

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

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

**Volume V**

**2011-2012**

Compiled and Edited  
by  
Fergus MacKay



**Forest Peoples Programme**

1c Fosseway Business Centre,  
Stratford Road, Moreton-in-Marsh  
GL56 9NQ, UK

*tel:* (44) 01608 65289

*email:* [info@forestpeoples.org](mailto:info@forestpeoples.org)

## Preface

This document contains Volume V of the series of compilations of United Nations human rights bodies' jurisprudence pertaining to indigenous peoples and covers the years 2011 and 2012.<sup>1</sup> For the first time, it also contains the advice of the Expert Mechanism on the Rights of Indigenous Peoples and the observations and recommendations of selected 'Special Procedures' of the Human Rights Council, such as Special Rapporteurs and Independent Experts.

In the period 2011-12, 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. 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." It also decided a case in 2011 concerning the rights of an indigenous woman in Argentina and found violations of a number of rights.

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 (for instance, Bangladesh, Costa Rica, Kenya, and South Africa). 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. CEDAW also adopted a decision on a case submitted pursuant to Optional Protocol 1 that deals with the rights of an indigenous woman in Canada. This decision is most noteworthy because it "finds that an act of intersectional discrimination has taken place against the author..."<sup>2</sup>

As an example of new practice, the Committee on the Rights of the Child repeatedly called on states to "establish and implement regulations to ensure that the business sector" complies with human rights, often with an explicit reference to the rights of the indigenous child, as well as referring to the UN Framework on business and human rights, adopted by the Human Rights Council in 2011. It also made reference to indigenous peoples rights under the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (twice) and the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (four times). The Committee against Torture also adopted concluding observations that address indigenous peoples in its reviews of four countries and, in 2012, the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families Committee on the Rights of Persons with Disabilities both adopted their first concluding observations concerning indigenous issues.

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<sup>1</sup> Volumes I-IV covering the years 1993-2010 are available at: [http://www.forestpeoples.org/documents/law\\_hr/un\\_jurisprudence\\_comp\\_sept05\\_eng.pdf](http://www.forestpeoples.org/documents/law_hr/un_jurisprudence_comp_sept05_eng.pdf); [http://www.forestpeoples.org/documents/law\\_hr/un\\_jurisprudence\\_comp\\_vol2\\_06\\_eng.pdf](http://www.forestpeoples.org/documents/law_hr/un_jurisprudence_comp_vol2_06_eng.pdf); <http://www.forestpeoples.org/sites/fpp/files/publication/2010/08/unjurisprudencecompvol30708eng.pdf>; and, <http://www.forestpeoples.org/sites/fpp/files/publication/2011/02/ips-and-human-rights-bodies-jurisprudence-2009-2010.pdf>.

<sup>2</sup> CEDAW explains that "discrimination of women based on sex and gender is inextricably linked with other factors that affect women, such as race, ethnicity, religion or belief, health, status, age, class, caste, and sexual orientation and gender identity. States parties must legally recognize and prohibit such intersecting forms of discrimination and their compounded negative impact on the women concerned."

The Committee on Economic, Social and Cultural Rights made reference to Article 1 of the Covenant in relation to land and resource rights (see Argentina and New Zealand). It also adopted an important general comment on the right to take part in cultural life, which was issued in 2009, that contains substantial text on indigenous peoples and affirms the rights recognised in the UN Declaration on the Rights of Indigenous Peoples.<sup>3</sup> It relates therein territorial rights to cultural identity, using language from the UNDRIP about indigenous peoples' right to own and control their lands, territories and resources, and stresses that states "should respect the principle of free, prior and informed consent of indigenous peoples in all matters covered by their specific rights."

The Human Rights Council's Universal Peer Review continues to be mostly disappointing except for the fact that indigenous peoples are usually discussed in the reviews of almost all states. However, it is difficult to fully ascertain what the results of these reviews are and what they may mean in principle and in practice. For instance, only 28 of the 234 states that have been reviewed to date have submitted reports on the measures they have taken to implement the recommendations.<sup>4</sup> Moreover, in these 'implementation' reports, a number of recommendations are not addressed at all or it is stated that they have been dealt with via existing legislation or through the adoption of non-binding policy measures.

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.

January 2013

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<sup>3</sup> This general comment was omitted from Volume IV and is included herein due to its importance.

<sup>4</sup> See <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRImplementation.aspx>.

## Contents

## Page

<b>I. COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION</b>	<b>1</b>
<b>A. Concluding Observations</b>	<b>1</b>
1. Bolivia, CERD/C/BOL/CO/17-20, 8 April 2011	1
2. Norway, CERD/C/NOR/CO/19-20, 8 April 2011	4
3. Rwanda, CERD/C/RWA/CO/13-17, 19 April 2011	5
4. Kenya, CERD/C/KEN/CO/1-4, 2 September 2011	8
5. Paraguay, CERD/C/PRY/CO/1-3, 12 September 2011	8
6. United Kingdom, CERD/C/GBR/CO/18-20, 1 September 2011	12
7. Canada, CERD/CAN/CO/19-20, 9 March 2012	12
8. Laos, CERD/LAO/CO/16-18, 9 March 2012	16
9. Mexico, CERD/C/MEX/Q/16-17, 04 April 2012	18
10. Vietnam, CERD/VNM/CO/10-14, 9 March 2012	21
11. Fiji, CERD/FJI/CO/18-20, 31 August 2012	23
12. Ecuador, CERD/ECU/CO/20-22, 31 August 2012	24
13. Finland, CERD/FIN/CO/20-22, 31 August 2012	27
14. Thailand, CERD/THA/CO/1-3, 31 August 2012	29
<b>B. Follow Up &amp; Early Warning and Urgent Action Procedures</b>	<b>31</b>
1. Brazil, 11/03/2011 (UA/EW)	31
2. Chile 02/09/2011 (UA/EW)	31
3. Colombia, 02/09/2011 (UA/EW)	32
4. Costa Rica, 02/09/2011 (UA/EW)	33
5. Costa Rica, 11/03/2011 (UA/EW)	34
6. Russian Federation, 11/03/2011 (UA/EW)	34
7. Ethiopia, 102/09/2011 (UA/EW)	35
8. India, 02/09/2011 (UA/EW)	36
9. Indonesia, 02/09/2011 (UA/EW)	37
10. Papua New Guinea, 11/03/2011 (UA/EW)	38
11. Peru, 02/09/2011 (UA/EW)	39
12. Russian Federation, 02/09/2011 (UA/EW)	39
13. Suriname, 20/09/2011 (UA/EW)	40
14. Tanzania, 11/03/2011 (UA/EW)	40
15. United States of America, 11/03/2011 (UA/EW)	41
16. Finland, 11/03/2011 (Follow Up)	41
17. Guatemala, 02/09/2011 (Follow Up)	42
18. Japan, 02/09/2011 (Follow Up)	43
19. Peru, 03/11/2011 (Follow Up)	44
20. Belize, 09/03/2012 (UA/EW)	45
21. Kenya, 09/03/2012 (UA/EW)	46
22. Panama, 09/03/2012 (UA/EW)	46
23. Suriname, 09/03/2012 (UA/EW)	47
24. Thailand, 09/03/2012 (UA/EW)	48
25. United States of America, 09/03/2012 (UA/EW)	48
26. Australia, 09/03/2012 (Follow Up)	49
27. Costa Rica, 31/08/2012 (UA/EW)	50
28. Ethiopia, 31/08/2012 (UA/EW)	50
29. India, 31/08/2012 (UA/EW)	51
30. Nepal, 31/08/2012 (UA/EW)	51
31. Philippines, 31/08/2012 (UA/EW)	52

32. Morocco, 31/08/2012 (Follow Up) (FR)	52
<b>II. HUMAN RIGHTS COMMITTEE</b>	<b>54</b>
<b>A. Concluding Observations</b>	<b>54</b>
1. Togo, CCPR/C/TGO/CO/4, 18 April 2011	54
2. Norway, CCPR/C/NOR/CO/6, 18 November 2011	54
3. Guatemala, CCPR/C/GUA/CO/3, 19 April 2012	54
4. Kenya, CCPR/C/KEN/CO/3, 31 August 2012	56
<b>B. Jurisprudence under Optional Protocol I</b>	<b>56</b>
1. Argentina, CCPR/C/102/D/1610/2007, 24/08/2011	56
<b>III. COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS</b>	<b>63</b>
<b>A. Concluding Observations</b>	<b>63</b>
1. Russian Federation, E/C.12/RUS/CO/5, 22 May 2011	63
2. Argentina, E/C.12/ARG/CO/3, 14 December 2011	64
3. Cameroon, E/C.12/CMR/CO/3, 23 January 2012	66
4. Ethiopia, E/C.12/ETH/CO/1-3, 31 May 2012	67
5. New Zealand, E/C.12/NZL/CO/3, 31 May 2012	67
6. Peru, E/C.12/PER/CO/2-4, 30 May 2012	68
7. Tanzania, E/C.12/TZA/CO/1-3, 30 November 2012	70
8. Ecuador, E/C.12/ECU/CO/3, 30 November 2012	70
9. Rep. of Congo, E/C.12/COG/CO/1, 30 November 2012	72
<b>B. General Comments</b>	<b>73</b>
1. General Comment No. 21, Right of everyone to take part in cultural life (art. 15, para. 1 (a), of the International Covenant on Economic, Social and Cultural Rights), E/C.12/GC/21, 21 December 2009	73
<b>C. Statements</b>	<b>88</b>
1. Statement on the obligations of States Parties regarding the corporate sector and economic, social and cultural rights, E/C.12/2011/1, 20 May 2011	88
<b>IV. COMMITTEE ON THE RIGHTS OF THE CHILD</b>	<b>91</b>
<b>A. Concluding Observations</b>	<b>91</b>
1. Denmark, CRC/C/DNK/CO/4, 7 April 2011	91
2. New Zealand, CRC/C/NZL/CO/3-4, 11 April 2011	93
3. Cambodia, CRC/C/KHM/CO/2, 20 June 2011	95
4. Costa Rica, CRC/C/CRI/CO/4, 17 June 2011	96
5. Finland, CRC/C/FIN/CO/4, 20 June 2011	99
6. Panama, CRC/C/PAN/CO/3-4, 21 December 2011	99
7. Myanmar/Burma, CRC/C/MMR/CO/3-4, 14 March 2012	103
8. Thailand, CRC/C/THA/CO/3-4, 17 February 2012	105
9. Australia, CRC/C/AUS/CO/4, 28 August 2012	108
10. Vietnam, CRC/C/VNM/CO/3-4, 15 June 2012	114
11. Algeria, CRC/C/DZA/CO/3-4, 18 July 2012	117
12. Canada, CRC/C/CAN/CO/3-4, 5 October 2012	117
13. Namibia, CRC/C/NAM/CO/2-3, 16 October 2012	124
<b>B. Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict</b>	<b>125</b>
1. Dem. Republic of Congo, CRC/C/OPAC/COD/CO/1, 7 March 2012	125
2. Thailand, CRC/C/OPAC/THA/CO/1, 21 February 2012	125

<b>C. Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography</b>	<b>126</b>
1. Mexico, CRC/C/OPSC/MEX/CO/1, 7 April 2011	126
2. Sweden, CRC/C/OPSC/SWE/CO/1, 23 January 2012	126
3. Nepal, CRC/C/OPSC/NPL/CO/1, 18 July 2012	127
4. Canada, CRC/C/OPSC/CAN/CO/1, 5 October 2012	127
<b>D. General Comments</b>	<b>128</b>
1. General comment No. 13 (2011), The right of the child to freedom from all forms of violence, CRC/C/GC/13, 18 April 2011	128
<b>V. COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN</b>	<b>130</b>
<b>A. Concluding Observations</b>	<b>130</b>
1. Nepal, CEDAW/C/NPL/CO/4-5, 29 July 2011	130
2. Ethiopia, CEDAW/C/ETH/CO/6-7, 27 July 2011	131
3. Paraguay, CEDAW/C/PRY/CO/6, 8 November 2011	132
4. Brazil, CEDAW/C/BRA/CO/7, 23 March 2012	133
5. Republic of Congo, CEDAW/C/COG/CO/6, 23 March 2012	135
6. Norway, CEDAW/C/NOR/CO/8, 23 March 2012	135
7. Guyana, CEDAW/C/GUY/CO/7-8 27 July 2012	135
8. Indonesia, CEDAW/C/IDN/CO/6-7/R.1, 27 July 2012	136
9. Mexico, CEDAW/C/MEX/CO/7-8, 27 July 2012	137
10. New Zealand, CEDAW/C/NZL/CO/7, 27 July 2012	138
11. Chile, CEDAW/C/CHL/CO/5-6, 24 October 2012	139
<b>B. Jurisprudence</b>	<b>141</b>
1. Canada: CEDAW/C/51/D/19/2008, 26 April 2012	141
<b>VI. COMMITTEE AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT</b>	<b>155</b>
<b>A. Concluding Observations</b>	<b>155</b>
1. Paraguay, CAT/C/PRY/CO/4-6, 14 December 2011	155
2. Canada, CAT/C/CAN/CO/6, 25 June 2012	155
3. Peru, CAT/C/PER/CO/6, 16 November 2012	155
4. Mexico, CAT/C/MEX/CO/5-6, 15 November 2012	156
<b>VII. COMMITTEE ON THE PROTECTION OF THE RIGHTS OF ALL MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES</b>	<b>157</b>
<b>A. Concluding Observations</b>	<b>157</b>
1. Paraguay, CMW/C/PRY/CO/1, 16 May 2012	157
<b>VIII. COMMITTEE ON THE RIGHTS OF PERSONS WITH DISABILITIES</b>	<b>158</b>
<b>A. Concluding Observations</b>	<b>158</b>
1. Peru, CRPD/C/PER/CO/1, 9 May 2012	158
<b>IX. COMMITTEE ON ENFORCED DISAPPEARANCES</b>	<b>160</b>
<b>A. Documents and Guidelines</b>	<b>160</b>
1. Guidance for Submission of Requests for Urgent Action to the Committee on Enforced Disappearances, 2012	160
2. Guidance for the Submission of Communications to the Committee on Enforced Disappearances, 2012	160

<b>X. HUMAN RIGHTS COUNCIL</b>	<b>161</b>
<b>A Resolutions</b>	<b>161</b>
1. Human rights and indigenous peoples, A/HRC/18/L.23, 13 Oct. 2011	161
2. Human rights and the environment, A/HRC/RES/19/10, 19 April 2012	164
<b>B. Universal Peer Review Mechanism</b>	<b>166</b>
1. Australia, A/HRC/17/10, 24 March 2011	166
2. Myanmar (Burma), A/HRC/17/9, 24 March 2011	173
3. Namibia, A/HRC/17/14, 24 March 2011	174
4. Nepal, A/HRC/17/5, 8 March 2011	176
5. Paraguay, A/HRC/17/18, 28 March 2011	177
6. Rwanda, A/HRC/17/4, 14 March 2011	181
7. Denmark, A/HRC/18/4, 11 July 2011	182
8. Papua New Guinea, A/HRC/18/18, 11 July 2011	184
9. Suriname, A/HRC/18/12, 11 July 2011	187
10. Thailand, A/HRC/19/8, 8 December 2011	191
11. Tanzania, A/HRC/19/4, 8 December 2011	192
12. Uganda, A/HRC/19/16, 22 December 2011	194
13. Venezuela, A/HRC/19/12, 7 December 2011	194
14. Ecuador, A/HRC/21/4, 5 July 2012	196
15. Tunisia, A/HRC/21/5, 9 July 2012	198
16. Morocco, A/HRC/21/3, 6 July 2012	198
17. Indonesia, A/HRC/21/7, 5 July 2012	199
18. Finland, A/HRC/21/8, 5 July 2012	201
19. India, A/HRC/21/10, 9 July 2012	202
20. Brazil, A/HRC/21/11, 9 July 2012	204
21. Philippines, A/HRC/21/12, 9 July 2012	206
22. South Africa, A/HRC/21/16, 9 July 2012	207
23. Argentina, A/HRC/22/4, 12 December 2012	208
24. Gabon, A/HRC/22/4, 13 December 2012	209
25. Guatemala, A/HRC/22/8, 31 December 2012	210
26. Japan, A/HRC/22/14, 14 December 2012	214
27. Peru, A/HRC/22/15, 27 December 2012	214
<b>XI. EXPERT MECHANISM ON THE RIGHTS OF INDIGENOUS PEOPLES</b>	<b>216</b>
<b>A. Advice</b>	<b>216</b>
1. Advice No 2 (2011): Indigenous peoples and the right to participate in decision making	216
2. Advice No. 3 (2012): Indigenous peoples' languages and cultures	221
3. Advice No. 4 (2012): Indigenous peoples and the right to participate in decision-making, with a focus on extractive industries,	225
<b>XII. SELECTED SPECIAL PROCEDURES OF THE HUMAN RIGHTS COUNCIL</b>	<b>235</b>
<b>A. Reports of the Special Rapporteur on the Rights of Indigenous Peoples</b>	<b>235</b>
<b>B. Special Rapporteur on adequate housing as a component of the right to an adequate standard of living</b>	<b>235</b>
1. Mission to Argentina, A/HRC/19/53/Add.1, 21 December 2011	235
<b>C. Special Rapporteur in the Field of Cultural Rights</b>	<b>236</b>
1. The right to enjoy the benefits of scientific progress and its applications, A/HRC/20/26, 14 May 2012	236

2. Mission to Brazil, A/HRC/17/38/Add.1, 21 March 2011	237
3. Preliminary conclusions and observations by the Special Rapporteur in the field of cultural rights at the end of the Visit to the Russian Federation, 16-26 April 2012	241
<b>D. Special Rapporteur on the Right to Food</b>	<b>242</b>
1. Mission to Mexico, A/HRC/19/59/Add.2, 17 January 2012	242
2. Guiding principles on human rights impact assessments of trade and investment agreements, A/HRC/19/59/Add.5, 19 December 2011 (Excerpts)	244
3. Mission to Canada, 6-16 May 2012. End of Mission Statement	249
4. Mission to Cameroon, 16-23 July 2012. End of Mission Statement	252
<b>E. Special Rapporteur on freedom of religion or belief</b>	<b>253</b>
1. Mission to Paraguay, A/HRC/19/60/Add.1, 26 January 2012	253
<b>F. Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health</b>	<b>256</b>
1. Mission to Guatemala, A/HRC/17/25/Add.2, 16 March 2011	256
<b>G. Special Rapporteur on extrajudicial, summary or arbitrary executions</b>	<b>262</b>
1. Follow-up country recommendations: Colombia, A/HRC/20/22/Add.2, 15 May 2012	262
<b>H. Special Rapporteur on the human rights of internally displaced persons</b>	<b>263</b>
1. Mission to Kenya, A/HRC/19/54/Add.2, 6 February 2012	263
<b>J. Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance</b>	<b>266</b>
1. Bolivia: End of Mission Statement, 10 September 2012	266
<b>K. Special Rapporteur on contemporary forms of slavery, including its causes and consequences</b>	<b>269</b>
1. Mission to Peru, A/HRC/18/30/Add.2, 15 August 2011	269
<b>L. 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</b>	<b>273</b>
1. Report of the Working Group, A/HRC/20/29, 10 April 2012	273
2. Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework, A/HRC/17/31, 21 March 2011	274
<b>M. Independent Expert on the right to water and sanitation</b>	<b>281</b>
1. Mission to the USA, 22 February to 4 March 2011: End of Mission Statement	281
<b>N. Independent Expert on Minority Issues</b>	<b>282</b>
1. Mission to Rwanda, 31 January – 7 February 2011, A/HRC/19/56/Add.1, 28 November 2011	282

## **I. COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION**

### **A. Concluding Observations**

#### **1. Bolivia (Plurinational State of), CERD/C/BOL/CO/17-20, 8 APRIL 2011**

3. The Committee notes with interest the legal, political and institutional reforms that the State party is undertaking, and it views this process as an opportunity to bolster the collective effort to build a pluralistic and inclusive society in the face of considerable challenges to the elimination of discrimination against and exclusion of indigenous peoples and other vulnerable groups. The Committee wishes to encourage the State party to pursue this process of change.

6. The Committee notes with satisfaction that the State party has introduced the United Nations Declaration on the Rights of Indigenous Peoples into its domestic legal order through Act No. 3760.

7. The Committee welcomes the new Constitution of 2009, which is the result of a process that embraced historically excluded sectors of the population. It notes that the Constitution upholds a wide range of human rights that reinforce the application of the Convention, such as:

- (a) The prohibition and punishment of discrimination;
- (b) The recognition of indigenous original campesino peoples and nations and their rights;
- (c) The recognition of Afro-Bolivian communities and their rights;
- (d) The recognition of the indigenous original campesino justice system;
- (e) The promotion of agrarian reform and the granting of land to indigenous original campesino people, intercultural communities of original peoples, Bolivians of African descent and campesino communities whose members have no land or insufficient land;
- (f) Profit-sharing when natural resources are extracted from the territories of indigenous original campesino peoples and nations;
- (g) The right to request and receive asylum or refuge on grounds of political or ideological persecution, and the principle of non-refoulement to a country where the life, integrity, security or freedom of the person concerned is at risk.

12. The Committee is concerned about the lack of reliable statistical data in the State party's report regarding indigenous original campesino peoples, Bolivians of African descent and all groups that make up Bolivian society. While noting with interest the information provided about the next census to be held in the State party, the Committee expresses its concern about the lack of clarity concerning the methodological tools to be used in the census to guarantee the right to self-identification (art. 2, paras. 1 (a) – 1 (d)).

The Committee reminds the State party that disaggregated data are needed in order to develop suitable public policies and programmes for the population and to evaluate the implementation of the Convention as it relates to the groups that make up society. The Committee also reminds the State party of paragraph 11 of its guidelines on the presentation of reports (CERD/C/2007/1) and recommends that, in its next periodic report, the State party include updated, disaggregated statistics on indigenous original campesino peoples and Bolivians of African descent. It also recommends that the State party develop reliable, appropriate statistical tools to ensure self-identification in the 2012 census and to ensure the full and effective participation of indigenous original campesino peoples and Bolivians of African descent in all stages of the census process and the inclusion of peoples in geographically remote locations.

13. While the Committee notes with appreciation that the Constitution recognizes the equal civil and political rights of indigenous communities and the advances made in the representation of indigenous peoples in the Government at the highest level, it is concerned that, in practice, members of these

communities continue to be subjected to discrimination and are underrepresented in all Government and decision-making bodies. It is concerned that the Electoral System Act, by providing for only 7 seats from special electoral districts out of a total of 130 seats, contravenes both the Constitution and the Convention. The Committee is particularly concerned about the situation of women, who suffer from multiple and intersectional discrimination on the basis of their ethnic origin as well as their gender, occupation and poverty (art. 2 and art. 5 (b) and (c)).

The Committee recommends that the State party take the necessary measures under, inter alia, the Electoral System Act, to guarantee political representation for indigenous original campesino peoples and nations. The Committee recommends that the State party take into consideration the Committee's general recommendation No. 25 (2000) on gender-related dimensions of racial discrimination and general recommendation No. 32 (2009) on special measures or affirmative action. It further recommends that the State party consider taking special measures to guarantee the proper representation of indigenous communities, and of women in particular, at all levels of government service and in all social participation mechanisms.

15. The Committee regrets the fact that some organizations, media and journalists in the State party use racial hate speech and act in a discriminatory manner, that they spread racial stereotypes and expressions of hatred against persons belonging to indigenous original campesino peoples and nations and Bolivians of African descent, and that they incite racial discrimination. While taking due note of the new articles 281 septies and octies of the Criminal Code, which refer to private individuals, the Committee regrets the lack of a specific provision in the Criminal Code of the State party that prohibits organizations and propaganda activities from inciting racial hatred, in keeping with article 4 (b) of the Convention (arts. 2, 4 (b) and 7).

The Committee recommends that the State party amend its Criminal Code in order to fully implement the provisions of article 4. The Committee also recommends that the State party devote particular attention to the social role of the media in improving human rights education and that it establish a code of ethics to ensure responsible journalistic practice. It recommends that the State party strengthen measures to combat racial prejudice that leads to racial discrimination in the media and in the press through education and training for journalists and for persons working with the media in order to increase awareness about racial discrimination in the population at large.

17. The Committee regrets the occurrence of conflicts and acts of racist violence against members of indigenous original campesino peoples and nations, some of which have resulted in deaths, and notes that these incidents have become worse since 2006 and have included clashes in Cochabamba, Chuquisaca, Santa Cruz and Pando. The Committee is concerned at the impunity that continues to prevail in respect of the majority of the human rights violations perpetrated during these incidents and at the delays in their investigation (arts. 4–6).

The Committee reaffirms the duty of the State party to put an end to impunity for these acts and urges it to expedite the administration of justice, the investigation of the complaints, and the identification and prosecution of the perpetrators and to guarantee victims and their family members an effective remedy. It also recommends that the State party demonstrate the political will to carry out the necessary measures, including educational and public policies, in order to create and promote forums for dialogue and understanding among the members of society.

18. While taking due note of the restitution of land and clarification of land title as part of the State party's efforts to abolish servitude and slavery in Guaraní territory, the Committee expresses its concern at the continued captivity of indigenous peoples and at the systematic violation of the human rights of members of these communities. In addition, the Committee regrets that the Transitional Inter-ministerial Plan for the Guaraní People came to an end in 2009 without all of its objectives

having been met and without provision having been made for its continuation by means of comprehensive measures. The Committee notes, in particular, the difficulties that have been and continue to be encountered by persons belonging to the Guaraní people in exercising their rights (arts. 4 and 5).

The Committee recommends that the State party adopt urgent measures to guarantee the full exercise of the rights of the Guaraní people, including an acceleration of the recovery of their ancestral lands. It recommends that the State party intensify its efforts to prevent, investigate and duly prosecute contemporary forms of slavery and to guarantee access to justice for the Guaraní people. The Committee also encourages the State party to establish, as a matter of urgency and in consultation with the Guaraní communities, a comprehensive and adequately funded development plan that specifically addresses the needs of the Guaraní people. This plan should focus on capacity-building and creating conditions of equality in order to ensure the Guaraní people's enjoyment of their rights. It further recommends that the State party undertake initiatives to raise the general public's awareness of the need to eradicate forced labour and servitude and that it continue its cooperation with the relevant specialized agencies of the United Nations in this regard.

19. The Committee regrets the persistence of threats and physical attacks against human rights defenders, especially those defending the interests of indigenous peoples (see the previous concluding observations of the Committee in the document bearing the symbol CERD/C/63/CO/2, paragraph 14) (art. 5).

The Committee reiterates its previous recommendation in its entirety and urges the State party to take all necessary measures for the protection of human rights defenders against any act of intimidation or reprisal or any arbitrary action as a consequence of their activities, including interference with their efforts to secure external funding. The Committee also reiterates that the State party should take into account its general recommendation No. 13 (1993) on the training of law enforcement officials in the protection of human rights and encourages the State party to improve the training of law enforcement officials, especially police officers, so that the standards of the Convention are fully met.

20. While recognizing the existence of the constitutional right to consultation of the indigenous original campesino and Afro-Bolivian peoples and nations, the Committee is concerned at the difficulties surrounding the exercise of this right in practice. It is concerned at the lack of regulations governing consultations with the above-mentioned peoples and nations in all sectors other than the hydrocarbons industry. It is also concerned at the fact that, even where mechanisms have been set up for consultations for the purpose of obtaining the free, prior and informed consent of the communities, such consultations are not carried out systematically with regard to natural resource development projects or regional infrastructure projects. In this connection, the Committee expresses its concern at the violation of the constitutional right of consultation in respect of the Coro Coro mining project (arts. 5 and 6).

The Committee urges the State party to establish practical mechanisms for implementing the right to consultation in a manner that respects the prior, free and informed consent of the affected peoples and communities and to ensure that such consultations are carried out systematically and in good faith. It also recommends that impact studies be carried out by an independent body before authorization is given for natural resource exploration and production in areas traditionally inhabited by indigenous original campesino and Afro-Bolivian peoples and nations. It also recommends that the State party request technical assistance from the Office of the United Nations High Commissioner for Human Rights and from the International Labour Organization to that end. The Committee further recommends that the indigenous original campesino and Afro-Bolivian peoples and nations be guaranteed access to the courts or to any special independent

body established for this purpose 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.

22. While it notes with interest the coexistence of different legally recognized justice systems, the Committee regrets that, inasmuch as certain personal, material and territorial matters are not included within the scope of the indigenous justice system, that system is not in line with the Constitution or the Convention and does not correspond to the actual situation of coexistence between indigenous and non-indigenous persons. The Committee is concerned that, in practice, there are sectors of the population that continue to face difficulties in accessing justice, in particular indigenous people and women, and it reiterates its concern about difficulties in gaining access to legal remedies in cases of offences which relate to racial discrimination (CERD/C/63/CO/2, para. 17). It is also concerned about the lack of clarity in the Jurisdiction Demarcation Act with regard to levels and mechanisms of coordination and cooperation between the indigenous original campesino justice system and other judicial systems in the State party (arts. 4, 5 (a) and 6).

The Committee recommends that the State party provide for the amendment of the Jurisdiction Demarcation Act. It also urges the State party to continue its efforts to establish a domestic legal system that gives full effect to the provisions of the Convention and to ensure compliance with international human rights standards and effective and equal access for all citizens to remedies through the competent national courts and other State institutions against any act of racial discrimination or related intolerance.

## **2. Norway, CERD/C/NOR/CO/19-20, 8 April 2011**

5. The Committee welcomes the fact that the State party has adopted initiatives to combat discrimination among which are the following: ...

(d) The project of Statistics Norway aimed at producing more accurate statistics with regard to the Sami population;...

6. While appreciating the information provided by the delegation during its oral presentation, the Committee reiterates its concern regarding the lack of data on the ethnic composition of the population in the State party's report.

The Committee recommends that the State party provide it with updated information concerning the ethnic composition of the population, in accordance with paragraphs 10 and 12 of the reporting guidelines (CERD/C/2007/1) and its general recommendation 8 (1990) concerning self-identification with a particular racial or ethnic groups.

17. The Committee is concerned about the effects on indigenous peoples and other ethnic groups in territories outside Norway, including the impact on their way of life and on the environment, of the activities by transnational corporations domiciled in the territory and/or under the jurisdiction of Norway. (arts. 2, 5 and 6)

In light of its general recommendation No. 23 (1997) on the rights of indigenous peoples, the Committee recommends that the State party take appropriate legislative or administrative measures to ensure that the activities of transnational corporations domiciled in the territory and/or under the jurisdiction of Norway do not have a negative impact on the enjoyment of rights of indigenous peoples and other ethnic groups, in territories outside Norway. In particular, the State party should explore ways to hold transnational corporations domiciled in the territory and/or under the jurisdiction of Norway accountable for any adverse impacts on the rights of indigenous peoples and other ethnic groups, in conformity with the principles of social responsibility and the ethics code of corporations.

18. The Committee is concerned that measures taken may not be sufficient to preserve and promote the culture of the Sami people and address the special situation of the East Sami, in particular regarding their access to land for reindeer grazing and that of the Sea Sami, in particular regarding their fishing rights. The Committee is also concerned about the persistence of discrimination towards Sami communities and the lack of implementation of the status of Sami language instruction, including teaching materials and staff. (arts. 2, 5 and 6)

In light of its general recommendation No. 23, the Committee recommends that the State party consult with the East Sami and Sea Sami and implement measures with a view to enabling them to fully enjoy their human rights and fundamental freedoms and to maintain and develop their culture, means of livelihood, including management of land and natural resources, in particular regarding reindeer grazing and fishing. The Committee urges the State party to take active measures to enable the Sami community to preserve its cultural identity and to monitor and address all forms of discrimination against the Sami communities. It recommends that the State party enact an educational policy to address the mother-tongue teaching requirements, including materials and staffing resources, of the Sami community. The Committee would appreciate receiving the results of the examination of East Sami land claims by the Finnmark Commission.

19. The Committee takes note of the existence of provisions dealing with Sami interests in Finnmark in the Mining Law of 19 June 2009, which entered into force on 1 January 2010. However, the cited Law does not stipulate anything with regard to Sami interests in other places traditionally inhabited by the Sami in Norway that are outside Finnmark.

The Committee requests the State party to include in its next periodic report information about consultations that were and are being conducted by the Government of the State party concerning industrial and other projects in all the territories where indigenous peoples traditionally live.

### **3. Rwanda, CERD/C/RWA/CO/13-17, 19 April 2011**

9. The Committee notes the efforts of the State party to promote and achieve national reconciliation and social cohesion among the various groups that make up the population. It also notes that the State party's overall approach, which is marked by the tragic genocide of 1994, seeks to change fundamental perceptions of ethnic divisions in order to achieve national unity. The Committee wonders, however, whether the achievement of reconciliation and national unity might not be to the detriment of the specific characteristics of certain groups, particularly the Batwa.

The Committee invites the State party to take into account, in its efforts to achieve reconciliation, national cohesion and unity, the specific characteristics of each of the groups that make up the population, including in the implementation of the various mechanisms, plans and programmes, particularly Rwanda Vision 2020, so that reconciliation, cohesion and national unity observe all aspects — including the political, economic, social and cultural aspects — of the human rights of persons belonging to these groups.

10. The Committee takes note of the explanations provided in the report of the State party (CERD/C/RWA/13-17, paras. 5–13) and confirmed by the State party delegation to the effect that the terms Batwa, Bahutu and Batutsi refer not to ethnic groups but to social classes. The report also explains that the population of Rwanda comprises a single ethnic group sharing the same language and the same culture, making it impossible to compile ethnic data on its composition. However, the Committee notes with concern the absence in the State party's report of any statistical data on the composition of the population or on the number of non-citizens residing in the territory of the State party and their socio-economic status.

In 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 recommends that the State party provide information on the composition of the population and other information from socio-economic studies that will allow the economic, social and cultural situation of the population to be assessed. The Committee also recommends that the State party furnish comprehensive data, disaggregated by sex and national or ethnic origin, on the number of non-citizens living in its territory and on their socio-economic situation, in accordance with the Committee's general recommendation No. 30 (2005) on discrimination against non-citizens.

11. The Committee regrets the position taken by the State party not to recognize the Batwa as an indigenous people.

The Committee, recalling its general recommendation No. 23 (1997) on the rights of indigenous peoples, recommends that the State party review its position on the Batwa community and contemplate recognizing the Batwa as an indigenous people.

12. The Committee is uncertain as to the meaning, scope and content of the notion of "historically marginalized groups" which appears in the State party's report and which includes the Batwa community, according to information provided by the State party delegation.

The Committee recommends that the State party clarify the notion of "historically marginalized groups" which appears in the State party's report, so as to enable the members of the Batwa community, among others, to fully enjoy their rights under the Convention.

16. The Committee is concerned at reports it has received of the persistence of negative stereotypes where the Batwa are concerned. It is also concerned at the weak impact of the measures taken by the State party to help the Batwa, who continue to suffer from poverty and discrimination in obtaining access to:

- (a) Education, their educational level remaining the lowest and their dropout rate the highest as compared with the rest of the population;
- (b) Adequate housing, given that the destruction of their habitat is not always accompanied by specific proposals for alternative housing;
- (c) Social services;
- (d) Employment (art. 5).

Recalling its 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, the Committee recommends that the State party intensify its efforts, in particular by taking special measures, to combat the persistent inequalities between the Batwa and the rest of the population, and also the high level of marginalization and poverty of the Batwa community. To this end, the Committee recommends that the State party:

- (a) Combat stereotypes and ensure that the Batwa are not victims of discrimination, and that they benefit equally with other population groups from plans and programmes implemented by the State party;
- (b) Facilitate and guarantee Batwa children's access to education without discrimination, in particular by taking steps to cut the high dropout rate, and continue to promote awareness of the importance of education among adults of the Batwa community;
- (c) Facilitate access by the Batwa to adequate housing, including by preventing forced evictions without prior consultation and without any offer of alternative housing;
- (d) Ensure that the Batwa enjoy effective access to health care and health services;

- (e) Develop training and apprenticeship opportunities for the Batwa with a view to facilitating their integration in the labour market. The Committee recommends that the State party provide information on this subject in its next periodic report.

17. The Committee takes note with concern of reports brought to its attention that no land was offered to the Batwa after their land was expropriated without prior consultation with them about the construction of parks. According to the same sources, the Batwa have not benefited from the land distribution plan established by the State party, which would have allowed them to retain their traditional lifestyle (art. 5).

The Committee recommends that the State party take all necessary steps, in consultation with and with the agreement of the Batwa, to offer them adequate land, inter alia under the land distribution plan established by the State party, so that they can retain their traditional lifestyle and engage in income-generating activities.

18. While taking note of the information provided by the State party regarding the participation of all groups in political and public life, the Committee is concerned at the lack of specific information on the participation of the Batwa in the public and political life of the State party at both the local and national levels (art. 5).

The Committee recommends that the State party take special measures to encourage and promote the participation of the Batwa in political and public life by such means as awareness campaigns among the rest of the population and training for the Batwa. The Committee recommends that the State party provide information on this subject in its next periodic report.

19. The Committee is concerned at the lack of information on complaints, prosecutions, sanctions and reparations relating to instances of racial discrimination apart from those linked to the 1994 genocide. It is likewise concerned at reports that the Batwa do not receive equal treatment in the courts and that they have difficulty obtaining access to justice in order to defend their rights (arts. 5 and 6).

Referring to its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee recalls that the absence of complaints or legal proceedings brought by victims of racial discrimination can be indicative of legislation that is insufficiently specific, a lack of awareness of available remedies, fear of social censure or reprisals, or an unwillingness on the part of the authorities to initiate proceedings. The Committee recommends that the State party take all necessary steps to facilitate the access of the Batwa to justice, to disseminate legislation relating to racial discrimination, particularly among the Batwa, and to inform the latter of all the legal remedies available to them and of the possibility of obtaining legal assistance. It further recommends that the State party provide comprehensive information on this subject in its next periodic report.

21. While taking note of the State party's efforts to promote tolerance and reconciliation, particularly through the teaching of the history of the genocide, civic education, the introduction of human rights in school curricula, and awareness campaigns in the various media, the Committee seeks assurances that such promotional activities adequately cover all segments of the population in the State party, including certain "historically marginalized groups" such as the Batwa, who have greater problems gaining access to the media and to education. The Committee also wonders whether human rights education is offered specifically to law enforcement officers, and to police and judicial officers in particular (art. 7).

The Committee recommends that the State party take additional measures to ensure that civic education and efforts to teach, promote and foster awareness of human rights and the

Convention cover all segments of the population, in particular the “historically marginalized groups”, whose access to the media is not always guaranteed. The Committee recommends that the State party redouble its efforts to ensure that law enforcement officers receive training in human rights and in the provisions of the Convention in particular.

22. Bearing in mind the indivisibility of all human rights, the Committee urges the State party to consider ratifying those international human rights treaties to which it is not yet a party, particularly those which have a direct bearing on the question of racial discrimination, such as the International Labour Organization (ILO) Convention concerning Indigenous and Tribal Peoples in Independent Countries (No. 169).

#### **4. Kenya, CERD/C/KEN/CO/1-4, 2 September 2011**

17. The Committee notes with concern that the State party has not acted upon the decisions of the African Commission on Human and Peoples’ Rights as regards forced evictions of the *Endorois* and the *Ogiek* from their lands and that people affected are still without any redress to date. (art. 5)

The Committee urges the State Party to respond to the decisions made by the African Commission on Human and Peoples’ Rights and to ensure that all marginalised communities and peoples involved are redressed as ordered.

19. The Committee notes with interest the introduction of the concept of community lands in the 2010 Constitution which recognises the rights of marginalised and vulnerable ethnic minorities. (art. 5)

The Committee calls on the State party to take the necessary legislative measures and to adopt policies to implement the constitutional provisions on community lands and minority rights.

#### **5. Paraguay, CERD/C/PRY/CO/1-3, 12 September 2011**

5. The Committee is pleased to note that the amount budgeted for land purchases by the National Institute of Indigenous Affairs (INDI) was raised from US\$ 4 million to US\$ 22 million in 2011.

6. The Committee welcomes the firm commitment made by the delegation of the State party to comply with rulings handed down by international courts in cases involving indigenous peoples. The Committee commends the State party on its recent recognition of the Kelyenmagategma indigenous community’s ownership rights to a portion of its ancestral territory and on the transfer of official title to that land following more than 10 years of litigation.

7. The Committee is gratified to learn of the creation of the Directorate-General for Indigenous Health under the Ministry of Health.

8. The Committee is concerned about the lack of sufficient reliable, disaggregated data on the demographic composition of the Paraguayan population, particularly in the case of indigenous peoples and Afro-descendent communities. Noting that the next national census is to be conducted in 2012, the Committee is concerned by the lack of information on the corresponding preparatory work, including such matters as the training to be provided to census-takers and communities, the methodological tools to be used to ensure that the principle of self-identification is respected, and the information provided and the consultations held regarding the design of census forms (art. 2, para. 1 (a) and (d)).

The Committee recommends that the State party, working in close cooperation at all stages of the process with the United Nations and with indigenous peoples and Afro-descendent communities, in particular, take the necessary steps to refine its census methodology and develop appropriate, reliable statistical tools for use in the 2012 census that are in keeping with

the principle of self-identification. The Committee requests the State party to include disaggregated, up-to-date statistics in its next periodic report on the composition of the population and reminds it that such information is needed as a basis for the development of suitable public policies and programmes for sectors of the population subject to racial discrimination and for the evaluation of the application of the Convention in respect of the different groups that make up society.

11. While the Committee takes note of the information supplied about the special measures implemented in the State party to contribute to the advancement and protection of sectors of the population subject to racial discrimination, it is concerned about the segmentation of the labour market and the low level of representation of indigenous and Afro-descendent communities and other vulnerable groups in decision-making positions, in social participation mechanisms and in education. It is also concerned by the lack of information about how people make use of these special measures and about their impact or scope (arts. 2, para. 2, and 5).

The Committee encourages the State party to launch a campaign for the purpose of gathering information that can be used to evaluate the extent to which these special measures are designed and applied in ways suited to the needs of the communities concerned. It recommends that the State party undertake a study to determine what impact existing special measures have had on the target communities' enjoyment of their rights and that their implementation be monitored and evaluated on a regular basis. In this connection, the Committee invites the State party to take into consideration its general recommendation No. 32 (2009) on the meaning and scope of special measures in the Convention.

12. While the Committee is appreciative of the fact that constitutional recognition has been extended to indigenous peoples, it is concerned that, in practice, the absence of a comprehensive policy for the protection of their rights and the existence of insufficient institutional capacity pose serious obstacles to indigenous peoples' full enjoyment of their rights. The situation of indigenous women is of particular concern to the Committee, as they are subject to multiple, intersectional forms of discrimination because of their ethnic origin, gender, occupational status and poverty. The Committee is also concerned about the failure to act upon the recommendations set forth in the report of the Truth, Justice and Reparations Commission concerning means of addressing persistent racial discrimination on the basis of time-bound objectives (arts. 2 and 5, subparas. (c), (d) and (e)).

The Committee recommends that the State party take the necessary steps, including legislative measures and the establishment of national budget allocations, to ensure equal rights for indigenous peoples. It further recommends that the State party redouble its efforts to implement the recommendations contained in the report of the Truth, Justice and Reparations Commission concerning ways of countering racial discrimination. The Committee invites the State party to take advantage of the technical assistance available under the advisory services and technical assistance programme of the Office of the United Nations High Commissioner for Human Rights for the purpose of reviewing its laws and its institutional structure for the implementation of policies concerning indigenous peoples. It also encourages the State party to accept advisory assistance and to agree to receive visits from experts, including the Special Rapporteur on the rights of indigenous peoples. The Committee also invites the State party to take into consideration its general recommendation No. 25 (2000) on gender-related dimensions of racial discrimination.

13. The Committee notes with concern that many children belonging to vulnerable groups are not registered or lack identity documents and do not receive basic services in respect of health care, nutrition, education or cultural activities (art. 5, subparas. (d) and (e)).

The Committee recommends that the State party take the necessary steps to register all children in its territory, particularly those residing in areas inhabited by indigenous peoples, while safeguarding and respecting their culture, and ensure that they receive the services required to promote their intellectual and physical development.

14. The Committee is concerned by the fact that INDI lacks institutional autonomy and functional authority over other departments and ministries of the State party and by the fact that, in the absence of a statutory mandate for full consultations with indigenous peoples, these peoples do not perceive the Institute as a body that represents them. The Committee is also concerned by the fact that indigenous peoples are not systematically provided with the relevant information or consulted beforehand with a view to obtaining their informed consent to decisions that have an impact on their rights. This is made evident by the recent INDI resolution on consultations which was directed to all governmental agencies (arts. 2 and 5, subpara. (d) (viii)).

The Committee recommends that the State party undertake an institutional assessment of INDI with a view to converting it into an autonomous institution that represents the country's indigenous peoples and equipping it with the appropriate authority and resources, as well as with a mandate that covers cases of racial discrimination. The Committee also recommends that the State party take the necessary steps to create an atmosphere of trust that will be conducive to dialogue with indigenous peoples and that it do what is necessary to ensure that indigenous peoples are effectively involved in decision-making processes in areas in which their rights could be affected, taking into consideration the Committee's general recommendation No. 23 (1997) on the rights of indigenous peoples.

15. While the Committee was interested to learn from the Paraguayan delegation that 45 per cent of the indigenous communities that do not yet have secure and definitive legal land titles will have been awarded such titles by the year 2020, it is concerned that the absence of an effective system for the recognition and restitution of land rights prevents indigenous communities from gaining access to their ancestral lands. Another source of concern is the State party's failure to undertake full investigations and action in response to threats and violence against some indigenous and Afro-descendent communities in connection with evictions from their lands (arts. 2, subparas. (c) and (d); 5, subpara. (d) (v) and (vi); and 6).

The Committee recommends that the State party adopt the necessary reforms, including legal and administrative measures, to ensure that the domestic justice system has effective and sufficient means of protecting indigenous and Afro-descendent communities' rights, including effective mechanisms for lodging complaints and claims concerning land, for bringing about the restitution of their lands and for fully recognizing their land rights in a coordinated and systematic manner. The Committee urges the State party to undertake a prompt and effective investigation into threats and incidents of violence, to identify and prosecute the persons responsible for them and to ensure that victims and their families have an effective remedy available to them.

16. While taking note of the State party's efforts to abolish servitude in the Chaco, the Committee reiterates its concern about the social and economic situation of the indigenous communities in that territory, which it has addressed under its early warning and urgent action procedure. The Committee is concerned by the continued practice of debt servitude, exploitation of child domestic workers (*criadazgo*) and violations of the human rights of members of indigenous communities in that territory (arts. 4 and 5).

The Committee recommends that the State party take urgent action to ensure that the indigenous communities of the Chaco are able to fully exercise their rights. It recommends that the State party intensify its efforts to prevent, investigate and duly prosecute cases of forced

labour and to guarantee that the communities concerned have access to justice. It also encourages the State party to establish a plan of action whose components include training for labour inspectors and initiatives for raising workers' and employers' awareness of the need to eradicate forced labour in the indigenous communities of the Chaco. The Committee further encourages the State party to continue to work with specialized agencies of the United Nations in this connection.

17. While noting with interest the information furnished by the State party on the situation of the Yakye Axa and Sawhoyamaya indigenous communities, which the Committee addressed under its early warning and urgent action procedure, on the status of the Xamok Kasek community, and on the steps taken to date to partially comply with the judgements handed down by the Inter-American Court of Human Rights concerning these three communities, the Committee is concerned by the delay in executing the most important aspects of those judgements, particularly the restitution of these communities' ancestral lands. The Committee is also concerned by the fact that the Inter-Agency Commission for the Enforcement of International Judgements has no mandate to coordinate actions taken by the legislative and executive branches (arts. 2; 5, subpara. (d) (v) and (vi); and 6).

The Committee calls upon the State party to take, as a matter of urgency, the necessary steps to fully comply with the judgements of the Inter-American Court of Human Rights, in which it found for the Yakye Axa, Sawhoyamaya and Xamok Kasek indigenous communities, and to do so in accordance with an established timetable. It further recommends that the Inter-Agency Commission for the Enforcement of International Judgements be strengthened so that it is able to coordinate the efforts of the different branches of government to fulfil the State party's obligations.

19. The Committee notes with interest that the State party is under a constitutional obligation to promote the Guaraní language, which is an official language, and the languages of other indigenous and minority groups and to undertake to provide intercultural, bilingual education. It is concerned, however, by the fact that Languages Act No. 4251 is not being fully implemented and by the lack of information on students' access to schooling in their mother tongue (art. 5, subparas. (a) and (e) (v)).

The Committee recommends that the State party implement Languages Act No. 4251 without delay and that it set a timetable and provide a suitable budget for this purpose, especially in connection with the use of the two official languages on an even footing in, inter alia, education, vocational training and the administration of justice. The Committee also recommends that, in the course of the State party's efforts to cultivate and reinforce the languages of indigenous and other minority groups, it take into consideration Expert Mechanism Advice No. 1 (2009) on the rights of indigenous peoples to education.

20. The Committee is gratified that the status of the Office of the Ombudsman is recognized in the Constitution and that the Department for Indigenous Peoples and the Department for Action against Discrimination have been established within it. The Committee is concerned, however, about the extent of the Office's institutional capacity and about the lack of knowledge in the State party about the Office's duties and the actions it takes to protect the rights of victims of racial discrimination. The Committee regrets that information is not available on what progress has been made in acting upon complaints of racial discrimination received by the Office of the Ombudsman or on the outcome of any action taken (arts. 6 and 7).

The Committee encourages the State party to take the necessary steps to strengthen the operational capacity of the Office of the Ombudsman and to see to it that the Office of the Ombudsman makes a stronger commitment to protecting the human rights of indigenous peoples and Afro-Paraguayan communities. It also recommends that the State party provide

information in its next periodic report on the progress made in resolving cases of racial discrimination that have been brought to the attention of the Office of the Ombudsman.

#### **6. United Kingdom, CERD/C/GBR/CO/18-20, 1 September 2011**

29. The Committee is concerned at reports of adverse effects of operations by transnational corporations registered in the State party but conducted outside the territory of the State party that affect the rights of indigenous peoples to land, health, environment and an adequate standard of living. The Committee further regrets the introduction of a legislative bill in the State party which, if passed, will restrict the rights of foreign claimants seeking redress in the State party's courts against such transnational corporations (articles 2, 5 and 6).

Recalling its General Recommendation 23 (1997) on the rights of indigenous peoples, the Committee encourages the State party to take appropriate legislative and administrative measures to ensure that acts of transnational corporations registered in the State party comply with the provisions of the Convention. In this regard, the Committee recommends that the State party should ensure that no obstacles are introduced in the law that prevent the holding of such transnational corporations accountable in the State party's courts when such violations are committed outside the State party. The Committee reminds the State party to sensitize corporations registered in its territory of their social responsibilities in the places where they operate.

#### **7. Canada, CERD/CAN/CO/19-20, 9 March 2012**

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

(b) Amendment to Section 67 of the Canadian Human Rights Act, which allows, as of July 2011, the Canadian Human Rights Commission to accept complaints regarding actions or decisions under the Indian Act;

(c) Gender Equity in Indian Registration Act, which came into effect in January 2011 and ensures that eligible grand-children of women who lost Status as a result of marrying non-Indian men can become entitled to registration (Indian status);

(d) Various programmes, strategies and other initiatives aimed at raising the awareness of the population with regard to racial discrimination, integration, tolerance and multiculturalism. ...

4. The Committee notes with appreciation the formal apology delivered, in June 2008, by the Prime Minister of Canada, on behalf of the Government of Canada, to former students, their families and communities for Canada's role in the operation of the Indian Residential School System. It also notes with appreciation the apology by the Government of Canada for relocating Inuit from Inukjuak and Pond Inlet to the High Arctic in the 1950's and for the hardship, suffering and loss they experienced.

5. The Committee also notes with appreciation the endorsement by Canada of the United Nations Declaration on the rights of indigenous peoples.

7. The Committee remains concerned at the absence in the State party's report of recent reliable and comprehensive statistical data on the composition of its population including economic and social indicators disaggregated by ethnicity, including Aboriginal (indigenous) peoples, African Canadians and immigrants living in its territory, to enable it to better evaluate their enjoyment of civil and political, economic, social and cultural rights in the State party.

In accordance with paragraphs 10 to 12 of its revised reporting guidelines (CERD/C/2007/1), the Committee reiterates its previous recommendation that the State party collect and, in its next periodic report, provide the Committee, with reliable and comprehensive statistical data on the ethnic composition of its population and its economic and social indicators disaggregated by

ethnicity, gender, including on Aboriginal (indigenous) peoples, African Canadians and immigrants, to enable the Committee to better evaluate the enjoyment of civil, political, economic, social and cultural rights of various groups of its population.

9. The Committee takes note of the various fora and mechanisms in the Canadian government that take part of the State party's efforts to facilitate exchange of information at the federal, provincial, and territorial levels on legislation, policies, programs and best practices aimed at coordinating the implementation of the Convention. These cover, inter alia, immigrants, Aboriginal peoples, and issues relating to multiculturalism and anti-racism. In spite of the existence of these mechanisms, however, the Committee is concerned that disparities and discrepancies still exist in the implementation of the Convention among provinces and territories (art. 2).

The Committee recommends that the State party take appropriate measures to strengthen the coordination of all existing federal and provincial mechanisms in order to remove discrepancies and disparities in the implementation of anti-racism legislation, policies, programs and best practices, and to ensure the enjoyment on an equal footing within all provinces and territories of the rights set forth in the Convention, including by adopting, when necessary, new federal laws.

10. The Committee has noted that the various policies, programmes and strategies adopted by the State party at the federal, provincial, and territorial levels do not give a comprehensive and clear picture of the special measures adopted by the State party to address the situation of Aboriginal peoples and African Canadians (art. 2, 5).

The Committee recommends that the State party coordinate its various policies, strategies and programs on Aboriginal peoples and African Canadians by adopting a comprehensive strategy on the situation of Aboriginal people at the federal level, so as to give a coherent picture of its actions and enhance their efficiency, and ensure that any differences of treatment are based on reasonable and objective grounds.

12. The Committee is concerned at the disproportionately high rates of incarceration of Aboriginal people including Aboriginal women, in federal and provincial prisons across Canada (art. 2, 5, 7).

In 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 recommends that the State party reinforce measures to prevent excessive use of incarceration of indigenous peoples. The Committee also recommends that the State party:

(a) Give preference, wherever possible, to alternatives to imprisonment concerning Aboriginal peoples, as set forth in subsection 717 (1) of the Criminal Code;

(b) Implement, when appropriate, subsection 718.2 (e) of the Criminal Code, as well as section 742.1, to allow Aboriginal convicted offenders to serve their sentences in their communities;

(c) Make adequate use of the Aboriginal Justice Strategy (AJS) in order to prevent Aboriginal overrepresentation in prisons, as a result of the operation of the criminal justice system.

The Committee urges the State party to train its prosecutors, judges, lawyers, police officers on these provisions of the Criminal Code, and to increase its efforts to address socio-economic marginalization of Aboriginal people.

14. While noting that the State party has enacted a Corporate Responsibility Strategy, the Committee is concerned that the State has not yet adopted measures with regard to transnational corporations registered in Canada whose activities negatively impact the rights of indigenous peoples outside Canada, in particular in mining activities (art. 5).

The Committee recommends that the State party take appropriate legislative measures to prevent transnational corporations registered in Canada from carrying out activities that negatively

impact on the enjoyment of rights of indigenous peoples in territories outside Canada, and hold them accountable.

17. The Committee takes note of various measures taken by the State party to combat violence against Aboriginal women and girls, such as the Family Violence Initiative, the Urban Aboriginal Strategy, and various initiatives taken at the provincial or territorial level to address murders and disappearances of Aboriginal women. However, the Committee remains concerned that Aboriginal women and girls are disproportionately victims of life-threatening forms of violence, spousal homicides and disappearances (art. 5).

The Committee recommends that the State party:

- (a) Strengthen its efforts to eliminate violence against Aboriginal women in all its forms by implementing its legislation and reinforcing its preventive programmes and strategies of protection, including the Shelter Enhancement Program, the Family Violence Prevention Program, the Policy Centre for Victim Issues and the Aboriginal Justice Strategy and the new National Police Support Centre for missing persons;
- (b) Facilitate access to justice for Aboriginal women victims of gender-based violence, and investigate, prosecute and punish those responsible;
- (c) Conduct culturally-sensitive awareness-raising campaigns on this issue, including in affected communities and in consultation with them;
- (d) Consider adopting a national plan of action on Aboriginal gender-based violence;
- (e) Consult Aboriginal women and their organisations and support their participation in development, implementation and evaluation of measures taken to combat violence against them.

The Committee further recommends that the State party support existing databases and establish a national database on murdered and missing Aboriginal women and provide the Committee with statistical data and information on concrete results of its programmes and strategies.

18. The Committee is concerned that the State party has not yet removed all discriminatory effects in matters relating to the Indian Act that affect First Nations women, in particular relating to band membership and matrimonial real property on reserve lands (art. 2, 5).

The Committee urges the State party to adopt and implement the proposed Family Homes on Reserves and Matrimonial Interests or Rights Act presently under consideration before Parliament, without further delay, in order to allow the enjoyment by First Nations women in the areas of property, marriage and inheritance.

19. While noting measures taken by the State party, such as the Aboriginal Health Transition Fund, Canada Economic Action Plan 2009, the new Federal Framework for Aboriginal Economic Development, and the new Aboriginal Skills and Employment Training Strategy, the Committee remains concerned about the persistent levels of poverty among Aboriginal peoples, and the persistent marginalization and difficulties faced by them in respect of employment, housing, drinking water, health and education, as a result of structural discrimination whose consequences are still present (art. 5).

The Committee recommends that the State party, in consultation with Aboriginal peoples, implement and reinforce its existing programmes and policies to better realize the economic, social and cultural rights of Aboriginal peoples, in particular through:

- (a) Speeding up the provision of safe drinking water to Aboriginal communities on reserves;
- (b) Intensifying efforts to remove employment-related discriminatory barriers and discrepancies in salaries between Aboriginal and non-Aboriginal people, in particular in Saskatchewan and Manitoba;

- (c) Finalising the construction of homes for the Attawapiskat communities in northern Ontario, and facilitating access to housing by Aboriginal people, by adopting and implementing the plan currently being drafted;
- (d) Facilitating their access to health services;
- (e) Improving access to education of Aboriginal children including to the post-graduate education, in particular by generalising the Enhanced Prevention Focus, and providing it with sufficient funding;
- (f) Discontinuing the removal of Aboriginal children from their families and providing family and child care services on reserves with sufficient funding; and
- (g) Providing adequate compensation through an appropriate settlement mechanism, to all students who attended the Indian Residential Schools in order to fully redress the intergenerational effects.

The Committee requests that the State party, in consultation with indigenous peoples, consider elaborating and adopting a national plan of action in order to implement the United Nations Declaration on the rights of indigenous peoples.

The Committee also requests that the State party provide it with information on the progress and concrete results of such programs and policies, in its next periodic report.

20. The Committee is concerned about reports according to which the right to consultation as provided in legislation and the right to prior, free and informed consent to projects and initiatives concerning Aboriginal peoples, are not fully applied by the State party, and may be subject to limitations. It is also concerned that Aboriginal peoples are not always consulted for projects conducted on their lands or which affect their rights and that treaties with Aboriginal peoples are not fully honoured or implemented. The Committee is further concerned that Aboriginal peoples incur heavy financial expenditures in litigation to resolve land disputes with the State party owing to rigidly adversarial positions taken by the State party in such disputes. While acknowledging that the Special Claims Tribunal constitutes a positive step, the Committee is concerned at reports that this tribunal does not resolve disputes on treaty rights for all First Nations and does not provide for all guarantees for a fair and equitable settlement (art. 5).

In light of its General Recommendation no. 23 (1997) on the rights of indigenous peoples, the Committee recommends that the State party, in consultation with Aboriginal peoples:

- (a) Implement in good faith the right to consultation and to free, prior and informed consent of Aboriginal peoples whenever their rights may be affected by projects carried out on their lands, as set forth in international standards and the State party's legislation;
- (b) Continue to seek in good faith agreements with Aboriginal peoples with regard to their lands and resources claims under culturally-sensitive judicial procedures, find means and ways to establish titles over their lands, and respect their treaty rights;
- (c) Take appropriate measures to guarantee that procedures before the Special Tribunal Claims are fair and equitable and give serious consideration to the establishment of a Treaty Commission with a mandate to resolve treaty rights issues.

21. The Committee is concerned that persons belonging to Aboriginal peoples and African Canadians, continue to face obstacles in recourse to justice, despite the existence of some programs at the provincial and territorial levels. The Committee also draws attention to the lack of information about the mechanism to replace the Court Challenges Programs which were cancelled by the State party (art. 6).

The Committee recommends that the State party strengthen its efforts to promote and to facilitate access to justice at all levels by persons belonging to minority groups, in particular by Aboriginal peoples and African Canadians. The Committee also urges the State party to establish without

further delay, a mechanism to fill the gap caused by the cancellation of the Court Challenges Programs, as previously recommended by the Committee.

23. Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider ratifying those international human rights treaties which it has not yet ratified, in particular treaties the provisions of which have a direct relevance to communities that may be the subject of racial discrimination, such as the ... ILO Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries....

30. The Committee also wishes to draw the attention of the State party to the particular importance of recommendations 12, 18, 20, and 22 and requests the State party to provide detailed information in its next periodic report on concrete measures taken to implement these recommendations.

#### **8. Laos, CERD/LAO/CO/16-18, 9 March 2012**

3. The Committee notes the legislative and policy measures taken by the State party which contribute to combating racial discrimination, including: ... (c) The scientific study undertaken on the ethnic composition of the State party's population which has led to the formal recognition of 49 ethnicities classified into 4 ethno-linguistic groups.

11. While noting the answer given by the delegation of the State party, notably concerning the investigation conducted on the allegations of killings of young Hmong persons in the Xaisomboune Special Zone in May 2004, the Committee remains concerned that allegations of acts of violence against Hmong people are not properly and impartially investigated. (art. 5 (b)).

The Committee urges the State party to investigate promptly, thoroughly and impartially all allegations of acts of violence against members of the Hmong ethnic group. In this regard, the Committee draws the attention of the State party to its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system.

The Committee also reiterates its previous recommendation that the State party should invite United Nations bodies for the protection and promotion of human rights to visit the areas where members of the Hmong ethnic groups have taken refuge.

12. The Committee notes the information provided by the State party in its letter of 2 October 2009 as well as during the dialogue regarding the conditions of Hmong persons repatriated under an agreement with a neighbouring country. Nevertheless, the Committee expresses concern that some persons, considered by the UNHCR as persons of concern, did not voluntarily repatriate and that international monitors were not allowed access to them upon their arrival in the State party. (art. 5 (b)).

The Committee calls upon the State party to ensure that repatriation of persons or groups, considered as persons of concern to UNHCR, is conducted on a genuinely voluntary basis. The Committee also urges the State party to give international monitors unrestricted access to returnees.

16. In view of the customs and traditional practices of members of ethnic groups in mountainous areas, the Committee is concerned that the land regime of the State party, whereby land is allotted for housing, farming, gardening and grazing, fails to recognize a link between the cultural identity of ethnic groups and their land. (art. 5 (e)).

The Committee calls upon the State party to review its land regime with a view to recognizing the cultural aspect of land, as an integral part of the identity of some ethnic groups.

17. The Committee regrets that it has not been given information during the dialogue as to how communities' free prior and informed consent is ensured in practice in the implementation of projects that affect the use of their lands and resources, in particular in the implementation of development projects, such as the building of hydropower stations, extractive activities or in the context of land concessions and the establishment of economic special zones. (art. 5(e)).

The Committee urges the State party to ensure that the right of communities to free prior and informed consent is respected in the planning and implementation of projects affecting the use of their lands and resources. The Committee calls upon the State party to ensure that communities have the capacity to effectively represent their interests in decision-making processes. The Committee also recommends that the State party take all measures to ensure that communities have effective access to redress.

Moreover, the Committee calls upon the State party to ensure that the laws and regulations pertaining to consultations, impact assessments, displacement, and compensations, such as Prime Minister Decree No. 192/PM of 7 July 2006, fully respect the rights of the members of communities living in the areas where development projects are to be implemented.

18. The Committee notes the development objective of the relocation policy which aims to cluster and settle scattered ethnic communities of the mountainous areas in lowland villages with better access to public services and infrastructure. The Committee further notes the affirmation by the State party that communities concerned by relocation projects have been consulted prior to resettlement and that these relocations have been made on a voluntary basis. At the same time, the Committee is seriously concerned that the implementation of the policy has uprooted communities who have also been forced to adopt new lifestyles and livelihoods. Moreover, the Committee regrets that it has not received information as to how alternatives to relocation as well as consideration of ethnic groups' ties to land have been taken into account in the implementation of the policy. (arts. 5(e) and 1).

The Committee reiterates its previous recommendation calling on the State party to consider all possible alternatives to relocation and to pay attention to the cultural ties of certain ethnic groups to their land. Moreover, the Committee recommends that the State party provide opportunities for smaller ethnic groups to define development in their own terms and to contribute to decision-making as to how development is operationalized.

The Committee requests the State party to include in its next periodic report information on the number of persons/villages and their ethnic affiliation which have been relocated as well as information on the impact of the relocation policy on the livelihood and the culture of the persons, villages and ethnic groups concerned.

20. Notwithstanding the explanation provided by the State that no ethnic group is considered as a minority, the Committee emphasizes the need in a multi-ethnic society to recognize and promote the rights of ethnic groups of smaller size, including the need to protect their existence and their identity so as to prevent forced assimilation and loss of cultures as well as to ensure that their concerns are taken into consideration in public policies. (arts. 5, 2 and 1).

In line with its previous concluding observations, the Committee calls upon the State party to recognize without discrimination on the ground of ethnic origin, all human rights listed in article 5 of the Convention to all members of its ethnic groups that are numerically inferior to the rest of the population, regardless of the name given to these groups in domestic law.

21. The Committee expresses its concern at the insufficient measures taken to preserve the ethnic languages spoken in the State party, in particular the non-written languages, which are part of the national cultural heritage. (art. 5(e)).

The Committee urges the State party to take the necessary measures to preserve the cultural heritage of ethnic groups, including their languages. In this regard, the Committee recommends

that the State party explore all possibilities for capturing and documenting ethnic languages, traditional knowledge and cultures, and develop their teaching in school.

#### **9. Mexico, CERD/C/MEX/Q/16-17, 04 April 2012**

7. The Committee welcomes the establishment of programmes and institutions for combating racial discrimination in Mexico, particularly the National Council for the Prevention of Discrimination (CONAPRED), the General Act on the Linguistic Rights of Indigenous Peoples and the Programme for the Development of Indigenous Peoples 2009–2012.

11. Although the State party has carried out important legislative reforms, the Committee notes with concern that the definition of discrimination in the Federal Act on the Prevention and Elimination of Discrimination contains no mention of racial discrimination and is not in line with the Convention. The Committee also expresses its concern that the legislation on matters affecting indigenous peoples varies greatly from one federal state to another and that policies rely heavily on the administration's agenda in each federal state. The Committee reiterates its concern at the absence of domestic legislation that defines as an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, and all acts of racially motivated violence against, in particular, indigenous people and people of African descent in the State party (art. 1 and art. 4 (a)).

The Committee notes with interest the proposed reform of the Federal Act, which contains a definition of discrimination in line with article 1 of the Convention and which is intended to pave the way for the adoption of local laws across the country, and strongly urges the State party to complete the adoption of the reform. The Committee also recommends that the State party step up its efforts to harmonize the legislation and regulations regarding the rights of indigenous peoples at all levels of the state and that it pass a law specifically to define the various manifestations of racial discrimination as an offence punishable by law, in accordance with article 4 of the Convention.

12. The Committee takes note of the recognition and application of the indigenous justice system within the local justice system by evoking “usage and customs”, particularly in the election of local representatives. However, it expresses its concern at the limited scope for applying the “usage and customs” of indigenous communities (art. 5).

In 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 urges the State party to respect the traditional systems of justice of indigenous peoples, in accordance with international human rights standards, including by establishing special indigenous courts.

13. The Committee takes note with deep concern of the reports on the violence associated with the fight against organized crime in the State party and its possible negative repercussions on the protection of the human rights of the population, including indigenous people and people of African descent, who are often in a particularly vulnerable situation (art. 5 (b)).

The Committee urges the State party to take the necessary steps to end the violence while ensuring the strict observance of human rights.

14. While the Committee takes note of the State party's efforts to reform security and the justice system, it reiterates its concern about the obstacles to access to justice faced by members of indigenous peoples and the alarming number of allegations of irregularities in cases concerning indigenous people, as well as the number of indigenous people in prison. In particular, the Committee expresses concern about the shortage of interpreters and bilingual justice officials familiar with judicial procedures, and also about the availability and quality of federal public

defenders. The Committee is concerned that existing interpretation services are withheld on the basis of a superficial evaluation of the accused's knowledge of Spanish. The Committee notes with concern the case of Mr. Hugo Sánchez and welcomes the news that the issue has been taken up by the Supreme Court (art. 5 (a)).

Given that the lack of interpreters could be a reason for the disproportionate number of indigenous persons in prison, the Committee recommends that the State party should:

- (a) Guarantee full access for indigenous persons to bilingual public defenders and justice officials in judicial proceedings;
- (b) Guarantee full access for indigenous persons to culturally sensitive interpretation services throughout the judicial proceedings, including in cases where the person concerned has some knowledge of Spanish;
- (c) Continue providing courses for judges and court officers in order to guarantee effective and equal access to justice for the indigenous population.

15. The Committee expresses deep concern about the recent tragic events in which defenders of the rights of indigenous peoples were physically attacked and, in some cases, killed (art. 5 (b)).

The Committee recommends that the State party investigate and punish those responsible for the above-mentioned killings. It also urges the State party to expedite the adoption of legislation that specifically guarantees the protection of human rights defenders, including defenders of the rights of indigenous peoples, and to take timely measures to prevent such acts, inter alia by establishing a special mechanism for the protection of human rights defenders, in line with the Declaration on Human Rights Defenders, adopted by the General Assembly, and the recommendations of the Special Rapporteur on the situation of human rights defenders.

16. While taking note of the State party's efforts to guarantee the participation of indigenous peoples in the political process, and particularly in representative institutions, the Committee reiterates its concern about the number and level of government posts held by indigenous people, especially women. The Committee notes with concern that, pursuant to article 2, section A.VII, of the Constitution, the right of indigenous peoples to elect their political representatives according to their own laws is limited to the municipal level. It also notes with concern the lack of information on the political participation of people of African descent (art. 5 (c)).

In light of 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 institutions, particularly in representative institutions and those dealing with public matters, and that it take effective measures to ensure that all indigenous peoples participate at every level of the administration. The Committee also exhorts the State party to take steps to ensure the participation of people of African descent in political and public affairs. In both cases, the Committee recommends that the State party take special measures or affirmative action, in accordance with the Convention and general recommendation No. 32 (2009) of the Committee, on the meaning and scope of special measures in the Convention.

17. The Committee notes that the National Commission for the Development of Indigenous Peoples has a system for consultations with indigenous peoples, based on articles 2 and 26 of the Constitution and the Act on the National Commission for the Development of Indigenous Peoples. However, it is concerned that this consultation system does not incorporate the concept of "free, prior and informed consent". The Committee expresses its deep concern at the growing tensions between outsiders and indigenous peoples over the exploitation of natural resources, especially mines. The Committee reiterates its concern at reports of conflict on lands traditionally owned by indigenous peoples and at the failure, in practice, to fully respect their right to be consulted before

work starts on exploiting the natural resources in their territories. The Committee also notes that there are three proposals for laws on the subject and regrets that it has been given no detailed information on them. The Committee is also concerned about the need for administrative measures to safeguard traditional forms of land tenure and ownership (art. 5 (d) (v)).

In light of its general recommendation No. 23 (1997), the Committee recommends that the State party should:

- (a) Ensure that effective consultations are carried out at each stage of the process with communities likely to be affected by projects to develop and exploit natural resources, with the aim of obtaining their free, prior and informed consent, particularly in the case of mining projects. It also recommends that everything possible be done to expedite the adoption of a law on the subject, and reminds the State party that the absence of implementing regulations for the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169), is no obstacle to holding prior consultations;
- (b) Promote forums where government representatives can actively participate in different discussion groups with indigenous peoples, ensuring that these lead to concrete, viable and verifiable agreements that are properly implemented; and also encourage the use of alternative dispute-settlement methods in line with international standards in the field of human rights and the rights of indigenous peoples;
- (c) Ensure, in exceptional cases where it is deemed necessary to relocate and resettle indigenous peoples, compliance with international standards in the relocation process. In this connection, the State party is requested to include in its next periodic report information on indigenous peoples and land tenure, particularly in cases where attempts are being made to exploit the natural resources on the land.

18. The Committee is very concerned that, according to the United Nations Development Programme (UNDP) 2010 publication *Informe sobre Desarrollo Humano de los Pueblos Indígenas en México*, 93.9 per cent of the indigenous population is denied one, and 64.2 per cent at least three, of the following rights: the rights to education, health, social security, housing, basic services and food. Some 70.9 per cent of the indigenous population falls into the category of “living in multidimensional poverty”, defined as the percentage of persons on a low income with at least one social disadvantage. The Committee is also concerned about reports that, in terms of the human development index, the native population of towns in Mexico has lower levels of human development than the non-indigenous population (art. 5 (e)).

The Committee urges the State party to take steps to eliminate the historical, structural discrimination found in Mexico by adopting social inclusion policies to reduce the high level of inequality and the levels of poverty and extreme poverty and thus fully guarantee the rights of all Mexicans, especially indigenous ones, to education, health, social security, housing, basic services and food, while respecting their cultural origins and consulting with the peoples who might be affected by such State initiatives.

19. The Committee acknowledges the efforts made by the State party to provide health care for indigenous people that takes account of their cultural characteristics. However, it is concerned that the highest figures for maternal and infant mortality are found among the indigenous population. The Committee expresses its concern at the lack of adequate and accessible services for such communities and at the shortage of data on health indicators and on the steps taken to improve those services (art. 5 (e)).

The Committee recommends that the State party draw up, in close cooperation with the communities concerned, a comprehensive and culturally sensitive strategy to ensure that indigenous peoples receive quality health care. The implementation of the strategy should be

guaranteed by an adequate allocation of resources, the collection of indicators and transparent monitoring of progress. Particular attention should be paid to improving access to health care for indigenous women and children. The Committee underlines the need for interpreters in this area too, in order to ensure that indigenous people have full access to health services. It is important that the health system recognize, coordinate, support and strengthen indigenous health systems and use them as the basis for achieving more effective and culturally sensitive coverage. The Committee requests the State party to provide clear data on maternal mortality and life expectancy in indigenous communities and among people of African descent. Lastly, the Committee recommends that the State party step up its efforts to improve the sexual and reproductive health of indigenous women and women of African descent.

20. The Committee remains concerned about the situation of migrant workers, most of whom come from indigenous communities in Guatemala, Honduras and Nicaragua, and migrants in transit, especially with regard to women who are the victims of abuse. The Committee expresses its deep concern at the vulnerability of these communities to kidnapping, torture and murder, and is also extremely concerned that their fear of being subjected to discrimination and xenophobia prevents them from seeking assistance and protection when needed (art. 5 (e) (i)).

Bearing in mind its general recommendation No. 30 (2004) on discrimination against non-citizens, the Committee again recommends that the State party ensure that programmes and measures to protect migrants and their rights are properly implemented in practice. The Committee invites the State party to include in its next periodic report information on the progress made with regard to the situation of migrant workers in Mexico.

#### **10. Vietnam, CERD/VNM/CO/10-14, 9 March 2012**

9. The Committee is concerned about the lack of information on complaints about acts of racial discrimination lodged with courts and other relevant authorities in spite of persistent reports of *de facto* discrimination against members of certain minority groups. Furthermore, while taking note of the Committee for Ethnic Minority Affairs, a ministerial-level agency responsible for overall development of strategies and implementation of government policies on ethnic minorities, the Committee regrets the lack of a comprehensive, effective and independent complaints mechanism in the State party. (arts. 2, 4, 5 and 6).

The Committee recommends that the State party:

- (a) assess reasons for the low number of complaints relating to racial discrimination, including whether it may be due to victims' lack of awareness of their rights, language barriers, fear of reprisals, limited access to available mechanisms, or the authorities' lack of attention or sensitivity to cases of racial discrimination;
- (b) actively assist victims of racial discrimination seeking remedies and inform the public, in particular law enforcement officials and minority groups, about legal remedies in the field of racial discrimination;
- (c) establish a comprehensive, effective and independent complaints mechanism; and
- (d) provide in the next periodic report updated information on complaints of racial discrimination and on relevant decisions in court proceedings, including statistical data on complaints, prosecutions and sentences for acts prohibited under article 4 of the Convention.

12. While the State party supported the adoption of the United Nations Declaration on the Rights of Indigenous Peoples, the Committee notes the State party's reluctance to commit open and inclusive discussions on the recognition of indigenous peoples. The Committee welcomes the commitment made by the delegation that the State party would consider comments by its members on the need to promote the right to self-identification of such peoples in accordance with international standards. (arts. 2 and 5).

The Committee recommends that the State party respect and protect the existence and cultural identity of all ethnic groups within its territory. In particular, recalling its general recommendations No.21 (1990) on the right to self-identification and No. 23 (1997) on the rights of indigenous peoples, the Committee invites the State party to pay greater attention to the principle of self-identification by individuals concerned, including the Khmer Krom and the Degard Montagnards, and to consider ratifying ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries.

13. While noting various measures taken by the State party to reduce poverty, including Programmes 134 and 135, and its outstanding achievement of economic development, the Committee remains concerned that not all communities benefit in practice from the economic growth. The Committee is deeply concerned at the sizeable socio-economic gap between disadvantaged ethnic minorities and the majority Kinh, even when they live in the same mountain area, and at its negative impact on the enjoyment of economic, social and cultural rights by indigenous and minority groups, particularly in the fields of employment, education and healthcare. (art. 5(e)).

The Committee recommends that the State party strengthen its efforts in combating poverty among marginalized groups and discrimination on grounds of ethnicity with regard to the enjoyment of economic, social and cultural rights. The State party should take measures to promote equal opportunities for all persons and stimulate economic growth and development for the ethnic minorities groups and the indigenous communities, especially with regard to employment, education and healthcare. Furthermore, the Committee recommends that the State party ensure the active involvement of targeted beneficiaries through adequate consultation and participation in the decisions relating to their rights and interests.

14. The Committee is concerned at disparities in access to and quality of education as well as education outcomes between majority Kinh students and ethnic minority students. The Committee also regrets the high illiteracy and school drop-out rates among members of ethnic minorities, in particular minority women and girls. Furthermore, the Committee is concerned at the limited access to mother tongue based education for ethnic minorities. (art. 5 (e)).

The Committee recommends that the State party take vigorous measures to ensure equal enjoyment of the right to education by, *inter alia*, increasing the financial assistance provided to students from economically disadvantaged families in all communities, and improving the quality of teaching and the curriculum. Furthermore, the State party should increase the provision of bilingual education programmes for ethnic minority children and of training in local languages for Kinh teachers in ethnic minority areas, recruit more ethnic minority teachers, allow ethnic minority languages to be taught and used as a medium of instruction in schools, and support education programmes on the culture of ethnic minority groups.

15. The Committee notes with concern the displacement of minorities and the confiscation of ancestral lands without prior consent and appropriate compensation for confiscated lands. (art. 5).

The Committee calls on the State party to adopt measures to safeguard indigenous rights over ancestral lands and pursue efforts, together with communities affected, towards adequate resolution of land disputes including the provision of appropriate compensation, giving due consideration in this respect to general recommendation No. 23 (1997).

16. The Committee takes note of the State party's assurance that the right to freedom of belief and religion of ethnic minorities is well protected under article 70 of the Constitution and other relevant laws and policies. The Committee is nevertheless concerned at: (arts. 2, 4 and 5(a),(b),(d)).

(a) numerous and consistent reports about discrimination and restriction on religious practices faced by some Christian and Buddhist denominations among the Khmer Krom, the Degar

Montagnard and Hmong, through legislation, registration requirements, surveillance and imprisonment;

(b) provisions which appear to be discriminatory on both ethnic and religious grounds, including articles 8 and 15 of the Ordinance Regarding Religious Beliefs and Religious Activities (2004), which forbid religious activities deemed to “violate national security” and “negatively affect the unity of the people or the nation’s fine cultural traditions”;

(c) the household registration system (*hộ khẩu*), which results in discrimination against ethnic minorities belonging to “unrecognised” religious groups, in the fields of employment, social security, health services, education, and the right to freedom of movement; and

(d) incidents of violent attacks and threats against religious groups and activities, as shown in the reported attacks against the Bat Nha monastery, referred to by the Special Rapporteur on racism, racial discrimination, xenophobia and related intolerance (A/HRC/15/53, para.10).

Taking into account the intersectionality between ethnicity and religion, as explained in general recommendation No. 32 (2009), the Committee recommends that the State party take measures to address the phenomenon of double discrimination faced by ethnic minorities belonging to unrecognised religious groups and ensure the rights of all persons to freely profess and practice their religion in public or in private regardless of registration status by, *inter alia*:

(a) considering the amendment of the household registration system;

(b) reviewing the Ordinance Regarding Religious Beliefs and Religious Activities, in particular article 8, paragraph 2 and article 15, and the Decree 22 on Religion, which impose strict controls on religions, in order to ensure full conformity with article 5 (d) of the Convention; and

(c) immediately and thoroughly investigating reports of threats and attacks against ethnic and religious minorities, and updating in the next periodic report the outcome of the investigations, any punishments or sanctions imposed on those responsible, as well as remedies provided for victims.

17. The Committee is concerned at (a) persistent reports of arrests, arbitrary detention and ill-treatment in custody of members of minority groups due to their peaceful practice of religion and freedom of expression, including cases taken up by several Special Rapporteurs (A/HRC/16/52/Add.1, para.249), (b) the lack of effective investigation of those allegations, and (c) the lack of effective remedies provided for victims. In that regard, the Committee notes with concern some legal documents, *inter alia*, Ordinance 44 on Regulating Administrative Justice, which authorizes suspected “national security” offenders to be placed under administrative detention for up to two year without trial, Decree 38/2005/ND-CP on Public Order, which prohibits demonstrations outside State agencies and public buildings, and Circular 09/2005/TT-BCA, which prohibits gatherings of more than five people without State permission. (arts. 2 and 5 (b), (d)).

The Committee recommends that the State party review its regulations and policies relating to the protection of the rights to freedom of expression, peaceful assembly and association in full compliance with the requirements of article 5 (d) of the Convention. Furthermore, in light of the recommendation by the Independent Expert on minority issues (A/HRC/16/45/Add.2, para.97), the Committee calls on the State party to consider releasing those in detention for activities that would, under international standards, constitute the peaceful exercise of the aforementioned rights.

## **11. Fiji, CERD/FJI/CO/18-20, 31 August 2012**

6. The Committee welcomes the establishment of the Constitution Review Commission for the elaboration of a new constitution and notes the commitment made by the State party to ensure the participation of all Fijians in the constitutional consultation process.

14. The Committee takes note of measures adopted by the State party in providing assistance on the basis of need rather than ethnicity, including various Land Use Decrees to ensure equal access to land for all. It is however concerned by reports of insufficient consultation and participation of indigenous people on issues affecting them such as equitable rent for the use of its land. The Committee notes the information about the dissolution of the Great Council of Chiefs without prior consultation(arts. 2 and 5).

The Committee reaffirms the importance of securing the free, prior and informed consent of indigenous groups regarding their permanent rights as a group, including issues affecting them and their ways of living. It urges the State party to enhance appropriate mechanisms for effective consultation with indigenous people around all policies affecting their identity, ways of living and resources, in line with the Convention, the United Nations Declaration on the Rights of Indigenous Peoples and the ILO Convention on 169 on Indigenous and Tribal Peoples. The Committee requests the State party to clarify the issue relating to the dissolution of the Great Council of Chiefs.

22. The Committee also wishes to draw the attention of the State party to the particular importance of recommendations in paragraphs 8, 10 and 14 and requests the State party to provide detailed information in its next periodic report on concrete measures taken to implement these recommendations.

## **12. Ecuador, CERD/ECU/CO/20-22, 31 August 2012**

3. The Committee welcomes the adoption of the Constitution of 2008, and notes with interest, among others:

- a) its definition of the State party as intercultural and plurinational;
- b) the recognition of the rights of nature and the protection of the environment; and
- c) the guarantee of individual and collective rights of communities, peoples, and indigenous nationalities, the Afro-Ecuadorian people, the Montubio people and communes.

4. The Committee welcomes the adoption of the 2011 Organic Law on Intercultural Education.

5. The Committee welcomes the work of civil society on the proposal and the self-identification campaign surrounding the 2010 Census.

6. The Committee notes with interest the provisions in plans that support the implementation of the Convention, such as the National Development Plan (National Plan for Living Well 2009 – 2013) which seeks to improve the situation of traditionally excluded groups and the eradication of discrimination, and the Plurinational Plan for the Elimination of Racial Discrimination and Ethnic and Cultural Exclusion.

8. The Committee welcomes the commitment reiterated by the State party to comply with the judgment of the Inter-American Court of Human Rights in favour of the Kichwa Indigenous People of Sarayaku.

11. The Committee notes with interest the existence of the Plurinational Plan for the Elimination of Racial Discrimination and Ethnic and Cultural Exclusion, but remains concerned about the limited participation of representatives from peoples and nationalities of the State party in its development. The Committee is further concerned about its insufficient dissemination and implementation in remote areas of the State party, where situations of racial discrimination persist.

The Committee reiterates its previous recommendation (CERD/C/ECU/CO/19, par. 8) and urges the State party to develop and implement a comprehensive national policy to combat

racism and racial discrimination, with the effective participation of the peoples and nationalities that continue to be confronted with discrimination and exclusion.

12. While the Committee notes with interest the Ministerial Agreement 0142 which determined special measures to facilitate access to public office by Afro-Ecuadorians, Montubios and indigenous peoples, it regrets the lack of information on the practical application of these special measures for the benefit of these peoples (Articles 1 and 6).

The Committee recommends that the State party take fully into account general recommendation No.32 (2009) on the meaning and scope of special measures for the implementation of actions to ensure the exercise of the rights of indigenous, Afro-Ecuadorian and Montubio populations provided for in the Constitution and under the Convention . Likewise, the Committee requests the State party to provide relevant information in its next periodic report.

16. The Committee is concerned regarding the contents in the media that negatively represents indigenous and Afro-Ecuadorian peoples (Articles 4(a) and 7).

The Committee reiterates its previous recommendation (CERD/C/ECU/CO/19 par. 22) that the State party should adopt measures focused on the social role of the media, including through education and capacity building for reporters and people working in the communications media, as well as campaigns directed to the general public to fight racial prejudice that causes racial discrimination against indigenous and Afro-Ecuadorians peoples, and to promote tolerance and respect among different racial groups in the State party.

17. The Committee regrets that the Draft Law on Consultation and Participation faces an impasse in the National Assembly. The Committee reminds the State party that the lack of regulation for ILO Convention 169 does not preclude its application, and it notes with concern the absence of a systematic and regulated implementation of effective consultation with indigenous peoples, with the aim of obtaining their prior, free and informed consent relating to natural resource extraction or other issues that may affect them. The Committee is also concerned about public declarations on the importance of extraction projects for the economic development of the State party and justifying the lack of consultation with Indigenous Peoples, Afro-Descendants, Montubios and other relevant groups. Despite the absence of convictions, the Committee is concerned about a tendency towards arbitrary detentions and unfounded allegations facing mainly indigenous leaders when organising or taking part in social protests, particularly in the context of laws and policies that govern the use of natural resources and the right to effective consultation with a view to obtaining consent (Article 5 (b), (d) inc. v, ix and (e)).

In the light of its general recommendation No.23 (1997) on the rights of indigenous peoples, the Committee calls upon the State party to increase its efforts to establish mechanisms for constructive dialogue and participation, and urges it to implement the necessary measures to establish effective consultation processes with affected communities, according to international standards, for any project that may affect indigenous people's territory or have an impact on their livelihood. The Committee is of the view that the protection of human rights and elimination of racial discrimination are key factors in sustainable economic development and recalls the role of both the State party and the private sector. The Committee urges the State party to protect indigenous peoples against physical attacks and intimidation with regard to resources present in their territories. It also invites the State party to ensure that the lawful fight against crime does not restrict the legitimate exercise of freedom of expression, peaceful assembly and association of Indigenous Peoples, Afro-descendants, Montubios and other ethnic groups in the State party.

18. The Committee is concerned about the absence of criminal cases of relating to racial discrimination in national tribunals and reports that such cases are dismissed particularly if they are submitted by Indigenous Peoples, Afro-descendants or Montubios (Article 5 (a) and 6).

The Committee reiterates its previous recommendation (CERD/C/ECU/CO/19 par. 21) and urges the State party to train national tribunals to deal with cases on racial discrimination against Indigenous Peoples, Afro-Ecuadorians and Montubios communities. 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 recommends that the State party increases its efforts to ensure equal access to justice for all and widely disseminate information on the available domestic remedies for acts of racial discrimination, legal avenues for obtaining compensation in cases of discrimination and the individual complaint procedure under Article 14 of the Convention.

19. The Committee is concerned that the Draft Law of Coordination and Cooperation between the Indigenous and the Ordinary Justice is paralyzed in the National Assembly. The Committee is also concerned about the slow progress in the development of a regulatory framework that regulates the competences, responsibilities and powers of indigenous justice (Articles 2, 5(a) and 6).

The Committee exhorts the State party to ensure respect for and recognition of traditional systems of justice of indigenous peoples, in conformity with international human rights law, and reiterates its recommendation (CERD/C/ECU/CO/19 par. 12) to expedite the process of adoption of the law to harmonize and allocate responsibilities for the administration of justice, whose principal objective is to ensure compatibility between the functions, competences and responsibilities of the system of justice of the indigenous peoples and those of the national system of justice.

20. The Committee is concerned about the persistence of poverty, marginalisation and discrimination among communities of Afro-Ecuadorians and Montubios in the State party with regard to the enjoyment of the rights recognized under the Convention, including access to basic services, education, employment and the holding of public office. The Committee regrets the difficult circumstances faced by Afro-Ecuadorians in the province of Esmeraldas with respect to the exercise of the right to collective or individual land ownership. The Committee also regrets reports of physical violence against Afro-Ecuadorian community members (art. 5).

The Committee reiterates its previous recommendation to the State party (CERD/C/ECU/CO/19 par. 19) to continue its efforts in terms of social inclusion policies and poverty reduction in order to ensure the enjoyment of rights recognized by the Convention, and urges the State party to allocate sufficient resources to the institutions responsible for implementing the necessary steps to address discrimination against Afro-Ecuadorian and Montubio peoples. In the light of its general recommendation No. 34 (2011) on discrimination against Afro-Descendants, the Committee recommends that the State party collects differentiated data on unemployment, access to ownership, housing, health and other basic services to carry out initiatives to ensure effective exercise of the rights of Afro-Descendant and Montubios communities, and to promote greater participation in public life. The Committee urges the State party to investigate and properly punish those responsible for the attacks against members of the Afro-Ecuadorian community.

21. While the Committee notes with interest the consideration of linguistic and cultural factors by the State party in the provision of certain basic services, it is concerned about the lack of adequate health services accessible to the indigenous population particularly in rural areas. It also regrets the lack of information on health indicators and the measures taken to improve them (Article 5, inc. e).

The Committee encourages the State party to continue to adopt the necessary measures to ensure appropriate access to basic services and care in health centres, in particular in rural areas, that responds to linguistic and cultural differences of indigenous peoples.

22. While noting with interest the existence of an intercultural bilingual education in the State party, the Committee is concerned of the high levels of illiteracy and difficulties in access to education of indigenous peoples, including at a higher education level where only 4.9% of the indigenous population have access, as well as the lack of information on the implementation of intercultural bilingual education (Article 5, v).

The Committee reiterates its previous recommendation (CERD/C/ECU/CO/19, par. 20) and urges the State party to allocate the necessary human and financial resources to implement such education. The Committee also encourages the State party to develop, with the help of indigenous peoples, policies that seek to increase levels of education and access to schooling of indigenous peoples, respecting the intercultural bilingual education model.

23. The Committee is concerned that women belonging to indigenous, Afro-Ecuadorian, Montubio, migrant and refugees communities continue to find multiple forms of discrimination and gender violence in all aspects of their life. The Committee is also concerned about reports on the difficult access to justice for these women (Article 5).

The Committee recommends that the State party take into account its general recommendation No.25 (2000) on the dimensions of racial discrimination related with gender and includes a gender perspective in all its policies and strategies against racial discrimination to address multiple forms of discrimination that affect women. The Committee exhorts the State party to continue with its measures to support female victims of discrimination and improve access to justice, and requests the State party to include information in its next report on progress made by specialised courts on women's issues and domestic violence.

24. The Committee notes the information shared by the delegation on the mobility in livelihood of indigenous peoples in voluntary isolation and the demarcation of the Tagaeri and Taromenane Intangible Zone. However, the Committee is concerned about the vulnerable situation of those peoples, including the Tagaeri and Taromenane peoples, in particular with respect to extractive policies of the State party and private actors (Article 2 and 5).

The Committee urgently urges the State party to comply with the precautionary measures of the Inter-American Commission of Human Rights (2006) granted with respect to indigenous peoples in voluntary isolation, and exhorts the State party to strengthen and adapt the strategies to protect the life and livelihoods of such peoples. The Committee also encourages the State party to take into account the itinerant dynamic in the livelihoods of these peoples, and to consider the expansion of the intangible zone prior to feasibility studies that include environmental and cultural impacts criteria. The Committee urges the State party to suspend extractive activities that may create vulnerability to life or livelihoods of indigenous peoples in voluntary isolation.

### **13. Finland, CERD/FIN/CO/20-22, 31 August 2012**

5. The Committee notes with appreciation the State-Party's commitment to ratify the ILO Convention 169 within the term of the current government.

6. The Committee also notes with appreciation the initiation of negotiations on the Nordic Sámi Convention, as well as the State-Party's naming of a negotiating delegation half of which consists of members of the Sámi indigenous group.

7. While noting the explanation provided by the State party with regard to its legislation that precludes the collection of statistical data based on race or ethnicity, the Committee remains concerned at the absence in the State party's report of recent reliable and comprehensive statistical data on the composition of its population including economic and social indicators disaggregated by ethnicity, including data regarding the Sámi indigenous peoples, other minority groups, and immigrants living in the territory of the State-Party. (art. 1).

In accordance with paragraphs 10 to 12 of its revised reporting guidelines (CERD/C/2007/1), and recalling its General Recommendation 4 (1973) on demographic composition of the population, the Committee reiterates its previous recommendation that the State party collect and provide the Committee with reliable and comprehensive statistical data on the ethnic composition of its population and economic and social indicators disaggregated by ethnicity and gender, including data on Sámi indigenous peoples, other minority groups, and immigrants, in order to enable the Committee to evaluate the enjoyment of civil, political, economic, social and cultural rights of various groups of its population.

11. While noting that the State party has established, in August 2012, a working group tasked to revise the Sámi Parliament Act, the Committee is concerned that the Sámi Parliament still has very limited decision-making power on issues relating to the cultural autonomy of the Sámi people, including rights relating to land and resources used.

The Committee recommends that the State party, when revising the Sámi Parliament Act, enhance the decision-making powers of the Sámi Parliament with regard to the cultural autonomy of Sámi, including rights relating to the use of land and resources in areas traditionally inhabited by them.

12. While noting that the Supreme Administrative Court relied on the Committee's prior Concluding Observations in its decision of 26 September 2011 defining who is a "Sámi" entitled to vote for Members of the Sámi Parliament, the Committee is concerned that the definition adopted by the Supreme Administrative Court gives insufficient weight to the Sámi people's rights, recognized in the U.N. Declaration of the Rights of Indigenous Peoples, to self-determination (art. 3), in particular their right to determine their own identity or membership in accordance with their customs and traditions (art. 33), as well as their right not to be subjected to forced assimilation or destruction of their culture (art. 8) (art.5).

The Committee recommends that, in defining who is eligible to vote for Members of the Sámi Parliament, the State party accord due weight to the right of the Sámi people to self-determination concerning their status within Finland, to determine their own membership, and not to be subjected to forced assimilation.

13. While noting information provided by the State party, in particular the adoption of the Mining Act and the Water Act and the intention of the State party to clarify the legislation on the land rights of the Sámi people, the Committee is concerned that the land rights of the Sámi people have not been satisfactorily settled and that various projects and activities, such as mining and logging, continue to be carried out in the traditional lands of Sámi people without their prior, free and informed consent. The Committee is also concerned that Finnish law empowers reindeer cooperatives, the majority of whose members practice modern reindeer farming rather than traditional Sámi reindeer husbandry, to take decisions by majority vote that can severely undermine the ability of Sámi reindeer herders to carry out their traditional occupations. The Committee is particularly concerned by the decision of the Ivalo reindeer cooperative, recently upheld by the Supreme Administrative Court, to require four Sámi reindeer herders in the Nellim area to slaughter almost their entire herds. (art. 5).

In line with its General recommendation no. 23 (1997) on the rights of indigenous people, the Committee recommends that the State party find an adequate negotiated solution to the dispute regarding the rights of Sámi people in their traditional lands, including by revising its legislation on this issue. In doing so, the Committee recommends that the State party take into account the ILO Convention no. 169, which the State party has committed to ratify. The Committee further recommends that the State party take appropriate measures to protect the Sámi traditional livelihood of reindeer husbandry.

14. The Committee is concerned that, while about 70 per cent of Sámi speaking children live outside of the Sámi Homeland, mainly in the Helsinki area, Rovaniemi and Oulu, the right of the Sámi to receive early childhood education in the Sámi language is recognized only in the Sámi Homeland. The Committee is also concerned at the fact that social and health services are not effectively guaranteed to Sámi people in their languages (art. 5, 7).

The Committee recommends that the State party take appropriate measures to ensure that all Sámi children throughout the territory of the State Party effectively receive education in their own languages, including by training more teachers in Sámi languages. The Committee also recommends that the State party effectively ensure social and health services in Sámi languages to Sámi people in their Homeland. The Committee further recommends that the State party accelerate the adoption of the revitalization programme proposed by the Ministry of Education and Culture in order to promote and protect the Sámi languages, including in media, education, social and health services and culture.

#### **14. Thailand, CERD/THA/CO/1-3, 31 August 2012**

4. The Committee welcomes the following legislative and other measures taken by the State party:

...

(b) The adoption of the 2008 Civil Registration Act Number 2, which allows for the registration of all persons born in the State party, irrespective of the origin or status of the parents;...

12. The Committee notes with concern the lack of information on court decisions relating to racial discrimination. The Committee also expresses concern about the obstacles to access to justice experienced by members of ethnic groups, including their limited knowledge of their rights, as well as language, geographical and financial barriers. (arts. 5(a), 6)

Recalling its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee recommends that the State party collect data on court decisions relating to racial discrimination with a view to assessing the effectiveness of laws and policies aimed at eliminating racial discrimination. The Committee requests that the State party include such information in its next periodic report. Moreover, drawing attention to its general recommendation No. 26 (2000) on article 6, the Committee recommends that the State party raise the public's awareness of the Convention as well as of laws adopted pursuant to the Committee's recommendation in paragraph 7 above, and ensure that members of ethnic groups can avail themselves of legal remedies.

14. While welcoming the setting of the target of granting of legal status to around 300,000 persons within a timeframe of three years and measures such as the adoption of the 2008 Civil Registration Act Number 2, the Committee is nevertheless concerned at the large number of persons in the State party eligible for citizenship but who are currently stateless. The Committee is further concerned at the subsequent denial of their civil and political rights as well as economic and social rights.

Moreover, while noting that the State party's legislation allows for the registration of all persons born in the State party, the Committee remains concerned that a large number of births, particularly

among ethnic groups and migrants, are not registered. The Committee reminds the State party that lack of birth registration is a contributing factor to statelessness. (art. 5(d))

The Committee urges the State party to take effective measures to address the obstacles encountered in the acquisition of citizenship by those who qualify for it, including with regard to obtaining the required documentation from local authorities. Bearing in mind its general recommendation No. 30 (2004) on discrimination against non-citizens, the Committee also recommends that the State party strengthen its efforts to facilitate the registration of births, including by allowing late registration as well as through the healthcare system. The Committee further encourages the State party to accede to the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.

15. The Committee expresses concern at the categorization used by the State party for identifying specific groups, such as rootless persons, aliens, unsurveyed persons, persons with status problems, referred to in paragraphs 11 to 40 of the State report. (arts. 1, 2)

The Committee recommends that the State party review the policy of categorisation of the various groups in its territory guided by the principle of self-identification contained *inter alia* in general recommendation No. 8 (1990) and revise its terminologies in order to avoid discrimination against these groups.

Moreover, referring the State party's support for the adoption of the United Nations Declaration on the Rights of Indigenous Peoples, the Committee encourages the State party to affirm in its legislation the rights of indigenous peoples, in line with the Declaration, and also consider acceding to the ILO Convention No 169 on Indigenous and Tribal Peoples.

16. The Committee is concerned that the various forestry and environment protection laws may have a discriminatory effect on ethnic groups living in forests. The Committee is also concerned that it has not been assured how their free and prior informed consent is guaranteed in decision-making processes affecting them. (arts. 1, 2 and 5)

Notwithstanding the Constitutional Court decision No. 33/2554 of November 2011, the Committee urges the State party to review the relevant forestry laws in order to ensure respect for ethnic groups' way of living, livelihood and culture, and their right to free and prior informed consent in decisions affecting them, while protecting the environment.

17. The Committee is concerned about the inadequate access to social welfare and public services by certain ethnic groups because of language barriers and the limited availability of such services where these groups live. The Committee also regrets the lack of data to monitor the progress achieved in improving their situation. (art. 5(e), 2(2)).

The Committee calls on the State party to continue efforts aimed at improving the enjoyment of economic and social rights by all ethnic groups, including by implementing special measures so as to speed up the achievement of equality in the enjoyment of human rights. In this regard, the Committee refers the State party to its general recommendation No. 32 (2009) on the meaning and scope of special measures.

Moreover, noting the State party's intention to collect and produce disaggregated data on the implementation of its National Human Rights Action Plan, the Committee recommends that the State party also collect data on the enjoyment of economic, social and cultural rights by ethnic groups.

18. The Committee notes with concern that some ethnic languages in the State party are at risk of disappearance. Moreover, taking note of pilot projects, announced by the State party, for the teaching of ethnic languages in schools, the Committee remains concerned that many ethnic children have limited opportunities to learn their language. (art. 5(e))

The Committee calls on the State party to strengthen efforts to protect and conserve ethnic languages and to allocate the necessary resources for the promotion of the teaching of ethnic languages in schools.

19. The Committee expresses concern at negative stereotypes and prejudices about ethnic groups which are conveyed by the media. (art. 7)

The Committee recommends that the State party take measures to eliminate negative stereotypes about ethnic groups and to raise awareness among media professionals of their responsibility not to disseminate stereotypes and prejudices and to avoid giving accounts of incidents involving ethnic groups in ways that stigmatize the group as a whole.

33. The Committee also wishes to draw the attention of the State party to the particular importance of recommendations 16, 23 and 24 above, and requests the State party to provide detailed information in its next periodic report on concrete measures taken to implement these recommendations.

## **B. Early Warning/Urgent Action and Follow Up Procedures**

### **1. Brazil, 11/03/2011 (UA/EW)**

I write to inform you that in the course of its 78<sup>th</sup> session, the committee considered the situation of the Ingarico, Macuxi, Patamona, Taurepang and Wapichana indigenous peoples from the Raposa do Sol, in the State of Roraima, which has been under consideration by the committee since 2006 under its early warning and urgent action procedure.

The committee welcomes the responses provided in the Permanent Missions note verbale dated 23 August 2012 and takes note with satisfaction of the ruling of the federal Supreme Court of 19 March 2009 which reaffirmed recognition of the rights of the indigenous people to their traditional lands and upheld the constitutionality of the demarcation of the Raposa Serra do Sol indigenous land, as well as the administrative procedures applied. The Committee also welcomes the reorganization of the FUNAI through decree 7056/2009 of December 2009 aimed at strengthening participatory management and at prioritizing the role of the indigenous peoples in the decisions affecting them.

The committee would like to inform you that this case is now removed from its early warning and urgent action procedure. At the same time, the committee notes that Brazil has not yet submitted its eighteenth, nineteenth and twentieth periodic reports overdue since January 4<sup>th</sup> 2008, and invites the state party to do so, in one document, as soon as possible. The committee invites the state party to include in its next periodic report information on results of investigations conducted, if any, and sanctions imposed on those responsible for violence against indigenous peoples of the Raposa Serra do Sol, and on other measures taken to secure the enjoyment by indigenous peoples of their rights.

Allow me, Excellency, to reiterate the wish of the Committee to continue to engage in a constructive dialogue with the Government of Brazil, with a view to provide it with assistance in the effective implementation of the convention.

### **2. Chile 02/09/2011 (UA/EW) (Original in Spanish; unofficial translation)**

I write to inform you that in the course of its 79<sup>th</sup> session, the Committee considered the situation of the Rapa Nui Indigenous People of Easter Island in Chile. This same situation was considered previously under the early warning and urgent action procedure of the Committee at its 78<sup>th</sup> session in March 2011.

The Committee welcomes the information received on the 3<sup>rd</sup> of July 2011 by the Permanent Mission in Chile, and notes with appreciation the extensive information on the circumstances, motives and

modalities of the evictions carried out against the Rapa Nui Indigenous People of Easter Island; the motives for and the progress of penal actions taken against members of the Rapa Nui people involved in the protection of their ancestral lands; and progress in the investigations and possible sanctions against the direct perpetrators and suspected instigators of the violent acts allegedly committed against the Rapa Nui Indigenous People by the Chilean Armed Forces. Although the Committee takes note of the information on measures put in place in order to prevent the violation of the human rights of the members of the Rapa Nui Indigenous People, and the violent acts perpetrated against them, it regrets that the information supplied has not been sufficient to allow the Committee to understand the existing processes of consultation, participation and negotiation between the State party and the Rapa Nui Indigenous People.

The Committee notes that on the 7 of February 2011 the Inter-American Commission on Human Rights (IACHR) granted precautionary measures in favour of the Rapa Nui Indigenous People, in the context of protests and eviction processes, claiming that the life and integrity of the Rapa Nui people was at risk by virtue of alleged acts of violence and intimidation carried out by the armed forces. The Committee informs the State party that is watching its implementation of the IACHR's decision and recommendations closely with respect to the Rapa Nui Indigenous People situation and their rights, including the right to ancestral lands, and urges the State party to fully comply with them.

In this regard, the Committee requests that the State party includes additional information in its periodic report regarding:

- a) Progress of the investigations and possible sanctions against the direct perpetrators and suspected instigators of the violent acts allegedly committed against the Rapa Nui Indigenous People by the Chilean Armed Forces given that, according to the information from the State party, several are still pending;
- b) Specific measures to protect the rights of the Rapa Nui Indigenous People, including the right to their ancestral lands in accordance with national law, in particular in accordance with Indigenous Law 19.253 and Law 16.441 of 1996, and international obligations assumed by Chile, especially under the International Convention on the Elimination of All Forms of Racial Discrimination;
- c) Mechanisms established for the implementation of different proposals made public by the Chilean Vice-president on the 24 of October 2010; and
- d) Legislative progress, including in relation to the draft law that restores the mechanism for the recognition of regular possession established under DL 2.885 of 1979 and under draft reform of Article 126 bis of the Political Constitution;

The Committee requests that the State party includes the information mentioned above in its nineteenth to twentieth periodic reports to be submitted in one document by the 31<sup>st</sup> of August 2012.

Rest assured, Excellency, that the Committee looks forward to engaging in a constructive dialogue with the Government of Chile, with a view to providing it with assistance in its efforts to ensure the effective implementation of the Convention.

### **3. Colombia, 02/09/2011 (UA/EW) (Original in Spanish; unofficial translation)**

I write to inform you that in the course of its 79th session, the Committee considered the situation of the Embera Katio Indigenous people of the Upper Sinú River, Colombia. This is the same situation as considered previously under the early warning and urgent action procedure of the Committee at its 78<sup>th</sup> session in August 2010.

The Committee welcomes the information received on the 3<sup>rd</sup> of July 2011 by the Permanent Mission in Colombia, and notes with appreciation that the 'Sinú River' Hydroelectric project will not be constructed, as well as the information on interim measures of protection in favour of the Embera Katio community.

Although the Committee notes the information on the functions of the Mixed Commission in support of the permanent presence of the ombudsman, the Committee regrets that the information supplied has not been sufficient to assess the practical performance of the said Commission. The Committee requests additional information on the way the Commission has performed its functions and other mechanisms present for the protection of the Embera Katio people.

The Committee wants to inform the State party that this case has been withdrawn from the early warning and urgent action procedures. At the same time, the Committee continues to closely monitor the situation of the Embera Katio people and requests that the State party includes additional information in its next periodic report regarding efforts undertaken to ensure that the Embera Katio people enjoy and benefit from the precautionary measures established by the Inter-American Commission on Human Rights. In particular, the Committee asks the State party to implement the necessary measures to protect indigenous communities from the actions of armed and criminal groups within indigenous territory. The Committee takes note of those measures already implemented by the State party for the protection of indigenous peoples, including the Embera Katio people, among which stand out the military operations carried out through the National Army, but reiterates that any intervention should take place by common consent with those concerned and in full respect of their rights.

In the light of the above considerations, the Committee requests that the State party include the information mentioned in its fifteenth and sixteenth periodic reports to be submitted in one document by the 2<sup>nd</sup> of October 2012.

Rest assured, Excellency, that the Committee looks forward to engaging in a constructive dialogue with the Government of Colombia, with a view to providing it with assistance in its efforts to ensure the effective implementation of the Convention.

#### **4. Costa Rica, 02/09/2011 (UA/EW)**

I have the honour to address you and thank you for the information sent to the Committee on July 29<sup>th</sup> 2011, in response to the letter dated March 11<sup>th</sup> 2011 in which the Committee makes reference to the examination of the situation of the Teribe indigenous people in the State party and the construction of El Diquís hydroelectric dam.

In this regard, the Committee, during its 79<sup>th</sup> session, has continued to examine the situation under CERD's Early Warning and Urgent Action Procedure, and takes note of the communication from the State party about the suspension of works in the right bank of the river and the advancements in the establishment of conditions to carry out a consultation process in accordance to the provisions in ILO Convention 169.

Also, the Committee takes note of the report of the Special Rapporteur on the Rights of Indigenous Peoples, Mr. James Anaya about the visit made to the State party on April 2011 (reference A/HRC/18/35/Add.8).

The committee wishes to express its concern on the information received about possible pressures on the Térraba indigenous community to support the project before the mentioned consultation is

celebrated. The Committee would also like to express its concern on information received about statements made by the State party on the situation of El Diquís hydroelectric dam as a reason for not adopting the Autonomy Bill of Indigenous Peoples, which has been waiting the approval in Congress for 16 years.

In this regard, the Committee urges the State party to stop all operations on the terrain waiting for the celebration and results of the mentioned consultation. It also urges the State to ensure that the Teribe indigenous communities are not subject to any pressure before, during or after the consultation. Finally, it expresses its support to the work and recommendations of the Special Rapporteur, Mr. James Anaya, and it recommends to the State party to implement these recommendations contained in the report of the Special Rapporteur.

In this regard, it respectfully requests to the State party updated information on the situation before the celebration of its 80th session which will start in February 2012.

#### **5. Costa Rica, 11/03/2011 (UA/EW)**

I have the honour to address you to inform you that in the course of the 78th meeting, the Committee examined the situation of the Terraba Indigenous people of Costa Rica, in light of the information presented by the State party in response to the questions of the Committee about the information presented by non-governmental organisations under the early warning and urgent action procedure in August 2010.

The Committee thanks the State party and the Permanent Mission for the report and the documentation provided by verbal note dated January 28th, 2011. According to the information contained in the report, the construction of the Diquis hydroelectric dam is still under analysis. Various initiatives apparently have been carried out with the objective to facilitate the information and in consultation with the indigenous peoples that would be affected by the planned construction.

Therefore, the Committee, requests that the State party provides information about the progress of the Diquis project and the decisions taken in that regard. In this context, it is required that the State party pays special attention and informs about the measures taken to guarantee the rights of indigenous peoples, including their consultation, prior and informed consensus and participation in all the stages of the project, and the respect to their territories and culture.

According to the article 9 (1) of the Convention and the article 65 of its internal rules, the Committee requests the State party to respond before July 31st 2011.

#### **6. Russian Federation, 11/03/2011 (UA/EW)**

I write to inform you that in the course of its 78<sup>th</sup> session, the committee considered the situation of the small-numbered indigenous peoples from the Nanai District of the Khabarovsk Krai, on a preliminary basis, under its early warning and urgent action procedure, in light of information submitted by a non-governmental organisation.

The Committee expresses its concern about information received according to which the new federal law “On amendments to certain legislative acts of the Russia Federation” which was to be adopted in 2012 contains amendments on the Fishery Law which will reportedly affect negatively traditional economic activities of small-numbered indigenous peoples of the Russian North, Siberia and the Far East. The Committee is concerned that the new federal law may aggravate the situation of those indigenous peoples as compared with previous fishery rules, by preventing them from selling fish for their livelihood.

It is alleged that, under the new law, authorities may impose restrictions on fishing without any consultation with the indigenous people's community. It is alleged that vesting constituent entities with the right to determine the areas of catching may result in the allotment to indigenous peoples of areas little suitable for fishing. Moreover, use of the fishing grounds will reportedly be allowed for industrial purposes and sold at auctions, making them inaccessible to the indigenous communities.

The committee requests the State part to inform the Committee on measures taken to ensure that the application of the new law will not endanger fishing activities and livelihood of the Nanai District indigenous peoples as well as other indigenous peoples in other regions of the Russian federation. In this context, the Committee recommends that the State part conduct an impact assessment of the new law on the traditional economic activities and sustainability of those populations and ensure their effective participation in the process pertaining to its implementation.

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 all the issues and concerns as outlined above, before 31 July 2011.

#### **7. Ethiopia, 102/09/2011 (UA/EW)**

I write to inform you that in the course of its 79<sup>th</sup> Session, the Committee considered information on allegations to the threat to the existence of the South Omo indigenous peoples in Southern Ethiopia due to the construction of the Gibe III dam and the Kuraz Sugar Project, as well as the authorization for a fifty year lease granted to an Indian company called Verdanta Harvests (VH) on traditional forests belonging to Mazenger indigenous and other indigenous peoples of Gambella, on preliminary basis, under its early warning and urgent action procedure, in light of information submitted by a non-governmental organization.

The Committee is concerned about information according to which the ongoing construction of the Gibe III dam and the Kuraz Sugar Project will undermine the enjoyment of the rights by the South Omo peoples whose means of subsistence depend mainly on the cultivation of sorghum, corn and the production of milk, meat and blood of their cattle.

The committee is particularly concerned that the Gibe III dam will reportedly end the annual flood of the Omo river; silts rich in nutrients will no longer be carried out to the lower basin, and families will reportedly no longer be able to plant their crops in the river banks. It is reported that according to an independent review of the European Investment Bank of 2010, the controlled flood recommended by an Environmental and Social Impact Assessment to mitigate all adverse effects, is a temporary measure and may be withdrawn at any moment by the Ethiopian authorities. It is also alleged that other studies proposed have never been commissioned: and that South Omo indigenous peoples have not been informed or consulted before the Gibe III dam project started. The Committee notes that the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples has raised similar concerns (See A/HRC/12/34/Add. 1, 18 September 2009, paras.113-122) to the State party but has not received replies to its letters.

In relation to the Kuraz Sugar Project, the Committee expresses its concern about information, according to which lands used by South Omo indigenous peoples for the agriculture of livestock will be used for a large-scale irrigation project in the lower Omo in order to grow sugar cane. It is reported that this will force the South Omo indigenous peoples to abandon their traditional ways of life and face displacement. In addition, it is also reported that they have not been consulted.

The Committee would like to inform the State party that it also received information about the authorization by the minister of Agriculture, in 2012, of a fifty year lease to an Indian Company (Verdanta Harvests) on ancient forests in the Godere District that reportedly belong to the Manzenger and other indigenous peoples of Gambella, for cultivation of tea and spice destined to export. It is alleged that despite claims by indigenous peoples and the intervention by the president of Ethiopia to stop the process of lease, the project is still ongoing. It is also reported that this project would have negative effects on the livelihood of Mazenger and other indigenous peoples, who allegedly have not been consulted in an appropriate manner; and that short or long-term environmental risks were not considered.

The committee requests the State part to provide information on measures taken to conduct an independent assessment of the negative effects of the construction of the Gibe III dam and the Kuraz Sugar projects on the livelihood of the South Omo peoples; as well as details on measures taken to consult them or to seek their prior, free and informed consent before carry out such projects.

The committee also requests the State party to provide information on the situation of Mazenger and other indigenous peoples of Gambella and on measures taken to consult them in effective and appropriate manner.

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 all of the issues and concerns as outlined above, before 31<sup>st</sup> January 2012.

#### **8. India, 02/09/2011 (UA/EW)**

I write to inform you that in the course of its 79<sup>th</sup> session, the committee considered information on the situation of indigenous peoples in the North East India, under its early warning and urgent action procedure, in light of information by a non-governmental organization.

The committee expresses its concern about information according to which persistent and intensified discriminatory acts and omissions are continuing to occur in the state party. The committee is particularly concerned about the reportedly signature, on 23<sup>rd</sup> April 2012, in New Delhi. Of a Memorandum of Understanding for the construction of the Tipiamukh dam in the district of Manipur despite a reported massive public opposition and condemnation of all indigenous Armed Forces (Special Powers) Act for another one year, despite its recommendations contained in paragraphs 12 and 19 of its concluding observations on India of 2007 (see CERD/C/IND/CO/19) while violence, arrests, killings, torture and displacement of indigenous peoples are reportedly still occurring with impunity in Manipur.

The Committee is further concerned about information according to which security forces were being deployed in Manipur to counter insurgency and continued to occupy schools (since 1998) preventing classes to take place in school sittings.

The Committee regrets that the Stat party has not yet provided follow-up replies on the implementation of recommendations contained in paragraphs 12 and 19 of its concluding observations (see CERD/C/IND/CO/19). The Committee also notes that the Human Rights Committee addressed similar issues in recommendations contained in paragraphs 18 and 29 of its concluding observations on India, in 1997 (see CCPR/C/79/Add.81), as well as the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples did in its report (See A/HRC/15/Add.1, 15 September 2012, paras.201-239).

The Committee requests the State party to provide information on the situation of indigenous peoples in the North East of Indonesia and measures taken to implement the recommendations made by the committee in its concluding observations of 2007 (see CERD/C/IND/CO/19, paras.12 and 19). The Committee also requests the State party to provide its replies to those issues in its 20<sup>th</sup>-21<sup>th</sup> periodic reports to be submitted, as quickly as possible, and which is overdue since 4 January 2010. The Committee will consider such replies during the dialogue with the State party on its next periodic reports.

#### **9. Indonesia, 02/09/2011 (UA/EW)**

I write to inform you that in the course of its 79<sup>th</sup> session, the Committee considered the information on allegations on the threatening an imminent irreparable harm for the Malind and other indigenous people of the District of Meruake, Papua Province, due to the reportedly massive and non-consensual alienation of their traditional lands by the Meruake Integrated Food and Energy Estate project (called the MIFEE project), on a preliminary basis, under its early warning and urgent action procedure, in light of information submitted by a non-governmental organization

The Committee is concerned about information according to which the MIFEE project, which is an agro-industrial mega-project implemented by various corporate entities and initiated by the state, reportedly encompassed 2 million hectares of traditional indigenous lands. It is claimed that the MIFEE project, which is about to expand and intensify in the coming months, has already impacted and will continue to threaten a range of interdependent rights of indigenous peoples. It is reported that such an expansion will encroach and alienate indigenous peoples' lands in favour of palm oil, logging, cause an enormous influx of non-indigenous workers, and further compromise their future, diminish their livelihood options and destroy their traditional economy.

The Committee is also concerned about information on allegations according to which encroachment activities are supported by the state party and enjoy the protection of the Indonesian army. It is reported that decision-making regarding the exploitation of natural resources largely remains with the central government and is controlled by national laws which prejudice indigenous peoples, despite the existence of the 2001 Papua Special Autonomy Law intended to decentralise decision making over prescribed issues to the provincial level and which has not been implemented due to the absence of a subsidiary law. It is alleged that the majority of the MIFEE area is classified as "forest" and falls under the Ministry of Forests, which allegedly interpret the 1999 Forestry Law as further limiting Indigenous peoples' rights.

The committee is further concerned about allegations on the manipulation of communities by investors and State officials to obtain signatures necessary for complying with the legal requirements of proving land titles over indigenous lands.

The committee notes that it has already addressed the situation of indigenous peoples in Indonesia in its letter under the early warning and urgent action procedure, dated 28 September 2009 (attached for ease of reference) and in its concluding observations (CERD/C/IND/CO/3, para. 17,18,22) of 15 August 2007. The Committee regret that the State party has not provided its responses.

In light of this information, the committee would like to request information on measures taken by the State party to implement the recommendations set out in paragraph 22 of its concluding observations (CERD/C/IND/CO/3) of 15 August 2007, as well as information requested in its letter dated 28 September 2009. The Committee would also like to request information on measures taken to effectively seek the free, prior and informed consent of Malind and other indigenous peoples in Papua before carrying out the MIFEE project; and as to whether the State party has conducted an

environmental impact assessment on the traditional habits and livelihood of Malind and others, as well as the impact of the transmigration over their capacity to survive as a minority. The committee would further like to request that the State party consider inviting the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples.

The committee also would like to request a meeting with the representatives of the state party to discuss these issues, at its next session to be held in Geneva from 13 February to 13 March 2012.

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 all of the issues and concerns as outlined above, before 31 January 2012.

#### **10. Papua New Guinea, 11/03/2011 (UA/EW)**

I write to inform you that in the course of its 78<sup>th</sup> session, the Committee considered information on allegations of threat to indigenous peoples' lands in Papua New Guinea, on a preliminary basis, under its early warning and urgent action procedure, in light of information submitted by non-governmental organizations.

The Committee expresses its concern about information according to which indigenous lands are under threat of alienation through the government's practice to issue long-term leases to non-indigenous companies over indigenous lands, as allowed by Land Act (1996). It is also concerned about the alleged dramatic acceleration of these arrangements (known as "Special Agricultural and Business Leases") which are reportedly concluded without seeking the consent of indigenous landowners as required by the Land Act (1996); the indigenous landowners are allegedly not adequately informed on the purposes for which the land is acquired and on the environmental consequences of activities planned by non-indigenous mining companies.

The committee is also concerned about the alleged denial of access to judicial remedies to indigenous landowners by the Compensation (Prohibition of Foreign Legal Proceedings) Act (1996) to seek redress before foreign courts, including compensation for environmental destruction of their lands and resources. Moreover, the Committee is concerned about the Environmental (Amendment) Act 2012 which also allegedly denies indigenous peoples from seeking redress before national courts against environmental permits granted that negatively impact their lands and resources.

The Committee urges the state party to provide information to the Committee on measures taken or envisaged to ensure that the application of the Land Act (1996) does not result to alienation of lands belonging to indigenous peoples; measures to ensure that all leases are granted with prior and informed consent of indigenous peoples; and measures taken to grant indigenous landowners access to justice and an effective remedy in case of violation of their rights.

In accordance with article 9 (1) of the Convention and article 65 of its Rules of Procedure, the Committee would be grateful to urgently received information on all the issues and concerns as outlined above, before 31 July 2011.

In this context, the Committee notes with concern that the State party has not submitted its overdue reports since 1984. The Committee urges the State party to submit its overdue reports, in one document, in order to resume the dialogue.

### **11. Peru, 02/09/2011 (UA/EW) (Original in Spanish; unofficial translation)**

I am writing to thank you for the information provided to the Committee on the 21<sup>st</sup> of February 2011, in reply to the letter dated 27 of August 2010 in which the Committee referred to the review of the situation of Indigenous Peoples in Urania District, Loreto Province, in the Peruvian Amazon.

In this respect, the Committee, during its 79th session, continued its review of the situation under the CERD's early warning and urgent action procedure and expresses its serious concern about the fact that all the measures taken to remedy the spill have been left in the hands of the companies, and that the Committee didn't receive a report on the water quality studies relating to the Marañón River. The Committee also expresses its serious concern regarding the fact that indigenous communities were apparently not consulted prior to the activities carried out in their territories by the mentioned companies, and also about the possibility that such a situation might continue in the future. The Committee expresses its extreme concern at reports indicating that the Contingency Plans of the companies responsible for the oil spill did not have the approval of the Ministry of Environment of the State party.

In this respect, the Committee respectfully requests the State party to provide it with information on:

- Measures adopted to monitor and ensure the water quality of the Marañón River;
- Measures taken to ensure the right to free, prior and informed consent of the indigenous communities affected by the activities of companies like Pluspetrol, in particular taking into account the fact that the State party has ratified ILO Convention 169;
- Measures taken or to be taken to ensure that the Contingency Plans have the approval of the Ministry of Environment of the State party; and
- Measures adopted or to be adopted to ensure that consultations and dialogues with indigenous communities are held in a way that will protect their rights and involve measures necessary to remedy any power differential which may arise.

Rest assured, Excellency, that the Committee looks forward to engaging in a constructive dialogue with the Government of Peru, and please accept the assurance of my highest consideration,

### **12. Russian Federation, 02/09/2011 (UA/EW)**

I write to inform you that in the course of its 79<sup>th</sup> session, the Committee further considered the situation of the small-numbered indigenous peoples from Nanai District of the Khabaroovsk in relation to the new draft law in respect of traditional fishing activities of indigenous peoples of the Russian of the Russian North, Siberia and the Far East, under its early warning and urgent action procedure. The Committee would like to refer to its letter dated on 11 March 2011 (copy attached for ease of reference). The Committee thanks to Stat party for responses provided in the Permanent Mission's note verbale dated 4 August 2011.

While noting with appreciation the responses provided, the Committee would like the State part to provide explanations on the contents of the draft federal act on traditional fishing activities; and to share the text of the draft with the Committee. The Committee would also like to receive information about the foreseen dates of the consideration and the adoption of the draft federal act, by the parliament. The Committee further calls upon the State party to consult the concerned indigenous small-numbered peoples about this draft act, and to inform the Committee on such consultations.

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 the issues and concerns as outlined above, before 31 January 2012.

### **13. Suriname, 20/09/2011 (UA/EW)**

I write to inform you that in the course of its 79<sup>th</sup> session, the Committee considered the information on alleged severe encroachment of lands traditionally belonging to Kailina Indigenous community of Maho, in the District of Saramaca, by non-indigenous parties, on preliminary basis, under its early warning and urgent action procedure, in the light of information submitted by a non-governmental organization.

The Committee is concerned about information according to which a 2000 metre long dam by stitching Moshiro was built with the 65 hectares reserved by the Government to the Maho community, in 1971, and caused flooding of some of the best farm lands in the rain seasons rendering this substantial area unsuitable for most crops. It is also reported that private individuals claiming land titles have appropriated part of lands reserved to the Maho community, including for the extraction of sand and for other mining activities. All those activities and operations allegedly have reduce the area, destroyed farms, and continue to threaten the subsistence of the Maho community which primarily derived from agriculture, hunting and fishing and other uses of natural resources of these lands and forests.

The Committee is also concerned about information on allegations of harassment, intimidation and violence during many years, against members of the Maho community who complain about the taking of their lands and the destruction of their crops. It is reported that despite many claims from the Maho community against these acts, the State party has not yet intervened.

The Committee notes that the Kalina indigenous peoples of Maho have submitted a petition to the Inter-American Commission of Human Rights on this matter of concern, and that the Inter-Americana Commission of Human Rights has granted precautionary measures, on 27 October 2010.

The Committee would like to recall its decisions 3 (62) of 3 June 2003, 1 (67) of 18 August 2005 and 1 (69) of 18 August 2006 (copies attached for ease of reference) adopted under its early warning and urgent action procedures related to the serious violations of the rights of indigenous peoples, the failure to recognize their rights to lands and resources, the refusal to consult them and to seek their prior, free and informed consent when granting mining concessions to foreign companies whose activities would have threatened their livelihood, as well as recommendations made accordingly.

The Committee would also like to recall paragraphs 12, 13 and 14 of its concluding observations (CERD/C/SUR/CO/12) adopted in March 2009, following the consideration of the twelfth periodic report of the State party, and which are particular relevance to the matter of concern.

In light of the nature of the Committee's ongoing concerns, the Committee, requests the State party to inform on measures taken to comply with the Inter-American Commission's decision on precautionary measures, no later than 31 January 2012. At the same time, the Committee will suspend the consideration of these issues under its early warning and urgent action procedures until a final decision is handed down by the Inter-American Commission of Human Rights.

### **14. Tanzania, 11/03/2011 (UA/EW)**

I wish to refer to the Committee's letter of 13 March 2009 (copy attached for ease of reference) requesting information, under its Early Warning Urgent Action Procedure on the situation of the Maasai community in Soitsambu village, Sukenya Farm.

You will recall that, in its latest concluding observations on Tanzania (CERD/C/TZA/CO/16, 2007), the Committee noted with concern the lack of information from the State party regarding the

expropriation of the ancestral territories of certain ethnic groups, and their forced displacement and resettlement. It recommended the State party to provide detailed information on the expropriation of the land of certain ethnic groups, on compensation granted on their situation following their displacement (CERD/C/TZA/CO/16, paragraph 14).

Following updated yet contradictory information on the situation of Maasai community in the Soitsambu village from non-governmental organisations and the Company which purchased the Farm, the Committee would be grateful for clarification regarding the status of your Government's response and would appreciate receiving the following information:

- Measures the State party has taken to ensure the effective participation of Maasai community in decisions affecting them including measures taken on allegations of expropriation of land in Soitsambu village;
- outcomes of legal proceedings and administrative investigations on the case;
- Measures the State party has taken to investigate thoroughly all allegations of excessive use of force and crimes by the police and the security guards of the company occupying the Farm.

In accordance with article 9 (1) of the Convention and article 65 of its Rules of Procedure, the Committee requests the State party to submit its response at its earliest convenience but preferably no later than 31 July 2011.

The Committee takes this opportunity to invite the State party to submit its seventeenth and eighteenth periodic reports overdue since November 2007.

#### **15. United States of America, 11/03/2011 (UA/EW)**

I would like to refer to the committee's letter of 28 September 2009 (copy attached for ease of reference) in which it expressed concern over the slow progress in the implementation of its decision 1 (68) taken under its early warning and Urgent Action Procedure regarding traditional rights to land of Western Shoshone.

The Committee urges the State party to implement the recommendations contained in its aforementioned Decision and would be grateful to receive information on effective measures taken by the State party in order to find a solution acceptable to all on Western Shoshone ancestral lands, in its seventh, eighth and ninth periodic reports due on 20 November 2011.

#### **16. Finland, 11/03/2011 (Follow Up)**

I wish to inform you that the Committee on the Elimination of all Forms of Racial Discrimination, in the course of its 78<sup>th</sup> session, considered the follow-up report submitted by the Government of Finland, pursuant to Rule 65 (1) of the Rules of Procedure of the Committee.

The Committee welcomes the timely submission of the report, in response to its request to receive information within one year on the implementation of the recommendations contained in paragraphs of the Concluding Observations (CERD/C/FIN/CO/19), adopted following the consideration of the State party's attention to the observations mentioned below. The Committee requests that comments and responses on actions taken by the state party on these issues be included in its 20<sup>th</sup> to 22<sup>nd</sup> periodic reports to be submitted in a single document by 13 August 2011.

**Paragraph 14 of the Concluding Observations.** The Committee thanks the State party for the information provided and appreciated the frankness of its response. The Committee welcomes the efforts taken by the state party to enact laws which take into account the rights of Sami. In particular,

the Committee notes with appreciation that the Mining and water Acts contain provisions to strengthen the right to participate of the Sami as indigenous peoples and allow them to appeal against decisions which do not take into account their rights. The Committee encourages the State party to continue with legislative reforms reinforcing the rights of the Sami and requests the State party to include updated information in its next periodic report on the reforms implemented.

The Committee regrets the absence of information on the proposed establishment of a new preparatory body in charge of reaching a solution for the issue of the right to land use in the Sami Homeland. In this regards, the committee encourages the State party to take into account the Committee's general recommendation No.23 on the rights of indigenous peoples which calls upon States parties to recognize and protect the rights of indigenous peoples own, develop, control and use their communal lands, territories and resources and requests further information to be included in the next periodic report.

**17. Guatemala, 02/09/2011 (Follow Up) (Original in Spanish; unofficial transl.)**

I write to inform you that in the course of its 79th session held between the 8th and the 2nd of September 2011, the Committee on the Elimination of Racial Discrimination considered the follow up report submitted by Guatemala (CERD/C/GTM/CO/12-13/Add.1) pursuant to Article 9, paragraph 1 of the Convention and to Article 65 of the Committee's rules of procedure, as amended. The Committee welcomes the information submitted by the State party and the efforts made to comply with the Committee's recommendations contained in paragraphs 7, 9, and 14 of the concluding observations (CERD/C/GTM/CO/12-13), adopted by the Committee in its 76<sup>th</sup> session after the review of the twelfth to thirteenth periodic reports of Guatemala, submitted in a single document.

The Committee appreciates the opportunity to maintain a dialogue with the State party and, in this regard, would like to highlight the observations mentioned below. The Committee requests the State party to include its comments and responses to these issues in its fourteenth and fifteenth periodic reports to be submitted in a single document by the 17<sup>th</sup> of February 2013.

**With respect to paragraph 7 of its concluding observations:** The Committee welcomes the information submitted by the State party, but regrets that such information does not allow the identification of an improvement in the situation. In addition, the Committee notes that the preliminary draft law to prevent, punish and eradicate racism and ethnic discrimination has not been adopted. The Committee reiterates its recommendation to the State party that, in compliance with its international obligations, it needs to speed up the adoption of specific legislation classifying different forms of racial discrimination as punishable acts, in line with the provisions of Article 4 of the Convention. In this context, the Committee recommends that the State party carries out the necessary legislative reforms to harmonise national legislation with the Convention. The Committee requests additional information in this regard in the next periodic report of Guatemala.

**With respect to paragraph 9 of its concluding observations:** The Committee thanks the State party for the statistical information submitted with regard to cases investigated by the Public Prosecutor. The Committee notes that there is a gap between this information and additional information available to the United Nations, and notes with concern that cases involving attempts against the physical integrity of social activists and the defenders of Indigenous People's rights continue, including killings of such rights defenders. The Committee also notes that only some of these cases have resulted in convictions or sentences. In this regard, the Committee urges the State party to adopt, through the Attorney General's Office, an efficient methodology to thoroughly investigate all threats and attacks against human rights defenders and to carry out the

prosecution of the perpetrators. The Committee also urges the State party to ensure that the Public Prosecutor's office has adequate human and financial capacity to implement its functions.

The Committee notes with appreciation the specific measures adopted by the State party, including the organisation of capacity building sessions and the establishment of an analytic body with the mandate to examine the patterns of the attacks and enable the exchange of experiences through dialogue and cooperation between governmental institutions. Similarly, the Committee notes with interest the establishment of a national prevention and protection policy for human rights defenders.

**With respect to paragraph 14 of its concluding observations:** The Committee thanks the State party for the extensive information on the rules and plans in force with respect to the environment and natural resources. At the same time, it notes with appreciation the creation of a Specific Cabinet for Water, but also notes that the information available does not allow the Committee to assess progress in the development of specific legislation to ensure access to safe drinking water for all communities. In this respect, the Committee urges the State party to adopt such legislation.

Similarly, the Committee notes with appreciation the efforts made by the State party to develop tools for the prevention and control of water contamination, including the launch of a national campaign for water chlorination and the implementation of a module on drinking water within the Water Integrated Information System. The Committee requests the State party to submit updated information on the impacts and outcomes of different campaigns on water and sanitation on the population, and on the incidence of water-related diseases in indigenous communities in its next periodic report.

#### **18. Japan, 02/09/2011 (Follow Up)**

**Paragraph 20 of the Concluding Observations.** The Committee thanks the State party for the information provided. It notes with interest the creation of the two working groups mentioned but notes that the second only surveyed the living conditions of Ainu people "outside Hokkaido". The Committee encourages the State party to conduct a national survey regarding the Ainu people, living in and out of Hokkaido, in a systematic way.

The Committee also notes that no working group was created to examine and implement the Declaration of the Rights of Indigenous Peoples and that the number of Ainu representatives within the Meeting for the Promotion of Ainu Policies had not been increased since the session. Therefore, the Committee requests further clarification on which paragraphs of the Declaration are taken into consideration by the Meeting and how they are reflected in its work. It also reiterates its request that further steps be taken for the effective implementation of the Declaration on the Rights of Indigenous Peoples.

Finally, the Committee appreciates the need of Japan for consultation, analysis and study in order to consider the issues preventing it from ratifying the ILO Convention No.169 on Indigenous and Tribal Peoples in Independent Countries. It encourages the State party to undertake such activities, including holding effective consultations with the Ainu people.

#### **19. Peru, 03/11/2011 (Follow Up) (Original in Spanish; unofficial translation)**

I am honoured to be writing to inform you that in the course of its 78th session held between 14<sup>th</sup> of February and 11<sup>th</sup> of March 2011, the Committee on the Elimination of Racial Discrimination considered the follow up report submitted by Perú (CERD/C/PER/CO/14-17/Add.1) pursuant to Article 9, paragraph 1, of the Convention and to Article 65 of the Committee's rules of procedure, as amended.

The Committee welcomes the information submitted by the State party and the efforts made to comply with the Committee's recommendations contained in paragraphs 12, 17, and 20 of the concluding observations (CERD/C/PER/CO/14-17), adopted by the Committee in its 75<sup>th</sup> session after the review of the fourteenth to seventeenth periodic reports of Guatemala, submitted in a single document.

The Committee appreciates the opportunity to maintain a dialogue with the State party and, in this respect, would like to highlight the observations mentioned below. The Committee requests that the State party include its comments and responses on actions taken on these issues in its eighteenth to twentieth periodic reports to be submitted on the 29 of October 2012.

**With respect to paragraph 12 of its concluding observations:** The Committee welcomes the information submitted by the State party but regrets the lack of updated information, especially on the current state of the ethno linguistic map. The Committee notes with interest that the 2007 National Census included a question on the mother tongue of respondents, but invites the State party to remember that there is not always a correlation between ethnic group and mother tongue, and to take this into account when developing public policies to better meet the needs of its multiethnic and multilingual population. The Committee regrets the lack of specific statistical information on Afro descendant populations and recalls that disaggregated information constitutes a fundamental tool for policy design and assessment, and for the promotion of human rights. The Committee reiterates its recommendation to the state party to continue to improve the methodology used in the census, and respectfully requests additional information in this regard in the next periodic report of Peru, in accordance with paragraphs 10 to 12 of the Committee's reporting guidelines (CERD/C/2007/1).

**With respect to paragraph 17 of its concluding observations:** The Committee thanks the State party for the information submitted and welcomes the information on Supreme Resolution (RS) N<sup>o</sup> 010-2009-MIMDES, and congratulates the State party for the Resolution and the ceremony held, as a crucial first step. The Committee regrets the lack of information on the need for a study of the Afro-Peruvian population, and encourages the State party to implement Article 3 of the Supreme Resolution under which the Ministry for Women and Social Development will implement specific public policies to meet the needs of Afro-Descendants. The Committee also urges the State party to develop awareness programmes, with emphasis on intercultural education and tolerance, and requests additional information on this matter in its next periodic report.

**With respect to paragraph 20 of its concluding observations:** While the Committee thanks the State Party for the information submitted, it regrets that no information has been included on the rights to consultation, nor on remedies or compensation with respect to damages suffered by the Ancomarca community. The Committee is concerned at the apparent failure of measures undertaken by the State party to ensure that there will be no further negative effects on those communities that have traditionally used resources around Tacna. The Committee reminds the State party that it is essential to obtain the free, prior, and informed consent of those communities affected, and urges the State party to consider its General Recommendation 23. The Committee respectfully requests that the State party include information on remedies for damages to the community in its next periodic report.

The Committee urges the State party to conduct independent studies on climate change that examine the interrelation between springs, ground water and surrounding wetlands. Referring to the State party response that wetlands could have been affected by climate change, the Committee considers that it is the State party's responsibility to find and implement, in dialogue with affected

communities, mitigation and adaptation measures to tackle climate change and its implications for the use of land and water resources. The Committee urges the State party to facilitate the development of strategies, in consultation with indigenous communities, to provide alternative livelihoods, particularly for those communities who have traditionally depended on agriculture.

The Committee welcomes additional information on (i) efforts made by the State party to conduct effective consultation with indigenous peoples; (ii) obtaining informed consent of indigenous peoples, in line with international norms, when taking decisions directly related to their rights and interests, prior to the implementation of natural resources extraction projects; (iii) the regulatory framework for State investments in indigenous peoples' lands and the exploitation of subsoil resources.

## **20. Belize, 09/03/2012 (UA/EW)**

I write to inform you that in the course of its 80<sup>th</sup> session, the Committee considered the situation of the Maya people in Belize and their land claims which have been under consideration by the Committee since 2007 under its early warning and urgent action procedure.

In view of the information at its disposal, the Committee deplores the fact that the State party appears to continue to deny customary land rights to the Mayan people despite its Supreme Court decisions, recommendations of the Inter-American Commission and this Committee. The Committee notes decisions of the Supreme Court of Belize reaffirming that existence of Maya customary land tenure in all of the Toledo Maya villages. It expresses concern at the absence of measures by the State party such as consultations with the Maya people in order to delimitate, demarcate and title the customary title of the Maya villages of Belize. The Committee urges the State party to take such measures.

The Committee would appreciate receiving additional information on steps that have been taken to ensure that the Maya people are provided with "the protections necessary to exercise their property rights fully and equally with other members of the Belize population" in line with the Inter-American Commission on Human Rights recommendation of 2004 which refers to equal protection before the law, and to non-discrimination as well as recommendations of this Committee.

The Committee welcomes the *Alcaldes Act* and the inclusion of indigenous peoples' customary law as well as the consultations undertaken in order to receive comments from *Alcaldes*. It requests further information on the adoption of this law as well as the draft on Village Boundaries Demarcation Law and whether the latter takes into account the land rights of Maya people.

The Committee wishes to draw the attention of the State party to its general recommendation No.23 (1997) on the rights of indigenous peoples, in particular their rights to own, develop, control and use their communal lands, territories and resources and, where they have been deprived of their lands and territories traditionally owned or otherwise inhabited or used without their free and informed consent, to take steps to return those lands and territories. Only when this is for factual reasons not possible, the right to restitution should be substituted by the right to *just, fair and prompt compensation*. Such compensation should as far as possible take the form of lands and territories.

The Committee hopes that the State party will submit urgently its initial report to the Committee, following the technical assistance it benefited from in relation to the reporting process with the participation of one of its members. It wishes to inform the State party that Belize will be examining in August 2012 during 81<sup>st</sup> session of the Committee, either under the reporting procedure if a report is submitted on time or under the review procedure in the absence of a report.

The Committee requests the State party to provide information on the current situation concerning Mayan land rights. 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 2012.

**21. Kenya, 09/03/2012 (UA/EW)**

I write to inform you that in the course of its 80<sup>th</sup> Session, the Committee considered on a preliminary basis, information submitted by a non-government organisation on allegations to the alleged forced evictions of the Samburu people from their traditional homeland by the police forces, on a preliminary basis, under its early warning and urgent action procedure.

The Committee is concerned about information according to which some 3000 Samburu were forcefully evicted from Eland Downs between 2008 and 2010. Eland Downs has been the seasonal home of Sambaru since the 1980s.

The Committee is particularly concerned about information according to which, reportedly took place on 23 November 2012, homes and possessions of Sambaru were allegedly destroyed and their livestock confiscated, and that despite a Court Order to refrain attempts at eviction or harassment of Sambaru, the police harassment continued and resulted in the death of three Sambaru individuals. The Committee notes that the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people has raised similar issues in his report on his mission to Kenya in 2006.

The Committee also requests the State party to provide information on the situation of Sambaru people of Eland Downs, and on measures taken to promote and protect their rights, in particular the promotion of consultation with the Sambaru community and their participation in decision-making processes on issues that affect them as well as the granting of adequate compensation for the alleged forced eviction of Sambaru where relevant.

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 all of the issues and concerns as outlined above, before 31 July 2012.

**22. Panama, 09/03/2012 (UA/EW) (Original in Spanish; unofficial translation)**

I write to inform you that in the course of its 80th session and under its early warning and urgent action procedure, the Committee considered, on a preliminary basis, information on the violent confrontation that took place between indigenous communities and Security Forces during protests against the exploitation and construction of a hydroelectric dam in the West of Panama.

The Committee is especially concerned that protests by Ngäbe-Buglé communities have led to a violent response from the police, resulting in the death of two demonstrators, injured people and numerous arrests.

The Committee refers to paragraph 20 of its Concluding Observations on Panama, adopted at its 76<sup>th</sup> session, in which the Committee urges the State party to step up measures to ensure the safety of indigenous leaders and communities faced with intimidation and persecution for asserting indigenous peoples' rights, specifically in connection with their opposition to major hydroelectric, mining and tourism projects. The Committee reiterates the recommendation to the State party in paragraph 14 of its Concluding Observations "to conduct consultations with communities potentially affected by

development projects and the exploitation of natural resources with the objective of obtaining their free, prior and informed consent”.

The Committee recalls the appeal of the Special Rapporteur on Human Rights, Professor James Anaya, and urges the State party to continue the dialogue with indigenous communities to resolve the current conflict in a peaceful way. The Committee also requests the State party to submit information on measures adopted to ensure the effective participation of indigenous communities in all decision-making processes that affect them, including discussions regarding the revision of the Mining Code, which allows the construction of hydroelectric dams in indigenous territories.

In accordance with the standing invitation to Special Proceedings granted by the State party, the Committee recommends that the State party schedule a visit by the Special Rapporteur on the rights of indigenous peoples to their territory as soon as possible.

In accordance with Article 9(1) of the Convention and Article 65 of its Rules of Procedure, the Committee would be grateful to receive urgent information on the issues and concerns as outlined above, before 31 July 2012.

Allow me, Excellency, to reiterate the wish of the Committee to continue to engage in a constructive dialogue with the Government of Panama, with a view to promote the effective implementation of the Convention.

### **23. Suriname, 09/03/2012 (UA/EW)**

I write to inform you that in the course of its 80<sup>th</sup> session, the Committee considered, on a preliminary basis under its early warning and urgent action procedure, information submitted by non-governmental organisations on the situation of the Saramaka people of Suriname.

The Committee is particularly concerned that, according to information presented to the Committee, Suriname has failed to implement even the most important elements of the judgment of the Inter-American Court of Human Rights in *Saramaka people v Suriname* (2007), including the requirement to provide legal recognition to the collective juridical capacity of the Saramaka people. The Committee is particularly concerned that despite the Committee's numerous recommendations and decisions regarding the rights of indigenous peoples in Suriname, the marginalisation of indigenous people, which constitutes violation of the human rights protected under the Convention on the Elimination of all Forms of Racial Discrimination, continues in the State party.

The Committee reminds the State party of its previous decisions on Suriname under its 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 regrets that the State party has not yet provided follow-up replies to the recommendations contained in paragraph 18 of its concluding observations (CERD/C/SUR/CO/12) in which the Committee raised its concern over the ‘ongoing delays in compliance of the most crucial aspects of the of the court judgment, in particular, concerning the recognition of communal and self-determination rights of the Saramaka people’.

The Committee requests the State party to provide information on the actual situation concerning the Saramaka people<sup>4</sup> and the measures taken to implement the judgment of the Inter-American Court of Human Rights in the *Samaraka v Suriname* (2007).

In accordance with Article 9(1) of the Convention and article 65 of its Rules and Procedure, the Committee would be grateful to urgently receive information on the issues and concerns as outlined above before 31 July 2012.

#### **24. Thailand, 09/03/2012 (UA/EW)**

I write to inform you that in the course of its 80<sup>th</sup> session, the Committee considered, on a preliminary basis, information submitted by a non-governmental organisation regarding the forceful eviction and harassment of the Karen indigenous people from the Kaeng Krachan National Park (KKNP), under its early warning and urgent action procedure.

The Committee expresses its concern about the information according to which an increasing level of violence has been committed against the Karen people by the Thai National Park and Forestry Authorities. It has been brought to the attention of the Committee that the alleged violent eviction and harassment have been carried out against the Karen people despite existing laws protecting the rights of the Karen people to live in national parks and other forest areas. Such laws include the Thai Cabinet Resolution of 3 August 2010 on policies regarding the restoration of the traditional practices and livelihoods of the Karen people, which categorically provides the Karen people with the right to stay in their ancestral land and to continue their traditional farm rotation system. The Committee is further concerned that the reported continuous and escalating violence may have been linked to the tragic murder of a Karen human rights defender, Mr Tatkamol Ob-om, who filed a petition on the Thai National Human Rights Commission on behalf of the Karen people.

The Committee requests the State party to provide information on the situation of indigenous peoples in the Kaeng Krachan National Park. Furthermore, the Committee would like to receive information regarding the measures taken to improve the situation of the Karen people in the KKNP.

In accordance with Article 9(1) of the Convention and article 65 of its Rules of Procedures, the Committee would be grateful to urgently receive information on all issues and concerns as outlined above, before 31 July 2012. The Committee will consider such replies during the dialogue with the State party in the course of the 81<sup>st</sup> session.

#### **25. United States of America, 09/03/2012 (UA/EW)**

I write to inform you that in the course of its 80<sup>th</sup> session, the Committee considered, on a preliminary basis, under its early warning urgent action procedure, information submitted by non-governmental organisation concerning the Ski Resort project in San Francisco Peaks. The Committee has also considered the situation of Western Shoshone and particularly the implementation of its 2006 Decision 1 (68) taken under the same procedure.

The Committee recalls its recommendation to the State party (CERD/C/USA/CO/6 of March 2008), particularly paragraph 29 which the State party to take all appropriate measures, in consultation with indigenous peoples concerned and their representatives chosen in and their representatives chosen in accordance with their own procedure, to ensure that activities carried out in areas of spiritual and cultural significance to Native Americans do not have a negative impact on the enjoyment of their rights under the Convention. The Committee has further recommended that the State party recognise the right of Native Americans to participate in decisions affecting them, and consult and cooperate in good faith with the indigenous peoples concerned before adopting and implementing any activity in areas of spiritual and cultural significance to Native Americans.

In light of the information at its disposal, the Committee remains concerned at the potential impact of the Ski Resort Project on indigenous peoples' spiritual and cultural beliefs. The Committee requests information about the process by the State party to obtain the free, prior and informed consent of indigenous peoples with regard to the project.

The Committee requests information on concrete measures taken to ensure that the sacred character of the site for indigenous peoples is respected, including the possibility of suspending the permit granted to the Arizona Snowbowl in order to further consult with indigenous peoples and take into account their concerns and religious traditions.

Regarding traditional rights to land of Western Shoshone, the Committee requests updated information on the implementation of its 2006 Decision 1 (68) and its request to State party to send high-level representatives to meet with Shoshone peoples.

The Committee urges the State party to take urgent steps to find a solution acceptable to all in accordance with its obligations under the convention. It recalls its general recommendation No.23 (1997) on the rights of indigenous peoples, in particular their right to own, develop, and use their communal land territories and resources as well as the duty of the State party to ensure that indigenous communities can exercise their rights to practice and revitalise their cultural traditions and customs.

In accordance with Article 9(1) of the Convention and article 65 of its Rule of Procedure, the Committee would be grateful to urgently receive information on the issues and concerns as outlined above before 31 July 2012 or in its next periodic report overdue since November 2012 in case the report is finalised before that date.

#### **26. Australia, 09/03/2012 (Follow Up)**

I wish to inform you that the Committee on the Elimination of All Forms of Racial Discrimination, in the course of its 80<sup>th</sup> session, considered the follow-up report submitted by the Government of Australia, pursuant to Rule 65(1) of the Rules of Procedure of the Committee.

The Committee welcomes the timely submission of the report, in response to its request to receive information within one year on the implementation of the recommendations contained in paragraphs 11, 16 and 23 of the Concluding Observations (CERD/C/AUS/CO/15-17) adopted following the consideration of the State party's fifteenth to seventeenth periodic reports in September 2012. The Committee appreciates the opportunity provided to continue its dialogue with the State party, and would like to draw the State party's attention to the observations mentioned below. The Committee requests that comments and responses on actions taken by the State party on these issues be included in its eighteenth and nineteenth periodic reports to be submitted in a single document by 30 October 2012.

**Paragraph 16 of the concluding observations.** The Committee thanks the State party for the extensive information provided. It welcomes, in particular, the reinstatement of the Racial Discrimination Act and the State Party's commitment to organize consultations with Aboriginal peoples and communities on future plans to tackle disadvantage. Nevertheless, the Committee reiterates the need for the State party to always guarantee the free, prior and informed consent of the communities concerned notably by ensuring that these consultations are inclusive, translated into languages of indigenous peoples, and that they provide sufficient time for them to send their inputs.

The Committee requests further clarification on how the Northern Territory Emergency Response legislation enforcement and the income management scheme are implemented in practice, so as to avoid not only discrimination but any further negative impact on indigenous peoples. The Committee encourages the State party to monitor the effectiveness of these measures and review them if necessary.

**27. Costa Rica, 31/08/2012 (UA/EW) (Original in Spanish; unofficial translation)**

I am honoured to be writing to inform you that in the course of its 80th session, the Committee continued to study the situation of the Terraba indigenous people in Costa Rica, affected by the construction of the El Diquis hydroelectric dam. The Committee would like to thank the State party for its replies to the letter of the 2<sup>nd</sup> of September 2011, sent under its early warning and urgent action procedure.

The Committee welcomes the positive measures implemented by the State party, especially by the Costa Rican Institute of Electricity (ICE), following concerns expressed by the Committee and recommendations issued by the Special Rapporteur on the Rights of Indigenous Peoples with regard to the situation of the Terraba people. The Committee notes ICE's initiatives to resume an open dialogue with the Terraba people and urges the State party to continue to take adequate measures to ensure that consultations are carried out with them in order to obtain their free, prior and informed consent with regard to El Diquis dam and the construction of related infrastructure.

Pursuant to Article 9, paragraph 1, of the Convention and to Article 63 of the Committee's internal rules, the Committee urges the State party to submit its nineteenth periodic report without further delay, which was to be submitted on the 4 of January 2010, including information on measures implemented to ensure consultation with the Terraba people, as well as information on the process of adoption of the draft Law on Autonomous Development of Indigenous Peoples.

Rest assured, Excellency, that the Committee looks forward to engaging in a constructive dialogue with the Government of Costa Rica, with a view to providing it with assistance in its efforts to ensure the effective implementation of the Convention.

**28. Ethiopia, 31/08/2012 (UA/EW)**

I write to inform you that in the course of its 81<sup>st</sup> Session, the Committee further considered, under its early warning and urgent action procedure, the situation of the South Omo indigenous people in Southern Ethiopia in relation to the construction of the Gibe III Dam and the Kuraz Sugar project, as well as the situation of the Mazeneger and other indigenous peoples of Gambella in relation to the authorisation granted to the company Verdanta Harvest for cultivation in ancient forests of the Godere District. The Committee would like to thank the State Party for the information provided in its note verbale of 25 May 2012 in reply to the Committee's letter of 2 September 2011.

The committee welcomes the responses and clarifications provided and would like to request the State Party to provide updated and detailed information on the measures envisaged or implemented to address discrimination against those communities in Ethiopia, in its subsequent periodic report due to 23 July 2013, as already indicated in the State Party's reply (paragraph 32 of the above-mentioned note verbale).

The Committee notes the request by the State Party to meet with the Chairperson of the Committee to further exchange on the early warning and urgent action procedure. The Secretariat of the Committee will liaise with the Permanent Mission of Ethiopia to schedule a meeting during the eighty-second session of the Committee to be held from 11 February to 8 March 2013.

Allow me, Excellency, to reaffirm the wish of the Committee to continue to engage in a constructive dialogue with the Government of Ethiopia, with a view to assist the State Party in the effective implementation of the Convention, as well as to provide clarifications on the functioning of the early warning and urgent action procedure, as requested by the permanent Mission.

### **29. India, 31/08/2012 (UA/EW)**

I write to inform you that in the course of its 81<sup>st</sup> Session, the Committee considered on a preliminary basis the situation of the Jarawa people in the Andaman Islands in India under its early warning and urgent action procedure, in light of information submitted by non-governmental organizations.

Information before the Committee alleges that the Jarawa people have become the subject of ‘human safaris’ on the Andaman Road. These safaris are trips undertaken by tourists who use the Andaman Trunk Road to drive through the Jarawa Reserve in the hope of spotting the tribes people. The Committee is deeply concerned and regrets the distinction of the Jarawa people from Indian settlers in this way as well as the attitudes of tourists visiting the region, allegedly with the involvement of the authorities. In this regard, the Committee is equally concerned that, on the information available to it, the State Party has not taken any measures to redress the situation

The Committee recalls paragraph 19 of its concluding observations on India, adopted during its 70<sup>th</sup> session in which the Committee urged *‘the State party to fully respect and implement the right ownership, collective or individual, of the members of the tribal communities over the lands traditionally occupied by them in its practice concerning tribal peoples in accordance with ILO Copnvention No 107 on Indigenous and Tribal Populations. (...) Furthermore, it should protect tribes such as the Jarawa against encroachment on their lands and resources by settlers, poachers, private companies or third parties and implement the 2002 order of the Indian Supreme Court to close the sections of the Andaman Trunk Road that runs through the Jarawa reserve.’*

The Committee notes that the 2002 order of the Indian Supreme Court ruled regarding the closure of the Andaman Trunk Road has not been implemented. Therefore, the Committee urges the State Party to implement this Court Order promptly, as well as the recommendation of this Committee in this regard.

In accordance with Article 9 (1) of the Convention and articles 63 and 65 of its rules and procedures, the Committee would be grateful to receive urgently information on the issues and concerns as outlined above, before **31 December 2012**. The Committee also urges the State Party to submit in a single report, its twentieth and twenty-first periodic reports without further delay, which were due on 4 January 2010.

### **30. Nepal, 31/08/2012 (UA/EW)**

I write to inform you that in the course of its 81<sup>st</sup> session, the committee considered information submitted by a non-governmental organization regarding the alleged ongoing persecution of indigenous leaders in Limbuwan, in Nepal.

The committee expresses its concern about allegations that indigenous leaders of the Pallo Kirant Limbuwan Rastriya Manch (PKLRM) continue to be harassed and persecuted by the state party under criminal charges, including charges of sedition and treason. It has been brought to the attention of the Committee that indigenous peoples’ territories have been militarized and that the State party has interfered with their attempts to engage in democratic political processes and have arbitrarily

detained them. It has also been brought to the attention of the Committee that the alleged harassment and persecution have occurred as a result of attempts of Limbuwan leaders to raise awareness about 18<sup>th</sup> century treaties between the traditional inhabitants of Limbuwan and the Nepalese monarchy in relation to their independent status. The committee is further concerned about allegations suggesting that most of the indigenous leaders of Limbuwan have fled Nepal to escape further persecution.

The Committee requests the State party to provide information on the situation of Limbuwan indigenous peoples, in particular regarding allegations of ongoing harassment and persecution of Limbuwan leaders. The Committee would also like to receive information on measures taken to improve the situation of Limbuwan indigenous peoples and to engage in dialogue with them in relation to their rights to political participation, freedom of assembly, and freedom of expression. Further, the Committee requests information on measures taken to ensure the free and equal participation of indigenous peoples of Limbuwan in the ongoing constitution-writing process and to freely choose representatives in that process, including by the establishment of a committee on indigenous people, as recommended by the committee in its previous letters.

The Committee urges the State party to submit its seventeenth, eighteenth and nineteenth periodic reports overdue since 1 March 2008 and to include in these reports information regarding the situation of indigenous peoples of the Limbuwan.

In accordance with Article 9(1) of the Convention and article 65 of its Rules of Procedures, the Committee would be grateful to receive urgently information on all issues and concerns as outlined above, before 31 December 2012. The Committee will consider such replies during the dialogue with the State part in the course of its 82<sup>nd</sup> session.

### **31. Philippines, 31/08/2012 (UA/EW)**

I write to inform you that in the course of its 81<sup>st</sup> session, the Committee further considered the situation of the Subanon of Mount Canatuan, which has been under consideration by the Committee since 2007 under its early warning and urgent action procedure.

The Committee recalls its recommendation to the Stat party (CERD/C/PHL/CO/20 of September 2009), particularly paragraph 25 which urged the State party to consult with all concerned parties in order to address the issues regarding Mount Canatuan in a manner that respects customary laws and practices of the Subanon people and invited you to provide information in relation to further developments. In a letter dated on 27 August 2010, the Committee further expressed its ongoing concern that mining activities continued to be carried out without the consolation of the Subanon people, resulting in the destruction of their sacred site.

The Committee reiterates its previous recommendation and requests further information on: concrete measures taken to ensure that sacred character of Mount Canatuan is respected; and, appropriate consultation conducted with the Subanon people and culturally appropriate reparation provided to them.

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 combined 21<sup>st</sup> and 22<sup>nd</sup> periodic report, which was due on 4 January 2012, and include up to date information on this issue.

### **32. Morocco, 31/08/2012 (Follow Up) (original in French; unofficial translation)**

**Paragraph 11 of the Concluding Observations:** The Committee welcomes the constitutional provisions recognising the Amazigh language as an official language of the State Party, as well as

the development of the National Council for Moroccan Language and Culture. The Committee also notes with interest the reference made to measures to improve the teaching of the Amazigh language and its integration into areas of public life. The Committee wishes to obtain additional details on the type of measures taken, and asks the State Party to provide information on the full implementation of these measures in its next periodic report. The Committee notes however that the State Party has not provided information concerning racial discrimination as regards to access to employment and health services and reiterates its request that the State Party includes this information in its next periodic report.

## II. HUMAN RIGHTS COMMITTEE

### A. Concluding Observations

#### 1. Togo, CCPR/C/TGO/CO/4, 18 April 2011

21. The Committee is concerned that minorities are underrepresented in the civil service and the army in particular. It also notes with concern that neither the existence of indigenous peoples in Togo nor their right to free, prior and informed consent is recognized (arts. 2 and 27).

The State party should take the necessary steps to guarantee the recognition of minorities and indigenous peoples. It should also ensure that indigenous peoples are able to exercise their right to free, prior and informed consent. The State party must also give minorities in Togo the means for better representation in public life and positions of responsibility.

#### 2. Norway, CCPR/C/NOR/CO/6, 18 November 2011

14. The Committee regrets that the State party has not withdrawn its reservation to article 20, paragraph 1, of the Covenant. It further regrets the persistence of hate speech against the Sami people, and xenophobic, anti-Semitic and Islamophobic statements (art. 20).

The State party should consider withdrawing its reservation to article 20. Furthermore, the State party should continue and intensify its efforts to raise awareness and promote tolerance and diversity in society. Law enforcement officials should be trained to detect and prosecute hate speech that constitutes an offence.

#### 3. Guatemala, CCPR/C/GTM/CO/3, 19 April 2012

6. The Committee welcomes the progress in the investigation, prosecution and punishment of genocide and other serious human rights violations committed during the internal armed conflict. Nevertheless, the Committee is concerned at the personal messages issued by high-level representatives of the Executive Power, who are questioning and undermining those efforts, and at the lack of an overall State policy to support the investigation and punishment initiatives that are under way. The Committee also regrets the persistent gaps in the legal authorities' institutional capacity to perform their duties adequately in all cases (arts. 2 and 14).

The State party should take a clear position in support of the processes initiated by the Public Prosecution Service and the courts in cases of genocide and other serious human rights violations committed during the internal armed conflict. The State party should also provide the legal and investigative institutions with all necessary human and material resources so that they can comply with their international human rights obligations.

7. The Committee is concerned that the main reparative measures adopted under the National Reparations Programme have been economic in nature, whereas insufficient attention has been given to psychosocial support, restoration of dignity and recovery of historical memory (art. 2).

The State party should ensure that the reparations measures adopted under the National Reparations Programme systematically include comprehensive care with cultural and linguistic relevance, with a focus on psychosocial support, restoration of dignity and recovery of historical memory. For that purpose, the State party should establish mechanisms for coordination and partnerships with the sectors specializing in that field, and provide the institutions that help to implement the reparations measures with specialized staff and the necessary resources to carry out their functions throughout the country.

8. The Committee remains concerned at the low level of representation of women in Congress and in decision-making posts in the public and private sectors. The Committee reiterates its concern at the very vulnerable situation and the high levels of racial, social and gender discrimination

suffered by indigenous and Afro-descendent women, despite the formal recognition of their rights and the multiplicity of institutions and programmes designed to promote those rights (arts. 3, 25 and 26).

The State party should adopt and implement legislation on the equality of men and women, thus recognizing officially the special nature of discrimination against women and addressing it appropriately. The State party should develop additional policies to promote genuine gender equality that includes a specific perspective in favour of indigenous and Afro-descendent women, and strengthen Government programmes and institutions with mandates that include promotion of the rights of indigenous and Afro-descendent women and prevention of discrimination against them.

10. The Committee is concerned at the continuing de facto exclusion of indigenous and Afro-descendent workers in all areas, including land ownership, access to basic services, labour conditions, access to the formal economy and justice, participation in decision-making forums and State institutions and representation in the media and in the public debate. The Committee regrets the lack of appropriate criminalization of acts of discrimination and xenophobia suffered by indigenous and Afro-descendent persons, as a result of which the crime of discrimination applies only to acts that impede or hinder the exercise of a legally constituted right (arts. 3, 26 and 27).

The State party should continue its efforts to eradicate stereotypes and discrimination against indigenous and Afro-descendent persons by, inter alia, carrying out more education campaigns to promote tolerance and respect for diversity. The State party should adopt measures to promote equal opportunity and access to services through appropriate efforts to resolve existing inequalities. Lastly, the State party should amend article 202 bis of the Criminal Code to ensure the investigation of acts of racial discrimination, the prosecution and punishment of the perpetrators, and adequate compensation for the victims so that it is not necessary to establish that those acts impede or hinder the exercise of one or more rights in order to constitute an offence.

26. The Committee is concerned at the existing limitations on access to justice owing to the inadequate geographical coverage of the judicial system and to the prevalence of a monocultural vision within that system. The Committee also regrets the lack of interpreters to meet the needs of indigenous persons (arts. 14 and 27).

The State party should take the necessary measures to facilitate the access of all persons to justice in their own language by adopting effective policies to recruit bilingual officials, creating the necessary number of interpreter posts, providing adequate training to professionals so that they can discharge their functions and constantly evaluating the quality of service in all regions of the country. In addition, the State party should implement specific training programmes for legal officials responsible for representing the judiciary in indigenous areas.

27. While recognizing the measures taken by the State party, such as the 2009–2012 Programme for the Development of Indigenous Peoples and the constitutional reforms of 2001 designed to ensure respect for indigenous rights, the Committee regrets that indigenous peoples are not effectively consulted by the State party during decision-making processes that affect their rights (arts. 2, 25 and 27).

The State party should comply with its international commitment to carry out prior and informed consultations with indigenous peoples for all decisions relating to projects that affect their rights, in accordance with article 27 of the Covenant. The State party should also recognize and take due account of all decisions taken by indigenous peoples during such consultations.

#### **4. Kenya, CCPR/C/KEN/CO/3, 31 August 2012**

24. The Committee is concerned at reports of forced evictions, interference and dispossession of ancestral land by the government from minority communities such as the Ogiek and Endorois communities who depend on it for economic livelihood and to practice their cultures. The Committee is further concerned at reports that the Ogiek community are subjected to continued eviction orders from the Mau forests complex. The Committee notes that the State party has not implemented the decision of the African Commission on Human and Peoples' Rights in the case *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya*. (arts. 12, 17, 26 and 27).

The Committee recommends that, in planning its development and natural resource conservation projects, the State party should respect the rights of minority and indigenous groups to their ancestral land and ensure that their traditional livelihood that is inextricably linked to their land is fully respected. In this regard, the State party should ensure that the inventory being undertaken by the Interim Coordinating agency with a view to obtaining a clear assessment of the status and land rights of the Ogiek community should be participatory and that decisions should be based on free and informed consent by this community.

### **B. Jurisprudence under Optional Protocol I**

#### **1. Argentina: CCPR/C/102/D/1610/2007, 24/08/2011** (footnote numbering different from original)

1. The author of the communication is Ms. L.N.P., an Argentine citizen born in 1988, who claims to be the victim of violations by the Argentine Republic of the rights recognized in article 2; article 3; article 7; article 14, paragraphs 1 and 5; article 17; article 24; and article 26 of the International Covenant on Civil and Political Rights. The Optional Protocol entered into force for the State party on 8 November 1986.

#### **The facts as submitted by the author**

2.1 The author belongs to the Qom ethnic group<sup>5</sup> and lives at the place known as El Espinillo, situated in the north of the Chaco Province of Argentina. On 3 October 2003, soon after the author had turned 15 years of age, she was sexually assaulted by three young Creoles<sup>6</sup> aged between 17 and 20 years. The author asserts that, on the evening of that date, she was called over by the three young men, with whom she was acquainted, in the village square and taken behind the church that gave onto the square, where she was forced by the eldest of the three, assisted by the other two, to practice oral sex, after which she was subjected to anal penetration. According to the author, the aggressor covered her mouth when she tried to scream and pinned her against the wall holding her arms, while the other two hid the scene with their jackets.

2.2 Immediately after the assault, the author went alone, in her blood-stained clothes, to the village police station, where she was kept waiting for approximately three hours before being sent to the local medical centre. When she arrived there, the author recounts that she was kept waiting again for several hours, standing up, before she was attended to. At around 4 a.m., she was subjected to a medical examination by the head of the medical centre, who performed anal and vaginal palpations which caused her intense pain. The medical report states that anal injuries were found which tallied with the violent assault that had occurred between 30 and 40 minutes prior to the examination. The author draws attention to the discrepancy between the time at which she was attended in the medical centre — approximately 4 a.m. — and the time entered in the medical report, which was 00.30 a.m. The author argues that this was an attempt to show that she was treated

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<sup>5</sup> According to the author, the original Toba people (who now refer to themselves as Qom) have been living on the economic, social and cultural margins of society since the end of the nineteenth century. After the so-called "desert campaign", the Qom members who survived the systematic killings that took place during that campaign were deprived of their lands, which were handed over to Creole farmers. The author maintains that this government policy strengthened racist attitudes towards the indigenous peoples among the colonists. According to the author, racial tensions were further aggravated after 2000, when the Qom communities were granted land titles to 140,000 hectares and the non-indigenous families occupying the lands were relocated elsewhere.

<sup>6</sup> The term "Creole" refers to non-indigenous citizens.

immediately, whereas, in actual fact, she was kept waiting for hours both in the police station and at the medical centre.

2.3 Worried about the author's absence, her family and several members of the Qom community started looking for her. When they found out what had happened, they met in front of the village police station, where the author's mother filed a complaint, written in Spanish and without any translation, despite the mother's difficulties in communicating in that language. Nevertheless, a judicial investigation was ordered; the three aggressors were arrested and the author was subjected to a forensic examination on 7 October. The report of the forensic physician of 7 October corroborated the conclusion of the medical report issued on 4 October. On 5 November 2003, a social worker was dispatched to the author's village "in order to enquire into lifestyles, habits and any other facts of interest" for the investigation. The author maintains that the social worker investigated only the victim, her family and her community, enquiring about her morals, but leaving aside the three accused.

2.4 After several months of police investigations, court proceedings were opened on charges of sexual abuse with carnal intrusion against the three individuals responsible. According to the author, neither she nor her family were informed of their right to appear as plaintiffs at the trial in accordance with articles 89 and 94 of the Code of Criminal Procedure of Chaco Province. The entire trial was conducted in Spanish, without interpreters, which hampered the testimony both of the victim and of other witnesses whose main language is Qom. Furthermore, the testimony of three members of the Qom community was not accepted on the grounds that their statements were "nonsensical" and influenced by "the local animosity between Creoles and Tobas". In a judgement on 31 August 2004, the Second Criminal Chamber of the town of Presidencia Roque Sáenz Peña acquitted the three accused. The Chamber concluded that, while the fact of anal intrusion was proved and had even been admitted by the main person accused, it was not proven that such intrusion had not occurred with the author's consent. The judgement states that "it would be difficult to speak of [the author's] sexual inexperience considering that [her] defloration had occurred long ago" according to the two medical reports. The Court also concluded that the fact that the principal accused was of adult age was not a basis for concluding that the author had been taken advantage of.

2.5 According to the author, since they were not plaintiffs in the trial, neither she nor her legal representatives were notified of the judgement and, for that reason, they were unable to appeal against it. The only person who could appeal the judgement within 10 days of notification was the Public Prosecutor. As he did not do so, the judgement took effect on 16 September 2004. The author maintains that she was also unable to lodge an appeal in cassation or on grounds of unconstitutionality for the same reason, i.e., that those remedies were reserved for the parties to the proceedings and were subject to the 10-day deadline following notification of the judgement, in conformity with articles 446 and 477 of the Code of Criminal Procedure of Chaco. Lastly the author points out that an *amparo* remedy would not have been feasible either, since, according to National *Amparo* Act No. 16.986, the remedy is not effective against judicial acts. In addition, that law establishes a time frame of 15 working days for lodging an appeal. The author maintains that, in the light of all the above factors, domestic remedies have been exhausted.

2.6 The author points out that, since her family was not notified of the judgement, and since they live in a remote village, without telephone or Internet coverage and without public transport, at a distance of 250 km from Presidencia Roque Sáenz Peña, where the judgement was handed down, and accessible only by a mud road which is impassable in the rainy season, she was unable to find out the result of the judgement until almost two years had gone by. Seeing that the aggressors were still free, a group of youths of the indigenous association Meguexogochi<sup>7</sup> cycled 80 km to the locality of Castelli to reach a telephone in order to contact the National Human Rights Secretariat. On 4 July 2006, the Secretariat sent a request for information to the Second Criminal Chamber of Presidencia Roque Sáenz Peña. The Chamber replied to the request, informing the Secretariat of the acquittal. The author cites these reasons as justification for not bringing the case before the Committee until almost three years had passed.

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<sup>7</sup> The indigenous association Meguexogochi is made up of eight Toba Qom communities.

2.7 According to the author, her case is by no means exceptional, since Qom girls and women are frequently exposed to sexual assault in the area, while the pattern of impunity that exists in regard to such cases is promoted by the prevalence of racist attitudes. The author adds that, in the opposite case, when a Creole woman says that she has been raped by a Qom, he is immediately arrested and sentenced.

### **The complaint**

3.1 The author claims that she was a victim of violations of article 2, article 3, article 7, article 14, paragraphs 1 and 5, article 17, article 24 and article 26 of the Covenant.

3.2 The author maintains that, because she was a girl and because of her ethnicity, she was a victim of discrimination on police premises, during the medical examination to which she was subjected and throughout the trial. She asserts that she had to wait for several hours standing up and in tears before anyone attended to her at the police station. When she was in the medical centre, where she was also kept waiting for several hours, she was subjected to palpations in the injured parts of her body without consideration for the intense pain that this caused her and purely in order to check whether the experience was really painful. She was also subjected to a vaginal examination to check her virginity, despite the fact that the attack she had suffered required an anal examination only. The court that heard the case introduced the virginity of the victim as a decisive factor in the trial. According to the author, unlike her, the accused youths spoke freely, giving a crude account of the facts, without denying carnal intrusion but asserting that she was a prostitute — a fact which was never proved and which was discredited by the report that was submitted on her social environment — and the court immediately took their side. She maintains that all the witnesses were asked if the author had a boyfriend and if she worked as a prostitute. According to the author, the court took no account of the fact that she had to express herself in a language that was not her own while in a state of profound distress when it found inaccuracies and discrepancies in her statement and invalidated it, while at the same time overlooking the inaccuracies and contradictions in the statements of the accused. The author concludes that the trial was flawed by gender bias that favoured impunity.

3.3 The author maintains that, throughout the proceedings, she was treated in a way that showed no regard for the fact that she was a girl or for her honour and dignity.

3.4 According to the author, she was unable to play a proper part in the trial and was denied her right to a fair trial and to due process because she had not received the necessary legal advice and had not been informed of her right to appear as a plaintiff at the trial.

3.5 The author alleges that the acts of physical and mental violence perpetrated by State officials, both at court and at the police station and medical centre where she was attended, caused her physical and moral injury.

3.6 The author maintains that the social worker who was sent to investigate her case questioned the neighbours about her family life and her morality, thereby violating her privacy, her honour and her good name, especially since it is such a small community, and that she was re-victimized as a consequence.

### **Request by the State party for an amicable settlement**

4.1 On 30 April 2008, the State party informed the Committee that the Government of the Province of Chaco had requested that the Ministry of Foreign Affairs establish contact in order to explore the possibility of an amicable settlement of the case by the parties at the national level. The State requested that the Committee transmit the proposal to the author. Without prejudice to that proposal, the State reserved the right to make observations on the admissibility and merits of the case.

4.2 On 9 May 2008, the State party re-sent its message of 30 April and included an annex containing a series of communications from various executive and judicial authorities of the Province of Chaco, admitting the full responsibility of the provincial government in the case and requesting the national Government to iron out the matter and begin to remedy the harm suffered by the author.

### **Author's comments**

5. On 10 June 2008, the author complained that the national Government had not admitted responsibility for the violations that she had endured, whereas the provincial authorities of the Chaco had done so. The author expressed her willingness to negotiate but only on condition that the national Government should admit its full responsibility and should be prepared to discuss measures for granting full compensation to the author, her family and her community, as well as measures and programmes at national level to avoid the recurrence of similar cases in the future.

### **Provisional consideration of the proposed amicable settlement by the Committee**

6. The State party's proposal for an amicable settlement was examined at the Committee's ninety-third session, in July 2008. In the light of the observations submitted by the author on 10 June 2008, however, the Committee decided to continue to pursue the normal procedure for the consideration of the communication and to request the State party to submit its observations on the merits without delay.

### **Additional observations of the parties**

7. On 8 September 2008, the State party informed the Committee that a meeting would be held among the author, members of her family, their representatives, and representatives of the national and provincial governments in order to initiate a dialogue with a view to arriving at an amicable settlement of the case.

8. On 12 November 2008, the author reported that, at the meeting held with the national and provincial authorities, the Government of the Province of Chaco accepted the author's claims in full and added the offer of housing for her and her family in the vicinity. The author also reported that, in a letter sent by the Governor of Chaco to the Ministry of Justice, the former had requested that the national Government share responsibility for meeting the costs of compensation. The author added that the draft proposal for an amicable settlement prepared by the national Government was partially unsatisfactory owing to the ambiguity of the compensation plan and the vagueness of the terms used. The author reiterated her claim to a clear and express recognition of responsibility on the part of the national Government.

9. On 24 November 2008, the State party informed the Committee that, in its communication of 9 May 2008, the Government of the Province of Chaco, which bore primary responsibility for the human rights violations in the present case, had clearly stated its position, acceding unconditionally and proposing the opening of a conciliatory dialogue with a view to arriving at an amicable settlement. The State party recognized its international responsibility in the present case, undertaking to make every effort, in coordination with the Province of Chaco, to make full reparation to the author.

10.1 On 1 February 2010, the author reported that, after several meetings with representatives of the national and provincial governments, the provincial government had accepted and implemented most of the compensatory measures requested by the author, namely, a public apology, the payment of compensation, the grant of land and housing titles, the award of a US\$ 150 study grant and the organization of a seminar on gender discrimination and violence against women, to be attended on a compulsory basis by all the judicial officials of the province. The author considered the attitude of the Government of the Province of Chaco to be a positive one. As far as the national Government was concerned, she stated that it had carried out one of the measures requested: the approval of a comprehensive national law on violence against women. However, other aspects of the amicable settlement proposed by the Government were, in the author's view, imprecisely worded, including the portion relating to an express recognition of responsibility by the national Government and the failure to specify the amount of financial compensation. On that basis, the author concluded that the efforts to reach an amicable settlement had not been successful owing to the vagueness of the Government's commitments, and she therefore rejected the proposed amicable settlement and requested that the Committee should continue to consider the case.

10.2 On 25 March 2010, the author expanded upon her comments regarding the amicable settlement agreement proposed by the State party, saying that the main outstanding measures included the award of a study grant to continue her studies (the amount offered being insufficient), the grant of a life pension and the offer of free psychological treatment. The author recognized that the initiation of compensation by the Government had had a positive effect on her life, but she insisted on the need for the complete implementation

of all the measures contained in the agreement signed with the Government in order to achieve full reparation. The author pointed out that it was very important for the Committee to issue its Views in her case, as it was the first of its kind to be adjudicated. The author also emphasized the importance of emblematic cases in Argentina, above and beyond the question of reparations for victims, in promoting major legislative, judicial and social changes and ensuring that such events did not recur. She asked that the Committee issue a statement requesting the Government to honour all the obligations that it has assumed in the agreement signed with the author.

11.1 On 13 May 2010, the State party informed the Committee of the compensatory measures adopted as part of the amicable settlement entered into with the author, including the preparation of a bill for the award of a life pension, as well as the measures referred to by the author in her communication of 1 February 2010.

11.2 On 5 August 2010, the State party transmitted a copy of Act No. 6.551, issued under Provincial Decree No. 1202 of 24 June 2010, concerning the award of a life pension to the author, as well as an attestation that the monthly payment of the pension had begun.

## **Issues and proceedings before the Committee**

### *Consideration of admissibility*

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

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

12.3 The Committee notes the author's argument regarding the impossibility of exhausting the existing domestic remedies, which were reserved for the parties to the proceedings and subject to short application deadlines, due to the fact that she was not informed of her right to act as a plaintiff and that she was not notified of the acquittal judgement. It also notes the author's allegations regarding the unavailability of *amparo* proceedings, which would appear to be inapplicable in respect of judicial acts under existing domestic legislation. In the absence of any counter-arguments from the State party in that respect, the Committee considers that the author did not have access to any effective remedy to lodge her complaint relating to article 14 at national level. The Committee also notes that the State party has not raised the issue of the exhaustion of domestic remedies in connection with any of the author's other complaints. The Committee therefore finds that all available domestic remedies have been exhausted, as stipulated in article 5, paragraph 2 (b), of the Optional Protocol.

12.4 With regard to the author's allegations concerning the violation of the right to a second hearing, which is recognized in article 14, paragraph 5, of the Covenant, the Committee points out that the paragraph referred to provides a procedural guarantee which is available to any person charged with an offence to have the conviction and sentence reviewed by a higher tribunal. In the present case, as the judgement took the form of an acquittal, that provision does not apply. The Committee therefore considers that the author's complaint under article 14, paragraph 5, is incompatible with the Covenant and declares it inadmissible in accordance with article 3 of the Optional Protocol.

12.5 Regarding the author's complaints under articles 2; 3; 7; 14, paragraph 1; 17; 24; and 26, the Committee considers that they have been sufficiently substantiated for the purposes of admissibility and declares the communication admissible with respect to those complaints.

### *Consideration of the merits*

13.1 The Human Rights Committee has examined the present communication, taking into account all the information provided by the parties, in accordance with the provisions of article 5, paragraph 1, of the Optional Protocol.

13.2 The Committee acknowledges the recognition of responsibility by the State party, including that of the provincial authorities, for violations of its international obligations. The following paragraphs express the Committee's understanding of the specific provisions of the Covenant that provide the basis for the responsibility of the State party in the present case.

13.3 The Committee takes note of the author's allegations to the effect that she was a victim of discrimination based on the fact that she was a girl and an indigenous person, both during the trial and at the police station and during the medical examination to which she was subjected. The author alleges that the personnel of the police station of El Espinillo kept her waiting for several hours, in tears and with traces of blood on her dress, and that they did not take down any complaint, being content in the end to hand her over to the local medical centre. The author further alleges that, once at the medical centre, she was subjected to distressing tests which were not necessary to determine the nature of the assault committed against her, but were instead aimed at determining whether or not she was a virgin. The court that heard the case also invoked discriminatory and offensive criteria, such as "the presence of long-standing defloration" of the author to conclude that a lack of consent to the sexual act had not been demonstrated. The author further maintains that all the witnesses were asked whether she was a prostitute. The Committee considers that all the above statements, which have not been contested by the State party, reflect discriminatory treatment by the police, health and judicial authorities aimed at casting doubt on the morality of the victim. The Committee observes, in particular, that the judgement of the Criminal Chamber of Presidencia Roque Sáenz Peña bases its analysis of the case on the sexual life of the author and whether or not she was a "prostitute". The Chamber also takes the author's loss of virginity as the main factor in determining whether she consented or not to the sexual act. In the light of the uncontested facts which the Committee has before it, the Committee concludes that these facts reveal the existence of discrimination based on the author's gender and ethnicity in violation of article 26 of the Covenant.

13.4 The Committee further considers that the way in which the author was treated by the judicial, police and medical personnel, as described above, demonstrates a failure on the part of the State to fulfil its obligation to adopt the measures of protection required by the author's status as a minor, recognized in article 24 of the Covenant.

13.5 The Committee takes note of the author's affirmation to the effect that, since she was not informed of her right to act as plaintiff under the provincial legislation in force, she was unable to participate as a party to the court proceedings and that, as a consequence, she was not notified of the acquittal. The author further alleges that several irregularities occurred during the trial of the three accused. In particular, according to the author, the proceedings were held entirely in Spanish, without interpretation, despite the fact that both she and other witnesses had difficulty communicating in that language. In view of the failure by the State to respond to those allegations, the Committee finds that the author's right to enjoy access to the courts in conditions of equality, as recognized in article 14, paragraph 1, was violated.

13.6 Regarding the author's affirmations concerning the physical and mental suffering that she endured, the Committee considers that the treatment she received in the police station and in the medical centre just after being assaulted, as well as during the court proceedings, when many discriminatory statements were made against her, contributed to her re-victimization, which was aggravated by the fact that she was a minor. The Committee recalls that, as pointed out in its general comment No. 20 and its jurisprudence, the right protected by article 7 covers not only physical pain but also mental suffering.<sup>8</sup> The Committee concludes that the author was the victim of treatment of a nature that is in breach of article 7 of the Covenant.

13.7 Regarding the author's complaint related to article 17 of the Covenant, the Committee considers that the constant enquiries by the social worker, by medical personnel and by the court into the author's sexual life and morality constitute arbitrary interference with her privacy and an unlawful attack on her honour and reputation, all the more so because those enquiries were not relevant to the rape case and related to a minor.

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<sup>8</sup> General comment No. 20 on prohibition of torture and cruel, inhuman and degrading treatment or punishment (art. 7), 10 March 1992, para. 5. See also the Committee's decisions in the cases *K.N.L.H. v. Peru* (communication No. 1153/2003), para. 6.3, and *L.M.R. v. Argentina* (communication No. 1608/2007), para. 9.2.

The Committee recalls its general comment No. 28, in which it points out that interference, in the sense in which the term is used in article 17, arises when the sexual life of a woman is taken into consideration in deciding the extent of her legal rights and protections, including protection against rape.<sup>9</sup> In view of the above, the Committee finds a violation of article 17 of the Covenant.

13.8 The Committee notes the author's allegations to the effect that no remedy was available that would allow her to lodge the complaints currently before the Committee because, under existing domestic legislation, *amparo* proceedings cannot be brought in respect of judicial acts. In the absence of any response on the part of the State to that affirmation, the Committee considers that the author, as a victim, was not guaranteed an effective remedy. The Committee therefore finds a violation of article 2, paragraph 3, of the Covenant, in conjunction with articles 3; 7; 14, paragraph 1; 17; 24; and 26.

13.9 The Human Rights Committee, acting in accordance with article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, considers that the State party has violated articles 3; 7; 14, paragraph 1; 17; 24; and 26; and article 2, paragraph 3, in conjunction with all the aforementioned articles, of the International Covenant on Civil and Political Rights.

14. The Committee takes note of the compensatory measures agreed upon between the author and the State party through the amicable settlement procedure. While recognizing the progress made by the State party in implementing several of those measures, the Committee requests full implementation of the agreed commitments. The Committee further recalls that the State party has the obligation to ensure that similar violations are not perpetrated in the future, in particular by guaranteeing access for victims, including victims of sexual assault, to the courts in conditions of equality.

15. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the Committee's Views.

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<sup>9</sup> General comment No. 28 on equality of rights between men and women (art. 3), 29 March 2000, para. 20.

### III. COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

#### A. Concluding Observations

##### 1. Russian Federation, E/C.12/RUS/CO/5, 22 May 2011

1. The Committee notes with appreciation the positive efforts made by the State party, since the last review of the State party's report, that have contributed to the promotion of the implementation of social, economic and cultural rights. The Committee welcomes in particular: ...

- (iii) The adoption in February 2009 of a policy framework for the sustainable development of the small indigenous peoples in the North, Siberia and the Far East of the Russian Federation;...

7. While taking note of the measures taken by the State party, in particular the adoption in February 2009 of a policy framework for the sustainable development of the indigenous peoples in the North, Siberia and the Far East of the Russian Federation, the corresponding action plan for 2009-2011, and the federal target programme for the economic and social development of the indigenous peoples until 2011, the Committee is concerned at the lack of concrete outcomes of the new policy, action plan and target program. The Committee is also concerned that changes to federal legislation regulating the use of land, forests and water bodies, in particular the revised Land (2001) and Forest (2006) Codes and the new Water Code, deprive indigenous peoples of the right to their ancestral lands, fauna and biological as well as aquatic resources, on which they rely for their traditional economic activities, through granting of licenses to private companies for development of projects such as the extraction of subsoil resources (art 2.2)

The Committee recommends that:

- (a) The State party incorporate the right of indigenous peoples to their ancestral lands into the revised Land Code and the new revised draft Law on Territories of Traditional Nature Use, and the right to free access to natural resources on which indigenous communities rely for their subsistence into the Forest and Water Codes;
- (b) Seek the free informed consent of indigenous communities and give primary consideration to their special needs prior to granting licences to private companies for economic activities on territories traditionally occupied or used by those communities;
- (c) Ensure that licensing agreements with private entities provide for adequate compensation of the affected communities;
- (d) Intensify its efforts to effectively implement the federal target programme for the economic and social development of the indigenous peoples, extend it to all peoples that self-identify as 'indigenous';
- (e) Adopt and implement by the next periodic report, the new revised draft Law on Territories of Traditional Nature Use of Indigenous Numerically Small Peoples of the North, Siberia and the Far East of the Russian Federation.

The Committee urges again the State party to consider ratifying ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries.

28. While noting the information about the free medical care system coverage of all indigenous peoples in the North, Siberia and the Far East, which includes a compulsory annual check-up at State and municipal health-care facilities under the programme of State guarantees, the Committee is concerned about reported gaps in the ambulatory system coverage, which resulted from the new territorial reorganizations in the State party, in particular as it affected the small indigenous village of Pareny in Kamchatka which has reportedly had no access to ambulatory medical care for two years (art. 12).

The Committee recommends the State party to take measures to ensure that the administrative reorganization of its territory does not negatively impact on the level of healthcare assistance provided to the indigenous peoples in the North, Siberia and the Far East, in accordance with the programme of State guarantees concerning the provision of free medical care to citizens of the Russian Federation.

32. The Committee remains concerned about the sizeable numbers of children, who do not attend school in the State party (arts. 13, 14).

The Committee urges the State party to strengthen its efforts to ensure that no child is deprived of the right to education in particular in the rural areas and among the disadvantaged and marginalized groups including the Roma, indigenous peoples and children with disabilities.

The Committee encourages the State party to strengthen its efforts and privilege integrated schooling for all disadvantaged and marginalized groups in particular Roma and children with disabilities.

34. While noting the information on measures undertaken in the State party to ensure full enjoyment and access of cultural and leisure facilities for everyone, the Committee is concerned that some of these facilities are not fully accessible for persons with disabilities. The Committee is also concerned about the lack of adequate protection in the legal system of the State party of the right of indigenous peoples in the North, Siberia and the Far East, to their ancestral lands and to the traditional use of their natural resources. It is also concerned about the lack of adequate protection of their intellectual property rights and the lack of information on intellectual property rights. (art. 15).

The Committee urges the State party to extend its program of building a barrier free accessible environment to cover cultural and leisure facilities. The Committee further recommends that the State party include in the new drafts of law being developed clear and precise norms for the effective protection of the right of indigenous peoples in the North, Siberia and the Far East, to their ancestral lands, natural resources and cultural heritage, including protection of their intellectual property rights to their works which are an expression of their traditional culture and knowledge.

## **2. Argentina, E/C.12/ARG/CO/3, 14 December 2011**

8. The Committee notes with concern that Act No. 26160 (extended by Act No. 26554), regarding the possession and ownership of lands traditionally occupied by indigenous peoples, has not been fully implemented. It is also concerned about delays in providing indigenous communities with ownership titles to such lands or territories (arts. 1, 11, 12 and 15).

The Committee urges the State party to ensure the full and coordinated implementation of Act No. 26160/26554 both at the federal and provincial levels. The Committee recommends that the State party finalize the processes of demarcation in all provinces, as foreseen by the Constitution and existing laws, and that it expedite the granting of communal title of land to indigenous communities.

9. The Committee is concerned about the persisting threats, displacements and violent evictions of indigenous peoples from their traditional lands in numerous provinces. The Committee also regrets the shortcomings in consultation processes with affected indigenous communities, which in some cases have led to the exploitation of natural resources in the territories traditionally occupied or used by them without their free, prior and informed consent and without just and fair compensation being paid to them, in violation of the Constitution (art. 75) and International Labour Organization (ILO) Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries. The Committee is particularly concerned by the negative consequences of lithium exploitation in Salinas

Grandes (Salta and Jujuy provinces) on the environment, access to water, way of life and subsistence of indigenous communities (arts. 1, 11 and 12).

The Committee recommends that the State party undertake the necessary measures to stop violations of the rights of indigenous peoples and that it hold accountable those responsible for such unlawful acts. It urges the State party to always enter into effective consultations with indigenous communities before granting concessions for the economic exploitation of the lands and territories traditionally occupied or used by them to State-owned companies or third parties, fulfilling the obligation to obtain the free, prior and informed consent of those who are affected by the aforementioned economic activities. The Committee also recommends that the State party guarantee that in no case will such exploitation violate the rights recognized in the Covenant and that just and fair compensation is granted to indigenous communities. The Committee also calls upon the State party to ensure the protection of indigenous communities during the implementation of mining exploration and exploitation projects. With regard to Salinas Grandes, the Committee urges the State party to comply with the decision of the Supreme Court, once it is available.<sup>10</sup> The Committee recalls in this context its statement on the obligations of States parties regarding the corporate sector and economic, social and cultural rights (E/C.12/2011/1).

10. The Committee is concerned about cases in which the increased use of chemical pesticides and transgenic soya seeds in regions traditionally inhabited or used by indigenous communities have negatively affected these communities. It worries the Committee that these communities find it increasingly difficult to apply their traditional farming methods, and that as a consequence, this may become an important obstacle to the access to safe, adequate and affordable food. The Committee also notes with concern the scale of deforestation, which has forced indigenous peoples to leave territories traditionally occupied or used by them, and in spite of Act No. 2633 on forest protection. The Committee is further concerned about the fact that the aforementioned activities are often carried out without an effective prior consultation with the affected groups of the population (arts. 1, 11, 12 and 15).

The Committee urges the State party to ensure that the means of subsistence of indigenous communities and their enjoyment of economic, social and cultural rights are effectively protected, and to develop institutional and procedural guarantees to ensure the effective participation of indigenous communities in decision-making on issues that affect them. The Committee also recommends that the State party ensure the full implementation of Act No. 2633 and other legislation regarding the protection of the non-renewable resources of the State party with a view to combating deforestation.

13. The Committee is concerned about instances in which security forces and agents, both public and private, resorted to reprisals and disproportionate use of force against persons participating in activities in defence of economic, social and cultural rights, in particular in the context of land disputes.

The Committee urges the State party to protect social activists and human rights defenders against any form of intimidation, threat and, especially, disproportionate use of force perpetrated by security forces and agents, both public and private. It also calls on the State party to ensure that all allegations of reprisals and abuse are promptly and thoroughly investigated, and that the perpetrators are brought to justice.

24. The Committee is concerned that despite the efforts by the State party to ensure universal access to education there are still incidences of children remaining outside of the education system, illiteracy, course repetition and school dropout, especially among disadvantaged and marginalized

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<sup>10</sup> File No. 1196/2010: *Indigenous Community of Three Wells Sanctuary and others vs. Jujuy, Province of and others*, on appeal to the Supreme Court since it has original jurisdiction in the matter, Supreme Court of Justice of the Nation.

indigenous communities. It also notes with regret that indigenous communities do not always enjoy the right to intercultural bilingual education (art. 13).

The Committee recommends that the State party effectively implement existing legislation to guarantee the right to education and to address, in particular, the problems of children remaining outside the education system, illiteracy, course repetition and school dropout. The Committee urges the State party to continue its efforts to remove disparities between different societal groups and promote the educational advancement of those disadvantaged and marginalized groups and provinces. It also recommends that the State party undertake effective steps to guarantee the access to intercultural education of indigenous peoples and to ensure that it is adapted to their specific needs.

25. The Committee regrets the insufficient information from the State party regarding the protection of the collective rights of indigenous peoples related to their traditional knowledge and cultural heritage in the State party, including ancestral lands, as an integral part of their cultural identity (art. 15).

The Committee recommends that the State party provide, in its next periodic report, comprehensive information about specific and effective measures, including legislation, to acknowledge and protect the traditional knowledge and cultural heritage of indigenous peoples, including their ancestral lands, in line with the Committee's general comments No. 17 (2005) on the right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author and No. 21 (2009) on the right of everyone to take part in cultural life.

### **3. Cameroon, E/C.12/CMR/CO/3, 23 January 2012**

10. The Committee remains concerned that, in spite of projects carried out for indigenous peoples, as described in paragraph 194 of the State party's report, some groups do not have the same economic, social and cultural rights as the rest of the population. The Committee also regrets the lack of a comprehensive policy on indigenous peoples (art. 2, para. 2).

The Committee urges the State party to adopt a consistent and comprehensive policy to promote the right of indigenous peoples to an adequate standard of living. The Committee refers the State party to its general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights.

Furthermore, the Committee urges the State party to guarantee the economic, social and cultural rights of indigenous peoples when major projects outlined in the growth and employment strategy paper are launched. It therefore also recommends that the State party raise the awareness of indigenous people to their right to be involved in decision-making that affects them throughout the various phases of those projects.

24. The Committee notes with concern that the system of land tenure in the State party is out of step with the country's economic and cultural situation, and that it makes some indigenous population groups and small-scale farmers vulnerable to land grabs. It is also concerned about obstacles such as prohibitive land transaction fees that bar the way to land ownership, particularly by women (art. 11, para. 1 (a)).

The Committee urges the State party to speed up the process of land reform, to guarantee the right of indigenous population groups and small-scale producers to ancestral and community lands and to ensure that obstacles to land ownership, in particular those faced by women, are removed.

33. The Committee is concerned that, despite its legal recognition of the cultural rights of indigenous peoples living on its territory, the State party has moved some communities, such as the

Baka Pygmy community and the Mbororo community, away from their ancestral lands, which have been opened to third parties for logging, thereby forcing those communities to adapt to other dominant cultures in the country (art. 15).

The Committee recommends that the State party take effective measures to protect the right of each group of indigenous people to its ancestral lands and the natural resources found there, and to ensure that national development programmes comply with the principle of participation and the protection of the distinctive cultural identity of each of these groups. In this regard, the Committee refers the State party to its general comment No. 21 (2009) on the right of everyone to take part in cultural life.

#### **4. Ethiopia, E/C.12/ETH/CO/1-3, 31 May 2012**

24. The Committee is concerned that the construction and operation of the Gilgel Gibe III hydro-electric dam will have a significant negative impact on the traditional practices and means of subsistence of indigenous peoples who rely on the Omo River, potentially endangering local food security (art.11).

The Committee recommends that the State party continue to identify and address the adverse social and environmental impact of the Gibe III dam. The Committee also urges the State party to initiate, prior to construction of hydro-electric projects, comprehensive impact assessments as well as extensive consultations with affected communities, involving genuine opportunities to present views and influence decision-making.

#### **5. New Zealand, E/C.12/NZL/CO/3, 31 May 2012**

4. ... The Committee also welcomes the State party's endorsement of the United Nations Declaration on the Rights of Indigenous Peoples.

6. The Committee notes some practical achievements in the realization of economic, social and cultural rights, in particular, the significant improvement in the immunization rate among Māori, the low rates of hardship among older persons and the notable reduction of unemployment during the reporting period.

11. The Committee is concerned that the State party does not give sufficient protection of the inalienable rights of indigenous people to their lands, territories, waters and maritime areas, and other resources, as manifested by the fact that Māori free, prior and informed consent on the use and exploitation of these resources has not always been respected (arts. 1, para.2; and 15).

The Committee calls on the State party to ensure that the inalienable rights of Māori to their lands, territories, waters and marine areas and other resources as well as the respect of the free, prior and informed consent of Māori on any decisions affecting their use are firmly incorporated in the State party's legislation and duly implemented.

The Committee also urges the State party to take the necessary measures to guarantee Māori right to redress for violations of these rights, including through the implementation of the recommendations of Waitangi Tribunal's proceedings, and to ensure that Māori receive proper compensation and enjoy tangible benefits from the exploitation of their resources.

12. The Committee is concerned that Māori and Pasifika continue to be disadvantaged in the enjoyment of economic, social and cultural rights, in spite of measures taken by the State party and improvements in the area of health and education (art. 2, para. 2).

The Committee calls on the State party to strengthen its efforts aimed at eliminating the disadvantages faced by Māori and Pasifika in the enjoyment of economic, social and cultural rights by addressing structural factors and ensuring that relevant measures effectively benefit the most disadvantaged. The Committee also recommends that the State party set specific equality

targets by year and closely monitor their achievement. The Committee refers the State party to its general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights.

18. The Committee is concerned that, in spite of the measures taken by the State party, family violence and sexual violence continue to be a problem, affecting in particular Māori women (art. 10).

The Committee recommends that the State intensify its measures to combat family violence and also adopt, as a priority, a framework for the implementation of the recommendations of the Taskforce for Action on Sexual Violence. The Committee requests that the State party provide in the next periodic report information on results achieved, including updated statistical data on the incidence of family violence and sexual violence.

25. The Committee is concerned that, in spite of measures taken such as the ban on tobacco advertisement, tobacco consumption remains widespread, particularly among Māori and Pasifika (art. 12).

The Committee recommends that the State party strengthen its measures to counter tobacco consumption, particularly among Māori and Pasifika and improve access to smoking cessation programmes.

26. The Committee recommends that, when acting upon the recommendations of the Waitangi Tribunal, as contained in the Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity, the State party bear in mind its obligation to protect the cultural rights of Māori. These include, among others, Māori's right to conserve, promote and develop their own culture, language and cultural heritage, traditional knowledge and traditional cultural expressions, and the manifestations of their sciences and cultures. In this regard, the Committee refers the State party to its general comment No. 21 (2009) on the right of everyone to take part in cultural life (art. 15).

#### **6. Peru, E/C.12/PER/CO/2-4, 30 May 2012**

4. The Committee welcomes in particular: ... (c) The adoption of the Act on the Right of Indigenous or Aboriginal Peoples to Prior Consultation (No.29785) on 6 September 2011.

8. The Committee notes with concern the use of forced labor, in particular in the logging sector. (art.6)

The Committee recommends that the State party take legislative measures to penalize forced labor, and prioritize the combating of forced labour, including through effective implementation, resourcing, and, where necessary, reviewing of the National Plan of Action for the Eradication of Forced Labour.

11. The Committee notes with concern that workers in the agricultural exports sector receive wages that do not allow them and members of their family an adequate standard of living. The Committee also notes with concern that such workers often face excessively long working hours (art.7).

The Committee recommends that the State party amend the Agricultural Promotion Act (Act No.27360) in order to ensure that workers in the agricultural exports sector receive salaries not lower than the minimum wage, are not required to work excessively long working hours, and receive compensation in the case of unfair dismissal.

14. The Committee is concerned about the prevalence and extent of domestic violence, including violence and sexual abuse of children. The Committee is also concerned at the fact that domestic violence is not specifically defined as an offence in the State party's Criminal Code, and at the

obstacles in accessing justice for victims of domestic violence, in particular for indigenous and rural women, and the lack of enforcement measures (art.10).

The Committee recommends that the State party amend its Criminal Code in order to make domestic violence a specific offence and to intensify its efforts to prevent and combat domestic violence, including through awareness-raising measures aimed at the judiciary, law enforcement officers, prosecutors, teachers, health-care and social workers and the media. It also urges the State party to ensure that all cases of domestic violence are investigated and that perpetrators are promptly prosecuted and sentenced.

17. The Committee is concerned that, despite progress in recent years, a large section of the rural population still lives in poverty. The Committee is particularly concerned about the high incidence of poverty and extreme poverty in sierra and jungle regions, where indigenous communities are concentrated. It also notes with regret the lack of disaggregated statistical data accurately reflecting the living standards of these communities (art.11).

The Committee recommends that the State party step up its efforts to combat poverty in rural areas. The Committee recommends that the State party intensify measures to combat poverty and extreme poverty among indigenous communities and monitor progress in this regard, inter alia, by compiling disaggregated statistical data. The Committee draws the State party's attention to its statement on poverty and the International Covenant on Economic, Social and Cultural Rights adopted on 4 May 2001 (E/2002/22-E/C.12/2001/17, annex VII).

22. The Committee is concerned about the adverse effects as a result of the extractive industries' activities on the health of the population, in particular on the access to safe drinking water. It is also concerned that independent impact assessments on water, air and soil conditions are not always carried out prior to the granting of licenses to companies (art.12).

The Committee recommends that the State party ensure, as part of its National Environmental Policy, that comprehensive independent impact assessments are carried out prior to the setting up of mining projects, and ensure that such activities are not a threat to health and do not adversely impact water, air or soil quality, in particular in rural and remote areas.

23. The Committee is concerned that effective consultation and prior informed consent of indigenous peoples is not systematically sought in decision-making processes relating to the exploitation of natural resources in their traditional territories (art. 15).

The Committee recommends that the State party ensure that the implementation of the National Environmental Policy, Section 5, on mining and energy, as well as Act No.29785 on the Right of Indigenous or Aboriginal Peoples to Prior Consultation, involves effective consultation and prior informed consent of indigenous peoples relating to the exploitation of natural resources in their traditional territories.

26. The Committee is concerned about the discrepancies in quality and infrastructure between urban and rural schools. It is furthermore concerned about the very high dropout and repetition rates, in particular for girls in rural areas, and the illiteracy rate among the indigenous and Afro-Peruvian communities (arts. 13 and 14).

The Committee recommends that the State party take steps to improve the quality of instruction in and physical infrastructure of schools in rural areas. It also recommends that the State party take urgent steps to increase attendance rates, address the high dropout and repetition rates, in particular for girls in rural areas, and address the illiteracy rate among children of indigenous and Afro-Peruvian communities.

27. The Committee is concerned that the use of indigenous languages is gradually declining (art. 15).

The Committee urges the State party to take urgent steps to preserve and promote the use of indigenous languages.

28. The Committee recommends that the State party adopt temporary special measures, in line with the Committee's general comment No.20 (2009) on non-discrimination in economic, social and cultural rights, to promote the realization of all Covenant rights for disadvantaged and marginalized indigenous communities and Afro-descendants. The Committee also requests that the State party include in its next periodic report data on progress made in this regard, including statistical data.

#### **7. Tanzania, E/C.12/TZA/CO/1-3, 30 November 2012**

5. The Committee is concerned that the State party has not yet adopted a comprehensive anti-discrimination bill. ... (art.2)

The Committee recommends that the State party adopt a comprehensive anti-discrimination bill. The Committee recommends that the State party take steps to combat and prevent discrimination and societal stigma ... against ... belonging to disadvantaged and marginalized groups, and ensure their enjoyment of the rights enshrined in the Covenant, in particular access to employment, social services, health care, and education. The Committee draws the attention of the State party to its General Comment No. 20 (2009) on Non-Discrimination in Economic, Social and Cultural Rights.

22. The Committee is concerned that several vulnerable communities, including pastoralist and hunter-gatherer communities, have been forcibly evicted from their traditional lands for the purposes of large scale farming, creation of game reserves and expansion of national parks, mining, construction of military barracks, tourism and commercial game hunting. The Committee is concerned that these practices have resulted in a critical reduction in their access to land and natural resources, particularly threatening their livelihoods and their right to food. (art.11)

The Committee recommends that the establishment of game reserves, the granting of licences for hunting, or other projects on ancestral lands is preceded by free, prior and informed consent of the people affected. It recommends that the State party ensure that vulnerable communities, including pastoralist and hunter-gatherer communities, are effectively protected from forced evictions from traditional lands. It also recommends that past forced evictions and violations that have taken place during those evictions are properly investigated, that perpetrators are brought to justice, that the findings are made public, and that those evicted are offered adequate compensation. The Committee draws the attention of the State party to its General Comment No.7 (1997) on forced evictions.

29. The Committee is concerned that restrictions to land and resources, threats to livelihoods and the reduced access to decision-making processes by vulnerable communities, such as pastoralist and hunter-gatherer communities, pose a threat to the realization of their right to culture life. (art.15)

The Committee recommends that the State party take legislative and other measures to protect, preserve and promote the cultural heritage and traditional ways of life of vulnerable communities, such as hunter-gatherer and pastoralist communities. It recommends that it ensure their meaningful participation in the debates related to nature conservation, commercial hunting, tourism and other uses of the land, based on free, prior and informed consent.

#### **8. Ecuador, E/C.12/ECU/CO/3, 30 November 2012 (unofficial translation)**

9. The Committee reiterates its concern about the lack of consultations to enable indigenous peoples and nationalities to express their consent in a prior, free and informed way regarding natural resources exploitation projects that affect them. In particular, the Committee is concerned that Executive Decree 1247 of August 2012 was issued in the absence of consultation with indigenous

peoples and nationalities, and that it places limits on agreements that might be reached regarding previous measures established under public policies. The Committee is concerned that, within the framework of the right to consultation, the activities being undertaken by the State party with regard to information, permanent consultation offices, and itinerant trips relating to mining and hydrocarbon projects are restricted to information sharing on projects, and they continue to be insufficient to allow intercultural dialogue and expression of consent by indigenous peoples and nationalities.

The Committee urges the State party to carry out consultations regarding mining and oil exploration and exploitation activities, that include the free expression of consent in relation to the admissibility or non-admissibility of a project, sufficient spaces and time for reflection and decision making, as well as safeguard measures for cultural integrity and redress. Consultation processes should respect protocols that are already developed for community consultation and respect the decisions emerging from them. The Committee recommends that the State party consider suspending the implementation of Decree 1247 of 2012, and instead undertake participatory design of legislative measures with indigenous peoples, with provision of the necessary pre-legislative consultations, in order to regulate the right to consultation. The Committee urges the State party to comply with the orders of the Inter-American Court of Human Rights in its judgment of 27 June 2012 (*Kichwa Indigenous People of Sarayaku vs. Ecuador*).

10. The Committee is concerned about investigations and criminal convictions against social and indigenous leaders who have participated in public demonstrations relating to the legislative initiatives of the Government of the State party on water management and development projects that would generate impacts on nature reserves, as in the case of the *Kimsakoch* Lake. The Committee is concerned that the State party has insufficient social consultation and consensus-building mechanisms for natural resources extraction activities, so that these might be harmonised with the development cosmo-vision of indigenous peoples and nationalities.

The Committee recommends that in connection with social demonstrations the State party establish full guarantees for the exercise of the right of assembly and peaceful demonstration, and regulate the use of force by law enforcement officials. The Committee also recommends that the State party clarifies the scope of application of sabotage and terrorism criminal offences, and restrict its application in the context of social demonstrations. Independent commissions of inquiry could make recommendations on the admissibility or non-admissibility of criminal prosecutions in relation to social protests.

11. Notwithstanding a decline in income inequality, the Committee is concerned that such inequality is still wide in the State party (with a Gini coefficient of 49.0). The Committee regrets that the State party has not provided sufficient disaggregated and updated statistical information to reflect the status of people by sex, membership in a particular ethnic group, geographic area, age, and social and economic status.

The Committee recommends that the State party incorporates objectives, goals and indicators to overcome the inequality that particularly affects indigenous and Afro-Ecuadorian peoples. The Committee recommends that the State party continue making progress in the development of public policy indicators with the technical cooperation of the Human Rights Advisor of the United Nations High Commissioner on Human Rights so that monitoring of such policies can determine if inequity gaps are being overcome.

25. The Committee is concerned about the environmental impacts produced by mining and agro-industrial projects, in particular their effects on the enjoyment of the right to water in rural areas.

The Committee recommends that the State party establish measures to protect the environment, and specifically steps to protect the enjoyment of the right to water in the context of the development of mining and agro-industrial projects.

27. The Committee is concerned about the provision of the insufficient health services, including maternal health care in rural areas, especially affecting indigenous women.

The Committee recommends that the State party continue its efforts in order provide maternal and child health care, with special attention to its coverage and accessibility in rural areas and in those areas inhabited by the indigenous population.

31. Notwithstanding progress in eliminating costs in primary education, the Committee is concerned about the persistence of illiteracy and its occurrence in the indigenous population. The Committee is concerned about the limitations in access and permanence in secondary and higher education, particularly among adolescents and young indigenous people, Afro-Ecuadorians and Montubios.

The Committee recommends that the State party continue its efforts in the framework of the literacy plan so that it includes the situation in rural and indigenous areas and among different age-groups. The Committee encourages the State party to develop specific programs to prevent and address the causes of students dropping out of school. The Committee recommends that the State party implement its policies with the broad participation of the education sector, including parents and guardians, teachers unions and social movements in both the public and private sectors.

33. The Committee is concerned about the risk of disappearance of certain indigenous languages in the State party. The Committee is also concerned about the lack of sufficient information translated into the different indigenous languages.

The Committee urges the state party to adopt urgent measures to preserve indigenous languages. The Committee urges the State party to increase its efforts to translate information into the main indigenous languages and to develop mechanisms to promote local use, including through media, books and stories.

#### **9. Rep. of Congo, E/C.12/COG/CO/1, 30 November 2012**

7. The Committee notes the following measures taken by the State Party:

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

13. The Committee remains deeply concerned about the situation of and discrimination against the indigenous peoples, despite the adoption in 2011 of the Law on the promotion and protection of indigenous peoples. (art. 2)

The Committee requests the State Party to include in its Initial Report information on the actual extent to which indigenous peoples enjoy economic, social and cultural rights, such as the percentage of indigenous peoples in employment, registered with social security, and with access to basic social services: education and health care. By reference to the replies given in the list of questions, the report should provide information on the implementation of the 2011 Law on the promotion and protection of indigenous peoples, as well as on the impact of the capacity-building activities by members of the National Network of Indigenous Peoples of the Congo (Réseau National des Populations Autochtones du Congo) on the enjoyment of the rights contained in the pact. Equally, the report should include an analysis of obstacles to the enjoyment of these rights, as well as information on the impact of the implementation of the 2009–2013 National Action

Plan on the Improvement on the Quality of Life of Indigenous Peoples and the support programme for the empowerment of indigenous peoples.

23. The Committee is concerned about the low level at which enjoyment of cultural rights is practised by the State Party.

The Committee requests the State Party to include in the Initial Report detailed information on the content and the extent of concrete measures adopted to respect the obligations ensuing from the provisions of Article 15 of the pact, taking into consideration the country's cultural diversity. This information should include, among others, access by all to cultural life; protection of indigenous peoples' traditional knowledge; and the enjoyment of cultural rights by rural communities, ethnic groups and underprivileged and marginalized groups.

## **B. General Comments**

### **1. General Comment No. 21, Right of everyone to take part in cultural life (art. 15, para. 1 (a), of the International Covenant on Economic, Social and Cultural Rights), E/C.12/GC/21, 21 December 2009 (omitted from Volume IV due to late publication date)**

#### **I. Introduction and basic premises**

1. Cultural rights are an integral part of human rights and, like other rights, are universal, indivisible and interdependent. The full promotion of and respect for cultural rights is essential for the maintenance of human dignity and positive social interaction between individuals and communities in a diverse and multicultural world.

2. The right of everyone to take part in cultural life is closely related to the other cultural rights contained in article 15: the right to enjoy the benefits of scientific progress and its applications (art. 15, para. 1 (b)); the right of everyone to benefit from the protection of moral and material interests resulting from any scientific, literary or artistic production of which they are the author (art. 15, para. 1 (c)); and the right to freedom indispensable for scientific research and creative activity (art. 15, para. 3). The right of everyone to take part in cultural life is also intrinsically linked to the right to education (arts. 13 and 14), through which individuals and communities pass on their values, religion, customs, language and other cultural references, and which helps to foster an atmosphere of mutual understanding and respect for cultural values. The right to take part in cultural life is also interdependent on other rights enshrined in the Covenant, including the right of all peoples to self-determination (art. 1) and the right to an adequate standard of living (art. 11).

3. The right of everyone to take part in cultural life is also recognized in article 27, paragraph 1, of the Universal Declaration of Human Rights, which states that "everyone has the right freely to participate in the cultural life of the community". Other international instruments refer to the right to equal participation in cultural activities;<sup>11</sup> the right to participate in all aspects of social and cultural life;<sup>12</sup> the right to participate fully in cultural and artistic life;<sup>13</sup> the right of access to and participation in cultural life;<sup>14</sup> and the right to take part on an equal basis with others in cultural life.<sup>15</sup> Instruments on civil and political rights,<sup>16</sup> on the rights of persons belonging to minorities to enjoy their own culture, to profess and practise their own religion, and to use their own language, in private and in

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<sup>11</sup> International Convention on the Elimination of All Forms of Racial Discrimination, art. 5 (e) (vi).

<sup>12</sup> Convention on the Elimination of All Forms of Discrimination against Women, art. 13 (c).

<sup>13</sup> Convention on the Rights of the Child, art. 31, para. 2.

<sup>14</sup> International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, art. 43, para. 1 (g).

<sup>15</sup> Convention on the Rights of Persons with Disabilities, art. 30, para. 1.

<sup>16</sup> In particular the International Covenant on Civil and Political Rights, arts. 17, 18, 19, 21 and 22.

public,<sup>17</sup> and to participate effectively in cultural life,<sup>18</sup> on the rights of indigenous peoples to their cultural institutions, ancestral lands, natural resources and traditional knowledge,<sup>19</sup> and on the right to development<sup>20</sup> also contain important provisions on this subject.

4. In the present general comment, the Committee addresses specifically the right of everyone under article 15 paragraph 1 (a), to take part in cultural life, in conjunction with paragraphs 2, 3 and 4, as they relate to culture, creative activity and the development of international contacts and cooperation in cultural fields, respectively. The right of everyone to benefit from the protection of moral and material interests resulting from any scientific, literary or artistic production of which they are the author, as provided for in article 15, paragraph 1 (c), was the subject of general comment No. 17 (2005).

5. The Committee has gained long experience on this subject through its consideration of reports and dialogue with States parties. In addition, it has twice organized a day of general discussion, once in 1992 and again in 2008, with representatives of international organizations and civil society with a view to preparing the present general comment.

## **II. Normative content of article 15, paragraph 1 (a)**

6. The right to take part in cultural life can be characterized as a freedom. In order for this right to be ensured, it requires from the State party both abstention (i.e., non-interference with the exercise of cultural practices and with access to cultural goods and services) and positive action (ensuring preconditions for participation, facilitation and promotion of cultural life, and access to and preservation of cultural goods).

7. The decision by a person whether or not to exercise the right to take part in cultural life individually, or in association with others, is a cultural choice and, as such, should be recognized, respected and protected on the basis of equality. This is especially important for all indigenous peoples, who have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law, as well as the United Nations Declaration on the Rights of Indigenous Peoples.

### **A. Components of article 15, paragraph 1 (a)**

8. The content or scope of the terms used in article 15, paragraph 1 (a), on the right of everyone to take part in cultural life, is to be understood as set out below:

#### **“Everyone”**

9. In its general comment No. 17 on the right to benefit from the protection of moral and material interests resulting from any scientific, literary or artistic production of which one is the author,<sup>21</sup> the Committee recognizes that the term “everyone” in the first line of article 15 may denote the individual or the collective; in other words, cultural rights may be exercised by a person (a) as an individual, (b) in association with others, or (c) within a community or group, as such.

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<sup>17</sup> International Covenant on Civil and Political Rights, art. 27.

<sup>18</sup> Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, art. 2, paras. 1 and 2. See also Framework Convention for the Protection of National Minorities (Council of Europe, ETS No. 157), art. 15.

<sup>19</sup> United Nations Declaration on the Rights of Indigenous Peoples, in particular arts. 5, 8, and 10–13 ff. See also ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries, in particular arts. 2, 5, 7, 8, and 13–15 ff.

<sup>20</sup> Declaration on the Right to Development (General Assembly resolution 41/128), art. 1. In its general comment No. 4, paragraph 9, the Committee considers that rights cannot be viewed in isolation from other human rights contained in the two international Covenants and other applicable international instruments.

<sup>21</sup> See definition of “author” in general comment No. 17 (2005), paras. 7 and 8.

## **“Cultural life”**

10. Various definitions of “culture” have been postulated in the past and others may arise in the future. All of them, however, refer to the multifaceted content implicit in the concept of culture.<sup>22</sup>

11. In the Committee’s view, culture is a broad, inclusive concept encompassing all manifestations of human existence. The expression “cultural life” is an explicit reference to culture as a living process, historical, dynamic and evolving, with a past, a present and a future.

12. The concept of culture must be seen not as a series of isolated manifestations or hermetic compartments, but as an interactive process whereby individuals and communities, while preserving their specificities and purposes, give expression to the culture of humanity. This concept takes account of the individuality and otherness of culture as the creation and product of society.

13. The Committee considers that culture, for the purpose of implementing article 15 (1) (a), encompasses, inter alia, ways of life, language, oral and written literature, music and song, non-verbal communication, religion or belief systems, rites and ceremonies, sport and games, methods of production or technology, natural and man-made environments, food, clothing and shelter and the arts, customs and traditions through which individuals, groups of individuals and communities express their humanity and the meaning they give to their existence, and build their world view representing their encounter with the external forces affecting their lives. Culture shapes and mirrors the values of well-being and the economic, social and political life of individuals, groups of individuals and communities.

## **“To participate” or “to take part”**

14. The terms “to participate” and “to take part” have the same meaning and are used interchangeably in other international and regional instruments.

15. There are, among others, three interrelated main components of the right to participate or take part in cultural life: (a) participation in, (b) access to, and (c) contribution to cultural life.

(a) *Participation* covers in particular the right of everyone — alone, or in association with others or as a community — to act freely, to choose his or her own identity, to identify or not with one or several communities or to change that choice, to take part in the political life of society, to engage in one’s own cultural practices and to express oneself in the language of one’s choice. Everyone also has the right to seek and develop cultural knowledge and expressions and to share them with others, as well as to act creatively and take part in creative activity;

(b) *Access* covers in particular the right of everyone — alone, in association with others or as a community — to know and understand his or her own culture and that of others through education and information, and to receive quality education and training with due regard for cultural

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<sup>22</sup> Culture is (a) “the set of distinctive spiritual, material, intellectual and emotional features of a society or a social group, [which] encompasses, in addition to art and literature, lifestyles, ways of living together, value systems, traditions and beliefs” (UNESCO Universal Declaration on Cultural Diversity, fifth preambular paragraph); (b) “in its very essence, a social phenomenon resulting from individuals joining and cooperating in creative activities [and] is not limited to access to works of art and the human rights, but is at one and the same time the acquisition of knowledge, the demand for a way of life and need to communicate” (UNESCO recommendation on participation by the people at large in cultural life and their contribution to it, 1976, the Nairobi recommendation, fifth preambular paragraph (a) and (c)); (c) “covers those values, beliefs, convictions, languages, knowledge and the arts, traditions, institutions and ways of life through which a person or a group expresses their humanity and meanings that they give to their existence and to their development” (Fribourg Declaration on Cultural Rights, art. 2 (a) (definitions)); (d) “the sum total of the material and spiritual activities and products of a given social group which distinguishes it from other similar groups [and] a system of values and symbols as well as a set of practices that a specific cultural group reproduces over time and which provides individuals with the required signposts and meanings for behaviour and social relationships in everyday life”. (Rodolfo Stavenhagen, “Cultural Rights: A social science perspective”, in H. Niec (ed.), *Cultural Rights and Wrongs: A collection of essays in commemoration of the 50th anniversary of the Universal Declaration of Human Rights*, Paris and Leicester, UNESCO Publishing and Institute of Art and Law).

identity. Everyone has also the right to learn about forms of expression and dissemination through any technical medium of information or communication, to follow a way of life associated with the use of cultural goods and resources such as land, water,<sup>23</sup> biodiversity, language or specific institutions, and to benefit from the cultural heritage and the creation of other individuals and communities;

(c) *Contribution to cultural life* refers to the right of everyone to be involved in creating the spiritual, material, intellectual and emotional expressions of the community. This is supported by the right to take part in the development of the community to which a person belongs, and in the definition, elaboration and implementation of policies and decisions that have an impact on the exercise of a person's cultural rights.<sup>24</sup>

## **B.Elements of the right to take part in cultural life**

16. The following are necessary conditions for the full realization of the right of everyone to take part in cultural life on the basis of equality and non-discrimination.

(a) *Availability* is the presence of cultural goods and services that are open for everyone to enjoy and benefit from, including libraries, museums, theatres, cinemas and sports stadiums; literature, including folklore, and the arts in all forms; the shared open spaces essential to cultural interaction, such as parks, squares, avenues and streets; nature's gifts, such as seas, lakes, rivers, mountains, forests and nature reserves, including the flora and fauna found there, which give nations their character and biodiversity; intangible cultural goods, such as languages, customs, traditions, beliefs, knowledge and history, as well as values, which make up identity and contribute to the cultural diversity of individuals and communities. Of all the cultural goods, one of special value is the productive intercultural kinship that arises where diverse groups, minorities and communities can freely share the same territory;

(b) *Accessibility* consists of effective and concrete opportunities for individuals and communities to enjoy culture fully, within physical and financial reach for all in both urban and rural areas, without discrimination.<sup>25</sup> It is essential, in this regard, that access for older persons and persons with disabilities, as well as for those who live in poverty, is provided and facilitated. Accessibility also includes the right of everyone to seek, receive and share information on all manifestations of culture in the language of the person's choice, and the access of communities to means of expressions and dissemination.

(c) *Acceptability* entails that the laws, policies, strategies, programmes and measures adopted by the State party for the enjoyment of cultural rights should be formulated and implemented in such a way as to be acceptable to the individuals and communities involved. In this regard, consultations should be held with the individuals and communities concerned in order to ensure that the measures to protect cultural diversity are acceptable to them;

(d) *Adaptability* refers to the flexibility and relevance of strategies, policies, programmes and measures adopted by the State party in any area of cultural life, which must be respectful of the cultural diversity of individuals and communities;

(e) *Appropriateness* refers to the realization of a specific human right in a way that is pertinent and suitable to a given cultural modality or context, that is, respectful of the culture and cultural rights of individuals and communities, including minorities and indigenous peoples.<sup>26</sup> The Committee has in many instances referred to the notion of cultural appropriateness (or cultural acceptability or adequacy) in past general comments, in relation in particular to the rights to food, health, water, housing and education. The way in which rights are implemented may also have an impact on cultural life and cultural diversity. The Committee wishes to stress in this regard the need

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<sup>23</sup> General comment No. 15 (2002), paras. 6 and 11.

<sup>24</sup> UNESCO Universal Declaration on Cultural Diversity, art. 5. See also Fribourg Declaration on Cultural Rights, art. 7.

<sup>25</sup> See general comment No. 20 (2009).

<sup>26</sup> Fribourg Declaration on Cultural Rights, art. 1 (e).

to take into account, as far as possible, cultural values attached to, inter alia, food and food consumption, the use of water, the way health and education services are provided and the way housing is designed and constructed.

### **C.Limitations to the right to take part in cultural life**

17. The right of everyone to take part in cultural life is closely linked to the enjoyment of other rights recognized in the international human rights instruments. Consequently, States parties have a duty to implement their obligations under article 15, paragraph 1 (a), together with their obligations under other provisions of the Covenant and international instruments, in order to promote and protect the entire range of human rights guaranteed under international law.

18. The Committee wishes to recall that, while account must be taken of national and regional particularities and various historical, cultural and religious backgrounds, it is the duty of States, regardless of their political, economic or cultural systems, to promote and protect all human rights and fundamental freedoms.<sup>27</sup> Thus, no one may invoke cultural diversity to infringe upon human rights guaranteed by international law, nor to limit their scope.<sup>28</sup>

19. Applying limitations to the right of everyone to take part in cultural life may be necessary in certain circumstances, in particular in the case of negative practices, including those attributed to customs and traditions, that infringe upon other human rights. Such limitations must pursue a legitimate aim, be compatible with the nature of this right and be strictly necessary for the promotion of general welfare in a democratic society, in accordance with article 4 of the Covenant. Any limitations must therefore be proportionate, meaning that the least restrictive measures must be taken when several types of limitations may be imposed. The Committee also wishes to stress the need to take into consideration existing international human rights standards on limitations that can or cannot be legitimately imposed on rights that are intrinsically linked to the right to take part in cultural life, such as the rights to privacy, to freedom of thought, conscience and religion, to freedom of opinion and expression, to peaceful assembly and to freedom of association.

20. Article 15, paragraph 1 (a) may not be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized in the Covenant or at their limitation to a greater extent than is provided for therein.<sup>29</sup>

### **D.Special topics of broad application**

#### **Non-discrimination and equal treatment**

21. Article 2, paragraph 2, and article 3 of the Covenant prohibit any discrimination in the exercise of the right of everyone to take part in cultural life on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.<sup>30</sup>

22. In particular, no one shall be discriminated against because he or she chooses to belong, or not to belong, to a given cultural community or group, or to practise or not to practise a particular cultural activity. Likewise, no one shall be excluded from access to cultural practices, goods and services.

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<sup>27</sup> Vienna Declaration and Programme of Action, para. 5.

<sup>28</sup> Universal Declaration on Cultural Diversity, art. 4.

<sup>29</sup> International Covenant on Economic, Social and Cultural Rights, art. 5, para. 1.

<sup>30</sup> See general comment No. 20 (2009).

23. The Committee emphasizes that the elimination of all forms of discrimination in order to guarantee the exercise of the right of everyone to take part in cultural life can, in many cases, be achieved with limited resources<sup>31</sup> by the adoption, amendment or repeal of legislation, or through publicity and information. In particular, a first and important step towards the elimination of discrimination, whether direct or indirect, is for States to recognize the existence of diverse cultural identities of individuals and communities on their territories. The Committee also refers States parties to its general comment No. 3 (1990), paragraph 12, on the nature of States parties' obligations, which establishes that, even in times of severe resource constraints, the most disadvantaged and marginalized individuals and groups can and indeed must be protected by the adoption of relatively low-cost targeted programmes.

24. The adoption of temporary special measures with the sole purpose of achieving de facto equality does not constitute discrimination, provided that such measures do not perpetuate unequal protection or form a separate system of protection for certain individuals or groups of individuals, and that they are discontinued when the objectives for which they were taken have been achieved.

## **E. Persons and communities requiring special protection**

### **1. Women**

25. Ensuring the equal right of men and women to the enjoyment of economic, social and cultural rights is a mandatory and immediate obligation of States parties.<sup>32</sup> Implementing article 3 of the Covenant, in relation to article 15, paragraph 1 (a), requires, inter alia, the elimination of institutional and legal obstacles as well as those based on negative practices, including those attributed to customs and traditions, that prevent women from participating fully in cultural life, science education and scientific research.<sup>33</sup>

### **2. Children**

26. Children play a fundamental role as the bearers and transmitters of cultural values from generation to generation. States parties should take all the steps necessary to stimulate and develop children's full potential in the area of cultural life, with due regard for the rights and responsibilities of their parents or guardians. In particular, when taking into consideration their obligations under the Covenant and other human rights instruments on the right to education, including with regard to the aims of education,<sup>34</sup> States should recall that the fundamental aim of educational development is the transmission and enrichment of common cultural and moral values in which the individual and society find their identity and worth.<sup>35</sup> Thus, education must be culturally appropriate, include human rights education, enable children to develop their personality and cultural identity and to learn and understand cultural values and practices of the communities to which they belong, as well as those of other communities and societies.

27. The Committee wishes to recall in this regard that educational programmes of States parties should respect the cultural specificities of national or ethnic, linguistic and religious minorities as well as indigenous peoples, and incorporate in those programmes their history, knowledge and technologies, as well as their social, economic and cultural values and aspirations. Such programmes should be included in school curricula for all, not only for minorities and indigenous peoples. States parties should adopt measures and spare no effort to ensure that educational programmes for minorities and indigenous groups are conducted on or in their own language, taking into

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<sup>31</sup> See general comment No. 3 (1990); statement by the Committee: an evaluation of the obligation to take steps to the "maximum of available resources" under an optional protocol to the Covenant (E/C.12/2007/1).

<sup>32</sup> General comment No. 16 (2005), para. 16.

<sup>33</sup> *Ibid.*, para. 31.

<sup>34</sup> In particular articles 28 and 29 of the Convention on the Rights of the Child.

<sup>35</sup> World Declaration on Education for All: Meeting Basic Learning Needs, art. I-3.

consideration the wishes expressed by communities and in the international human rights standards in this area.<sup>36</sup> Educational programmes should also transmit the necessary knowledge to enable everyone to participate fully and on an equal footing in their own and in national communities.

### **3.Older persons**

28. The Committee is of the view that States parties to the Covenant are obligated to pay particular attention to the promotion and protection of the cultural rights of older persons. The Committee emphasizes the important role that older persons continue to play in most societies by reason of their creative, artistic and intellectual abilities, and as the transmitters of information, knowledge, traditions and cultural values. Consequently, the Committee attaches particular importance to the message contained in recommendations 44 and 48 of the Vienna International Plan of Action on Aging, calling for the development of programmes featuring older persons as teachers and transmitters of knowledge, culture and spiritual values, and encouraging Governments and international organizations to support programmes aimed at providing older persons with easier physical access to cultural institutions (such as museums, theatres, concert halls and cinemas).<sup>37</sup>

29. The Committee therefore urges States parties to take account of the recommendations contained in the United Nations Principles for Older Persons, and in particular of principle 7, that older persons should remain integrated in society, participate actively in the formulation and implementation of policies that directly affect their well-being and share their knowledge and skills with younger generations; and principle 16, that older persons should have access to the educational, cultural, spiritual and recreational resources of society.<sup>38</sup>

### **4.Persons with disabilities**

30. Paragraph 17 of the Standard Rules on the Equalization of Opportunities for Persons with Disabilities provides that States should ensure that persons with disabilities have the opportunity to utilize their creative, artistic and intellectual potential, not only for their own benefit, but also for the enrichment of their community, be they in urban or rural areas, and that States should promote accessibility to and availability of places for cultural performances and services.<sup>39</sup>

31. In order to facilitate participation of persons with disabilities in cultural life, States parties should, *inter alia*, recognize the right of these persons to have access to cultural material, television programmes, films, theatre and other cultural activities, in accessible forms; to have access to places where cultural performances or services are offered, such as theatres, museums, cinemas, libraries and tourist services and, to the extent possible, to monuments and places of national cultural importance; to the recognition of their specific cultural and linguistic identity, including sign language and the culture of the deaf; and to the encouragement and promotion of their participation, to the extent possible, in recreational, leisure and sporting activities.<sup>40</sup>

### **5.Minorities**

32. In the Committee's view, article 15, paragraph 1 (a) of the Covenant also includes the right of minorities and of persons belonging to minorities to take part in the cultural life of society, and also

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<sup>36</sup> In particular the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, the Declaration on the Rights of Indigenous Peoples and the International Labour Organization Convention concerning Indigenous and Tribal Peoples in Independent Countries (Convention No. 169).

<sup>37</sup> General comment No. 6 (1995), paras. 38 and 40.

<sup>38</sup> General comment No. 6 (1995), para. 39.

<sup>39</sup> General Assembly resolution 48/96, annex.

<sup>40</sup> Convention on the Rights of Persons with Disabilities, art. 30.

to conserve, promote and develop their own culture.<sup>41</sup> This right entails the obligation of States parties to recognize, respect and protect minority cultures as an essential component of the identity of the States themselves. Consequently, minorities have the right to their cultural diversity, traditions, customs, religion, forms of education, languages, communication media (press, radio, television, Internet) and other manifestations of their cultural identity and membership.

33. Minorities, as well as persons belonging to minorities, have the right not only to their own identity but also to development in all areas of cultural life. Any programme intended to promote the constructive integration of minorities and persons belonging to minorities into the society of a State party should thus be based on inclusion, participation and non-discrimination, with a view to preserving the distinctive character of minority cultures.

## **6.Migrants**

34. States parties should pay particular attention to the protection of the cultural identities of migrants, as well as their language, religion and folklore, and of their right to hold cultural, artistic and intercultural events. States parties should not prevent migrants from maintaining their cultural links with their countries of origin.<sup>42</sup>

35. As education is intrinsically related to culture, the Committee recommends that States parties adopt appropriate measures to enable the children of migrants to attend, on a basis of equal treatment, State-run educational institution and programmes.

## **7.Indigenous peoples**

36. States parties should take measures to guarantee that the exercise of the right to take part in cultural life takes due account of the values of cultural life, which may be strongly communal or which can only be expressed and enjoyed as a community by indigenous peoples.<sup>43</sup> The strong communal dimension of indigenous peoples' cultural life is indispensable to their existence, well-being and full development, and includes the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.<sup>44</sup> Indigenous peoples' cultural values and rights associated with their ancestral lands and their relationship with nature should be regarded with respect and protected, in order to prevent the degradation of their particular way of life, including their means of subsistence, the loss of their natural resources and, ultimately, their cultural identity.<sup>45</sup> States parties must therefore take measures to recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources, and, where they have been otherwise inhabited or used without their free and informed consent, take steps to return these lands and territories.

37. Indigenous peoples have the right to act collectively to ensure respect for their right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literature, designs, sports and traditional games, and visual and performing

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<sup>41</sup> International Covenant on Civil and Political Rights, art. 27; Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, para. 1 (1).

<sup>42</sup> International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, art. 31.

<sup>43</sup> See Declaration on the Rights of Indigenous Peoples, art. 1. See also ILO Convention concerning Indigenous and Tribal Peoples in Independent Countries (Convention No. 169), art. 1, para. 2.

<sup>44</sup> United Nations Declaration on the Rights of Indigenous Peoples, art. 26 (a).

<sup>45</sup> Convention No. 169, arts. 13–16. See also the United Nations Declaration on the Rights of Indigenous Peoples, arts. 20 and 33.

arts.<sup>46</sup> States parties should respect the principle of free, prior and informed consent of indigenous peoples in all matters covered by their specific rights.<sup>47</sup>

### **8. Persons living in poverty**

38. The Committee considers that every person or group of persons is endowed with a cultural richness inherent in their humanity and therefore can make, and continues to make, a significant contribution to the development of culture. Nevertheless, it must be borne in mind that, in practice, poverty seriously restricts the ability of a person or a group of persons to exercise the right to take part in, gain access and contribute to, on equal terms, all spheres of cultural life, and more importantly, seriously affects their hopes for the future and their ability to enjoy effectively their own culture. The common underlying theme in the experience of persons living in poverty is a sense of powerlessness that is often a consequence of their situation. Awareness of their human rights, and particularly the right of every person to take part in cultural life, can significantly empower persons or groups of persons living in poverty.<sup>48</sup>

39. Culture as a social product must be brought within the reach of all, on the basis of equality, non-discrimination and participation. Therefore, in implementing the legal obligations enshrined in article 15, paragraph 1 (a), of the Covenant, States parties must adopt, without delay, concrete measures to ensure adequate protection and the full exercise of the right of persons living in poverty and their communities to enjoy and take part in cultural life. In this respect, the Committee refers States parties to its statement on poverty and the International Covenant on Economic, Social and Cultural Rights.<sup>49</sup>

### **F. Cultural diversity and the right to take part in cultural life**

40. The protection of cultural diversity is an ethical imperative, inseparable from respect for human dignity. It implies a commitment to human rights and fundamental freedoms, and requires the full implementation of cultural rights, including the right to take part in cultural life.<sup>50</sup>

41. Cultures have no fixed borders. The phenomena of migration, integration, assimilation and globalization have brought cultures, groups and individuals into closer contact than ever before, at a time when each of them is striving to keep their own identity.

42. Given that globalization has positive and negative effects, States parties must take appropriate steps to avoid its adverse consequences on the right to take part in cultural life, particularly for the most disadvantaged and marginalized individuals and groups, such as persons living in poverty. Far from having produced a single world culture, globalization has demonstrated that the concept of culture implies the coexistence of different cultures.

43. States parties should also bear in mind that cultural activities, goods and services have economic and cultural dimensions, conveying identity, values and meanings. They must not be treated as having solely a commercial value.<sup>51</sup> In particular, bearing in mind article 15 (2) of the Covenant, States parties should adopt measures to protect and promote the diversity of cultural expressions,<sup>52</sup> and enable all cultures to express themselves and make themselves known.<sup>53</sup> In this

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<sup>46</sup> ILO Convention No. 169, arts. 5 and 31. See also the United Nations Declaration on the Rights of Indigenous Peoples, arts. 11–13.

<sup>47</sup> ILO Convention No. 169, art. 6 (a). See also the United Nations Declaration on the Rights of Indigenous Peoples, art. 19.

<sup>48</sup> See E/C.12/2001/10, para. 5.

<sup>49</sup> *Ibid.*, para. 14.

<sup>50</sup> See the Universal Declaration on Cultural Diversity, arts. 4 and 5.

<sup>51</sup> UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, preamble, para. 18. See also the Universal Declaration on Cultural Diversity, art. 8.

<sup>52</sup> UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, art. IV-5.

respect, due regard should be paid to human rights standards, including the right to information and expression, and to the need to protect the free flow of ideas by word and image. The measures may also aim at preventing the signs, symbols and expressions of a particular culture from being taken out of context for the sole purpose of marketing or exploitation by the mass media.

### **III. States parties' obligations**

#### **A. General legal obligations**

44. The Covenant imposes on States parties the immediate obligation to guarantee that the right set out in article 15, paragraph 1 (a), is exercised without discrimination, to recognize cultural practices and to refrain from interfering in their enjoyment and development.<sup>54</sup>

45. While the Covenant provides for the “progressive” realization of the rights set out in its provisions and recognizes the problems arising from limited resources, it imposes on States parties the specific and continuing obligation to take deliberate and concrete measures aimed at the full implementation of the right of everyone to take part in cultural life.<sup>55</sup>

46. As in the case of the other rights set out in the Covenant, regressive measures taken in relation to the right of everyone to take part in cultural life are not permitted. Consequently, if any such measure is taken deliberately, the State party has to prove that it was taken after careful consideration of all alternatives and that the measure in question is justified, bearing in mind the complete set of rights recognized in the Covenant.<sup>56</sup>

47. Given the interrelationship between the rights set out in article 15 of the Covenant (see paragraph 2 above), the full realization of the right of everyone to take part in cultural life also requires the adoption of steps necessary for the conservation, development and dissemination of science and culture, as well as steps to ensure respect for the freedom indispensable to scientific research and creative activity, in accordance with paragraphs 2 and 3, respectively, of article 15.<sup>57</sup>

#### **B. Specific legal obligations**

48. The right of everyone to take part in cultural life, like the other rights enshrined in the Covenant, imposes three types or levels of obligations on States parties: (a) the obligation to respect; (b) the obligation to protect; and (c) the obligation to fulfil. The obligation to respect requires States parties to refrain from interfering, directly or indirectly, with the enjoyment of the right to take part in cultural life. The obligation to protect requires States parties to take steps to prevent third parties from interfering in the right to take part in cultural life. Lastly, the obligation to fulfil requires States parties to take appropriate legislative, administrative, judicial, budgetary, promotional and other measures aimed at the full realization of the right enshrined in article 15, paragraph 1 (a), of the Covenant.<sup>58</sup>

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<sup>53</sup> See the Universal Declaration on Cultural Diversity, art. 6.

<sup>54</sup> See general comment No. 20 (2009).

<sup>55</sup> See general comments No. 3 (1990), para. 9, No. 13 (1999), para. 44, No. 14 (2000), para. 31, No. 17 (2005), para. 26 and No. 18 (2005), para. 20. See also the Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights, para. 21.

<sup>56</sup> See general comments No. 3 (1990), para. 9, No. 13 (1999), para. 45, No. 14 (2000), para. 32, No. 17 (2005), para. 27 and No. 18 (2005), para. 21.

<sup>57</sup> See general comments No. 13 (1999), paras. 46 and 47, No. 14 (2000), para. 33, No. 17 (2005), para. 28 and No. 18 (2005), para. 22.

<sup>58</sup> See general comments No. 13 (1990), paras. 46 and 47, No. 14 (2000), para. 33, No. 17 (2005), para. 28 and No. 18 (2005), para. 22. See also the Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights, para. 6.

49. The obligation to respect includes the adoption of specific measures aimed at achieving respect for the right of everyone, individually or in association with others or within a community or group:

(a) To freely choose their own cultural identity, to belong or not to belong to a community, and have their choice respected;

This includes the right not to be subjected to any form of discrimination based on cultural identity, exclusion or forced assimilation,<sup>59</sup> and the right of all persons to express their cultural identity freely and to exercise their cultural practices and way of life. States parties should consequently ensure that their legislation does not impair the enjoyment of these rights through direct or indirect discrimination.

(b) To enjoy freedom of opinion, freedom of expression in the language or languages of their choice, and the right to seek, receive and impart information and ideas of all kinds and forms including art forms, regardless of frontiers of any kind;

This implies the right of all persons to have access to, and to participate in, varied information exchanges, and to have access to cultural goods and services, understood as vectors of identity, values and meaning.<sup>60</sup>

(c) To enjoy the freedom to create, individually, in association with others, or within a community or group, which implies that States parties must abolish censorship of cultural activities in the arts and other forms of expression, if any;

This obligation is closely related to the duty of States parties, under article 15, paragraph 3, “to respect the freedom indispensable for scientific research and creative activity”.

(d) To have access to their own cultural and linguistic heritage and to that of others;

In particular, States must respect free access by minorities to their own culture, heritage and other forms of expression, as well as the free exercise of their cultural identity and practices. This includes the right to be taught about one’s own culture as well as those of others.<sup>61</sup> States parties must also respect the rights of indigenous peoples to their culture and heritage and to maintain and strengthen their spiritual relationship with their ancestral lands and other natural resources traditionally owned, occupied or used by them, and indispensable to their cultural life.

(e) To take part freely in an active and informed way, and without discrimination, in any important decision-making process that may have an impact on his or her way of life and on his or her rights under article 15, paragraph 1 (a).

50. In many instances, the obligations to respect and to protect freedoms, cultural heritage and diversity are interconnected. Consequently, the obligation to protect is to be understood as requiring States to take measures to prevent third parties from interfering in the exercise of rights listed in paragraph 49 above. In addition, States parties are obliged to:

(a) Respect and protect cultural heritage in all its forms, in times of war and peace, and natural disasters;

Cultural heritage must be preserved, developed, enriched and transmitted to future generations as a record of human experience and aspirations, in order to encourage creativity in all its diversity and to inspire a genuine dialogue between cultures. Such obligations include the care, preservation and restoration of historical sites, monuments, works of art and literary works, among others.<sup>62</sup>

(b) Respect and protect cultural heritage of all groups and communities, in particular the most disadvantaged and marginalized individuals and groups, in economic development and environmental policies and programmes;

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<sup>59</sup> International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, art. 31

<sup>60</sup> Universal Declaration on Cultural Diversity, para. 8.

<sup>61</sup> Fribourg Declaration on Cultural Rights, arts. 6 (b) and 7 (b).

<sup>62</sup> Universal Declaration on Cultural Diversity, art. 7.

Particular attention should be paid to the adverse consequences of globalization, undue privatization of goods and services, and deregulation on the right to participate in cultural life.

(c) Respect and protect the cultural productions of indigenous peoples, including their traditional knowledge, natural medicines, folklore, rituals and other forms of expression;

This includes protection from illegal or unjust exploitation of their lands, territories and resources by State entities or private or transnational enterprises and corporations.

(d) Promulgate and enforce legislation to prohibit discrimination based on cultural identity, as well as advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, taking into consideration articles 19 and 20 of the International Covenant on Civil and Political Rights and article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination.

51. The obligation to fulfil can be subdivided into the obligations to facilitate, promote and provide.

52. States parties are under an obligation to facilitate the right of everyone to take part in cultural life by taking a wide range of positive measures, including financial measures, that would contribute to the realization of this right, such as:

(a) Adopting policies for the protection and promotion of cultural diversity, and facilitating access to a rich and diversified range of cultural expressions, including through, inter alia, measures aimed at establishing and supporting public institutions and the cultural infrastructure necessary for the implementation of such policies; and measures aimed at enhancing diversity through public broadcasting in regional and minority languages;

(b) Adopting policies enabling persons belonging to diverse cultural communities to engage freely and without discrimination in their own cultural practices and those of others, and to choose freely their way of life;

(c) Promoting the exercise of the right of association for cultural and linguistic minorities for the development of their cultural and linguistic rights;

(d) Granting assistance, financial or other, to artists, public and private organizations, including science academies, cultural associations, trade unions and other individuals and institutions engaged in scientific and creative activities;

(e) Encouraging scientists, artists and others to take part in international scientific and cultural research activities, such as symposiums, conferences, seminars and workshops;

(f) Taking appropriate measures or programmes to support minorities or other communities, including migrant communities, in their efforts to preserve their culture;

(g) Taking appropriate measures to remedy structural forms of discrimination so as to ensure that the underrepresentation of persons from certain communities in public life does not adversely affect their right to take part in cultural life;

(h) Taking appropriate measures to create conditions conducive to a constructive intercultural relationship between individuals and groups based on mutual respect, understanding and tolerance;

(i) Taking appropriate measures to conduct public campaigns through the media, educational institutions and other available channels, with a view to eliminating any form of prejudice against individuals or communities, based on their cultural identity.

53. The obligation to promote requires States parties to take effective steps to ensure that there is appropriate education and public awareness concerning the right to take part in cultural life, particularly in rural and deprived urban areas, or in relation to the specific situation of, inter alia, minorities and indigenous peoples. This includes education and awareness-raising on the need to respect cultural heritage and cultural diversity.

54. The obligation to fulfil requires that States parties must provide all that is necessary for fulfilment of the right to take part in cultural life when individuals or communities are unable, for reasons outside their control, to realize this right for themselves with the means at their disposal. This level of obligation includes, for example:

- (a) The enactment of appropriate legislation and the establishment of effective mechanisms allowing persons, individually, in association with others, or within a community or group, to participate effectively in decision-making processes, to claim protection of their right to take part in cultural life, and to claim and receive compensation if their rights have been violated;
- (b) Programmes aimed at preserving and restoring cultural heritage;
- (c) The inclusion of cultural education at every level in school curricula, including history, literature, music and the history of other cultures, in consultation with all concerned;
- (d) Guaranteed access for all, without discrimination on grounds of financial or any other status, to museums, libraries, cinemas and theatres and to cultural activities, services and events.

### **C. Core obligations**

55. In its general comment No. 3 (1990), the Committee stressed that States parties have a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights set out in the Covenant. Thus, in accordance with the Covenant and other international instruments dealing with human rights and the protection of cultural diversity, the Committee considers that article 15, paragraph 1 (a), of the Covenant entails at least the obligation to create and promote an environment within which a person individually, or in association with others, or within a community or group, can participate in the culture of their choice, which includes the following core obligations applicable with immediate effect:

- (a) To take legislative and any other necessary steps to guarantee non-discrimination and gender equality in the enjoyment of the right of everyone to take part in cultural life;
- (b) To respect the right of everyone to identify or not identify themselves with one or more communities, and the right to change their choice;
- (c) To respect and protect the right of everyone to engage in their own cultural practices, while respecting human rights which entails, in particular, respecting freedom of thought, belief and religion; freedom of opinion and expression; a person's right to use the language of his or her choice; freedom of association and peaceful assembly; and freedom to choose and set up educational establishments;
- (d) To eliminate any barriers or obstacles that inhibit or restrict a person's access to the person's own culture or to other cultures, without discrimination and without consideration for frontiers of any kind;
- (e) To allow and encourage the participation of persons belonging to minority groups, indigenous peoples or to other communities in the design and implementation of laws and policies that affect them. In particular, States parties should obtain their free and informed prior consent when the preservation of their cultural resources, especially those associated with their way of life and cultural expression, are at risk.

### **D. International obligations**

56. In its general comment No. 3 (1990), the Committee draws attention to the obligation of States parties to take steps, individually and through international assistance and cooperation, especially through economic and technical cooperation, with a view to achieving the full realization of the rights recognized in the Covenant. In the spirit of Article 56 of the Charter of the United Nations, as well as specific provisions of the International Covenant on Economic, Social and Cultural Rights (art. 2, para. 1, and arts. 15 and 23), States parties should recognize and promote the essential role of international cooperation in the achievement of the rights recognized in the

Covenant, including the right of everyone to take part in cultural life, and should fulfil their commitment to take joint and separate action to that effect.

57. States parties should, through international agreements where appropriate, ensure that the realization of the right of everyone to take part in cultural life receives due attention.<sup>63</sup>

58. The Committee recalls that international cooperation for development and thus for the realization of economic, social and cultural rights, including the right to take part in cultural life, is an obligation of States parties, especially of those States that are in a position to provide assistance. This obligation is in accordance with Articles 55 and 56 of the Charter of the United Nations, as well as articles 2, paragraph 1, and articles 15 and 23 of the Covenant.<sup>64</sup>

59. In negotiations with international financial institutions and in concluding bilateral agreements, States parties should ensure that the enjoyment of the right enshrined in article 15, paragraph 1 (a), of the Covenant is not impaired. For example, the strategies, programmes and policies adopted by States parties under structural adjustment programmes should not interfere with their core obligations in relation to the right of everyone, especially the most disadvantaged and marginalized individuals and groups, to take part in cultural life.<sup>65</sup>

#### **IV. Violations**

60. To demonstrate compliance with their general and specific obligations, States parties must show that they have taken appropriate measures to ensure the respect for and protection of cultural freedoms, as well as the necessary steps towards the full realization of the right to take part in cultural life within their maximum available resources. States parties must also show that they have guaranteed that the right is enjoyed equally and without discrimination, by men and women.

61. In assessing whether States parties have complied with obligations to take action, the Committee looks at whether implementation is reasonable or proportionate with respect to the attainment of the relevant rights, complies with human rights and democratic principles, and whether it is subject to an adequate framework of monitoring and accountability.

62. Violations can occur through the direct action of a State party or of other entities or institutions that are insufficiently regulated by the State party, including, in particular, those in the private sector. Many violations of the right to take part in cultural life occur when States parties prevent access to cultural life, practices, goods and services by individuals or communities.

63. Violations of article 15, paragraph 1 (a), also occur through the omission or failure of a State party to take the necessary measures to comply with its legal obligations under this provision. Violations through omission include the failure to take appropriate steps to achieve the full realization of the right of everyone to take part in cultural life, and the failure to enforce relevant laws or to provide administrative, judicial or other appropriate remedies to enable people to exercise in full the right to take part in cultural life.

64. A violation also occurs when a State party fails to take steps to combat practices harmful to the well-being of a person or group of persons. These harmful practices, including those attributed to customs and traditions, such as female genital mutilation and allegations of the practice of witchcraft,

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63 See general comment No. 18 (2005), para. 29.

64 General comment No. 3 (1990), para. 14. See also general comment No. 18 (2005), para. 37.

65 See general comment No. 18 (2005), para. 30.

are barriers to the full exercise by the affected persons of the right enshrined in article 15, paragraph 1 (a).

65. Any deliberately retrogressive measures in relation to the right to take part in cultural life would require the most careful consideration and need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources.

## **V.Implementation at the national level**

### **A.Legislation, strategies and policies**

66. While States parties have a wide margin of discretion in selecting the steps they consider most appropriate for the full realization of the right, they must immediately take those steps intended to guarantee access by everyone, without discrimination, to cultural life.

67. States parties must take the necessary steps without delay to guarantee immediately at least the minimum content of the core obligations (see paragraph 56 above). Many of these steps, such as those intended to guarantee non-discrimination de jure, do not necessarily require financial resources. While there may be other steps that require resources, these steps are nevertheless essential to ensure the implementation of that minimum content. Such steps are not static, and States parties are obliged to advance progressively towards the full realization of the rights recognized in the Covenant and, as far as the present general comment is concerned, of the right enshrined in article 15, paragraph 1 (a).

68. The Committee encourages States parties to make the greatest possible use of the valuable cultural resources that every society possesses and to bring them within the reach of everyone, paying particular attention to the most disadvantaged and marginalized individuals and groups, in order to ensure that everyone has effective access to cultural life.

69. The Committee emphasizes that inclusive cultural empowerment derived from the right of everyone to take part in cultural life is a tool for reducing the disparities so that everyone can enjoy, on an equal footing, the values of his or her own culture within a democratic society.

70. States parties, in implementing the right enshrined in article 15, paragraph 1 (a), of the Covenant, should go beyond the material aspects of culture (such as museums, libraries, theatres, cinemas, monuments and heritage sites) and adopt policies, programmes and proactive measures that also promote effective access by all to intangible cultural goods (such as language, knowledge and traditions).

### **B.Indicators and benchmarks**

71. In their national strategies and policies, States parties should identify appropriate indicators and benchmarks, including disaggregated statistics and time frames that allow them to monitor effectively the implementation of the right of everyone to take part in cultural life, and also to assess progress towards the full realization of this right.

### **C.Remedies and accountability**

72. The strategies and policies adopted by States parties should provide for the establishment of effective mechanisms and institutions, where these do not exist, to investigate and examine alleged infringements of article 15, paragraph 1 (a), identify responsibilities, publicize the results and offer the necessary administrative, judicial or other remedies to compensate victims.

## **VI. Obligations of actors other than States**

73. While compliance with the Covenant is mainly the responsibility of States parties, all members of civil society — individuals, groups, communities, minorities, indigenous peoples, religious bodies, private organizations, business and civil society in general — also have responsibilities in relation to the effective implementation of the right of everyone to take part in cultural life. States parties should regulate the responsibility incumbent upon the corporate sector and other non-State actors with regard to the respect for this right.

74. Communities and cultural associations play a fundamental role in the promotion of the right of everyone to take part in cultural life at the local and national levels, and in cooperating with States parties in the implementation of their obligations under article 15, paragraph 1 (a).

75. The Committee notes that, as members of international organizations such as United Nations Educational, Scientific and Cultural Organization (UNESCO), the World Intellectual Property Organization (WIPO), the International Labour Organization (ILO), the Food and Agriculture Organization of the United Nations (FAO), the World Health Organization (WHO) and the World Trade Organization (WTO), States parties have an obligation to adopt whatever measures they can to ensure that the policies and decisions of those organizations in the field of culture and related areas are in conformity with their obligations under the Covenant, in particular the obligations contained in article 15 article 2, paragraph 1, and articles 22 and 23, concerning international assistance and cooperation.

76. United Nations organs and specialized agencies, should, within their fields of competence and in accordance with articles 22 and 23 of the Covenant, adopt international measures likely to contribute to the progressive implementation of article 15, paragraph 1 (a). In particular, UNESCO, WIPO, ILO, FAO, WHO and other relevant agencies, funds and programmes of the United Nations are called upon to intensify their efforts to take into account human rights principles and obligations in their work concerning the right of everyone to take part in cultural life, in cooperation with the Office of the United Nations High Commissioner for Human Rights.

## **C. Statements**

### **1. Statement on the obligations of States Parties regarding the corporate sector and economic, social and cultural rights, E/C.12/2011/1, 20 May 2011**

1. As a result of globalization and the growing role played by non-state actors, the Committee increasingly addresses the obligations of States Parties regarding the impact of the corporate sector on the implementation of the rights under the Covenant. The corporate sector in many instances contributes to the realization of economic, social and cultural rights enshrined in the Covenant through *inter alia* input to economic development, employment generation, and productive investment. However, the Committee has also frequently observed that corporate activities can adversely affect the enjoyment of Covenant rights. Multiple examples of the related problems range from child labour and unsafe working conditions through restrictions on trade union rights and discrimination against female workers, to harmful impact on the right to health, standard of living, of including indigenous peoples, the natural environment, as well as to the destructive role of corruption. The Committee reiterates the obligation of States Parties to ensure that all economic, social and cultural rights laid down in the Covenant are fully respected and rights holders adequately protected in the context of corporate activities.

2. The Committee recalls that, in 1998, it issued its Statement on Globalization and Economic, Social and Cultural Rights<sup>66</sup> that is relevant to the present statement. The Committee also acknowledges the initiatives related to corporate responsibilities in the context of human rights and takes them into consideration in the implementation of its mandate. At the international level, following its 1977 Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy,<sup>67</sup> the ILO adopted in 1998 the Declaration of Fundamental Principles and Rights at Work.<sup>68</sup> The latter addresses *inter alia* freedom of association and the effective recognition of the right to collective bargaining, elimination of all forms of forced or compulsory labour, effective abolition of child labour, and elimination of discrimination in respect of employment and occupation. In 2000, the United Nations launched the United Nations Global Compact which has been signed so far by more than 7700 companies and other stakeholders, committing themselves to adhere to corporate responsibilities covering human rights, labour, the environment and anti-corruption.<sup>69</sup> The Committee takes note that in 2008, the Human Rights Council welcomed the “Protect, Respect and Remedy” Framework for Business and Human Rights, presented by the Special Representative of the United Nations’ Secretary-General on the issue of human rights and transnational corporations and other business enterprises.<sup>70</sup>

3. States Parties have the primary obligation to respect, protect and fulfil the Covenant rights of all persons under their jurisdiction in the context of corporate activities, undertaken by state-owned or private enterprises. This results from Article 2(1) of the Covenant that defines the nature of the obligations of States Parties, referring to legislative and other appropriate implementation steps, which include administrative, financial, educational, social measures, domestic and global needs assessments, and the provision of judicial or other effective remedies.<sup>71</sup>

**4. Respecting rights** requires States Parties to guarantee conformity of their laws and policies regarding corporate activities with economic, social and cultural rights set forth in the Covenant. As part of this obligation, States Parties shall ensure that companies demonstrate due diligence to make certain that they do not impede the enjoyment of the Covenant rights by those who depend on or are negatively affected by their activities.

**5. Protecting rights** means that States Parties effectively safeguard rights holders against infringements of their economic, social and cultural rights involving corporate actors, by establishing appropriate laws, regulations, as well as monitoring, investigation and accountability procedures to set and enforce standards for the performance of corporations. As the Committee has repeatedly explained, non-compliance with this obligation can come through action or inaction. It is of utmost importance that States Parties ensure access to effective remedies to victims of corporate abuses of economic, social and cultural rights, through judicial, administrative, legislative or other appropriate means. States Parties should also take steps to prevent human rights contraventions abroad by corporations which have their main seat under their jurisdiction, without infringing the sovereignty or diminishing the obligations of the host States under the Covenant. For example, in General Comment No.15 on the Right to Water the Committee states that “steps should be taken by States Parties to prevent their own citizens and companies from violating the right to water of individuals and communities in other countries”. It also emphasizes that “where States Parties can take steps to influence other third parties to respect the right, through legal or political means, such steps should be

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<sup>66</sup> E/1999/22-E/C.12/1998/26.

<sup>67</sup> ILO DOCNO:28197701.

<sup>68</sup> The International Labour Organization’s Fundamental Conventions, International Labour Office, Second impression 2003, p. 73.

<sup>69</sup> See: Corporate Sustainability in The World Economy. United Nations Global Compact, Published by the UN Global Compact Office, United Nations, New York, February 2011.

<sup>70</sup> See: A/HRC/Res/8/7 and A/HRC/8/5.

<sup>71</sup> See: CESCR General Comment No. 3, E/1991/23.

taken in accordance with the Charter of the United Nations and applicable international law.”<sup>72</sup> In General Comment No.18 on the Right to Work, the Committee underlines that private enterprises, both national and multinational, “have a particular role to play in job creation, hiring policies and non-discriminatory access to work. They should conduct their activities on the basis of legislation, administrative measures, codes of conduct and other appropriate measures promoting respect for the right to work, agreed between the government and civil society.”<sup>73</sup> In General Comment No.19 on the Right to Social Security, the Committee underscores that “States Parties should extraterritorially protect the right to social security by preventing their own citizens and national entities from violating this right in other countries”.<sup>74</sup>

**6. Fulfilling rights** entails that States Parties undertake to obtain the corporate sector`s support to the realization of economic, social and cultural rights. States Parties home to companies active abroad shall also encourage such companies to assist, as appropriate, including in situations of armed conflict and natural disaster, host States in building capacities needed to address the corporate responsibility for the observance of economic, social and cultural rights.

7. The Committee is, therefore, determined to devote special attention obligations of States Parties related to corporate responsibilities in the context of the rights protected by the Covenant with a view to contributing to their full realization. In order to enable an effective follow-up on the issues addressed in this Statement, the Committee calls on States Parties to include in their initial and periodic reports information on challenges faced and measures taken in relation to the role and impact of the corporate sector on the realization of economic, social and cultural rights. Other stakeholders are also encouraged to include relevant information into their presentations to the Committee, as appropriate.

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<sup>72</sup> E/C.12/2002/11.

<sup>73</sup> E/C.12/GC/18.

<sup>74</sup> E/C.12/GC/19.

## **IV. COMMITTEE ON THE RIGHTS OF THE CHILD:**

### **A. Concluding Observations**

#### **1. Denmark, CRC/C/DNK/CO/4, 7 April 2011**

12. ... The Committee, however, remains concerned that there is no legislative framework of a more comprehensive nature covering the full scope of the Convention. It is also concerned that child rights legislation in Greenland and the Faroe Islands has yet to be harmonized with the principles and provisions of the Convention.

13. The Committee recommends that the State party, including the authorities in Greenland and the Faroe Islands, take all necessary measures to ensure that legislation and administrative regulations throughout the territory of the State party conform fully to the principles and provisions of the Convention and the two Optional Protocols and that new legislation is assessed in due course and evaluated in terms of its impact on children, and that it consider drafting a rights-based Child Act encompassing all rights under the Convention. In this respect, the Committee urges the State party to ensure that the proposed reform to the Greenland Act on Help to Children and Youth, to be undertaken with support from the United Nations Children's Fund (UNICEF), is a comprehensive exercise taking full account of all rights and the views of children.

14. While noting that the Municipal Reform of 2007 seeks to streamline the distribution of responsibility between the national and the local level by transferring the financing and implementation of social (citizens) services to the municipalities, the Committee remains concerned at the absence of a clear national mechanism responsible for the overall horizontal and vertical coordination of the Convention's implementation. Furthermore, the Committee is deeply concerned at the possible negative effects the new distribution of responsibilities may have on the less endowed and/or less advanced municipalities, including those in Greenland and the Faroe Islands, thus deepening disparities in the full enjoyment of rights by the children of different municipalities.

15. The Committee calls upon the State party to clearly identify a high-level coordination system/authority across sectors and with all regions and municipalities in order to ensure the implementation of child rights in a comprehensive, coherent and consistent manner, throughout its territory. Furthermore, the Committee recommends that such coordination addresses, in a timely and open manner, the disparity issues among municipalities that may arise due to the implementation of the Municipal Reform.

16. The Committee welcomes the various sectoral strategies developed concerning children, including Greenland's 2010 strategy "A Safe Childhood". However, it regrets that the State party has yet to adopt a comprehensive rights-based policy and a harmonized plan of action for the full and effective implementation of the Convention throughout its territory.

17. The Committee recommends that the State party develop a comprehensive policy and a harmonized plan of action for the full implementation of the Convention. The Committee recommends that the State party, in doing so, ensure that such comprehensive policy and plan of action are rights-based and are an integral component of national development planning, taking full account of the different regional contexts, particularly in the territories of Greenland and the Faroe Islands. It further recommends that the harmonized plan of action contain specific time-bound and measurable goals and targets to effectively monitor progress in the enjoyment of all rights by all children. The national plan of action should be linked to national, sectoral and municipal strategies

and budgets to ensure appropriate allocation of the financial, human and technical resources required for its implementation.

19. The Committee welcomes the proposed establishment in Greenland of an independent children's council, based on the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles). However, it remains concerned that in the Faroe Islands no measures have been undertaken to establish an independent mechanism for child rights.

20. The Committee reiterates its recommendation that the State party take measures to ensure that the Ombudsman system in the country takes full account of the Convention and establishes therein a facility to monitor the implementation of child rights that is transparent, well-resourced and specialized and that is empowered to deal with individual complaints. In doing so, the Committee recommends that the State party conduct an evaluation of its current independent monitoring system, and apply the findings to set up such facility for children's rights. For the situation in the Faroe Islands and Greenland, the Committee reiterates its previous recommendation (CRC/C/DNK/CO/3, para. 21). The Committee reminds the State party of its general comment No. 2 (2002) on the role of independent national human rights institutions in the promotion and protection of the rights of the child.

21. ... The Committee is also concerned that insufficient resources have been allocated for the realization of the right to education for children in Greenland and the Faroe Islands, and for mental health services throughout the State party's territory.

22. The Committee urges the State party to ensure that its allocation of resources to all sectors covering child rights remains high and is equitable, bearing in mind the need for financial support to those municipalities which require it in order to ensure fully the realization of all rights of all children, and that the budget requirements, particularly in education and mental health services, are fully met.

29. The Committee notes with appreciation the adoption of the Act amending the Danish Financial Statements Act (Accounting for corporate and social responsibility in large businesses) of December 2008, which obliges the 1,100 largest corporations in Denmark to report on their corporate and social responsibility policies and initiatives. However, the Committee notes that there is no specific mention of child rights or the Convention on the Rights of the Child as part of the Act's framework for reporting.

30. The Committee recommends that the State party provide a framework for reporting on child rights by Danish corporations, including multinational corporations headquartered in Denmark, and for the National Contact Point to address cases of non-compliance, including extraterritorially, by Danish multinational enterprises. In so doing, the Committee recommends that the State party apply the relevant provisions of the Convention. The Committee further encourages the State party to give due consideration to experiences from around the world in the application of, inter alia, the United Nations "Protect, Respect and Remedy" Framework to the operations of private and public corporations, particularly in respect to child rights.

67. The Committee regrets that the State party has yet to fully implement the recommendations of the Human Rights Committee in 2008 (CCPR/C/DNK/CO/5, para. 13) and the Committee on the Elimination of Racial Discrimination in 2010 (CERD/C/DNK/CO/18-19, para. 17) to uphold the identity of the Inughuit as a distinct indigenous community capable of vindicating traditional rights in accordance with international norms.

68. The Committee reiterates the recommendations of the Human Rights Committee in 2008 (CCPR/C/DNK/CO/5, para. 13) and the Committee on the Elimination of Racial Discrimination in 2010 (CERD/C/DNK/CO/18-19, para. 17) and urges the State party to, in accordance with the Committee's general comment No. 11 (2009) on indigenous children and their rights under the Convention, take all measures necessary for ensuring that Inughuit children are able to exercise their right to grow up in a safe cultural environment, maintain and develop their identity and use their own language without being disqualified and discriminated against.

## **2. New Zealand, CRC/C/NZL/CO/3-4, 11 April 2011**

10. The Committee notes with concern that in spite of recent legislative developments in the field of child rights, the harmonization of national law with the Convention and its Optional Protocols is not completed (for example, in the area of adoption legislation) and that not all domestic laws affecting children are harmonized even among themselves. The Committee is also concerned that the Children, Young Persons and Their Families Amendment Bill No. 6 has been before Parliament since 2007.

11. The Committee urges the State party: (a) To ensure that all existing domestic legislation relating to children is consistent and is brought into compliance with the Convention and that it supersedes any existing customary law, including Maori customary law; ...

22. The Committee notes that the State party seems not to have as yet given consideration to the adoption of corporate social responsibility parameters for the operations at home and abroad of New Zealand corporations and other businesses subject to the jurisdiction of the State party in line with, inter alia, the "protect, respect and remedy" framework for business and human rights which was adopted unanimously in 2008 by the Human Rights Council and outlines the State duty to protect against human rights abuses by businesses; the corporate responsibility to respect human rights; and the need for more effective access to remedies when violations occur.

23. The Committee encourages the State party to give due consideration to experiences from around the world in its application of the "protect, respect and remedy" framework for business and human rights to the operations of private and public corporations, and to consider taking effective measures to establish and implement regulations to ensure that the business sector complies with international and domestic standards on corporate social responsibility, particularly with regard to respecting child rights.

24. While noting with interest the Youth Voices: Youth Choices project and the various efforts undertaken by the State party to improve the situation of the Maori, particularly in the fields of education and health, the Committee remains concerned at continuing manifestations of discrimination against the Maori population, including children, as evidenced by their unequal access to services.

25. The Committee recommends that the State party ensure full protection against discrimination on any grounds, including by:

- (a) Taking urgent measures to address disparities in access to services by Maori children and their families;
- (b) Strengthening its awareness-raising and other preventive activities against discrimination and, if necessary, taking affirmative action for the benefit of children in vulnerable situations, such as Maori and Pacific children, refugee children, migrant children, children with disabilities and lesbian, bisexual, gay and transgender children and children living with persons from these groups; ....

32. The Committee recommends that the State party intensify its efforts to render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities with timely responses at the local level, including services to parents who need counselling in child-rearing, services for the treatment of alcohol- or drug-related problems, and, in the case of Maori and Pacific Islander populations, culturally appropriate services to enable them to fulfil their parental role.

37. The Committee notes with interest that the Well Child programme has almost 100 per cent coverage and that children under the age of 6 have access to free primary health care during business hours. While welcoming the State party's commitment to implement focused policies and initiatives to address the disparities in the health status of children, the Committee is concerned that inequalities continue to exist, manifested, inter alia, by the disparities in infant mortality rates between the Maori population and the rest of the State party's population and in immunization rates, which tend to be lower among Maori children.

38. The Committee recommends that inequalities in access to health services be addressed through a coordinated approach across all government departments and greater coordination between health policies and those aimed at reducing income inequality and poverty.

39. The Committee, while welcoming the State party's efforts to encourage exclusive breastfeeding up to six months, remains concerned that only half of children in New Zealand are exclusively breastfed at three months and less than 8 per cent are exclusively breastfed at six months. The Committee is also concerned that Maori children are more likely than others to be given solids before the age of four months.

40. The Committee recommends that the State party continue its efforts to increase the number of infants up to six months of age that are exclusively breastfed, with a particular focus on raising the awareness of the Maori population about the benefits of exclusive breastfeeding, and that it implement fully the International Code of Marketing of Breast-milk Substitutes. The State party should also further promote baby-friendly hospitals and encourage breastfeeding to be included in training for nurses.

41. The Committee notes the efforts undertaken by the State party in the areas which affect adolescent health. However, the Committee is concerned at the increasing rate of teenage pregnancies, especially among girls from a lower socio-economic or Maori background and at the high suicide rates of teenagers, particularly Maori teenagers.

42. The Committee recommends that the State party:

- (a) Strengthen its efforts to provide adolescents with appropriate reproductive health services, including reproductive health education, in school and to promote a healthy lifestyle for adolescents;
- (b) Continue to address the issue of suicidal behaviour among adolescents across the State party, including by studying the root causes of this problem in order to provide targeted preventive measures.

43. The Committee notes with appreciation the efforts undertaken by the State party to improve the standard of living. However, the Committee, while noting that the extent of child poverty has declined in recent years, is nonetheless concerned that still about 20 per cent of children in the State party are living under the poverty line.

44. The Committee recommends that the State party take all necessary measures to provide appropriate support to allow disadvantaged families and their children to move out of poverty in a sustained way while, at the same time, continuing to provide assistance to those who remain under the poverty line.

45. ... However, the Committee is concerned that several groups of children have problems being enrolled in school or continuing or re-entering education, either in regular schools or alternative educational facilities, and cannot fully enjoy their right to education, notably children with disabilities (children with special educational needs), children living in rural areas, Maori, Pacific and minority children, asylum-seeking children, teenage mothers, dropouts and non-attendees for different reasons.

46. The Committee recommends that the State party: ... (b) Continue and strengthen its efforts to reduce negative effects of the ethnic (cultural, regional) and social background of children on their enrolment and attendance in school;...

58. The Committee encourages the State party, in its efforts to improve the situation of children belonging to indigenous groups, to take into account the observations and recommendations made by the Special Rapporteur on the rights of indigenous peoples following his visit to New Zealand in July 2010 (A/HRC/15/37/Add.9), including with regard to the principles enshrined in the Treaty of Waitangi. The Committee also draws the attention of the State party to its general comment No. 11 (2009) on indigenous children and their rights under the Convention.

### **3. Cambodia, CRC/C/KHM/CO/2, 20 June 2011**

26. The Committee notes that in the context of economic growth and increased domestic and foreign investment, the State party has taken positive measures to regulate the impact of business on child rights in the formal economy such as the garment industry. The Committee is however concerned that the regulatory framework on the social and environmental responsibility of business corporations, both national and international, is not yet in place to prevent possible negative impact of their activities on children.

27. The Committee recommends that the State party continue to be vigilant about the compliance of its national law by local and foreign companies throughout its territory, and to establish and implement regulations to ensure that the business sector complies with international and domestic standards on corporate social and environmental responsibility, particularly with regard to child rights, in line with the United Nations Business and Human Rights Framework which was adopted unanimously in 2008 by the Human Rights Council and which outlines the duty of States to protect against human rights abuses by businesses; corporate responsibilities to respect human rights; and the need for more effective access to remedies when violations occur.

28. The Committee expresses concern about the increasing level of inequities and disparities in the enjoyment of rights among children living in rural areas. Children belonging to ethnic minorities from the North Eastern provinces and children from the South Western provinces are in a particularly disadvantaged situation as regards access to health, education and welfare. The Committee is also concerned about the persistence of gender-based stereotypes that confine women and girls to traditional roles. In this regard, the Committee is concerned that the *Chbap Srey* (didactic code) which legitimizes the perceived inferior role of girls and women in the society is still taught in the State party's schools.

29. The Committee urges the State party to carefully and regularly evaluate existing disparities in enjoyment by children of their rights and on the basis of that evaluation, undertake the necessary steps to combat discrimination against children belonging to marginalized and disadvantaged groups. The Committee also urges the State party to strengthen its efforts to specifically end discrimination against girls and to eliminate the prevailing gender-based attitudes, practices and codes that perpetuate an inferior role for women and girls in society.

61. The Committee, while noting the adoption of the Law on Expropriation in February 2010 and the Circular on Temporary Settlements in May 2010, expresses deep concern that thousands of families and children, especially urban poor families, small-scale farmers and indigenous communities continue to be deprived of their land as a result of land grabbing and forced evictions carried out by people in positions of power.

62. The Committee urges the State party to establish a national moratorium on evictions until the determination of the legality of land claims is made. The Committee also urges the State party to ensure that families and their children are not made homeless as a result of evictions for private and development activities. The Committee further recommends that the State party fully implement the recommendations of the Special Rapporteur on the situation of human rights in Cambodia in relation to access to land and livelihood (A/HRC/4/36 and A/HRC/7/42)

65. The Committee notes with satisfaction the remarkable progress made by the State party to increase primary and secondary school enrolment, to ensure equitable access to education throughout the country and to reduce the gender gap. The Committee also welcomes the State party's commitment to implement the Education for All Initiative. However, the Committee expresses concern that education is still not compulsory in the State party, that only 1,9% of the GDP is spent on education and that education expenditure has dropped since 2007. The Committee also expresses concern that: ... b) School enrollment indicators are particularly low in certain regions, such as in Ratanakiri and Mondulakiri provinces where there is a large number of minority population; ...

66. The Committee recommends that the State party: ... d) Make greater efforts to address drop-out and repetition rates, paying special attention to regions with high minority population such as in the provinces of Ratanakiri and Mondulakiri;

#### **4. Costa Rica, CRC/C/CRI/CO/4, 17 June 2011**

18. The Committee takes note of the current efforts by the State party to strengthen its Statistical Information System on the Rights of Children and Adolescents (SIEDNA), with a view to obtaining disaggregated statistical data on all areas covered by the Convention, and the establishment of an Observatory for analysis, in cooperation with civil society. However, it regrets the lack in the State party's report of disaggregated data on the implementation of children's rights with particular attention to children at risk, such as children with disabilities, indigenous children and children affected by migration.

19. The Committee encourages the State party, with the support of its partners, to strengthen the National System for the Comprehensive Protection of the rights of children and adolescents (SNPI) and related activities in order to track and assess progress achieved in the realization of child rights, in collaboration with the National Institute of Statistics and Census (INEC), and to design policies and programmes to implement the Convention. The State party should ensure that data is disaggregated by age, sex, geographical location, nationality, education and socio-economic background to facilitate analysis of the situation of all children.

20. The Committee remains concerned about the low level of awareness of the Convention among children and adolescents.

21. The Committee recommends that the State party, in close cooperation with civil society and public and private media, design and implement programmes specifically targeting children and adolescents, including children with disabilities, Afro-descendant children, and indigenous and migrant children, to disseminate knowledge about their rights under the Convention and relevant national legislation. It also recommends that the State party increase its efforts to raise awareness among the general public about the rights provided for in the Convention.

25. The Committee notes with interest the information provided by the delegation that the State party has enacted a law to promote corporate social responsibility in tourism (*Ley sobre Incentivo de la Responsabilidad Social Corporativa Turística*) in order to eradicate sexual exploitation of children in this sector. The Committee is concerned about the impact on child rights of other industries, such as mining and services, given the high foreign investment in these sectors, which is likely to affect the quality of the environment (e.g. quality of water and soil), property rights and family life.

26. The Committee urges the State party to extend to other sectors beyond tourism a regulatory framework to ensure that activities of the corporate sector, both national and foreign, do not impact negatively on children and to give due consideration to experiences from around the world in the application of, *inter alia*, the UN Business and Human Rights Framework to the operations of private and public corporations, particularly in relation to child rights.

29. The Committee remains concerned about continued discriminatory attitudes and prejudices against indigenous children, children of African descent, Nicaraguan and other migrant children. The Committee also remains concerned about growing disparities affecting indigenous children with regard to access to health care (child mortality being twice as high as the national average) and to education (illiteracy being six times higher than the national average), especially in rural and coastal areas. While welcoming the new Migration Act, the Committee regrets that the State party has decided not to ratify the International Convention on the Rights of All Migrant

30. The Committee recommends that the State party:

- a) Strengthen its efforts to eliminate societal discrimination and prejudice against indigenous, Afro-descendant, migrant children and children with disabilities through legislative measures, awareness raising programmes, the media and the educational system, as well as in-service training for public officials;
- b) Adopt a comprehensive action plan for indigenous children, including targeted programmes and investment in services and infrastructure in indigenous territories and rural and deprived urban areas in order to improve the socio-economic situation of indigenous and other minority children, taking into account the Committee's general comment No. 11 (2009) on indigenous children and their rights under the Convention; and
- c) Inform children who are affected by societal discrimination and prejudice about their rights under the Convention.

33. The Committee notes with concern that the views and special linguistic requirements of children and adolescents are not adequately taken into account in judicial and administrative decision-making processes, including at the municipal level and within the local Protection Boards established by the Children and Adolescents Code.

34. In light of its general comment No. 12 (2009) on the right of the child to be heard, the Committee reiterates its recommendation that the State party: ... c) Take into consideration the special requirements and linguistic needs of children with disabilities, indigenous and migrant children, and other children in situations of vulnerability.

35. While acknowledging the efforts undertaken by the State party to implement a comprehensive birth registration system, through visits by mobile units of the civil registry to indigenous and remote areas and through a system of assistant registrars at hospitals and health centres, the Committee notes with concern that indigenous children and children of seasonal workers from Nicaragua and from the Ngöbe-Bugle indigenous group from Panama are in some cases not registered, especially when they are born on farms or plantations or when their parents are unaware of the need to register them for obtaining personal documents.

36. The Committee recommends that the State party intensify its efforts to ensure that all indigenous and migrant children are registered at birth and provided with personal documents enabling them to access social services, by ensuring that pregnant indigenous as well as migrant women, including those who are undocumented or in an irregular situation, have adequate access to hospitals and health centres, and by educating parents on the need to register their children. The Committee also recommends that the State party consider concluding bilateral agreements with neighbouring States, with a view to granting dual citizenship to migrant children.

41. The Committee remains concerned about the potentially negative role of the media and mass communications in shaping public opinion and disseminating knowledge on child rights regarding such key aspects as public security and crime, sexual and reproductive rights, food, alcohol and other consumption patterns.

42. The Committee urges the State party to: ... b) Encourage mass media to give special consideration to the linguistic needs of children who belong to indigenous group.

57. While welcoming the continuing decrease in infant and child mortality as well as malnutrition rates, the Committee is concerned about the persistence of disparities resulting in high infant mortality among indigenous and other minority children due to, *inter alia*, preventable diseases. It notes with satisfaction the State party's plan to expand the network of Care and Integral Development (*Red de Cuido y Desarrollo Integral*) to all cantons. However, the Committee is concerned about the low coverage of primary health care services for young children and mothers in rural and coastal areas and about reports that medical attention is sometimes effectively denied to indigenous and migrant children due to excessive charges and lack of personal identity documents.

58. The Committee recommends that the State:

- a) Review its centralized system of health care and ensure affordable access to basic health care for all children, particularly indigenous and migrant children, including those without personal identity documents, while giving priority to regions and communities with the lowest coverage, with a view to redressing the existing sharp inequalities;...

67. The Committee welcomes that article 78 of the Political Constitution increases the budget for education to 8 percent of the State party's GDP and takes note of the efforts made by the State party to provide financial subsidies, transportation and school meals to promote school attendance by children from poor families, facilitate the transition from primary to secondary school, and reduce the drop out rate at the secondary level. However, it remains concerned about the inadequate quality

of education, the low school attendance and completion rates, in particular among indigenous and migrant children, especially at the secondary level, and the poor school infrastructure in rural areas.

68. The Committee recommends that the State party: ... d) Promote more effective educational programmes to address low school attendance by indigenous and migrant children; and

69. The Committee notes with concern that native language and intercultural education for indigenous children is scarcely offered in primary schools and only in the indigenous territories, that the number of lessons is insufficient, and that there are no education materials in indigenous languages.

70. The Committee recommends that the State party:

- a) Reinforce bilingual and intercultural education models for indigenous children by, among others, increasing the number of school teachers in the indigenous territories;
- b) Expand the coverage and number of lessons on indigenous language and culture, including at the pre-school and secondary levels;
- c) Develop specific training programmes and improve the conditions for teachers of such classes in and outside the sub-systems for indigenous education, in cooperation with public universities and in accordance with the specific cultural needs of indigenous children;
- d) Make available textbooks and child-friendly education materials in indigenous languages; and
- e) Include education on indigenous cultures in the national school curriculum, with a view to promoting respect for diversity and eliminating prejudice against indigenous children.

#### **5. Finland, CRC/C/FIN/CO/4, 20 June 2011**

63. The Committee is concerned that children who belong to the Roma minority and Sami indigenous groups do not receive health services, including mental health services, therapy or psychiatric care in Romani and Sami languages. It is also concerned at the insufficient level of educational services and recreational activities in Romani and Sami language and that such services and activities in Sami language are limited to their main areas of domicile.

64. The Committee recommends that the State party:

- (a) Monitor and evaluate the integration of Roma and Sami children's rights in national plans and programmes;
- (b) Ensure that Roma and Sami children have the right to culturally sensitive education and health care services in their own language also for those Sami children who live outside the Sami homeland;
- (c) Cooperate more closely with the Swedish and Norwegian governments, inter alia concerning school curricula, teacher training, producing teacher materials and providing media content for Sami children;
- (d) Take into account the Committee's general comment No. 11 (2009) on indigenous children and their rights under the Convention (CRC/C/GC/11); and
- (e) Ratify ILO Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries.

#### **6. Panama, CRC/C/PAN/CO/3-4, 21 December 2011**

7. While welcoming the State party's efforts to implement the concluding observations on its previous reports (CRC/C/15/Add.233), the Committee regrets that some of the recommendations contained therein have not been implemented or only partially implemented.

8. The Committee urges the State party to take all necessary measures to address those recommendations from the concluding observations on its second periodic report under the Convention that have not been implemented or sufficiently implemented, particularly those related to ... discrimination against children (especially Afro-Panamanian and indigenous children)....

27. The Committee notes with appreciation that environmental assessments prior to the approval of investment projects in territory inhabited by indigenous population are mandated by national law and that, in the specific case of the hydroelectric project Chan 75, the State party followed the recommendation by the Special Rapporteur on the rights of indigenous peoples to conduct such assessment. Nonetheless, the Committee expresses its concern that prior consultation, including with indigenous children, is not being followed in all cases. The Committee also notes with concern that social impact studies of investment projects likely to affect child rights, such as forced displacement and dispossession, contamination and damage to cultural assets and/or traditions, are neither contemplated by the law nor conducted.

28. The Committee recommends that the State party:

(a) Apply without exception the legal obligation to conduct environmental impact assessments of investment projects;

(b) Consider including also in the legal framework regulating business activities (Law 41, 2007) the obligation to conduct social impact assessments, particularly relating to the effects on children's rights;

(c) Ensure prior consultation to indigenous people, including children, on investments likely to affect their rights, especially in the cases in which relocation of indigenous peoples is considered necessary and other cultural assets and traditions may be affected;

(d) Establish and implement regulations to ensure that the business sector complies with international and domestic standards on corporate social responsibility, particularly with regard to child rights, in line with the United Nations Business and Human Rights Framework which was adopted unanimously in 2008 by the Human Rights Council and which outlines the duty of States to protect against human rights abuses by businesses; corporate responsibilities to respect human rights; and the need for more effective access to remedies when violations occur.

33. The Committee remains concerned at the continued disparities affecting Afro-Panamanian, indigenous children and children with disabilities with regard to access to health care, education and other basic services,, as is made evident by the higher rates of infant mortality, especially due to preventable diseases, malnutrition, maternal mortality and school dropout. It is also concerned at discrimination by police and other security forces against Afro-Panamanian children living in marginalized urban neighbourhoods, who are wrongly perceived as potential delinquents, as a result of such measures as curfew for children and campaigns through mass media linking adolescents to alleged increases in criminality.

34. The Committee recommends that the State party:

(a) Undertake efforts, in collaboration with civil society, to eliminate social discrimination and prejudice against Afro-Panamanian, indigenous children and children with disabilities through, among others, legislative measures, awareness-raising programmes through the mass media, the social networks and the educational system, as well as through in-service training for public officials, including the police and security officers; ...

(c) Adopt a comprehensive policy and plan of action to positively address the rights of indigenous children, including investment in services and infrastructure in indigenous territories and rural and deprived urban areas in order to improve the socio-economic situation of

indigenous people in general, taking into account the Committee's general comment No. 11 (2009) on indigenous children and their rights under the Convention.

39. The Committee welcomes the State party's efforts to improve birth registration through national birth registration campaigns, improvements to the birth registration system and legislative reforms in 2006 and 2007. It also appreciates the State party commitment to the universal periodic review in 2010 (A/HRC/16/6, paras. 68.28, 68.28 and 68.29), in this respect. The Committee however notes that in remote parts of the country, indigenous children, children born to refugee parents and children of migrants still are not registered, a concern which was highlighted by the Committee on the Elimination of Racial Discrimination in 2010 (CERD/C/PAN/CO/15-20, para. 12).

40. The Committee recommends that the State party continue to implement special measures, including the provision of information in indigenous languages, greater access to registry services and more sensitization and training on nationality law for registry officials, with the view to ensuring that children born in remote areas, including indigenous children, refugee children and children of migrants parents are duly registered at birth.

56. The Committee continues to be concerned at the high number of teenage pregnancies in the State party, particularly amongst indigenous and Afro-Panamanian girls. The Committee is also concerned at the lack of access to information by children and adolescents regarding sexual and reproductive health and the lack of formal sex and reproductive education in schools. Moreover, the Committee is seriously concerned at proposed changes to existing legislation aimed at separating pregnant girls into special education facilities, which is a serious violation of their rights.

57. The Committee recommends that the State party ensure that children have access to sex and reproductive health education at school and that all communication means are used for the purpose, including by reaching out to parents and the population at large. The Committee further recommends that the State party address the root causes of teenage pregnancies, particularly amongst indigenous and Afro-Panamanian adolescents, with a view to better understanding the issue and drawing appropriate policy measures. In addition, the Committee strongly recommends against separating pregnant girls into special schools. It recommends that the State party take into consideration the Committee's general comment No. 4 on adolescent health and Committee on the Elimination of Discrimination against Women recommendation of 2010 (CEDAW/CO/PAN/7, paras. 40 and 41).

58. The Committee welcomes some significant advances by the State party with respect to HIV/AIDS, such as increasing access to free testing for pregnant women and decreases in the infection rate among young pregnant mothers. However, the Committee is concerned that there are no programmes for children with HIV/AIDS, that indigenous boys and girls are at greater risk of infection for lack of targeted services and information, and that there is a lack of prevention strategies for adolescents.

59. The Committee recommends that the State undertake steps to reduce the greater risk of HIV/AIDS among indigenous children, including through the provision of culturally sensitive sex education and information on reproductive health, reduce the greater risk of HIV/AIDS among teenagers by providing reproductive health services especially aimed at them and by expanding their access to information on prevention of sexually transmitted diseases, and that it direct programmes at children with HIV/AIDS. The Committee recommends that the State party seek technical assistance from, inter alia, the United Nations Joint Programme on HIV/AIDS (UNAIDS), UNICEF and UNFPA.

62. The Committee welcomes the State party's efforts in reaching universal enrolment in primary education, the increased support for informal pre-school education in indigenous areas and the efforts to revise and modernize the national curricula. The Committee notes that an educational subsidy (*Bono escolar*) was made available to poorer families. The Committee also welcomes legislation introduced in 2010 recognizing the right of indigenous people to bilingual and intercultural education. The Committee remains concerned, however, that:

- (a) There are gaps in school retention for the seventh to ninth grades. Vocational education for the large proportion of children who drop out and are outside the education system is scarce or unavailable;
- (b) Preschool education coverage is still very limited and the quality of informal pre-schooling in rural and indigenous areas is low;
- (c) The education cash subsidy has been made conditional upon academic performance, which impacts negatively on poorer children who tend to perform less well than higher income children;
- (d) The review of school curricula did not include human rights and children's rights, nor the history and culture of the different ethnic groups in the State party; and,
- (e) Access to multicultural and bilingual education is persistently lacking.

63. The Committee recommends that the State party:

- (a) Address the issue of non-completion and children dropping out, and develop second-chance opportunities and vocational education for those children who are left outside the formal educational system, especially but not only indigenous and Afro-Panamanian children;
- (b) Improve access to preschool and basic compulsory education in rural areas, including those with concentration of indigenous children, refugees and migrants;
- (c) Modify the criteria for receiving the educational cash subsidy to avoid discrimination and include asylum-seekers and refugees as recipients;
- (d) Include human rights and child rights as well as the history and culture of the different ethnic groups in the territory in new revisions of the curricula; and,
- (e) Allocate sufficient human, technical and financial resources for the roll out of the intercultural and bilingual education programme in all indigenous territories as well as in other areas with indigenous populations.

80. The Committee reiterates its concern that children belonging to indigenous groups and Afro-Panamanian children from poorer urban areas suffer cumulative disadvantages and discrimination that impact negatively on the enjoyment of their rights and their development, and that they do not receive services adapted to their culture, history and languages. The Committee is deeply concerned that the situation is compounded if these children are girls and Afro-Panamanian adolescents. The Committee is further concerned that the Convention and its two Optional Protocols have yet to be translated into indigenous languages.

81. The Committee reiterates its recommendation that the State party take all necessary steps to address and prevent the marginalization and discrimination of indigenous and Afro-Panamanian girls and boys, that they receive health services and education adapted to their culture, history and languages, that they enjoy adequate standard of living. It also recommends that the Convention and its Optional Protocols be translated into the main indigenous languages. The Committee further recommends that the State party ratify ILO Convention 169 on indigenous and tribal peoples in independent countries.

## **7. Myanmar/Burma, CRC/C/MMR/CO/3-4, 14 March 2012**

21. While noting aspects of the State party's legislation regarding labour standards, the Committee notes the absence of a legislative framework regulating the prevention of, protection against and reparation of the adverse impacts of activities by private and State owned companies, mainly in the extractive and large-scale energy-related sectors. The Committee is especially concerned at the effects of child labour, particularly forced and hazardous labour, living conditions of children, environment degradation, health hazards and barriers to their freedom of movement.

22. The Committee urges the State party to:

- (a) Establish the necessary regulatory framework and policies for business and industry, in particular with regard to extractive industry (oil and gas) and large scale development projects such as dams and pipelines, to ensure that they respect and protect the rights of children; and
- (b) Comply with international and domestic standards on corporate social and environmental responsibility with a view to protecting local communities, particularly children, from any adverse effects resulting from business operations, in line with the Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework and the business and human rights framework that were adopted by the Human Rights Council in 2008 and 2011, respectively.

35. The Committee reiterates its concern (CRC/C/15/Add.237 para. 27) about the multiple forms of discrimination that persist in the State party, particularly those against girls and children in vulnerable and disadvantaged situations, such as children from ethnic and religious minority groups (including Rohingya children), children from remote and border areas, internally displaced children, children in street situations, children affected by HIV/AIDS, children with disabilities, orphans and children in situation of poverty.

36. The Committee urges the State party to:

- (a) Undertake the necessary legislative changes to ensure nondiscrimination on the basis of sex, ethnicity or religion and explicitly incorporate the principle of non-discrimination on any grounds in all newly developed legislation and policies;
- (b) Adopt and implement measures to prevent and eliminate discrimination against individual children and specific groups of disadvantaged children;
- (c) Carry out public awareness-raising campaigns on the detrimental impacts of discrimination; and
- (d) Include information in its next periodic report on measures and programmes relevant to the Convention on the Rights of the Child undertaken by the State party in the 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.

41. The Committee is concerned about:

- (a) The large number of people without citizenship and the lack of legislation granting nationality to children born in the territory of the State party or to nationals of the State party living abroad, who would otherwise be stateless; ...

45. The Committee is concerned that the right of the child to freedom of thought, conscience and religion, although provided by the Child Law, is not respected or protected in practice. The Committee is further concerned about reports that some children are placed in Buddhist monasteries and converted to Buddhism without their parents' knowledge or consent and that the Government

seeks to induce members of the Naga ethnic group, including children, in Sagaing Division to convert to Buddhism.

46. In the light of article 14 of the Convention, the Committee urges the State party to ensure full respect for the right to freedom of thought, conscience and religion for all children. The Committee recommends that the State party cease placing children in Buddhist monasteries and converting them to Buddhism without their parents' knowledge or consent, and inducing members of the Naga ethnic group, including children, to convert to Buddhism.

69. While noting the development of the Poverty Alleviation Plan for 2011–2015, the Committee is concerned about the persistently high rate of poverty among children and the lack of information received on the resources allocated to implement this plan. The Committee is further concerned about the significant income disparities between urban and rural areas, which affect the standard of living of children, as well as regional disparities in poverty which result, for example, in the Eastern Shan State having 20 per cent and the Chin State having 40 per cent, respectively, food poverty compared to the national average of 10 per cent. In addition, the Committee expresses concern about serious gaps in the supply of safe drinking water, especially in schools and rural areas, and inadequate sanitation facilities, which affect the health of and the ability to retain children in school.

70. The Committee recommends that the State party:

- (a) Ensure that adequate resources are allocated to the fight against poverty, especially child poverty, including by increasing resources to the most disadvantaged families and areas;
- (b) Take necessary measures to improve the standard of living for all children within its territory, with particular focus on remote and border areas, and address income disparities between urban and rural areas, which also affect children;
- (c) Study and address the root causes of child poverty; and
- (d) Develop and implement policies relating to safe drinking water and sanitation, especially in rural areas, and ensure that children in schools have equitable access.

77. The Committee is deeply concerned about children and their families obliged to flee conflict-affected areas and also expresses its concern about the negative impact on children of forced evictions of families from their homes for the purpose of extractive industry and large-scale development projects.

78. The Committee urges the State party to:

- (a) Acknowledge and address the issues of internally displaced persons, including children, due to conflict or forced evictions;
- (b) Prevent situations which force children and their families to be displaced;
- (c) Promptly put an end to forced evictions; and
- (d) Take all measures to guarantee the rights and well-being of internally displaced children, including by providing access to clean water, adequate sanitation, food and shelter to the internally displaced population, and paying due attention to their needs in terms of health and education.

96. The Committee reiterates its concern (CRC/C/15/Add.237, para. 27) that children belonging to ethnic, indigenous, religious and other minority groups, in particular Rohingya children, face multiple restrictions and forms of discrimination and continue to be denied access to basic rights, including the right to food, health care, education, survival and development, as well as the right to enjoy their culture and to be protected from discrimination.

97. The Committee recalls its previous concluding observations (CRC/C/15/Add.237) and urges the State party to gather additional information on all ethnic minorities and other marginalized groups and to elaborate policies and programmes to fully ensure the implementation of their rights without discrimination. The Committee recommends in particular that the State party take effective measures to improve access to education and primary health care for children in the northern Rakhine State. The Committee also recommends that the State party take into account the Committee's general comment No. 11 (2009) on indigenous children and their rights under the Convention.

#### **8. Thailand, CRC/C/THA/CO/3-4, 17 February 2012**

29. The Committee welcomes the State party's information that business and industry contribute resources and facilities to social welfare, including health care and education of children. The Committee is however concerned that the impact on children of business and fast growing heavy industries, manufacturing, textiles and export agriculture has not been fully assessed. The Committee is particularly concerned that, while tourism constitutes a large part of the country's economy, the State party has not yet adopted comprehensive measures to protect children from violations of their rights, such as in child sex tourism, child prostitution, child pornography and child labour, arising from tourist activities and facilities. The Committee also regrets the lack of legal institutional framework to regulate the activities of companies doing business in Thailand and of Thai companies operating abroad to ensure effective responses to issues of health and nutrition, economic and sexual exploitation, pollution and environmental degradation that can undermine the well-being of children.

30. In light of Human Rights Council resolutions 8/7 of 2008 adopting the report "Protect, Respect and Remedy" Framework and 17/4 of 16 June 2011 requesting the new Working Group to follow-up on this matter, both of which note that the rights of the child be included when exploring the relationship between business and human rights, the Committee recommends that the State party:

- (a) Provide a legislative framework, including Codes of Conduct, that require companies domiciled in Thailand, with particular attention to tourism industries, to adopt measures to prevent and mitigate adverse human rights impacts in their operations in the country and abroad;
- (b) Promote the inclusion of child rights indicators and parameters for reporting and provide specific assessments of impacts of business and industry on child rights;
- (c) Take measures to ensure that its companies respect child rights in its territory and when engaging in projects abroad and that appropriate remedies, including reparations are pursued in cases of violations;
- (d) Ensure that prior to the negotiation and conclusion of free trade agreements, human rights assessments, including child rights, are conducted and measures adopted to prevent violations.

33. The Committee notes the measures that are being taken to eliminate to some extent the disparities in access to education and health as well as special measures taken concerning children in the disadvantaged North-East and South of the country. Nevertheless, the Committee expresses concern that the efforts are insufficient to eradicate both direct and indirect discrimination against children, particularly with respect to the girl child, children with disabilities, children of indigenous, religious or ethnic minority communities, children of refugees and asylum-seekers, children of migrant workers, children in street situations, children living in rural areas, and children living in poverty. The Committee remains deeply concerned about regional disparities, especially in the North-East and South, regarding access to social, health and educational services for children.

34. The Committee reiterates its previous recommendations (CRC/C/THA/CO/2, paras 25-26) and urges the State party to take more effective measures to:

- (a) Ensure that all children within its jurisdiction enjoy all the rights enshrined in the Convention on the basis of non-discrimination by effectively implementing existing laws which guarantee that principle;
- (b) Prioritize and allocate adequate resources for social services and accelerate the provision of equal opportunities to health and education and other services for the most vulnerable groups of children as mentioned in paragraph 33;
- (c) Carry out comprehensive public education campaigns to prevent and combat all forms of discrimination;
- (d) Collect data that is appropriately disaggregated to enable effective monitoring of de facto discrimination and provide a basis for corrective action.

41. The Committee welcomes the Nationality Act of 2008 which provided for remedies for those whose nationality was revoked in 1972, including their children, and for naturalization for specific categories of persons including children in foster care and adopted children as well as children of illegal immigrants born in Thailand before 1992. While noting efforts of the State party to reach bilateral agreements with neighbouring countries, the Committee nevertheless remains concerned that a significant number of people including children, especially children of indigenous and minority groups, and children of migrant workers, refugees and asylum-seekers remain stateless or potentially stateless.

42. The Committee urges the State party to further review and enact legislation in order to ensure that all children who are at risk of becoming stateless, including children belonging to the disadvantaged groups mentioned in paragraph 41, are provided with access to Thai nationality. The Committee recommends that the State party consider ratifying the 1954 Convention relating to the Status of Stateless Persons and its 1967 Optional Protocol, and the 1961 Convention on the Reduction of Statelessness.

43. The Committee welcomes the Civil Registration Act of 2008 which provides late registration as well as numerous regulations, including on issuing registration cards to ethnic groups of highland people and abandoned infants. The Committee, however, is concerned that a considerable number of children, especially children living in poverty, children of indigenous groups and migrants remain unregistered. It also remains concerned that the State party maintains a penalty, however low it might be, for late registration of children.

44. The Committee recommends that the State party take measures to ensure birth registration for all children born on its territory especially those who are not registered due to the economic status of their parents, ethnicity and immigration status. It also recommends that the State party carry out public education programmes, including campaigns to provide birth registration to those children already born in the territory of the State party but remain unregistered, as well as remove any monetary penalties for late registrations and take alternative measures to ensure timely registration of new-born children.

66. The Committee is concerned that reportedly 10 per cent of families in urban areas live in slums and that income inequality is increasing and that a large proportion of families have problems accessing basic services such as nutrition, clothing, housing, water and sanitation. It also reiterates its previous concern that the wide disparities in income levels across regions, especially in the North and North East and the Southern regions remain a problem.

67. The Committee reiterates its previous recommendation that the State party continue to allocate resources for effective poverty reduction measures, particularly in the North, North-East and Southern regions. It further recommends that the State party:

- (a) Strengthen its efforts to enhance capacity to develop and monitor poverty reduction strategies at the local and community levels, ensuring, in particular, equitable access to basic services such as adequate nutrition, clothing, housing, water and sanitation as well as to social and health services, and education;
- (b) Adopt temporary special measures and affirmative action to raise the standard of living among its disadvantaged population including the provision of specific earmarked funds and concrete assistance to support children and families disproportionately affected by poverty;
- (c) Study and consider the feasibility of introducing a universal child allowance scheme to redress disparities and give each child an equal chance of a good start in life.

68. The Committee commends the State party for having already achieved the MDGs on education, adopting the 15-year free compulsory education for all programme, and initiating policies and measures to enhance early childhood development. However, it regrets that:

- (a) The number of 3-5 year-old children attending preschool education, especially children of non-Thai speaking or poor households, remains low and severe regional disparities persist with, for example, 78 per cent of young children in the North attending preschool compared with 54 per cent of young children in the South; ...
- (e) The use of ethnic and minority languages in the school system from early years is grossly inadequate;

69. In light its general comments Nos. 1 (2001) on the aims of education and 7 (2005) on implementing rights in early childhood, the Committee urges the State party to: ...

- (c) Encourage and create incentives for children of non- Thai speaking and poor households to attend early childhood development programmes, especially children in the North Eastern and Southern regions; ...
- (g) Implement the National Language Education Policy of 2010 to ensure effective bilingual education from the early years especially for non-Thai speaking children in accordance with article 30 of the Convention;
- (h) Adopt clear and concrete measures to greatly improve the quality of education and improve educational outcomes at all levels, including through the provision of teaching and learning materials and facilities, enhanced teacher training and supervision, increased recruitment of qualified teachers, in particular women and persons from minority and indigenous groups, enhanced capacity building at the Ministry of Education and improved systems of monitoring of the learning of children;...

82. The Committee is concerned that children belonging to indigenous, tribal and minority communities are often subjected to both stigmatization and discrimination due to their distinct living habits and language. The Committee is further concerned about widespread poverty among indigenous peoples and minorities and lack of demographic data on the hill-tribe population in the country.

83. The Committee recommends that the State party take necessary measures to:

- (a) Raise awareness of the Thai population on the culture of minority and indigenous people and foster tolerance of their living habits and lifestyle;
- (b) Provide more economic opportunities to minority and indigenous communities and ensure their access to basic social services;
- (c) Collect systematically disaggregated data on the hill-tribe population;

(d) Take into account the Committee's general comment No. 11 (2009) on indigenous children and their rights under the Convention.

**9. Australia, CRC/C/AUS/CO/4, 28 August 2012**

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

(e) The National Apology to the Stolen Generations regarding the Aboriginal and the Torres Strait Islander children, in 2008 and the National Apology by the Prime Minister to the Forgotten Australians and Former Child Migrants, in 2009;

(f) The National Integrated Strategy for Closing the Gap in Indigenous Disadvantage in 2008.

17. ... Furthermore, the Committee is concerned at the inadequacy of Aboriginal and Torres Strait Islander representation in the existing children's rights independent monitoring mechanisms and other related institutions.

18. ... Furthermore, the Committee recommends that the State party consider appointing a Deputy Commissioner for Aboriginal and Torres Strait Islander children's issues at national and/or state/territory level to ensure the effective monitoring of child rights in those communities.

19. Bearing in mind that the State party is one of the most affluent economies of the world and that it invests sizeable amounts of resources in child-related programmes, the Committee notes that the State party does not use a child-specific approach for budget planning and allocation in the national and state/territories level budgets, thus making it practically impossible to identify, monitor, report and evaluate the impact of investments in children and the overall application of the Convention in budgetary terms.

20. ... Furthermore, the Committee recommends that the State party define strategic budgetary lines for children in disadvantaged or vulnerable situations that may require affirmative social measures (for example, children of Aboriginal and/or Torres Strait Island descent and children with disabilities) and make sure that those budgetary lines are protected even in situations of economic crisis, natural disasters or other emergencies.

21. The Committee welcomes the ongoing work of the Australia Bureau of Statistics to improve its collection of data relevant to the implementation of the Convention, especially the Longitudinal Study of Australian Children and the Longitudinal Study of Indigenous Children which focus on the development of children and the context in which it occurs. ...

22. The Committee reiterates its previous recommendation (CRC/C/15/Add.268, para. 20) that the State party strengthen its existing mechanisms of data collection in order to ensure that data are collected on all areas of the Convention in a way that allows for disaggregation, inter alia by children in situations that require special protection. In that light, the Committee specifically recommends that the data cover all children below the age of 18 years and pay particular attention to ethnicity, sex, disability, socio-economic status and geographic location.

27. The Committee is concerned at reports on Australian mining companies' participation and complicity in serious violations of human rights in countries such as the Democratic Republic of Congo, the Philippines, Indonesia and Fiji, where children have been victims of evictions, land dispossession and killings. Furthermore, the Committee is concerned about reports of child labour and conditions of work of children that are in contravention of international standards in fishing industry enterprises operated by Australian enterprises in Thailand. Furthermore, while acknowledging the existence of a voluntary code of conduct on a sustainable environment by the

Australian Mining Council ("Enduring Values"), the Committee notes the inadequacy of this in preventing direct and/or indirect human rights violations by Australian mining enterprises.

28. In light of Human Rights Council resolutions 8/7 of 7 April 2008 adopting the report "Protect, Respect and Remedy" Framework and 17/4 of 16 June 2011, in which it is noted that the rights of the child should be included when exploring the relationship between business and human rights, the Committee recommends that the State party:

- (a) Examine and adapt its legislative framework (civil, criminal and administrative) to ensure the legal accountability of Australian companies and their subsidiaries regarding abuses to human rights, especially child rights, committed in the territory of the State party or overseas and establish monitoring mechanisms, investigation, and redress of such abuses, with a view to improving accountability, transparency and prevention of violations;
- (b) Take measures to strengthen cooperation with countries in which Australian companies or their subsidiaries operate to ensure respect for child rights, prevention and protection against abuses and accountability;
- (c) Establish that human rights impact assessment, including child rights impact assessments, are conducted prior to the conclusion of trade agreements with a view to ensuring that measures are taken to prevent child rights violations from occurring and establish the mechanisms for the Export Credit Agency of Australia to deal with the risk of abuses to human rights before it provides insurance or guarantees to facilitate investments abroad.

29. While welcoming the People of Australia – Australia's Multicultural Policy and the State party's National Anti-Racism Partnership and Strategy, the Committee notes with concern that racial discrimination in general remains a problem. It is particularly concerned at:

- (a) The serious and widespread discrimination faced by Aboriginal and Torres Strait Islander children, including in terms of provision of and accessibility to basic services and significant overrepresentation in the criminal justice system and in out-of-home care;
- (b) The absence of an independent evaluation of the effectiveness of programmes for the „Closing the Gap“ targets in the specific context of child protection, development and well-being;
- (c) The punitive nature of the State party's Northern Territory Emergency Response Bill (2007), including the student enrolment and attendance measure which allows for punitive reductions to welfare payments for parents whose children are truant;
- (d) Inadequate consultation and participation of Aboriginal and Torres Strait Islander persons in the policy formulation, decision-making and implementation processes of programmes affecting them; ...

30. In accordance with article 2 of the Convention, the Committee reiterates its previous recommendation that the State party regularly evaluate disparities in the enjoyment by children of their rights and on the basis of that evaluation undertake the necessary steps to prevent and combat discriminatory disparities. In doing so, the Committee recommends that the State party strengthen its awareness-raising and other preventative activities against discrimination, including through integrating such activities within school curricula, and if necessary taking affirmative action for the benefit of children in vulnerable situations, including Aboriginal and Torres Strait Islander children and children from non-Anglo-Australian background. Furthermore, the Committee calls upon the State party to:

- (a) Take urgent measures to address disparities in access to services by Aboriginal and Torres Strait Islander children and their families;

- (b) Consider establishing and resourcing an Aboriginal and Torres Strait Islander Steering Group to report on the development, planning, implementation and review of each „Closing the Gap“ target in the specific context of child development, well-being and protection;
- (c) Thoroughly evaluate the Northern Territory Emergency Response Bill (NTERB) (2007), particularly its student enrolment and attendance measure, with a view to ensuring that the NTERB measures are proportionate, and non-discriminatory in form as well as effect;
- (d) Ensure the effective and meaningful participation of Aboriginal and Torres Strait Islander persons in the policy formulation, decision-making and implementation processes of programmes affecting them; ...

33. The Committee welcomes the State party's establishment of the Australian Youth Forum as a communication channel between the Government, the youth sector and young people. However, the Committee remains concerned that there continues to be inadequate fora for taking into account the views of children who are below the age of 15 and/or of Aboriginal or Torres Strait Islander descent.

...

34. The Committee draws the State party's attention to its general comment No. 12 (2009) on the right of the child to be heard and recommends that it continue to ensure the implementation of the right of the child to be heard in accordance with article 12 of the Convention. In doing so, it recommends that the State party promote the meaningful and empowered participation of all children, at all levels of government and within the family, community, and schools, including within student council bodies – with particular attention to children in vulnerable situations. ...

35. The Committee is concerned about the difficulties faced by Aboriginal persons in relation to birth registration. In particular, the Committee is concerned that obstacles to birth registration arising from poor literacy levels, the lack of understanding of the requirements and advantages of a birth registration as well as inadequacies in the support provided by authorities have not been resolved. The Committee further notes with concern that a birth certificate is subject to administrative costs, posing an additional hindrance for persons in economically disadvantaged situations.

36. The Committee urges the State party to review its birth registration process in detail to ensure that all children born in Australia are registered at birth, and that no child is disadvantaged due to procedural barriers to registration, including by raising awareness among the Aboriginal population on the importance of birth registration and providing special support to facilitate birth registration for illiterate persons. It further urges the State party to issue birth certificates upon the birth of a child and for free.

37. The Committee is concerned at the large numbers of Aboriginal and Torres Strait Islander children being separated from their homes and communities and placed into care that, inter alia, does not adequately facilitate the preservation of their cultural and linguistic identity. The Committee further notes that a child's citizenship can be revoked where a parent renounces or loses citizenship in the State party.

38. The Committee recommends that the State party review its progress in the implementation of the recommendations of its “Bringing Them Home Report”, including as recommended by the United Nations Human Rights Committee and the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people to ensure full respect for the rights of Aboriginal and Torres Strait Islander children to their identity, name, culture, language and family relationships. With reference to article 8 of the Convention, the Committee further recommends that the State party

undertake measures to ensure that no child is deprived of citizenship on any ground regardless of the status of his/her parents.

46. The Committee is gravely concerned at the high levels of violence against women and children prevailing in the country and notes that there is an inherent risk that the coexistence of domestic violence, lawful corporal punishment, bullying, and other forms of violence in the society are interlinked, conducing to an escalation and exacerbation of the situation. The Committee is particularly concerned that:

(a) Women and children of Aboriginal origin are particularly affected; ...

47. Emphasising the State party's obligations under articles 19 and 37(a) of the Convention and the Committee's general comment No. 13 (2011) on the right of the child to freedom from all forms of violence, the Committee urges the State party to develop federal legislation as a general framework to reduce violence and promote the enactment of similar and complementary legislation at state and territory level. It also recommends that the State party adopt a specific plan of action to make operational the provisions under the National Plan to Reduce Violence against Women and Their Children (2010-2022), including such measures as: (a) Ensuring that the factors contributing to the high levels of violence among Aboriginal women and children are well understood and addressed in national and state/territory plans; ...

51. The Committee is deeply concerned at the significant increase, of approximately 51 per cent between 2005 and 2010, in the number of children placed in out-of-home care and the absence of national data documenting the criteria and decision leading to the placement of a child in care. The Committee is also seriously concerned that there are widespread reports of inadequacies and abuse occurring in the State party's system of out-of-home care, including: ... (g) Aboriginal and Torres Strait Islander children who are often placed outside their communities, and in that context, the need for more Aboriginal care providers.

52. The Committee urges the State party to take all necessary efforts to examine the root causes of the extent of child abuse and neglect as well as to provide general data on the reasons that children are being placed in care with a view to addressing them in order to reduce the number of such children. It further reiterates its previous recommendations to the State party that it take measures to strengthen the current programmes of family support, inter alia, by targeting the most vulnerable families, in order to reduce the number of children placed in out-of-home care and, preferring family-based care if needed. Furthermore, the Committee calls upon the State party to provide all the necessary human, technical and financial resources required for improving the situation of children in alternative care placements and to: ... (g) Observe the Committee's previous recommendations to fully implement the Indigenous Child Placement Principle and intensify its cooperation with indigenous community leaders and communities to find suitable solutions for indigenous children in need of alternative care within indigenous families.

59. The Committee appreciates generally the satisfactory level of children's health in the State party. However, it is concerned about health disparities of children living in rural and remote areas, children in out-of-home care as well as children with disabilities and particularly about the gap in the health status between Aboriginal and non-Aboriginal children.

60. The Committee reiterates its previous recommendation (CRC/C/15/Add.268, para. 48) that the State party undertake all necessary measures to ensure that all children enjoy the same access to and quality of health services with special attention to children in vulnerable situations, especially

indigenous children and children living in remote areas. It further urges the State party to address socio-economic disadvantages, which constitute important root causes for the existing health deficits.

64. ... Furthermore, the Committee is concerned about the high rate of suicidal deaths among young people throughout the State party, particularly among the Aboriginal community. ...

66. The Committee is deeply concerned at the marked increases in the rates of Sexually Transmissible Infections (STIs) among young people in the State party and the reported low proportion of youth practicing safe sex and the low level of awareness on STIs other than HIV/AIDS. The Committee further notes with concern that Aboriginal peoples and people in the most socioeconomically disadvantaged areas have much higher rates of STI infection.

67. Highlighting the Committee's general comment No. 4 (2003) on adolescent health and development in the context of the Convention on the Rights of the Child, the Committee recommends that the State party intensify efforts to provide adolescents with education on sex and reproductive health, particularly with regard to other STIs in addition to HIV, and improve the accessibility of contraception, counselling, and confidential health services, particularly among Aboriginal and socioeconomically disadvantaged communities.

68. The Committee welcomes the recent approval of the Paid Parental Leave scheme for 18 weeks for eligible parents, including women in casual, part-time or seasonal employment. However, it notes with concern that the scheme is fixed at the national minimum wage, which may not be enough income for many households and is shorter than the required six months to exclusively breastfeed children. Given that the percentage of persons living under the poverty line in the State party is at approximately 12 per cent, especially among the aboriginal population, migrants and asylum seekers, and people with disabilities, the Committee notes with appreciation that there is a range of measures including various types of subsidies, tax reductions and returns and other support for lower income families. Nevertheless, it remains concerned that these are not equitably available to all families in need nor provided without distinction of place of residence or other discriminating factors.

69. The Committee recommends that the Paid Parental Leave scheme is monitored closely to ensure that parents, especially mothers, are still able to earn an adequate living, while caring and breastfeeding their new born and that, after the 18-weeks payment period, appropriate facilities are made available to maintain high quality care of young children and continue breastfeeding until at least six months. The Committee also concurs with the Committee on Economic Social and Cultural Rights recommendation (E/C.12/AUS/CO/4, para. 24) that the State party develop a holistic anti-poverty strategy that allows a better understanding of its determinants, situate it socially and geographically and adopt specific measures according to gender, age, origin, place of residence, level of education and other such factors.

70. While welcoming additional funding of housing reforms for Aboriginal Australians, as well as the Closing the Gap strategy aiming at the improvement of socio-economic conditions of Aboriginal Australians, the Committee is deeply concerned at the extent of child and youth homelessness in the State party, with State-provided social accommodation facing severe capacity constraints. Furthermore, the Committee is concerned that the State party has been unable to provide culturally appropriate housing services to reflect the specific needs of different groups.

71. The Committee recommends that the State party expeditiously undertake a review of its efforts to address the issue of homelessness of children and young people, with a view to using the findings of the review to guide the improvement and further development of a framework for addressing this

issue with due regard for the specific experiences and needs of children and young people. In doing so, it is further recommended that the State party develop specific strategies for Aboriginal children, children from newly arrived communities, children leaving care, and children in regional and remote communities. The Committee further recommends that the State party improve its social services, including education, income support, the health system, the disability service system and employment systems and the coordination amongst these, to strengthen their responsiveness to the needs of children and youth who are at risk of homelessness.

72. While noting as positive that the State party has legislation requiring courts to take into account “the probable effect” of a sentence on a convicted person’s family, it notes with concern that Aboriginal Australians are severely overrepresented in prison, with a particularly serious overrepresentation of Aboriginal women often resulting in their children being subject to ad-hoc and insecure placement in alternative care that is not culturally appropriate and with low rates of family reunification.

73. With reference to the Committee’s recommendations during its day of general discussion in 2011 on the “Rights of Children of Incarcerated Parents, the Committee recommends that the State party:

- (a) Review all judicial and administrative arrangements to prevent imprisonment by providing support services to families at risk and use diversion and other alternative measures to avoid imprisonment and separation of children from their family members;
- (b) Resource and support the implementation of targeted programmes which facilitate tackling the root causes of the offences committed and providing preventive and early intervention services to families at risk;
- (c) Where it is in the child’s best interests, resource and support the maintenance of the relationship between parent(s) and child throughout the duration of the latter’s incarceration;
- (d) Respect and fulfil the child’s right to information regardless of whether the child was present at the time of the arrest, and fulfil the duty to ensure that a request for information or the sharing of information from the child is addressed in a child-friendly manner while avoiding adverse consequences for the person(s) concerned while taking into account the best interests of the child.

74. The Committee welcomes the State party’s National Indigenous Education Action Plan 2012 – 2014 and the National Partnership Agreement on Indigenous Early Childhood Development. However, the Committee reiterates its previous concerns (CRC/C/15/Add.268, para. 59) about the serious difficulties accessing education faced by indigenous children and children living in remote areas, with attendance, literacy, numeracy and other attainment levels for Aboriginal students continuing to be significantly lower than for non-Aboriginal students. The Committee is further concerned that this is exacerbated by the education system not having adequate measures for catering to the needs of non-English-speaking children resulting in their being more vulnerable to non-enrolment, poor attendance, repetition and are less likely to complete secondary level education.

75. The Committee recommends that within the “Closing the Gap” policy framework, the State party provide effective coordination and oversight of its state and territory governments to ensure that individual Aboriginal education strategies are based on previous policy success and undertaken with a long-term approach of collaboration with Aboriginal communities, the education sector, community organizations and professional groups such as social workers, researchers, health workers and police. It further recommends that the State party ensure adequate human, technical and financial resources for the protection and promotion of bilingual models of education, both at the national and state level.

#### **10. Vietnam, CRC/C/VNM/CO/3-4, 15 June 2012**

21. The Committee expresses its concern at the limited knowledge of the Convention and the rights-based approach enshrined therein, among children, the public at large, and professionals working with and for children. The Committee notes with appreciation the information provided by the State party during the dialogue that the Convention has been translated into eight ethnic minority languages, however remains concerned that the Convention has not been translated into the remaining written minority languages and not sufficiently disseminated within minority groups which disproportionately hampers the right of children belonging to ethnic minorities and indigenous groups to be aware of their basic rights and fundamental freedoms.

22. The Committee urges the State party to intensify its efforts to incorporate child rights issues into all curricula of different levels of education and strengthen awareness-raising programs, including campaigns on the Convention, among children, families and groups of professionals working with and for children. In this respect, the Committee encourages the State party to consider developing a national plan of action for human rights education, as recommended in the framework of the World Programme for Human Rights Education. The Committee also urges the State party to ensure appropriate distribution of the Convention to minority populations including their children, in their own languages, and to take effective measures to ensure actual dissemination.

29. The Committee is aware of the efforts invested during the review period by the State party to eliminate discrimination against various vulnerable groups of children. This includes the adoption of special measures to improve education and health services delivery to children belonging to ethnic minorities, children with disabilities and migrant children. However, the Committee is seriously concerned at laws and practices that continue to discriminate against children and the persistence of both direct and indirect discrimination against children in vulnerable situations in the State party. In particular, the Committee is concerned at the following: ...

(b) Persistent disparities in service delivery for health, education and social protection between children who belong to the Kinh population and children who belong to ethnic minority populations. This is coupled with negative societal views against ethnic minorities; ...

(d) Societal discrimination against girls who consequently drop out from school and engage in early marriage, especially in the mountainous areas, and such discrimination also resulting in the practice of aborting female foetuses.

30. In the light of article 2 of the Convention, the Committee urges the State party to ensure that all children in the State party effectively enjoy equal rights under the Convention without discrimination on any ground, and to this end: ...

(b) Effectively adopt and implement a comprehensive and holistic strategy on the prevention of ethnic discrimination and intolerance that ensures that ethnic minorities are not penalized for their distinctive characteristics, taking into full account all the relevant provisions of the Durban Declaration and Programme of Action,; in doing so, ensure equal access to social services to all groups of children, with a particular focus on children belonging to ethnic minorities and indigenous groups; ...

(d) Launch public awareness raising programs including campaigns with a view to eliminating all forms of discrimination against girls; focusing on school drop-out girls' engagement in early marriage especially in mountainous areas, and on the practice of aborting female foetuses, and ensure gender mainstreaming in all anti-discrimination policies and programs; and

(e) Establish a specific monitoring and evaluation system to closely track progress and results of these policies and programs, and inform the Committee in its next periodic report on the progress achieved.

37. The Committee is aware of the significant increase of birth registration rates in recent years due to multiple legislative and administrative measures adopted by the State party. These include the legal recognition of the right to birth registration in the 2004 Law on Protection, Care and Education of Children, as well as the abolishment of the birth registration fee as of 2007. However, the Committee expresses its concern at the persisting geographical and ethnic disparities in birth registration rates whereby the lowest rate remains in the two poorest regions, the North West and Central Highlands. The Committee is further concerned that parents, particularly in remote areas, are not always aware of birth registration requirements and of the importance attached to birth registration.

38. The Committee, recalling its previous recommendation (CRC/C/15/Add.200, 2003 para. 32), recommends that the State party continue and strengthen its efforts to secure the registration at birth of all children, giving particular attention to children living in rural and mountainous areas, and undertake awareness-raising campaigns on the right of all children to be registered at birth, regardless of social and ethnic background and the resident status of parents.

39. The Committee is concerned about the limited possibilities children of ethnic and indigenous populations enjoy in preserving and exercising their distinct identities.

40. In the light of article 8 of the Convention, the Committee urges the State party to ensure full respect for the preservation of identity for all children, and to take effective measures so as to eliminate all efforts to assimilate ethnic minority populations with the Kinh majority. To this end, the Committee urges the State party to adopt legislative and administrative measures to account for the rights, such as name, culture and language, of children belonging to minority and indigenous populations.

64. While welcoming the significant efforts made by the State party to reduce poverty which culminated in decreasing the rate of poor households by 2 per cent per year, and while noting that it has moved from the group of poorest countries to the group of low, middle-income countries in 2010, the Committee is deeply concerned at the high number of children who still live in poverty in the State party and at the disproportional concentration of child poverty within certain ethnic minorities and migrant populations. In addition, while noting the underway National Target Programme on clean water and rural sanitation, the Committee expresses its concern about serious gaps in the supply of safe drinking water, especially in rural areas and among ethnic minority populations, and about the inadequate sanitation facilities in the home and at schools, which affect the health of the child and ability to retain children in schools.

65. The Committee recommends that the State party

(a) Increase and sustain the social assistance cash transfer programme (Decree 67/Decree 13) for low-income families with children, and ensure that such support is extended to all poor or near poor families of ethnic minority origin, families of informal workers, and families of migrants;

(b) Strengthen its efforts, also through the effective implementation of the National Program on Poverty Reduction, in combating poverty among marginalized groups and in particular ethnic minority and migrant groups, while focusing on the needs and rights issues of children. In this respect the State party should take measures to promote equal opportunities for all persons including children in particular and stimulate economic growth and development for the ethnic minority groups and the indigenous communities, especially with regard to employment, education and healthcare with a focus on services for children;

(c) Ensure the active involvement of targeted beneficiaries through adequate consultation and participation in the decisions relating to their rights and interests; and

(d) Develop and implement well financed policies and programs relating to safe drinking water and sanitation, especially in rural areas, including the National Target Program on clean water and rural sanitation, , and ensure that children in schools have equitable access to sanitation facilities, in line with the Committee's previous recommendation (CRC/C/15/Add.200, 2003 para 42)

66. The Committee welcomes the adoption of the Education Development Strategic Plan 2001-2010 and the National Education for All Action Plan 2003-2015. While appreciating efforts to implement its previous recommendations (CRC/C/15/Add.200, 2003, para. 48), inter alia, the increasing budget allocations; the increasing rates of primary and secondary schools enrolment; and the development of financial education incentives to marginalized groups, and while appreciating the joint efforts of the State party together with UNICEF to provide for bilingual teaching for children belonging to ethnic minorities, the Committee is concerned at the following:

- (a) Scarcity of State-run facilities and programs for early childhood development;
- (b) Despite Constitutional provision on free-of-charge primary education, education related fees are in fact being imposed affecting the poorest, and mostly children of ethnic minorities and migrant children;
- (c) Continuing striking disparities in access to school between children of ethnic minorities and children of the Kinh population;
- (d) Continuing high rates of drop out at primary and secondary school levels and in particular among children of ethnic minorities, mainly due to lack of access; poverty reasons; and linguistic barriers;
- (e) Limited access to mother tongue based education for ethnic minorities and indigenous groups; insufficient number of ethnic minority and indigenous teachers and lack of appropriate training for these teachers to teach in bilingual education, as well as low quality of text books for children belonging to ethnic minorities or indigenous groups which impedes the right of children belonging to such groups to learn adequately their distinctive language and preserve it;
- (f) Lack of information relating to the monitoring of the children in ethnic minority boarding schools; and
- (g) Low quality of education and inappropriate teaching methods that do not allow children's participation, as well as low teacher capacity, and lack of information on whether human rights education, in particular children's rights, is included in the school curriculum.

67. The Committee recommends that the State party take into account its general comment No. 1 on the aims of education (CRC/GC/2001/1), and:

- (a) Develop well financed early childhood development programs, using a holistic approach to cover all needs of children under the age of 5 years; and expeditiously adopt and implement the program on Universalization of Kindergarten education for children below 5 years for 2010-2015;
- (b) Ensure that education is de facto free of charge for all, and pay particular attention to the most vulnerable groups of children, including children of ethnic minority groups and migrant children. In doing so, inter alia, remove all indirect expenses and introduce educational support mechanisms for children from economically disadvantaged families;
- (c) In line with its previous recommendation (CRC/C/15/Add.200, 2003 para. 48(a)), take all appropriate measures to increase access to schools, in particular for girls and in rural areas, with a view to providing equal access to education to all groups of children, and ensure the right to quality education for all children;
- (d) Undertake effective affirmative actions, such as second chance educational programs, targeting children belonging to ethnic minorities and children living in rural areas, in order to close ethnic and geographical disparities in school drop-out rates;

(e) Embark on an adequately resourced policy to support bilingual education for ethnic minority groups, providing that minority language is the medium of instruction at early school level and aiming at turning ethnic minority children proficient in both languages, so as to enable them to fully take part in the wider society; intensify the provision of training and instructions given to teachers who speak ethnic minority languages; and well finance the issuance of quality school text books for children who belong to ethnic minorities by inviting the local teachers to participate in writing the content of text books; ...

74. The Committee urges the State party to take all effective measures to close disparities in the enjoyment of rights between children belonging to minority groups and children belonging to the majority population in all areas covered under the Convention, and to pay particular attention to standards of living, health and education as recommended in previous paragraphs. The Committee further urges the State party to intensify its efforts to comply with the recommendations set forth in the report of the United Nations Independent Expert on minority issues (A/HRC/16/45/Add.2), as well as with the report of the United Nations Independent Expert on the question of human rights and extreme poverty (A/HRC/17/34/Add.1), in particular with minority-related recommendations therein, and to report on progress achieved in that respect in its next periodic report to the Committee.

#### **11. Algeria, CRC/C/DZA/CO/3-4, 18 July 2012**

39. ... The Committee is further concerned that in some cities, Berber families are denied their right to register their children with an Amazigh surname.

40. ... The Committee therefore urges the State party: (c) To ensure that Amazigh families can freely chose the surname of their children without interference from civil registration officers; ...

63. The Committee notes as positive the significant increase in the primary education enrolment rate (98 per cent in 2007). The Committee also welcomes Education Act No. 08-04 of 23 January 2008 which provides, inter alia, that education is compulsory for all girls and boys between the age of 6 and 16 years, the significant efforts to develop early childhood programmes, the strategy launched in 2009 to eliminate illiteracy by 2015 and the significant progress made to realize girls' right to education. The Committee is however concerned that: ... (g) Teaching of written or spoken Berber languages in the State party's schools remains unavailable in most of the State party's schools despite the guarantee contained in the 2008 Education Act.

64. The Committee recommends that the State party strengthen its efforts to eliminate illiteracy, to promote girl's education and to develop pre-school education. The Committee also urges the State party: ... (f) To ensure that Berber languages are effectively taught in the State party's schools as guaranteed by the Education Act (Act No. 08-04); ....

#### **12. Canada, CRC/C/CAN/CO/3-4, 5 October 2012**

16. Bearing in mind that the State party is one of the most affluent economies of the world and that it invests sizeable amounts of resources in child-related programmes, the Committee notes that the State party does not use a child-specific approach for budget planning and allocation in the national and provinces/territories level budgets, thus making it practically impossible to identify, monitor, report and evaluate the impact of investments in children and the overall application of the Convention in budgetary terms. Furthermore, the Committee also notes that while the State party report contained information about various programs and their overall budget the Committee regrets that the report lacked information on the impact of such investments.

17. In light of the Committee's Day of General Discussion in 2007 on "Resources for the Rights of the Child - Responsibility of States" and with emphasis on articles 2, 3, 4 and 6 of the Convention, the Committee recommends that the State party establish a budgeting process which adequately takes into account children's needs at the national, provincial and territorial levels, with clear allocations to children in the relevant sectors and agencies, specific indicators and a tracking system. In addition, the Committee recommends that the State party establish mechanisms to monitor and evaluate the efficacy, adequacy and equitability of the distribution of resources allocated to the implementation of the Convention. Furthermore, the Committee recommends that the State party define strategic budgetary lines for children in disadvantaged or vulnerable situations that may require affirmative social measures (for example, children of Aboriginal, African Canadian, or other minorities and children with disabilities) and make sure that those budgetary lines are protected even in situations of economic crisis, natural disasters or other emergencies.

28. The Committee joins the concern expressed by the Committee on the Elimination of Racial Discrimination that the State has not yet adopted measures with regard to transnational corporations registered in Canada whose activities negatively impact the rights of indigenous peoples in territories outside Canada, (CERD/C/CAN/CO/19-20, para. 14, 2012), in particular gas, oil, and mining companies. The Committee is particularly concerned that the State party lacks a regulatory framework to hold all companies and corporations from the State party accountable for human rights and environmental abuses committed abroad.

29. 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 child rights, and in light of Human Rights Council resolutions 8/7 of 18 June 2008 (para. 4(d)) and resolution 17/4 of 16 June 2011 (para. 6(f)). In particular, it recommends that the State party ensure the:

- (a) Establishment of a clear regulatory framework for, among others, the gas, mining, and oil companies operating in territories outside Canada ensure that their activities do not impact on human rights or endanger environment and other standards, especially those related to children's rights;
- (b) The monitoring of implementation by companies at home and abroad of international and national environmental and health and human rights standards and that appropriate sanctions and remedies are provided when violations occur with a particular focus on the impact on children;
- (c) Assessments, consultations with and disclosure to the public by companies on plans to address environmental and health pollution and the human rights impact of their activities; and
- (d) In doing so, take into account the UN Business and Human Rights Framework adopted unanimously in 2008 by the Human Rights Council.

32. While welcoming the State party's efforts to address discrimination and promote intercultural understanding, such as the Stop Racism national video contest, the Committee is nevertheless concerned at the continued prevalence of discrimination on the basis of ethnicity, gender, socio-economic background, national origin and other grounds. In particular, the Committee is concerned at:

- (a) The significant overrepresentation of Aboriginal and African-Canadian children in the criminal justice system and out-of-home care; ...
- (d) The lack of action following the Auditor General's finding that less financial resources are provided for child welfare services to Aboriginal children than to non Aboriginal children....

33. The Committee recommends that the State party include information in its next periodic report on measures and programs relevant to the Convention on the Rights of the Child undertaken by the State party in follow-up to the Declaration and Program 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. The Committee also recommends that the State party:

- (a) Take urgent measures to address the overrepresentation of Aboriginal and African-Canadian children in the criminal justice system and out-of-home care; to combatting violence, poverty, and redressing other vulnerabilities; ...
- (d) Take immediate steps to ensure that in law and practice, Aboriginal children have full access to all government services and receive resources without discrimination; and
- (e) Undertake a detailed assessment of the direct or indirect impact of the reduction of social transfer schemes and other social/tax benefit schemes on the standard of living of people depending on social welfare, including the reduction of social welfare benefits linked to the National Child Benefit Scheme, with particular attention to women, children, older persons, persons with disabilities, Aboriginal people, African Canadians and members of other minorities.

42. The Committee is concerned that vulnerable children, including Aboriginal and African Canadian children, who are greatly over-represented in the child welfare system often lose their connections to their families, community, and culture due to lack of education on their culture and heritage. The Committee is also concerned that under federal legislation, Aboriginal men are legally entitled to pass their Aboriginal status to two generations while Aboriginal women do not have the right to pass their Aboriginal status to their grandchildren.

43. The Committee urges the State party to ensure full respect for the preservation of identity for all children, and to take effective measures so as to ensure that Aboriginal children in the child welfare system are able to preserve their identity. To this end, the Committee urges the State party to adopt legislative and administrative measures to account for the rights, such as name, culture and language, of children belonging to minority and indigenous populations and ensure that the large number of children in the child welfare system receive an education on their cultural background and do not lose their identity. The Committee also recommends that the State party revise its legislation to ensure that women and men are equally legally entitled to pass their Aboriginal status to their grandchildren.

46. While the Committee notes initiatives such as the Family Violence Prevention Program, the Committee is concerned about the high levels of violence and maltreatment against children evidenced by the Canadian Incidence Study of Reported Child Abuse and Neglect 2008. The Committee is especially concerned about:

- (a) The lack of a national comprehensive strategy to prevent violence against all children;
- (b) That women and girls in vulnerable situations are particularly affected, including Aboriginal, African Canadian, and those with disabilities;
- (c) The low number of interventions in cases of family violence, including restraining orders; and
- (d) The lack of counselling for child victims and perpetrators and inadequate programs for the reintegration of child victims of domestic violence.

47. The Committee recommends that the State party take into account the Committee's General Comment No. 13 (CRC/C/GC/13, 2011) and urges the State party to:

- (a) Develop and implement a national strategy for the prevention of all forms of violence against all children, and allocate the necessary resources to this strategy and ensure that there is a monitoring mechanism;
- (b) Ensure that the factors contributing to the high levels of violence among Aboriginal women and girls are well understood and addressed in national and province/territory plans;
- (c) Ensure that all child victims of violence have immediate means of redress and protection, including protection or restraining orders; and
- (d) Establish mechanisms for ensuring effective follow-up support for all child victims of domestic violence upon their family reintegration.

48. The Committee notes with appreciation the launching of the National Strategy for the Protection of Children from Sexual Exploitation on the Internet in 2004 and the significant amount of resources allocated to the implementation of this program by the State party. The Committee further notes as positive that the State party has demonstrated considerable political will to coordinate law enforcement agencies to combat sexual exploitation of children on the internet. Nevertheless, the Committee is concerned that the State party has not taken sufficient action to address other forms of sexual exploitation, such as child prostitution and child sexual abuse. The Committee is also concerned about the lack of attention to prevention of child sexual exploitation and the low number of investigations and prosecutions for sexual exploitation of children as well as inadequate sentencing for those convicted. In particular, the Committee is gravely concerned about cases of Aboriginal girls who were victims of child prostitution and have gone missing or were murdered and have not been fully investigated with the perpetrators going unpunished.

49. The Committee urges the State party to:

- (a) Expand existing government strategies and programs to include all forms of sexual exploitation;
- (b) Establish a plan of action to coordinate and strengthen law enforcement investigation practices on cases of child prostitution and to vigorously ensure that all cases of missing girls are investigated and prosecuted to the full extent of the law;
- (c) Impose sentencing requirements for those convicted of crimes under the Optional Protocol to ensure that the punishment is commensurate with the crime; and
- (d) Establish programs for those convicted of sexual exploitation abuse, including rehabilitation programs and federal monitoring systems to track former perpetrators.

53. The Committee welcomes the State party's efforts to better support families through, inter alia, legislative and institutional changes. However, the Committee is concerned that families in some disadvantaged communities lack adequate assistance in the performance of their child-rearing responsibilities, notably those families in a crisis situation due to poverty. In particular, the Committee is concerned about the number of pregnant girls and teenage mothers who drop out of school, which leads to poorer outcomes for their children.

54. The Committee recommends that the State party intensify its efforts to render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities with timely responses at the local level, including services to parents who need counselling in child-rearing, and, in the case of Aboriginal and African Canadian populations, culturally appropriate services to enable them to fulfil their parental role. The Committee further encourages the State party to provide education opportunities for pregnant girls and teenage mothers so that they can complete their education.

55. The Committee is deeply concerned at the high number of children in alternative care and at the frequent removal of children from their families as a first resort in cases of neglect or financial hardship or disability. The Committee is also seriously concerned about inadequacies and abuses committed within the alternative care system of the State party, including:

- (a) Inappropriate placements of children because of poorly researched and ill-defined reasons for placement;
- (b) Poorer outcomes for young people in care than for the general population in terms of health, education, well-being and development;
- (c) Abuse and neglect of children in care;
- (d) Inadequate preparation provided to children leaving care when they turn 18;
- (e) Inadequate screening, training, support and assessment of care givers; and
- (f) Aboriginal and African Canadian children often placed outside their communities.

56. The Committee urges the State party to take immediate preventive measures to avoid the separation of children from their family environment by providing appropriate assistance and support services to parents and legal guardians in performance of child-rearing responsibilities, including through education, counselling and community-based programmes for parents, and reduce the number of children living in institutions. Furthermore, the Committee calls upon the State party to:

- (a) Ensure that the need for placement of each child in institutional care is always assessed by competent, multidisciplinary teams of professionals and that the initial decision of placement is done for the shortest period of time and subject to judicial review by a civil court, and is further reviewed in accordance with the Convention;
- (b) Develop criteria for the selection, training and support of childcare workers and out-of-home carers and ensure their regular evaluation;
- (c) Ensure equal access to health care and education for children in care;
- (d) Establish accessible and effective child-friendly mechanisms for reporting cases of neglect and abuse and commensurate sanctions for perpetrators;
- (e) Adequately prepare and support young people prior to their leaving care by providing for their early involvement in the planning of transition as well as by making assistance available to them following their departure; and
- (f) Intensify cooperation with all minority community leaders and communities to find suitable solutions for children from these communities in need of alternative care, such as for example, kinship care.

65. The Committee notes with appreciation that the State party provided significant resources to implement the National Aboriginal Youth Suicide Prevention Strategy over a five year period. Despite such programs, the Committee is concerned about:

- (a) The continued high rate of suicidal deaths among young people throughout the State party, particularly among youth belonging to the Aboriginal community;
- (b) The increasingly high rates of children diagnosed with behavioural problems and the over-medication of children without expressly examining root causes or providing parents and children with alternative support and therapy. In this context, it is of concern to the Committee that educational resources and funding systems for practitioners are geared toward a “quick fix;” and
- (c) The violation of both children’s and parents’ informed consent based on adequate information provided by health practitioners.

66. The Committee recommends that the State party:

- (a) Strengthen and expand the quality of interventions to prevent suicide among children with particular attention to early detection, and expand access to confidential psychological and counselling services in all schools, including social work support in the home;
- (b) Establish a system of expert monitoring of the excessive use of psycho stimulants to children, and take action to understand the root causes and improve the accuracy of diagnoses while improving access to behavioural and psychological interventions; and
- (c) Consider the establishment of a monitoring mechanism in each province and territory, under the ministries of health, to monitor and audit the practice of informed consent by health professionals in relation to the use of psycho-tropic drugs on children.

67. While the Committee appreciates that the basic needs of the majority of children in the State party are met, the Committee is concerned that income inequality is widespread and growing and that no national strategy has been developed to comprehensively address child poverty despite a commitment by Parliament to end child poverty by 2000. The Committee is especially concerned about the inequitable distribution of tax benefits and social transfers for children. Furthermore, the Committee is concerned that the provision of welfare services to Aboriginal children, African Canadian and children of other minorities is not comparable in quality and accessibility to services provided to other children in the State party and is not adequate to meet their needs.

68. The Committee recommends that the State party:

- (a) Develop and implement a national, coordinated strategy to eliminate child poverty as part of the broader national poverty reduction strategy, which should include annual targets to reduce child poverty;
- (b) Assess the impact of tax benefits and social transfers for and ensure that they give priority to children in the most vulnerable and disadvantaged situations; and
- (c) Ensure that funding and other support, including welfare services, provided to Aboriginal, African-Canadian, and other minority children, including welfare services, is comparable in quality and accessibility to services provided to other children in the State party and is adequate to meet their needs.

69. While welcoming the State party's various initiatives to improve educational outcomes for children in vulnerable situations, the Committee is concerned about the following:

- (a) The need for user fees at the compulsory education level for required materials and activities that are part of the basic public school service for children;
- (b) The high dropout rate of Aboriginal and African-Canadian children;
- (c) The inappropriate and excessive use of disciplinary measures applied to Aboriginal and African Canadian children in school, such as resorting to suspension and referring children to the police, as well as the overrepresentation of these groups in alternative schools;
- (d) The high number of segregated schools primarily for minority and disabled children, which leads to discrimination; and
- (e) The widespread incidence of bullying in schools.

70. The Committee recommends that the State party:

- (a) Take measures to abolish the need for user fees at the level of compulsory education;
- (b) Develop a national strategy, in partnership with Aboriginal and African Canadian communities, to address the high dropout rate of Aboriginal and African Canadian children;
- (c) Take measures to prevent and avoid suspension and the referral of children to police as a disciplinary measure for Aboriginal and African Canadian children and prevent their

reassignment to alternative schools while at the same time ensuring that professionals are provided with the necessary skills and knowledge to tackle the problems;

(d) Ensure integration of minority and disabled children in educational settings in order to prevent segregation and discrimination; and

(e) Enhance the measures undertaken to combat all forms of bullying and harassment, such as improving the capacity of teachers and all those working at schools and of students to accept diversity at school and in care institutions, and improve conflict resolution skills of children, parents, and professionals.

75. While noting with appreciation oral responses provided by the delegation during the dialogue, the Committee seriously regrets the absence of information to the follow up on implementation of the OPAC pursuant to Article 8(2). The Committee expresses deep concern that despite the recommendation provided in its concluding observations (CRC/OPAC/CAN/C0/1, para. 9, 2006) to give priority, in the process of voluntary recruitment, to those who are oldest and to consider increasing the age of voluntary recruitment, the State party has not considered measures to this effect. The Committee additionally expresses concern that recruitment strategies may in fact actively target Aboriginal youth and are conducted at high school premises.

76. The Committee reiterates its previous recommendations provided in CRC/OPAC/CAN/C0/1 and recommends to the State party to include their implementation and follow up to OPAC in its next periodic report to the CRC. The Committee further recommends the State Party to consider raising the age of voluntary recruitment to 18, and in the meantime give priority to those who are oldest in the process of voluntary recruitment. The Committee further recommends that Aboriginal, or any other children in vulnerable situations are not actively targeted for recruitment and to reconsider conducting these programs at high school premises.

85. The Committee notes as positive that Bill C-10 (Safe Streets and Communities Act of 2012) prohibits the imprisonment of children in adult correctional facilities. Nevertheless, the Committee is deeply concerned at the fact that the 2003 Youth Criminal Justice Act, which was generally in conformity with the Convention, was in effect amended by the adoption of Bill C-10 and that the latter is excessively punitive for children and not sufficiently restorative in nature. The Committee also regrets there was no child rights assessment or mechanism to ensure that Bill C-10 complied with the provisions of the Convention. In particular, the Committee expresses concern that:

(a) No action has been undertaken by the State party to increase the minimum age of criminal responsibility (CRC/C/15/Add.215, 2003, para. 57);

(b) Children under 18 are tried as adults, in relation to the circumstances or the gravity of their offence;

(c) The increased use of detention reduced protection of privacy, and reduction in the use of extrajudicial measures, such as diversion;

(d) The excessive use of force, including the use of tasers, by law enforcement officers and personnel in detention centers against children during the arrest stage and in detention;

(e) Aboriginal and African Canadian children and youth are overrepresented in detention with statistics showing for example, that Aboriginal youth are more likely to be involved in the criminal justice system than to graduate from high school....

86. The Committee recommends that the State party bring the juvenile justice system fully in line with the Convention, including Bill C-10 (2012 Safe Streets and Communities Act) in particular articles 37, 39 and 40, and with other relevant standards, including the Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), the Rules for the Protection of Juveniles Deprived of

their Liberty (the Havana Rules), the Vienna Guidelines for Action on Children in the Criminal Justice System; and the Committee's General Comment No. 10 (2007) (CRC/C/GC/10). In particular, the Committee urges the State party to:

- (a) Increase the minimum age of criminal responsibility;
- (b) Ensure that no person under 18 is tried as an adult, irrespective of the circumstances or the gravity of his/her offence; ...
- (e) Conduct an extensive study of systemic overrepresentation of Aboriginal and African Canadian children and youth in the criminal justice system and develop an effective action plan towards eliminating the disparity in rates of sentencing and incarceration of Aboriginal and African Canadian children and youth, including activities such as training of all legal, penitentiary and law enforcement professionals on the Convention....

### **13. Namibia, CRC/C/NAM/CO/2-3, 16 October 2012**

26. The Committee notes the State party's information that as a member of the International Atomic Energy Agency, it has complied with its international obligations to guarantee the safety of uranium activities. However, it is concerned that multinational and national companies in the country, notably the mining and uranium-producing industries, are operating in the absence of clear regulatory frameworks to ensure that international human rights, environment and other standards, especially relating to child and women's rights, are adhered to, in order to protect natural resources such as land, air and water and the persons, families and communities affected by high levels of radioactive toxicity and pollution. In addition, the Committee notes with concern that the Environmental Management Act, which has important safeguards relating to environmental impact assessments prior to licensing and monitoring compliance with the law, has also not entered into force. It also notes with concern that issues relating to the environmental and health impact of uranium mining are neither discussed nor communicated to the persons concerned or disclosed to the public.

27. 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 child rights, and in the light of Human Rights Council resolutions 8/7 of 18 June 2008 (para. 4 (d)) and 17/4 of 16 June 2011 (para. 6 (f)). In particular, it recommends that the State party:

- (a) Establish a clear regulatory framework for the mining and uranium producing industries operating in the State party to ensure that their activities do not affect human rights or endanger environment and other standards, especially those relating to child and women's rights;
- (b) Ensure effective implementation by companies, particularly the uranium mining industry, of international and national environment and health standards, and that the implementation is monitored and appropriately sanctioned and remedies provided when violations occur, and that appropriate international certification is sought;
- (c) 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;
- (d) Be guided by the United Nations "Protect, Respect and Remedy" Framework, accepted unanimously in 2008 by the Human Rights Council, while implementing these recommendations.

30. The Committee notes the efforts by the State party to address discrimination, including through the formulation of numerous policies and programs, such as the Education Sector Policy for Orphans and Vulnerable Children and the National Policy on HIV/AIDS for the Education Sector. Despite these efforts, the Committee is concerned about:

(a) Human rights violations resulting from widespread discrimination against children from indigenous communities, in particular Ovahimba and San, children with disabilities, those living in poverty, children in street situations and refugee and migrant children....

31. In the light of article 2 of the Convention, the Committee recommends that the State party:

(a) Intensify measures, including timely implementation of relevant policies and strategic plans, to reduce poverty, prevent and combat discrimination in education, health and development, particularly for girls, indigenous children, children with disabilities and other groups of children in vulnerable situations;

(b) Adopt all necessary measures to combat discrimination faced by women and girls under customary law, particularly in the areas of marriage and inheritance rights, including through efforts to prevent the application of such law in rural areas. In these efforts, the Committee calls upon the State party to ensure that girls, women, traditional leaders and civil society organizations are consulted throughout the process....

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

### **1. Democratic Republic of Congo, CRC/C/OPAC/COD/CO/1, 7 March 2012**

8. The Committee, notes with deep concern that children continue to be the primary victims of the ongoing conflicts especially in the Eastern provinces of the State party. Referring to its previous concluding observations (CRC/C/COD/2, paras. 33 and 34), the Committee remains alarmed that all parties to the conflict continue to kill and to subject children to the worst forms of violence, including torture and mutilation. The Committee expresses its deepest concern about: ... (c) The alleged war crimes and crimes against humanity committed against Bambuti children and their families;...

9. The Committee reminds the State party that it is primary responsible for the protection of its civilians, particularly children, which should be prioritized in all military operations and that the State party should prevent civilian casualties in accordance with the requirements of distinction, discrimination, proportionality, necessity and precaution. The Committee urges the State party to take concrete and firm measures to ensure that no further killings and maiming of civilians take place and ensure that all cases lead to prompt independent and impartial investigations and to the effective sanctioning with appropriate sanctions of those found responsible.

### **2. Thailand, CRC/C/OPAC/THA/CO/1, 21 February 2012**

21. The Committee is concerned about the lack of the protection of asylum-seeking and refugee children (so called “externally displaced persons”), including former child soldiers, who live in official and unofficial camps in Thailand, as well as the lack of mechanisms for identifying former child soldiers among refugees/asylum-seekers. The Committee is also concerned that in the absence of adequate identification and protection measures, child soldiers who have escaped from Myanmar could be among the populations forcibly returned to Myanmar, where they can face re-recruitment and/or detention on charges of desertion. It is particularly concerned that children in the camps are at risk of recruitment and re-recruitment by non-State armed groups from Myanmar operating inside the Thai border.

22. In light of its obligations under article 7 of the Optional Protocol, the Committee urges the State party:

(a) To put in place a national system of data collection and registration of all asylum-seeking and refugee children under its jurisdiction;

- (b) To establish an identification mechanism for children, including asylum-seeking and refugee children, who have been or may have been involved in armed conflict abroad, and ensure that personnel responsible for such identification are trained on child rights, child protection and with interviewing skills;
- (c) To provide children who have been or may have been involved in armed conflict with appropriate assistance for their physical and psychological recovery and their social reintegration;
- (d) To immediately end any forcible returns of children who may have been, or are at risk of becoming victims of crimes under the Optional Protocol to their countries of origin;
- (e) To prevent recruitment and re-recruitment of children by non-State armed groups from Myanmar in camps inside the Thai border;
- (f) To seek technical assistance from United Nations High Commissioner for Refugees (UNHCR) and UNICEF in this regard.

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

**1. Mexico, CRC/C/OPSC/MEX/CO/1, 7 April 2011**

12. While welcoming the 2002 National Plan of Action to Prevent, Monitor and Eradicate the Commercial Sexual Exploitation of Children, the Committee is concerned at the lack of information on whether this Plan covers all the offences under the Optional Protocol, and if its implementation has been evaluated. The Committee also welcomes the 2011 National Programme to Prevent and Punish Trafficking in Persons, but regrets that the Programme was not elaborated with sufficient participation of all actors, and that compliance of the Programme with the requirements of the Optional Protocol is not ensured. The Committee further regrets the lack of information on the coordination between these two plans.

13. The Committee recommends that the State party adopt a comprehensive plan of action in consultation with relevant actors, including children and civil society, ensure that this plan covers all the offences under the Optional Protocol, ensure resources for its implementation, and evaluate the Plan in a participatory manner. The Plan should take into account indigenous peoples and children and their right to participate, in a culturally sensitive manner, taking into account the Committee's general comment No. 11 (2009) on indigenous children and their rights under the Convention.

14. While welcoming the State party's efforts to raise the public's awareness about trafficking and sexual exploitation of children, such as the sensitization campaigns on radio, television and in print media, the Committee is concerned that these campaigns did not sufficiently take into account all the provisions of the Optional Protocol. The Committee is concerned that children and the general population, including indigenous children, do not have adequate knowledge to identify the risks related to the offences covered by the Optional Protocol or where and how to report cases.

**2. Sweden, CRC/C/OPSC/SWE/CO/1, 23 January 2012**

20. The Committee notes with interest that the Ethical Council of the four State pension funds examines environmental and ethical considerations by foreign companies where the Funds invest, regarding international conventions on the environment and human rights.

21. The Committee recommends that State corporations, including the State pension funds, that invest abroad or operate through subsidiaries or associates in foreign countries, comply with due diligence requirements to prevent and protect children in those countries from offences under the Convention and the Optional Protocol and in accordance with their principles. The Committee

further recommends that the State party appropriately regulate the investments and activities of all Swedish companies abroad, in this same respect.

### **3. Nepal, CRC/C/OPSC/NPL/CO/1, 18 July 2012**

21. The Committee welcomes the numerous measures taken with the view to preventing the sale of children, child prostitution and child pornography and in particular the programmes specifically targeting children from Dalit and Indigenous community and from marginalized and disadvantaged families, the promotion of child participation in policies and programmes, and the measures to combat illiteracy, especially among women. ...

### **4. Canada, CRC/C/OPSC/CAN/CO/1, 5 October 2012**

26. While noting with satisfaction law enforcement initiatives to hold perpetrators of child sexual exploitation on the internet and child pornography accountable, the Committee is deeply concerned at the low number of investigations, prosecutions, and convictions for offences under the Optional Protocol. The Committee is also concerned that sentences for those convicted of offences under the Optional Protocol, even for the most heinous violations, fall far short of the maximum sentencing; The Committee is further concerned that law enforcement has been weak due to a lack of resources in some provinces and territories. Furthermore, the Committee is deeply concerned cases of Aboriginal girls, including those who may have been involved in the sex trade, have gone missing or were murdered and have not been fully investigated with the perpetrators going unpunished.

27. The Committee recommends that the State party provide specific information on investigations, prosecutions and punishments of perpetrators of offences under the Optional Protocol, in its next periodic report. The Committee also urges the State party to: ...

- (c) Establish a plan of action to coordinate and strengthen law enforcement investigation practices on cases of child prostitution, especially in Aboriginal communities and to vigorously ensure that all cases of missing girls are investigated and prosecuted to the full extent of the law.

34. The Committee notes as positive that victims of human trafficking who receive short-term Temporary Residence Permits are eligible for health care benefits under the federal health program, including trauma counselling. However, the Committee is concerned that the State party has not adopted measures for the recovery and reintegration of victims of all offences under the Optional Protocol. In particular, the Committee is concerned about the lack of rehabilitation programs specifically for child victims of offences under the Optional Protocol, including child victims of sex tourism abroad where the perpetrators were Canadian citizens.

35. The Committee urges the State party to further strengthen measures to ensure appropriate assistance to victims of all offences under the Optional Protocol, including their full social reintegration and physical, psychological and psychosocial recovery. The Committee, in particular, recommends that the State party: ...

- (c) Adopt specific measures for the reintegration of Aboriginal child victims who are especially vulnerable to becoming victims of one of the offences under the Optional Protocol; and
- (d) Seek technical assistance from UNICEF and the International Organization for Migration (IOM) in the implementation of these recommendations.

## D. General Comments

### 1. General comment No. 13 (2011), The right of the child to freedom from all forms of violence, CRC/C/GC/13, 18 April 2011<sup>75</sup>

**26. Torture and inhuman or degrading treatment or punishment.** This includes violence in all its forms against children in order to extract a confession, to extrajudicially punish children for unlawful or unwanted behaviours, or to force children to engage in activities against their will, typically applied by police and law-enforcement officers, staff of residential and other institutions and persons who have power over children, including non-State armed actors. Victims are often children who are marginalized, disadvantaged and discriminated against and who lack the protection of adults responsible for defending their rights and best interests. This includes children in conflict with the law, children in street situations, minorities and indigenous children, and unaccompanied children. The brutality of such acts often results in life-long physical and psychological harm and social stress.

43. Social measures should reflect governmental commitment to fulfilling child protection rights and provide for basic and targeted services. They can be initiated and implemented by both State and civil society actors under the responsibility of the State. Such measures include:

(a) *Social policy measures to reduce risk and prevent violence against children, for example: ...* (ii) Identification and prevention of factors and circumstances which hinder vulnerable groups' access to services and full enjoyment of their rights (including indigenous and minority children and children with disabilities, among others);

**72. Elements to be mainstreamed into national coordinating frameworks.** The following elements need to be mainstreamed across the measures (legislative, administrative, social and educational) and stages of intervention (from prevention through to recovery and reintegration) ...

(g) *Children in potentially vulnerable situations.* Groups of children which are likely to be exposed to violence include, but are not limited to, children: not living with their biological parents, but in various forms of alternative care; not registered at birth; in street situations; in actual or perceived conflict with the law; with physical disabilities, sensory disabilities, learning disabilities, psychosocial disabilities and congenital, acquired and/or chronic illnesses or serious behavioural problems; who are indigenous<sup>76</sup> and from other ethnic minorities; from minority religious or linguistic groups; who are lesbian, gay, transgender or transsexual; at risk of harmful traditional practices; in early marriage (especially girls, and especially but not exclusively forced marriage); in hazardous child labour, including the worst forms; who are on the move as migrants or refugees, or who are displaced and/or trafficked; who have already experienced violence; who experience and witness violence in the home and in communities; in low socio-economic urban environments, where guns, weapons, drugs and alcohol may be easily available; living in accident- or disaster-prone areas or in toxic environments; affected by HIV/AIDS or who are themselves HIV infected; who are malnourished; looked after by other children; who are themselves carers and heads of households; born to parents who are themselves still under 18; who are unwanted, born prematurely or part of a multiple birth; hospitalized with inadequate supervision or contact with caregivers; or exposed to ICTs without adequate safeguards, supervision or empowerment to protect themselves. Children in emergencies are extremely vulnerable to violence when, as a consequence of

<sup>75</sup> Full document available at <http://www2.ohchr.org/english/bodies/crc/comments.htm> .

<sup>76</sup> In some societies, in contrast to non-indigenous families, "neglect" as distinct from "abuse" is the primary reason leading to the removal of indigenous children from their families. Non-punitive family support services and interventions directly addressing causes (such as poverty, housing and historical circumstances) are often more appropriate. Specific efforts are required to address discrimination in the provision of services and the range of intervention options available to indigenous and other minority communities.

social and armed conflicts, natural disasters and other complex and chronic emergencies, social systems collapse, children become separated from their caregivers and caregiving and safe environments are damaged or even destroyed; ....

## V. COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN

### A. Concluding Observations<sup>77</sup>

#### 1. Nepal, CEDAW/C/NPL/CO/4-5, 29 July 2011

23. The Committee welcomes the 33 percent representation of women in the Constituent Assembly. However, the Committee is deeply concerned about the very low representation of women, in particular Dalit and indigenous women, in high-level decision-making positions, the public service, the judiciary and the diplomatic service, in the National Human Rights Commission and at the local level.

24. The Committee recommends that:

(a) The quota system for women representation in the Constituent Assembly is increased in the future Parliament; and

(b) The State party fully utilize the Committee's general recommendation No. 23 and adopt temporary special measures, in accordance with article 4, paragraph 1, of the Convention and the Committee's general recommendation No. 25, in order to accelerate the full and equal participation of women in public and political life. To this end, the Committee recommends that the State party:

(i) Establish concrete goals and timetables so as to accelerate the increase in the representation of women, including Dalit and indigenous women, in elected and appointed bodies in all areas of public life from local level, including at the Village Development Committee level, to national and diplomatic levels;...

27. While welcoming the overall increase in gender parity in primary and secondary education, the Committee is concerned about the minimal increase in female enrolment, the very high rate of drop out among girls, the urban/rural disparities in access to education and illiteracy rates, and the low literacy rate of female adults. The Committee is further concerned about the very low number of female teachers at all levels of education.

28. The Committee urges the State party to enhance its compliance with article 10 of the Convention and to raise awareness of the importance of education as a human right and as the basis for the empowerment of women. To this end, it urges the State party to:

(a) Strengthen its efforts to achieve universal provision of quality education for girls at each level of the education system in urban, rural and remote areas, provide access to education to girls with disabilities through improvement of infrastructures and provision of support systems, with special attention to girls from Dalit, Indigenous and other disadvantaged groups;...

39. The Committee is deeply concerned about the multiple forms of discrimination against disadvantaged groups of women such as Dalit and indigenous women, widows and women with disabilities.

40. The Committee urges the State party to prioritize combating multiple forms of discrimination against women from various disadvantaged groups through the collection of data on the situation of these women, and the adoption of legal provisions and comprehensive programs, including public education and awareness raising campaigns involving the mass media as well as community and religious leaders, to combat multiple discriminations.

<sup>77</sup> CEDAW's concluding observations on the following states with self-identifying indigenous peoples did not make any reference to indigenous women, directly or indirectly: Bangladesh, Costa Rica, Kenya, South Africa, and Algeria.

## **2. Ethiopia, CEDAW/C/ETH/CO/6-7, 27 July 2011**

36. The Committee notes that women's right to obtain and use rural land is protected by Federal Proclamation, that both PASDEP (2005-2010) and the National Plan for Gender Equality (2005-2010) are aimed at enhancing women's access to productive resources such as land and livestock, and that microfinance institutions and projects provide credit to women to start small-scale income-generating activities. However, it is concerned that most rural women depend on men for economic support, that only 19 per cent of women own land and that the number of women borrowers from microfinance institutions is decreasing. The Committee is also concerned about the leasing of vast areas of arable land to foreign companies, which may result in the displacement of local communities and further contribute to women's food insecurity and the feminization of poverty, but notes the State party's explanation that such leases concern scarcely populated areas in the malaria-infested lowlands, help the State party to feed its people, create employment and are accompanied by resettlement and compensation schemes. The Committee also notes with concern that the majority of the rural population has no sustainable access to safe drinking water and adequate sanitation, forcing many women and girls to walk long distances to collect water, exposing them to an increased risk of sexual violence, and preventing girls from attending school.

37. The Committee recommends that the State party:

- (a) Effectively enforce women's equal right to land ownership, including by taking legal measures providing for the systematic inclusion of female spouses' names in landholder certificates;
- (b) Facilitate rural women's access to credit and loans, by controlling microfinance repayment terms to preclude unfair payment periods and interest rates and by expanding gender-sensitive projects such as the Managing Environmental Resources (MERET) Programme and Iqqub;
- (c) Ensure that land lease contracts with foreign companies do not result in the forced eviction and internal displacement, or the increased food insecurity and poverty, of local populations, including women and girls, and that such contracts stipulate that the company concerned and/or the State party must provide the affected communities, including pastoralist communities, with adequate compensation and alternative land;
- (d) Continue improving access to safe drinking water and adequate sanitation in rural areas by building new wells, taps and sanitation facilities.

38. The Committee is concerned about the lack of disaggregated data on the situation of those women who are reportedly among the most vulnerable and neglected groups of women in the State party and typically face multiple forms of discrimination, including older women, women with disabilities, pastoralist women and refugee and internally displaced women.

39. The Committee recommends that the State party:

- (a) Collect disaggregated data on the situation of women facing multiple forms of discrimination, such as older women, women with disabilities pastoralist women and refugee and internally displaced women, and include such information in its next periodic report;
- (b) Adopt measures, including temporary special measures within the meaning of article 4, paragraph 1, of the Convention, to eliminate any such discrimination, ensure equal rights and opportunities for those women, including, as applicable, in political, public, social and economic life and in the areas of education, employment and health, and protect them from violence, abuse and exploitation;
- (c) Adopt targeted policies to protect and integrate those women into society, such as, for example, a national policy on internally displaced persons and policies for the local integration of refugees.

### **3. Paraguay, CEDAW/C/PRY/CO/6, 8 November 2011**

12. The Committee is concerned that, despite the prohibition contained in article 48 of the Constitution, the State party's legislation does not provide a definition of discrimination in accordance with article 1 of the Convention. The Committee is further concerned that, despite the preparation of draft laws on equality and against all forms of discrimination against women, endorsed by ministerial entities, several commissions of the legislative branch and civil society, these drafts have not been approved by the legislature. The lack of a comprehensive law disproportionately affects disadvantaged groups of women, including indigenous and rural women, lesbians and transsexuals, who are particularly vulnerable to discrimination. The Committee is further concerned at the persistence of discriminatory provisions in the legislation which denotes a need to further harmonize domestic legislation with international instruments ratified by the State party.

13. The Committee reiterates its recommendation to the State party to take effective steps to prohibit discrimination against women in line with article 1 of the Convention through the adoption of appropriate national legislation, such as the drafting of a comprehensive law on discrimination that awaits the approval of parliament. The Committee also recommends that the State party review its domestic legislation in order to harmonize it with the Convention.

32. The Committee welcomes the efforts by the State party to implement action to improve institutional services for rural women, such as the drafting of the Specific Policy for Rural Women (*Política Específica para Mujeres Rurales*). However, the Committee remains concerned about the disadvantaged position of women in rural areas, who are most affected by poverty, challenges in access to health and social services and a lack of access to land, not due to legal impediments, but to traditional practices and cultural patterns, which are stronger in rural areas and indigenous communities. The Committee is further concerned that, despite the measures implemented to regulate the use of agro-toxic products, their misuse in agriculture can negatively impact on the health of rural women.

33. The Committee recommends the State party to:

- (a) Implement specific policies with a view to advancing the realization of women's rights, including through effective temporary special measures to accelerate the achievement of substantive equality;
- (b) Strengthen its efforts to implement comprehensive nationwide health and educational programmes, including programmes in the areas of functional literacy, enterprise development, skills training and microfinance, as a means of poverty alleviation; and
- (c) Undertake a comprehensive study on the probable negative causes of the misuse of agro-toxic products in agriculture in order to implement the necessary measures to eradicate their impact on the health of women and their children.

34. The Committee welcomes the efforts by the State party to improve the living conditions of indigenous women, including monolingual Guaraní women. However, the Committee reiterates its concern about the persistence of illiteracy, low school enrolment rates, poor access to health care and significant levels of poverty. The Committee is deeply concerned about the high levels of vulnerability in relation to the right to adequate food and to safe drinking water, especially in the Chaco region, which has been repeatedly affected by droughts. The Committee is also concerned about indigenous women's wages, which are usually below the national average.

35. The Committee recommends the State party to:

- (a) Adopt temporary special measures, in accordance with article 4, paragraph 1, of the Convention and the Committee's general recommendation No. 25 (2004) to accelerate the realization of the rights of indigenous women;
- (b) Ensure that indigenous women have easy access to schools and health services, in an affordable manner – both physically and financially – with bilingual services, which take into account the special needs of women from monolingual indigenous communities; and
- (c) Strengthen its efforts to realize the right to adequate food and water in a consultative and participatory manner, involving indigenous women in order to achieve culturally adequate outcomes.

#### **4. Brazil, CEDAW/C/BRA/CO/7, 23 March 2012**

16. The Committee acknowledges that the State party has adopted temporary special measures aimed largely at achieving equality among its population, such as quotas based on race and ethnicity to increase the number of Afro-descendent and indigenous students enrolled in higher education programmes, for example those related to science and technology. Even though women might benefit from these measures, the Committee is concerned about the lack of a specific assessment of their impact on women to evaluate how effectively these measures have contributed to the acceleration of the substantive equality of women. It is further concerned at the apparent inefficiency in the use of temporary special measures targeting different groups of women.

17. The Committee recommends that the State party take further steps to expand the understanding of the concept of temporary special measures and the use of these measures, in accordance with article 4 (1) of the Convention and general recommendation 25 (2004), as part of a necessary strategy towards the achievement of women's substantive equality, in particular for women with disabilities, Afrodescendent, indigenous and rural women, in fields such as political participation, health, education and employment.

22. The Committee takes note of the efforts of the State party aimed at increasing the participation in political and public life of women, such as the adoption of Law No. 12034/2009 which requires that political parties maintain a minimum of 30% and a maximum of 70% representation of women or men in their candidate lists and the launch of the permanent campaign "More Women in Power" in 2008. However, it regrets that the persistence of patriarchal attitudes and stereotypes as well as the lack of mechanisms to ensure the implementation of temporary special measures adopted, continue to impede women's participation in parliament and in decision-making positions at the state and municipal levels of the public administration. It is further concerned at the low representation of women in the highest instances of the Judiciary and in top managerial positions in the private sector, despite the increasing number of women with judicial careers as well as the increasing number of women who participate in the labour market.

23. The Committee calls upon the State party to:

- (a) Strengthen its efforts to amend or adopt legislation aiming at increasing the de facto participation of women in political life and pursue sustained policies aimed at the promotion of women's full and equal participation in decision-making as a democratic requirement in all areas of public, political and professional life, by giving effect to the Committee's general recommendation No. 23 (1997) on women in public life;
- (b) Adopt and implement temporary special measures, in accordance with article 4, paragraph 1, of the Convention and the Committee's general recommendation No. 25 (2004), in order to accelerate women's full and equal participation in public and political life, in particular with respect to disadvantaged groups of women, such as Afro-descendent and indigenous women, and women with disabilities;...

26. The Committee notes the establishment, in 2008, of the Commission for Equal Opportunities on the basis of Gender, Race, and Ethnic origin and for Persons with Disabilities and to Combat Discrimination by the Ministry of Labour and Employment. ... It is also concerned that stereotypes related to gender and race contribute to the segregation of Afro-descendent and indigenous women into lower quality jobs. It is further concerned at the lack of information regarding measures to protect women from sexual harassment in the workplace as well as about the persistence of the exploitation of women and children as domestic workers.

27. The Committee recommends that the State party: ... (b) Adopt effective measures in the formal labour market, including temporary special measures, to eliminate occupational segregation based on stereotypes related to gender, race and ethnicity; to narrow and close the wage gap between women and men; and to ensure the application of the principle of equal remuneration for work of equal value, and equal opportunities at work;

30. The Committee takes note of various measures in place aimed at ensuring that rural women participate in and benefit from rural development, such as the Technical Assistance and Rural Extension Policy for Women (ATER) aimed at, inter alia, promoting agroecology and ecologically based production and, the Women's National Programme for the Strengthening of Family Agriculture (PRONAF-Women), which provides women farmers with access to credit. However, it is concerned at the disadvantaged position of women in rural and remote areas, who often are the most affected by poverty and extreme poverty, face greater difficulties in obtaining access to health and social services and rarely participate in decision-making processes, due to patriarchal attitudes prevalent in rural communities. The Committee is further concerned about the impact of agro-industrial and development projects on rural women's living conditions and regrets the lack of information in this regard in the report.

31. The Committee calls upon the State party to:

(a) Take the necessary measures to ensure the participation of rural women in the design and implementation of local development plans, in particular those which will have an impact on the economic structure and dynamics of their communities;

(b) Ensure that rural women, and in particular women heads of households, participate in decision-making processes and have improved access to health, education, clean water and sanitation services, fertile land and income-generating projects; and

(c) Provide detailed information in its next periodic report on the impact on the living conditions of rural women of the major agro-industrial and development projects in place in the State party.

32. The Committee expresses its concern about the significant increase in the number of women and girls in prison in the State party. ... The Committee is further concerned at the precarious conditions and overcrowding of some detention facilities; the difficulties faced by women prisoners with access to justice, including the lack of interpretation services for indigenous women....

33. The Committee urges the State party to: ... (b) Address the situation of women and girls in detention through the development of comprehensive gender-sensitive policies, strategies and programmes aimed at facilitating their access to justice and ensuring compliance with their fair trial guarantees, in particular for indigenous women; and providing educational, rehabilitative and resettlement programmes for women and girls....

## **5. Republic of Congo, CEDAW/C/COG/CO/6, 23 March 2012**

### **Indigenous women**

41. While welcoming the adoption of the Law of 25 February 2011 prohibiting traffic and sexual exploitation of indigenous children and women, the Committee is concerned that indigenous women and girls are extremely vulnerable to sexual violence. It is further concerned about reports of discrimination against indigenous women by health workers. The Committee is also concerned that the State party did not provide adequate information on this issue.

42. The Committee recommends that the State party:

- (a) Take, without delay, concrete actions to protect indigenous women and girls from all forms of violence, establish mechanisms for redress and rehabilitation and take steps to investigate, prosecute and punish all perpetrators of violence against them;
- (b) Pay special attention to the needs of indigenous women and girls to ensure that they have access, without discrimination, to health, education, clean water, sanitation services and employment; and
- (c) Provide information in the next periodic report on efforts undertaken in this regard and results achieved.

## **6. Norway, CEDAW/C/NOR/CO/8, 23 March 2012**

3. The Committee commends the State party's large high level delegation, headed by Audun Lysbakken, the Minister of Children, Equality and Social Inclusion of Norway, which included also several representatives from relevant ministries, and representatives of the Norwegian Sámi Parliament, with expertise in the areas covered by the Convention. ...

31. While acknowledging the increased supportive measures for Sami women regarding social and health services, the Committee is concerned that Sami women continue to face multiple discrimination, including difficulty in accessing adequate health care, owing inter alia to the unavailability of adequate services for the Sami women living outside the defined Sami area. ...

32. The Committee calls upon the State party to:

- (a) Ensure that all Sami women are provided with adequate social and health services, including mental health services;
- (b) Ensure that gender perspectives are mainstreamed in all policies and programmes regarding the Sami people....

## **7. Guyana, CEDAW/C/GUY/CO/7-8 27 July 2012**

4. The Committee welcomes the progress achieved since the adoption of its previous concluding observations in 2005, including the legislative reforms that have been undertaken and the adoption of a range of legislative measures. Specific reference is made to the: a. Amerindian Act (2006)....

8. The Committee is concerned at the general lack of awareness of the Convention and the Committee's general recommendations in the State party, in particular, among the judiciary and other law enforcement officials, and among the population at large. It is further concerned that women themselves, especially those in rural and remote areas, are not aware of their rights under the Convention, and thus lack the necessary information to claim their rights.

9. The Committee calls on the State party to: ... (b) Take all appropriate measures to enhance women's awareness of their rights and the means to enforce them, including through providing women with information on the Convention in languages accessible to them in all regions of the

State party, in particular in hinterland and rural areas and among the Amerindian communities, emphasizing ways to utilize the available legal remedies for violations of their rights.

26. The Committee notes that female representation in the State party's parliament increased from 18.5 per cent in 1992 to 32 per cent in 2012. The Committee is, however, concerned that obstacles to the advancement of women remain in political and public life, such as the lack of an effective quota system, the absence of temporary special measures, limited financial resources, insufficient affirmative action in the form of capacity-building for potential candidates, the persistence of the gender-biased views and poor socioeconomic status that prevent women from gaining full access to the right to participate in public life, in particular at the level of decision-making. While noting with appreciation that in 2008 the first female and also the first Amerindian was appointed Minister for Foreign Affairs, and further that there are now 4 Amerindian women in Parliament, the Committee is concerned at the slow progress in ensuring the equal participation of Amerindian women in leadership and decision-making positions in public and political life.

27. The Committee calls upon the State party: ... (b) To adopt and implement temporary special measures, in accordance with article 4 (1) of the Convention and general recommendation No. 25 of the Committee, in order to accelerate women's full and equal participation in political and public life, in particular with regard to Amerindian women....

#### **Rural and Amerindian women**

36. While welcoming the enactment in 2006 of the new Amerindian Act, granting legal title to 135 Amerindian communities of 14% of Guyana's land mass, and while noting the establishment of a special fund for the development of Amerindian communities and the launch of the Rural Electrification Programme, the Committee expresses its concern at the disadvantaged position of women in hinterland, rural and remote areas who form the majority of women in the State party, and who are characterized by poverty, difficulties in access to health and social services and a lack of participation in decision-making processes at the community level.

37. The Committee calls upon the State party to:

- (a) Pay special attention to the needs of rural women to ensure that they have access to health, education, clean water and sanitation services and income-generation projects; and
- (b) Address negative customs and traditional practices, especially in rural areas, which affect the full enjoyment of the rights enshrined in the Convention by rural and Amerindian women.

#### **8. Indonesia, CEDAW/C/IDN/CO/6-7/R.1, 27 July 2012**

##### **Women facing multiple forms of discriminations**

45. The Committee is deeply concerned about:

- (a) The disadvantaged position of rural and indigenous women, which is characterized by poverty; their difficulties in accessing education and health and social services; and the existence of discrimination with respect to ownership and inheritance of land;
- (b) Cases of discrimination, violence and sexual intimidation specifically targeting women who belong to religious minorities, such as Ahmaddiyah, Christians, Buddhists and Baha'is, as well as indigenous women; and cases of violation of the rights of indigenous women to access their land, water and natural resources....

46. The Committee urges the State party to:

- a) Pay special attention to the needs of rural women to ensure that they have access to health, education, clean water, sanitation services and income-generating projects; and eliminate discrimination in women's ownership and inheritance of land;

b) Implement effective measures to eliminate discrimination and violence, including sexual violence and intimidation, against women belonging to religious minorities, such as Ahmaddiyah, Christians, Buddhists and Baha'is, and indigenous women; ensure their security and enhance their enjoyment of human rights and ensure access to land and natural resources for indigenous women, through all available means, including temporary special measures, in accordance with article 4, paragraph 1 of the Convention, and general recommendation no. 25 (2004) on temporary special measures....

### **9. Mexico, CEDAW/C/MEX/CO/7-8, 27 July 2012**

3. The Committee commends the State party for its large delegation ... which included representatives from ... the National Commission for the Development of Indigenous Peoples....

22. The Committee notes that the State party has made substantial progress to ensure women's equal participation with men in political life at the federal level. However, it is concerned at gaps in the federal and state electoral legal frameworks which may lead to the non-compliance of the gender quota system to register candidates in a proportion of 40-60 and that this quota system has not yet been incorporated in all the states' electoral legislation. It is further concerned at the low number of indigenous women participating in the political life of the State party.

23. The Committee recommends that the State party: ...

b) Eliminate the obstacles which prevent women from participating in the political life of their communities, in particular indigenous women, including by conducting awareness raising campaigns aiming at increasing the participation of women in political life, at the state and municipal levels; and

c) Ensure that the political parties comply with their obligation to allocate 2% of the public funding received to the promotion of women's political leadership, especially of indigenous women at the municipal level.

### **Indigenous rural women**

34. The Committee notes that the Convention has been translated into ten indigenous languages. It notes as well the creation of Indigenous Women's Centres (CAMI) whose objectives are the prevention and treatment of violence and the promotion of sexual and reproductive health and rights for indigenous women. However, it remains concerned at the high levels of poverty, illiteracy and multiple forms of discrimination against indigenous rural women, in particular in Chiapas, Guerrero and Oaxaca. It is also concerned about harmful cultural practices within the indigenous legal systems which are based on gender stereotyped roles for men and women, such as "bride price" and which perpetuate discrimination against indigenous women and girls. It is further concerned at the lack of indigenous rural women's access to land, property and justice. It is also concerned at information indicating that the State party's public security policy against organized crime has negatively impacted indigenous rural women, who have since been subjected to higher levels of violence, including femicide by security forces.

35. The Committee reiterates its previous recommendations and calls upon the State party to:

a) Ensure that all policies and programmes aiming at the eradication of poverty include a gender perspective and an intercultural approach with the view to eliminating discrimination against indigenous rural women;

b) Adopt temporary special measures to address the disparities that indigenous rural women face with regard to access to land and property, as well as basic social services, including education and health, and participation in decision-making processes;

- c) Put in place a comprehensive strategy aiming at the elimination of harmful practices which discriminate against indigenous rural women including by conducting awareness-raising campaigns targeting indigenous communities in collaboration with civil society and women's organizations, to enhance a positive and non-stereotypical portrayal of women;
- d) Take all necessary measures to ensure the effective implementation of the relevant legislation to prevent violence against indigenous women, investigate, prosecute and punish perpetrators of violence against indigenous women, and ensure effective and prompt access to justice to victims, including redress mechanisms; and
- e) Adopt appropriate measures to ensure that the army and law enforcement officials who are in or near indigenous peoples' communities respect the human rights of indigenous women.

**10. New Zealand, CEDAW/C/NZL/CO/7, 27 July 2012**

6. The Committee welcomes the appointment of the first Asian woman Minister and three Māori women Ministers.

14. The Committee is deeply concerned about the State party's tightened funding and proposed eligibility criteria for legal aid, which have led to fewer applications by women and which may probably continue to have a negative impact on women's access to justice, especially as 65 percent of legal aid users in the State party are women. The Committee is also concerned that migrant women lack access to appropriate legal services because of cultural, financial and linguistic barriers, and that the proportion of Māori women prosecuted and convicted for crimes as well as among victims of crime is disproportionately high. ...

15. The Committee urges the State party: ... (a) To facilitate women's access to justice, including by providing free legal aid to women without sufficient means and to increase efforts to make sure that migrant women and Māori women are not discriminated against in the administration of justice....

23. ... The Committee notes with concern insufficient statistical data on violence against women, especially on violence against Māori women, migrant women and women with disabilities.

24. The Committee calls upon the State party: ... (c) To provide adequate assistance and protection to women victims of violence, including Māori and migrant women, by ensuring that they receive the necessary legal and psychosocial services....

29. The Committee welcomes several positive trends within the State party in the field of education, including an increase in the number of children in early childhood education, higher retention rates for girls attending secondary school, and a steady increase in the number of women who obtain graduate degrees. ... The Committee is also concerned that the overall dropout rate for Māori girls has increased in recent years despite their improvement at the tertiary level.

30. The Committee recommends the State party: ... (c) To implement measures to decrease dropout rates among Māori girls and to reintegrate them into the educational system....

33. The Committee commends the State party for its advocacy on the protection of women's sexual and reproductive health rights and prevention of maternal mortality. ... The Committee also remains concerned about inequalities in access to health care by minority women. In particular, the Committee is concerned about the high rates of teenage pregnancy among Māori women and the lack of access to effective age-appropriate education on sexual and reproductive health and rights. ...

34. The Committee urges the State party: ... (d) To increase efforts to improve health-care services, including mental health care, for minority women, especially Māori and Pacific women....

### **Disadvantaged groups of women**

35. The Committee is concerned about the situation of disadvantaged groups of women, including women with disabilities, women of ethnic and minority communities, rural women and migrant women, who may be more vulnerable to multiple forms of discrimination with respect to education, health, social and political participation and employment. As noted in the report of the State party, disabled women are disproportionately represented among those who lack qualifications, those who do not work, and those on low incomes. The Committee is concerned that the new social security legislation will likely predominantly affect Māori women and reduce their social benefits. The Committee is further concerned that there are few education and employment programmes targeted at women and girls with disabilities. The Committee notes with concern the impact of the Christchurch earthquake on women, particularly rural women and older women, including their reported higher degrees of stress, anxiety and depression as well as their resulting higher numbers of displacement and unemployment.

36. The Committee recommends that the State party:

- (a) Provide in its next report data and information on the situation of women with disabilities, rural women, older women and women from ethnic minority groups, including with regard to their access to education, employment and health-care services;
- (b) Ensure that the ongoing welfare reforms do not discriminate against disadvantaged groups of women and that an independent evaluation of their gendered impact is made....

### **11. Chile, CEDAW/C/CHL/CO/5-6, 24 October 2012**

6. The Committee welcomes the fact that, in the period since the consideration of the previous report, the State party has ratified or acceded to the following international and regional instruments: ...

- (d) The International Labour Convention No. 169 on indigenous and tribal peoples (2008);

14. The Committee notes with concern that the Parliament has refused to include affirmative action in the new anti-discrimination law and thus deprives the State party of the means to accelerate the achievement of substantive equality between women and men in all areas of the Convention, especially in areas where women are underrepresented or disadvantaged.

15. The Committee calls on the State party to consider using temporary special measures in accordance with article 4, paragraph 1, of the Convention and the Committee's general recommendation No. 25, as a necessary strategy to accelerate the achievement of substantive equality in all areas of the Convention, in particular in political and public life where women are underrepresented, as well as in education and employment, to which migrant and indigenous have limited access.

16. While welcoming the recent legislation providing for parental leave for men (Act No. 20.545), the Committee remains concerned about the persistence of traditional stereotypes regarding the roles and responsibilities of women and men in the family and society, which overemphasize the traditional roles of women as mothers and spouses and continue to affect their educational and professional choices. Furthermore, the Committee is gravely concerned that, as acknowledged by the delegation during the dialogue, certain groups of women face multiple forms of discrimination and violence on grounds such as sexual orientation, gender identity, indigenous origin, or being HIV/AIDS positive.

17. The Committee recommends that the State party:

- (a) Increase its efforts to assist women and men in striking a balance between family and employment responsibilities, inter alia, through awareness-raising and education initiatives for both women and men on adequate sharing of care of children and domestic tasks;
- (b) Transform its recognition of the problem of multiple forms of discrimination into a comprehensive strategy to modify or eliminate stereotypical attitudes, in order to implement the new anti-discrimination law.

20. ... Further, the Committee is particularly concerned at the reported disproportionate use of violence by the police, including sexual abuse, against female students during social protests and against women during Mapuche protests. It regrets the absence of prosecution of perpetrators and the failure of the State party to provide access to justice to women victims of such violence.

21. The Committee urges the State party to: ...

- (b) Establish a comprehensive strategy and action plan to prevent and eliminate all forms of violence against women, including in the Mapuche and other indigenous communities, as well as an effective institutional mechanism to coordinate, monitor and assess the effectiveness of the measures taken;
- (e) Ensure that all forms of violence committed by, or resulting from, actions or omissions by state agents at all levels, including the police, are systematically and duly investigated, that perpetrators are effectively prosecuted and punished with adequate sentences and disciplinary measures, and that victims, especially indigenous women, are provided with reparation or compensation;
- (f) Strengthen its judicial system to ensure that women, in particular disadvantaged groups such as indigenous women, have effective access to justice.

24. While commending the State party's effort to strengthen female political leadership through the establishment of the "600 women leaders for Chile" Programme, the Committee is concerned about the low participation of women in government, in both Chambers of parliament, the diplomatic service and the judiciary, as well as mayors and municipal councillors. It regrets that the persistence of patriarchal attitudes and stereotypes and the lack of temporary special measures continue to impede women's participation in parliament and in decision-making positions at the state and municipal levels, including indigenous women. ...

25. The Committee calls on the State party to: ...

- (b) Strengthen its efforts aimed at increasing the participation of women in political life at the national and municipal levels, including by conducting awareness raising campaigns which also target indigenous women, by providing incentives for political parties to nominate equal numbers of women and men as candidates and adequately funding campaigns of women candidates....

28. ... The Committee is further concerned about the high illiteracy rates amongst rural and indigenous women.

29. The Committee recommends the State party to: ...

- (d) Step up its efforts to establish programmes specifically designed to eradicate female illiteracy among rural and indigenous women and to implement equal education opportunities for rural and indigenous girls.

32. While noting the State party's efforts to provide training to women in traditionally male-dominated areas, the Committee remains concerned at the low female participation in the labour market, especially with regard to migrant and indigenous women, the persistent wage gap between women and men and at the failure of the State party to incorporate the principle of equal pay for work of equal value in Act No. 20.348 (2009) on the right to equal remuneration, in conformity with ILO standards. ...

33. The Committee recommends the State party to: ...

(c) Increase its efforts to develop measures and programmes aimed at improving the situation of women in the labour market, including for the integration of migrant and indigenous women.

42. The Committee regrets the lack of detailed information in relation to disadvantaged groups of women, such as migrant women, rural women, indigenous women and other women facing multiple forms of discrimination.

43. The State party is invited to provide comprehensive information and statistical data, in its next periodic report, on the situation of disadvantaged groups of women, in particular migrant women, rural women and indigenous women.

## **B. Jurisprudence**

### **1. Canada, CEDAW/C/51/D/19/2008, 26 April 2012 (footnotes omitted)**

Views of the Committee on the Elimination of Discrimination against Women under article 7, paragraph 3, of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (fifty-first session)

concerning

#### **Communication No. 19/2008\*\*\***

<i>Submitted by:</i>	Cecilia Kell (not represented by counsel)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Canada
<i>Date of the communication:</i>	24 June 2008 (initial submission)
<i>References:</i>	Transmitted to the State party on 28 August 2008 (not issued in document form)

*The Committee on the Elimination of Discrimination against Women*, established under article 17 of the Convention on the Elimination of All Forms of Discrimination against Women,

*Meeting on 28 February 2012,*

*Adopts the following:*

#### **Views under article 7, paragraph 3, of the Optional Protocol**

1. The author of the communication, dated 24 June 2008, is Cecilia Kell, a Canadian aboriginal woman living in the Northwest Territories of Canada. The author claims to be the victim of violations by Canada of her rights under articles 1; 2, paragraphs (d) and (e), 14, paragraph 2 (h), 15, paragraphs 1-4, and 16, paragraph 1(h), of the Convention on the Elimination of All Forms of Discrimination against Women (hereinafter

“Convention”). The author is acting on her own behalf and is not represented by counsel. The Convention and its Optional Protocol entered into force for Canada on 10 December 1981 and 18 January 2003, respectively.

### **Factual background**

2.1 The author is an aboriginal woman who belongs to the community of Rae-Edzo, in the Northwest Territories in Canada. After attending college, she returned to the community as a single mother but decided to leave her three children with her relatives outside the community until she could get established and secure a home for her family. The author and her late partner, W.S. (hereinafter “partner”), began a common-law relationship in 1989.

2.2 When housing became available in the Rae-Edzo community under a scheme by a local housing authority which earmarked housing for the indigenous population, the author told her partner that she wanted to apply for a house in order to bring her children home. Without telling her, her partner applied in his name only for a unit from the Rae-Edzo Housing Authority (hereafter “Housing Authority”). On 1 November 1990, his application was turned down by the Housing Authority Board because he was not a member of the community, and had applied for himself as a single man. The author’s partner told her that the Housing Authority had turned her down for a house. The author could not ask her partner any questions as to why she would have been turned down without even applying because her partner was violent and abusive towards her. It was common knowledge within the Rae-Edzo community that the author and her partner had a common-law relationship. The author was informed by the Tenant Relations officer at Rae-Edzo that her partner could not apply for himself as he was not a member of the aboriginal community, and they advised her to apply for housing, listing her partner as her spouse.

2.3 The author and her partner therefore applied as a family for a house on a leasehold land, in accordance with the advice from the Housing Authority. On 7 October 1991, the Northwest Territories Housing Corporation issued an Agreement for Purchase and Sale to William Senych and Cecilia Kell as purchasers (co-owners) of the house that they moved into.

2.4 Over the next three years, the author experienced spousal abuse and the situation worsened when she got a job and became financially independent. Her partner was extremely jealous and controlled her finances, monitored her whereabouts, threatened her, prevented her from having contact with her family, assaulted her on several occasions, tried to stop her from working and took actions that resulted in her losing jobs. She was admitted a couple of times to McAteer House, a shelter for battered women in Yellowknife.

2.5 In February 1992, at the partner’s request and without the author’s knowledge, the Housing Authority wrote to the Northwest Territories Housing Corporation stating that the partner wanted the author’s name removed from the Assignment of Lease, the document that certified co-ownership of the author and her partner. Her partner was a board member of the Housing Authority Board at the time, and in June 1993, the Northwest Territories Housing Corporation complied with his request.

2.6 In early 1995, when the author took employment without her partner’s consent, the latter changed the locks on the family home and denied her access. As a result, the author had no place to go for several days, until she found a place with her employer’s help. In February 1995, when the author was allowed to enter the house to pick up a few belongings, her partner presented her with a letter from his lawyer requesting her to vacate the house by 31 March 1995. The letter further notified her that his client would exercise the remedies available to him under the law if she did not comply with his request. The author is of the opinion that she was evicted from the house by her partner because she had escaped the abusive relationship by leaving home and seeking refuge in a battered women’s shelter.

2.7 In May 1995, the author decided to file the first court action against her partner before the Supreme Court of the Northwest Territories to seek compensation for assault, battery, sexual assault, intimidation, trespass to chattels, loss of use of her home and consequential payment of rent and attendant expenses. She also filed a declaration that her partner had obtained the house through fraudulent methods, aided and abetted by the Government of the Northwest Territories. The author applied for legal aid and was assigned a lawyer who advised her to comply with the eviction letter and not to return to her home, otherwise she would be charged.

2.8 Shortly after the first lawsuit was filed, the partner became ill with cancer and the author's lawyer recommended that the court action be delayed. The partner died in November 1995. In March 1996, the author's lawyer initiated the second court action against the estate of the partner, the Northwest Territories Housing Corporation and William Pourier, who was alleged to have been residing in the house with her partner at the time of his death, and who continued to reside there. The author's claim was amended by her new counsel on 9 July 1998 to include the claim for damages for assault and intimidation, in addition to the previously submitted claim.

2.9 In May 1999, a formal offer to settle in the amount of Can\$15,000 was made by the partner's estate and the Northwest Territories Housing Corporation, while the author's lawyer focused his efforts on negotiating a settlement of Can\$20,000. No further steps were taken in respect of the author's outstanding legal actions. Thereafter, the author's file was reassigned twice to different lawyers because one relocated to Alberta, and the other ceased employment with the Legal Services Board. In November 1999, the author was assigned a fourth lawyer, who insisted that she accept a monetary settlement. As the author's primary focus has always been on regaining ownership and possession of her house, she wanted to pursue her claim in court, rather than pursue a monetary settlement. As a result of the conflict between the author and her lawyer, the latter ceased acting on her behalf in June 2002. The author was then denied another legal aid lawyer and had to appeal against her denial of legal coverage to the Legal Services Board, which allowed her appeal and assigned her a fifth lawyer.

2.10 On 3 June 2003, a notice of motion was filed by her partner's estate to set aside the author's statement of claims, for "want of prosecution" on the grounds that the author, as the party who initiated a legal action, has not diligently acted to pursue her claim. On 10 June 2003, the Northwest Territories Housing Corporation also brought a motion to dismiss the action. When the application for dismissal of the first action was heard in October 2003 in the Supreme Court of the Northwest Territories, the author did not contest the dismissal; therefore the first action was dismissed without appeal to the Court of Appeal for the Northwest Territories. However, the author argued against the dismissal of the second action, on the ground that the Court should have reviewed all the actions in the two cases in its assessment of whether there had been a material delay in prosecution. The author was actively responsive to the first action which was linked to the second case, therefore she considered it unjust that the Court deemed that she had taken "no action" in the past few years. The second action was nevertheless dismissed on 3 November 2003 by the Supreme Court of the Northwest Territories for "want of prosecution", on the grounds that no action had been taken by the author. Costs were imposed, which were later taxed at Can\$5,800. The author appealed against this decision in the Court of Appeal for the Northwest Territories but her appeal was dismissed without any reasons provided in writing. No further appeal was made by the author in the Supreme Court of Canada regarding the second action.

2.11 On 16 November 2004, the author initiated a new (third) action dealing solely with the issue of her interest in and right to the leasehold title and possession of the property. In January 2005, a counsel for the respondent, the partner's estate (hereinafter the "Estate"), brought a motion seeking summary judgment dismissing her action or security for costs in the alternative. The property in question had been sold by the Estate to third-party purchasers and a transfer of lease had been given to them in early November 2004. The author's position was that the Estate still held her legal title and equitable interest, which she had acquired prior to the purchasers in question. On 27 May 2005, an affidavit from the then Tenant Relations officer of Rae-Edzo was submitted during the third court action, which stated that the minutes of the meeting of the Board of Directors of the Housing Authority of 1 November 1990, denied the deceased partner's application for housing on the grounds that he did not belong to the community, however, the said minutes were missing. The affidavit also stated that the Tenant Relations officer was instructed by the Board of Directors to contact the author and advise her to apply for housing by listing her partner as her spouse. The affidavit further stated that after the signing of the Agreement of Purchase and Sale, the original copy of the document was sent to the main office of the Northwest Housing Corporation at Yellowknife, while a copy was retained by the Tenant Relations officer for record. However both copies of the Agreement were said to be missing and lost, and that there was no explanation for the situation.

2.12 On 21 July 2005, the Supreme Court of the Northwest Territories, while hearing the application for summary dismissal in the third court action, held that since the third action sought essentially the same relief as the previous two actions, the author had to pay the amount of the taxed bill of costs in court with respect to the previous court actions as well as post security for the respondent's costs in this third action before continuing with the case. The Court ordered that the cost payments had to be made within 60 days of the filing of the memorandum and that the case was stayed till compliance was met. As the author could not comply with the time limit set by the Court for the payment of costs and the security, the case was dismissed on 26 April 2006 by the Supreme Court of the Northwest Territories.

2.13 The author contends that she has exhausted all domestic remedies. She explains that she had to represent herself in the third case because, as a single mother, she did not have the means to retain a private lawyer. Although the author had been represented by many lawyers from the Legal Services Board over a period of 10 years, the lawyers did not comply with her instructions. She submits that a settlement had been negotiated without her consent and contrary to her instructions. She believes that as a result of her refusal of the said settlement, she was denied further legal aid and was obliged to represent herself.

### **The complaint**

3.1 The author claims to be the victim of a violation of article 1 of the Convention, because the State party allowed its agents (namely, the Northwest Territories Housing Corporation and the Rae-Edzo Housing Authority) to discriminate against her on the basis of her sex, marital status and cultural heritage, in that it failed to ensure that its agents provide equal treatment to women applicants for housing.

3.2 She also claims that the State party has contravened article 2, paragraph (d), of the Convention, as it failed to ensure that its agents refrain from engaging in any act or practice of discrimination against women, when they removed the author's name from the lease without her consent. She further contends that the fact that the State party did not take any action to remedy the situation when it was brought to its attention is a violation of article 2, paragraph (e), of the Convention.

3.3 She further claims that the State party has contravened article 14, paragraph 2(h), of the Convention by failing to ensure that its agents take all appropriate measures to eliminate discrimination against women in rural areas such as Rae-Edzo, in particular taking into account her situation. She alleges that the State party failed to ensure that its agents apply its policies and procedures with regard to the allocation of housing and the provision of adequate living conditions fairly and equally for men and women.

3.4 She submits that the State party has contravened article 15, paragraphs 1 and 2, of the Convention as it failed to ensure that its agents recognize her equal rights to conclude a legal contract, in particular a leasehold, independently of her partner, and to administer property independently and equally in all stages and procedures in court and before the housing corporations.

3.5 She also submits that the State party has contravened article 15, paragraphs 3 and 4, of the Convention as it failed to ensure that its agents respect the Agreement for Purchase and Sale, failed to rectify the fraudulent act of her partner and failed to ensure that the new Assignment of Lease, on which the author's name was not included, was declared null and void.

3.6 She further submits that the State party has contravened article 16, paragraph 1(h), of the Convention as it failed to ensure that its agents afford the same rights to her in comparison to her partner's rights in respect of ownership, acquisition, management, administration and enjoyment of the property.

### **State party's submission on admissibility**

4.1 On 6 January 2009, the State party submitted that it considers the "relevant fact" on which all of the author's allegations are based to be the alleged removal of the author's name from the Assignment of Lease in the early 1990s.

4.2 The State party challenges the admissibility of the communication on three grounds: (i) that the facts that form the subject matter of the communication occurred prior to the entry into force of the Optional Protocol of

the Convention;(ii) that the author failed to exhaust all available domestic remedies; and (iii) that the communication is manifestly ill-founded or not sufficiently substantiated.

4.3 The State party submits that the “relevant fact” on which the communication is based, that is, the removal of the author’s name from the Assignment of Lease, occurred between 1992 and 1993, well before the entry into force of the Optional Protocol for Canada on 18 January 2003; and action in that respect was completed at that time. Accordingly, the State party submits that the whole communication is inadmissible *ratione temporis* under article 4, paragraph 2(e), of the Optional Protocol.

4.4 The State party notes that the substance of the present communication has never been brought before the domestic authorities, therefore the communication should be declared inadmissible on the basis of non-exhaustion of domestic remedies. While acknowledging that the author initiated some domestic legal proceedings, the State party submits that the author did not allege any form of discrimination on the part of the Government of Canada, the Government of the Northwest Territories, or its agents. The State party further argues that the author did not exhaust all domestic appeal routes in respect of any of her three court actions: for the first action, she did not appeal to the Court of Appeal for the Northwest Territories; for the second action, she did not appeal to the Supreme Court of Canada; and the third action was dismissed by the Supreme Court of the Northwest Territories. Therefore, the State party submits that the entire communication should be deemed inadmissible for failure to exhaust domestic remedies under article 4, paragraph 1, of the Optional Protocol.

4.5 The State party is of the view that the communication neither singles out any particular legislation or policy of the Government of Canada or the Government of the Northwest Territories as being discriminatory, nor points to any pattern of discrimination, and does not otherwise demonstrate how the Government of Canada or the Government of the Northwest Territories, or its agents, have discriminated against the author or women in general on the basis of sex, marital status, cultural heritage or place of residence, or any other ground of discrimination. The State party further argues that the communication is not sufficiently substantiated, as the author has not submitted any evidence which would substantiate the allegation of discrimination against the author or women in general.

#### **Author’s comments on the State party’s observations on admissibility**

5.1 In her submission of 1 March 2010, the author, in response to the State party’s submission on admissibility, claims that the communication should be dealt with on the merits in accordance with both the doctrine of “equity *contra legem*,” as the use of equity in derogation of the law, where, under the circumstances of the case, an exception to the law is needed to achieve an equitable and just result; and the doctrine of “equity *intra legem*,” as the Court’s power to interpret and apply the law to achieve the most equitable result. The author also submits that the legal system did not understand the aboriginal way of solving disputes or the particular spiritual connection that the author had with the land.

5.2 With regard to the admissibility *ratione temporis*, the author submits that discrimination has continued after the date of the critical event. In relation to the requirement to exhaust domestic remedies, the author claims that she did not have entire control over the delays in taking action on her case. She also claims that the application of certain domestic remedies would have been unreasonably prolonged and unlikely to give effective relief. The author further claims that she would not have been approved for legal assistance to file an appeal before the Supreme Court of Canada.

#### **State party’s further submission on admissibility**

6.1 By further submission on 13 April 2010, the State party reiterates that the communication is inadmissible on the following grounds: *ratione temporis* pursuant to article 4, paragraph 2(e) of the Optional Protocol; non-exhaustion of domestic remedies pursuant to article 4, paragraph 1; and manifestly ill-founded pursuant to article 4, paragraph 2(c), of the Optional Protocol.

### **Issues and proceedings before the Committee concerning admissibility**

7.1 During its 47th session, from 4 to 27 October 2010, the Committee on the Elimination of Discrimination against Women decided, in accordance with rules 64 and 66 of its rules of procedure, to consider the question of admissibility and the merits of the communication separately.

7.2 The Committee considered the admissibility of the communication, in accordance with rules 64 and 66 of its rules of procedure. In accordance with article 4, paragraph 2, of the Optional Protocol, the Committee was satisfied that the same matter has not been or is not being examined under another procedure of international investigation or settlement.

7.3 The Committee found, with one dissenting opinion, the communication admissible under article 4, paragraph 1, of the Optional Protocol, and concluded that even assuming that domestic remedies had not been exhausted, the application of those remedies was unlikely to bring effective relief to the author.

7.4 The Committee observed that the author was subject to domestic violence by her abusive partner; that she belongs to the indigenous community; and that the housing in question was earmarked for the indigenous community, despite which, the author was advised by the Housing Authority to include her partner as her spouse and apply for a family unit, thereby denying her the sole right; that the author was forcibly evicted by her partner and his estate after the alleged connivance with the Housing Authority Board, and as a result, to this date, has not received her share in the estate. The Committee further noted that under general recommendation 19, it is the obligation of the State party concerned to exercise due diligence to protect women, including against gender-based violence by private actors; investigate the crime; punish the perpetrator; and provide compensation. Although the State party argues that the author has not brought any claim of discrimination in the domestic court, the Committee noted that the author filed a second action on 14 March 1996 before the Supreme Court of the Northwest Territories, subsequently augmented with an amended statement of claim dated 9 July 1998, which included the following claims of sex-based discrimination: that her partner was cruel, abusive, extremely dominant, intimidating and physically aggressive; that, as a result, she had to seek protection in a women's shelter and find alternative accommodation for fear of physical harm, serious injury or death; and that she was evicted from the property and land, and caused to suffer financial and emotional hardship. Accordingly, the Committee considered that the author's allegations, relating to articles 1, 2, paragraphs (d) and (e), 14, paragraph 2 (h), 15, paragraph 4 and 16, paragraph 1 (h), of the Convention had been sufficiently substantiated for the purposes of admissibility under the requirements of article 4, paragraph 2 (c), of the Optional Protocol.

7.5 The Committee found that since the author's claim had not been barred by limitation in any of the proceedings before the domestic courts after ratification of the Protocol, and since the author's claim had already been pending before the courts at the time of ratification and entry into force of the Protocol, her claim constituted a pending claim. The Committee was of the view that the subject matter and discriminatory effect of the alleged violation did not cease to exist, as the claim was a pending continuing claim not barred by limitation. The Committee considered the facts that are the subject of the communication to be of a continuous nature, and found that admissibility *ratione temporis* is thereby justified, and declared the communication admissible under article 4, paragraph 2 (e), of the Optional Protocol.

7.6 The Committee declared the communication admissible on 15 October 2010, with one dissenting opinion.

### **Comments from the State party on the merits**

8.1 On 25 May 2011, the State party submitted that the author's communication alleges that the Government of Canada and the Government of the Northwest Territories contravened articles 1, 2, paragraphs (d) and (e), 14 paragraph 2(h), 15 and 16, paragraph 1(h), of the Convention by virtue of the acts or omissions of the Northwest Territories Housing Corporation and the Rae-Edzo Housing Authority. The State party clarifies that the Northwest Territories Housing Corporation and the Rae-Edzo Housing Authority are not agents of the Government of Canada, but are rather agents of the Government of the Northwest Territories. The Northwest Territories Housing Corporation is a corporate body and agent of the Commissioner of the Northwest Territories, created pursuant to the Northwest Territories Housing Corporation Act, and the Rae-Edzo

Housing Authority is a housing authority incorporated to operate within the municipal limits of the hamlet of Rae-Edzo pursuant to an order made under the Northwest Territories Housing Corporation Act.

8.2 The State party reiterates its view that the author's communication is inadmissible for the reasons set out in its 6 January 2009 submission on the question of admissibility.

8.3 The State party reiterates at great length the chronology of the facts of the case and submits that the author has not demonstrated that articles 1, 2, paragraphs (d) and (e), 14, paragraph 2 (h), 15 and 16, paragraph 1 (h), of the Convention have been violated.

8.4 As to the author's allegation regarding violations of her rights under article 1 of the Convention, the State party submits that the author has at no time provided any evidence, either in her communication or before the domestic courts and tribunals in Canada, that the Government of Canada, the Government of the Northwest Territories, the Northwest Territories Housing Corporation or the Rae-Edzo Housing Authority (hereafter the "State party's authorities") have committed any direct or indirect acts of discrimination as defined in article 1 of the Convention, and has thus not established any discrimination in contravention of article 1 of the Convention. It maintains that the author's communication does not single out any particular legislation or policy of the State party as being discriminatory, nor does it point to any acts or patterns of discrimination, or otherwise demonstrate how the State party's authorities have discriminated against the author or women in general on the basis of sex, marital status, cultural heritage or place of residence, or any other ground of discrimination set out in the Convention. Rather, the communication deals with a highly personal dispute between the author and her former common-law partner, who, at a certain point in time, held a position with the Rae-Edzo Housing Authority, and who allegedly abused that position for his personal gain. While the author alleges that the Northwest Territories Housing Corporation and the Rae-Edzo Housing Authority played a role in removing her name from the Assignment of Lease, there is no evidence demonstrating that there was any discriminatory conduct on the part of these bodies in respect of the removal of the author's name from the document and, in turn, that there was a violation of one of the articles of the Convention.

8.5 The State party submits that the author has alleged discrimination against "women applicants for housing," and against "women generally," as well as failure on the part of the State party to take all appropriate measures to eliminate discrimination against women in general, and women living in rural areas in particular. The State party submits that the author does not presently have any standing to represent women applicants for housing generally, Canadian women generally, women living in rural areas or any other individuals or groups of individuals, since she has not demonstrated that she has obtained consent from such individuals or groups of individuals to act on their behalf, nor has she demonstrated that she can act on their behalf without their consent.

8.6 The State party submits that there is no evidence that removal of the author's name from the Assignment of Lease for the Rae-Edzo property was due to a failure to pursue a policy of eliminating discrimination against women, and that the removal of the author's name has not been shown to be due to a failure on the part of any Government entity to undertake to refrain from engaging in any act or practice of discrimination against women (art. 2, para. (d)) or due to a failure on the part of any Government entity to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise (art. 2, para. (e)). The State party also submits that the author has not advanced any evidence of discriminatory conduct on the part of the State party's authorities in respect of the circumstances surrounding the filing of the joint application for housing listing the author and Mr. Senych (her partner) as co-applicants for housing under the Northern Territorial Rental Purchase Program. The State party observes that the author has provided two letters indicating that in October of 1992, her partner made a request to have her name removed from the Assignment of Lease for the Rae-Edzo property. The author has also provided a copy of an Assignment of Lease indicating that the Rae-Edzo property was assigned to her partner, solely in his name, in June of 1993. However, the State party submits that these documents are not evidence indicating that the removal of the author's name from the Assignment of Lease was motivated by or was in any way a by-product of a failure on the part of the State party's authorities to refrain from engaging in any act or practice of discrimination against women or to ensure that the Northwest Territories Housing Corporation and the Rae-Edzo Housing Authority refrained from engaging in any such acts or practices of discrimination. Further, because the author did not

pursue her litigation claims against her partner, his Estate or the Housing Authority, there is no domestic decision-making body's judgment attempting to determine why her name was removed. The State party maintains that the author's partner may have perpetrated a fraud against her by abusing his position within the Housing Authority, although this has not been established in any way. This abuse of authority for personal reasons cannot be attributed to the State party or any of its Government entities as an act of discrimination against the author or women generally, and is not evidence of an act or pattern of discrimination. Accordingly, the State party submits that the author's allegations in respect of article 2, paragraph (d), of the Convention are without merit or have not been sufficiently substantiated.

8.7 The State party submits that after Mr. Senych (the author's partner), solely on his own behalf, applied to the Rae-Edzo Housing Authority to purchase a dwelling unit under the Northern Territorial Rental Purchase Program and was denied, "the Board of Directors of the Rae-Edzo Housing Authority instructed one of their Tenant Relations officers to contact the author and explain to her that her partner's application for housing would be considered if her name was added to the application since she was a resident of the community of Rae-Edzo." The State party maintains that the Board of Directors advised the Tenant Relations officer to provide this information to the author because "it was apparently common knowledge in the community of Rae-Edzo that Mr. Senych lived in a common-law relationship with the author, and because it was also common knowledge that the author was from the community of Rae-Edzo, and thus, was eligible to apply for housing from the Rae-Edzo Housing Authority." The State party observes that the author has not advanced any evidence to the effect that she was specifically told that she could only apply for housing under the Northern Territorial Rental Purchase Program if she submitted an application which listed Mr. Senych as a co-applicant or that she could not apply for housing on her own behalf or that she could not seek sole ownership of a housing unit from the Rae-Edzo Housing Authority. The State party further observes that the eligibility criteria under the Northern Territorial Rental Purchase Program in place at the material time did not contain any restrictions along the lines of gender, marital status or cultural heritage, and that the eligibility criteria cannot be seen as unfairly targeting women living in rural areas.

8.8 The State party maintains that both the author's income and the income of her partner were taken into account in determining their eligibility under the Northern Territorial Rental Purchase Program and that it is significant that the author has not demonstrated that she would have actually been in a position to acquire the Rae-Edzo property on a rent-to-own basis had she made an application solely on the basis of her own earnings.

8.9 As to the author's allegation that the State party contravened article 2, paragraph (e), of the Convention, the State party maintains that in order for the author to demonstrate a violation, the author must show that it has failed to take appropriate measures to eliminate the discrimination that the author experienced personally as a consequence of her name being removed from the Assignment of Lease, when the same was brought to the authorities' attention. The State party submits that several efforts were made by the Northwest Territories Housing Corporation, along with the Estate of Mr. Senych, to rectify the situation faced by the author when it was brought to their attention that her name had been removed from the Assignment of Lease. Between June 1996 and August 1996, the Northwest Territories Housing Corporation tried to address the author's situation by offering her "other homes in the community of Rae-Edzo that were of comparable size and market value to the Rae-Edzo property." For instance, the Northwest Territories Housing Corporation offered as settlement to the author a one bedroom duplex (in August 1996) and another Northern Territorial Rental Purchase Program unit (on an unspecified date), both of which the author rejected. Further, on 31 May 1999 and in 2001, the Northwest Territories Housing Corporation and the Estate of her late partner made offers to jointly settle the author's claim respectively for the amount of \$15,000 and \$20,000, but these offers were also rejected by the author. The State party notes its understanding that in 2003, the estimated value of the Rae-Edzo property had been found to be \$28,500. The State party further notes that according to a 1996 appraisal report submitted by the author, the estimated value of the Rae-Edzo property was \$40,000 at that time. The State party thus notes that the value of the author's undivided one-half interest would likely have been \$14,250 in and around the time of the \$20,000 offer, and would have been, at the very most, \$20,000 at the time of that 2001 offer. The State party maintains that the author's refusals of all of the above reasonable offers to settle this dispute render the allegations with respect to article 2, paragraph (e), of the Convention, as set out in the author's communication, moot and completely without merit. The State party further submits that the explanations

offered by the author in respect of her refusals to settle this dispute do not withstand scrutiny. The author has insisted on receiving a one-half interest in the Rae-Edzo property even though this particular request has long been legally impossible. The State party submits that the Northwest Territories Housing Corporation was actually no longer the registered owner of the property at the time that the settlement negotiations were ongoing, and thus was unable to offer the author a one-half interest in the property. Even in the event that the Northwest Territories Housing Corporation did have the ability to fulfil the author's requests when settlement negotiations were ongoing, doing so would have required evicting the new tenants from the Rae-Edzo property, thus creating significant inequities. For, in November of 2004, third parties became the registered owners of the leasehold interest in the Rae-Edzo property, and said third parties remain in lawful possession of the property today.

8.10 The State party also submits that it does provide the legislative and other measures necessary to eliminate discrimination against women by any person, organization or enterprise. The Canadian Charter of Rights and Freedoms (hereafter the "Charter") provides constitutional protection against discrimination against women. In addition, the State party has in place various pieces of domestic human rights legislation prohibiting discrimination against women, including discrimination against women on the grounds set out by the author in her communication, as well as specific protection against discrimination in the context of housing and accommodation. The State party submits that the human rights legislation in force in the Northwest Territories at the relevant time was the Fair Practices Act, and refers to section 4 of that Act. The Fair Practices Act was replaced with the Northwest Territories Human Rights Act, which similarly prohibits discrimination on a number of grounds, in the context of the provision of goods, services, accommodations and facilities, and thus likewise seeks to eliminate discrimination against women by any person, organization or enterprise as per article 2, paragraph (e), of the Convention. In addition, the State party's federal legislation, the Canadian Human Rights Act, specifically prohibits the denial of occupancy of residential accommodations on the basis of a prohibited ground of discrimination, such as race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability and conviction for which a pardon has been granted.

8.11 The State party notes that in its Decision of 25 November 2010 with respect to the admissibility of the author's communication, the Committee observed the author's claims that she was subject to domestic violence by her partner and in turn noted its general recommendation No. 19 on violence against women. The State party submits that the author herself did not raise in her communication any allegation to the effect that she was discriminated against on the basis of a failure on the part of the State party's authorities to ensure that their agents exercised due diligence to protect her from domestic violence, including violence committed by her partner, nor did she otherwise allege a failure on the part of these agents to investigate or punish acts of violence or to provide compensation for the same. The State party further submits that there is no evidence that the author had made known to the authorities that she was suffering violence at the hands of her partner at any point before she filed the domestic litigation against him, at which point, determination of such allegations fell to the civil court process. The State party maintains that, in fact, it has acted with due diligence to generally prevent violations under the Convention, and that Canadian governments do act with due diligence to investigate and punish acts of violence against women by individuals, where these acts are brought to their attention.

8.12 The State party proceeds to analyse the circumstances of the current case in light of the Committee's jurisprudence and concludes that, unlike in those cases, the Canadian authorities could not have known that the author was in danger, since she failed to pursue her claims in the domestic courts. The State party also notes "the sharp contrast between the procedural history of the author's domestic litigation and the procedural history in the Communication *Vertido v. The Philippines*" and submits that, unlike the situation in the *Vertido* case, there is no evidence that the delays associated with the author's domestic litigation were due to the failure of the court system to deal with her claims in a fair, impartial, timely and expeditious manner. The State party proceeds to describe the legislative and policy measures it has taken to protect victims of domestic violence.

8.13 As to the author's allegation that the State party has contravened article 14, paragraph 2 (h), of the Convention, the State party submits that the author does not have standing to represent the interests of women in general, women living in rural areas generally or women living in the specific area of Rae-Edzo, Northwest

Territories. It maintains that there is no evidence that the State party's authorities have applied their policies or procedures in respect of housing unfairly, in a discriminatory manner, in contravention of article 14, paragraph 2 (h), of the Convention. The author has not advanced any evidence indicating that the removal of her name from the Assignment of Lease was motivated by or in any way a by-product of a failure on the part of the State party's authorities to refrain from engaging in any act or practice of discrimination against women in general or women in rural areas in particular, or a failure on the part of the State party's authorities to ensure that the agents of the Government of the Northwest Territories refrain from engaging in any such acts or practices of discrimination against such women. The State party submits that the author has failed to substantiate this allegation and to demonstrate any violation of article 14, paragraph 2 (h), of the Convention.

8.14 The State party further submits that many of the constitutional protections and legislative measures set out above in response to the author's allegations under article 2, paragraph (e), of the Convention serve to demonstrate that it has appropriate measures in place, as required by article 14, paragraph 2 (h), of the Convention, to eliminate discrimination against women in rural areas in order to ensure, on the basis of equality of men and women, that they participate in and benefit from rural development, and in order to also ensure that women have an equal right to enjoy adequate living conditions. It proceeds to describe the policies and programs designed to meet the housing needs of women.

8.15 With respect to the author's allegations in regard to article 15, paragraph 4, of the Convention, the State party questions the applicability of this article of the Convention, given the Committee's general recommendation No. 21. The State party also submits that the author has failed to bring forth any evidence demonstrating that she was precluded in any manner from choosing the domicile ("country") in which she intended to reside "on the same basis as a man," or that her freedom to choose her residence was restricted on account of any discriminatory conduct, whether direct or indirect, on the part of the authorities. The State party does acknowledge that it became legally impossible for the author to acquire the specific Rae-Edzo property as a consequence of the fact that the property came to be lawfully occupied by third-party individuals in the years following the removal of her name from the Assignment of Lease, but it notes that various positive steps had been taken in order to remedy the situation of the author, and to allow her to once more reside in the community of Rae-Edzo, thus respecting her particular spiritual connection with the land where that community is located. The State party submits that the author is currently living in housing provided by the North Slave Housing Corporation, and has been living in housing provided by this housing authority since 2006. The State party submits that the facts fail to demonstrate that the author has been denied the opportunity to choose her place of residence as required by article 15, paragraph 4, of the Convention, and accordingly maintains that the author has not demonstrated a contravention of article 15, paragraph 4 of the Convention.

8.16 With respect to the author's allegations in regard to article 16, paragraph 1 (h), of the Convention, the State party submits that the author has not pointed to any property laws or customs that discriminate against married or unmarried women in respect of the ownership, acquisition, management, administration and enjoyment of property, any discriminatory practices or laws that interfered with her ownership, acquisition, management, administration or enjoyment of the Rae-Edzo property in particular, or any discriminatory conduct on the part of the authorities in respect of the removal of her name from the Assignment of Lease for that property. The State party reiterates its arguments that the author has not brought forth any evidence to substantiate the claim that there has been discrimination in her case, and that the communication deals with a personal dispute between the author and her partner, and an act of fraud and/or abuse of public office committed by the partner to advance his personal interests. It also submits that the constitutional protections and legislative measures cited above, in combination with any applicable family law legislation, aim to ensure the elimination of discrimination against women in all matters relating to marriage and family relations, and to ensure the same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property in accordance with article 16, paragraph 1 (h), of the Convention. The State party therefore maintains that the author has not demonstrated any violation of article 16, paragraph 1 (h), of the Convention.

#### **Further submissions from the parties**

9.1 On 26 October 2011, the author submitted as the reasons for not accepting alternative housing offers that her home and belongings were illegally stripped from her as a direct result of the collusion between her

partner and the local housing association of which he was a member of the Board and the Northwest Territories Housing Corporation which carried out his request to remove her name from the Assignment of Lease without her authorization. She submits that her common-law relationship was falsely characterized by her partner and the legal system as a “boarder relationship.” After she took refuge in a battered women’s shelter, she was informed by her lawyer that she had been evicted from her home and was under threat of criminal charges and arrest if she stepped onto the property again. As a result, she and her three children became homeless for several years, were forced to live apart for an extended period of time, and her ability to obtain and maintain employment were affected by that eviction.

9.2 The author submits that in exchange, the Northwest Territories Housing Corporation proposed to replace her three-bedroom privately owned home with a one-room duplex with a studio space, which was a rental unit. She had three teenage children and was pregnant with a fourth child and considered that the offer was neither fair nor reasonable. She did not believe that the Housing Corporation was making the offer in good faith because they had already played a role in taking her home. She was concerned that if she moved into the rental unit with her three children, they would evict her under a different rule regarding limitation, for example, on the size of families living in studio units. She maintains that she is an aboriginal woman with a homeland and a treaty right to land and a house, that she chose where to reside when she purchased her home and that she wanted security and enough space in her home for her growing family and the Northwest Territories Housing Corporation did not offer her that. Furthermore, she was told by the North Slave Housing Corporation that she could apply to purchase a home if she wanted, but when she applied on two occasions she was denied a house because her income did not meet the criteria to become a homeowner.

9.3 The author further submits that the lawsuit took so many years to settle, because between 1995 and 2005, she was pursuing the same goal to regain her home and her belongings, but at every point in the legal process, she was told that it was not possible. She maintains that the failure to reach a settlement in her lawsuit was a result of discrimination perpetrated against her by lawyers assigned to the case and by officials at the Northwest Territories Legal Services Board. As an aboriginal person, she experienced racism, and as a woman, she experienced sexism. Both of these aspects of discrimination contributed to a pattern of behaviour that was “at best bullying and at worst abusive.” Poverty, unemployment, dislocation and homelessness resulting from the theft of her home played a role because she could not afford a lawyer of her own choosing, and at times she could not afford the contribution that the Northwest Territories Legal Services Board demanded in order to provide her services. She maintains that the failure to reach a settlement was impacted by the fact that she was assigned a number of different lawyers in ten years. The failure to reach a settlement was also a direct result of actions or lack of action on the part of those lawyers. Most of the lawyers would not “hear” her instructions, but instead gave her instructions and threatened to quit if she disputed their position; some lawyers acted on her behalf without her knowledge or consent. She had no choice about which lawyer she got and those who were assigned to her case by the Northwest Territories Legal Services Board were not held accountable by it. The author provides numerous examples of misconduct on the part of the lawyers assigned *ex officio* to represent her, and maintains that she lost her case because she did not have the expertise to pursue it through the legal system on her own, and she did not receive adequate legal representation.

9.4 With regard to the remedies that the author wishes to obtain from the State party, the author describes the hardships that she and her family were forced to endure as a result of losing her home and states that she would be grateful if she could receive compensation for the damage that has occurred but that she could not “put a price tag on the extreme maltreatment we had to endure as a result of losing our family home.” She further states that the remedies that would make a difference would be receiving a three-bedroom home; rebuke of the Government of the Northwest Territories, including the Northwest Territories Housing Corporation and the Northwest Territories Legal Services Board outlining their illegal and discriminatory behaviour; a commitment to train and employ more Aboriginal people in the legal system; reimbursement of all the legal fees she paid over the 10 years.

9.5 On 22 December 2011, the State party reiterated its main observations on the merits of the communication.

### **Consideration of the merits**

10.1 The Committee has considered the present communication in the light of all the information made available to it by the author and by the State party, as provided for in article 7, paragraph 1, of the Optional Protocol.

10.2 In the present case, the Committee observes that the author's name was removed from the Assignment of Lease, making her partner, who was not a member of the aboriginal community, the sole owner of the property; that she lost her share in the house as a result of an alleged fraudulent transaction effected by her partner; that such change was impossible without action or inaction of the Northwest Territories Housing Corporation; that the Northwest Territories Housing Corporation was an agent of the State party; that her partner was serving as a director of the Housing Authority Board and therefore occupied a position of authority; that she was not informed by the Housing Corporation of the annulment of her property rights, despite the fact that she was the eligible right holder as a member of the Rae-Edzo community. These facts show that the author's property rights were prejudiced as a result of an act of a public authority acting together with her partner. The Committee also observes that the author was subsequently denied access to the family home by her partner, who changed the locks and evicted her while she was attempting to escape an abusive relationship and seeking protection in a battered women's shelter. The Committee further notes that the author's lawyer, who was assigned by the Legal Services Board, advised her to follow the evacuation request made by her partner, and did not challenge the validity of such request. The Committee considers that the combined effect of the above facts led to discrimination against the author as defined by article 1 of the Convention. The Committee considers that the author has established a distinction based on the fact that she was an aboriginal woman victim of domestic violence, which she clearly submitted in her first lawsuit against her partner, and that such violence had the effect of impairing the exercise of her property rights. In its general recommendation No.28, the Committee states that intersectionality is a basic concept for understanding the scope of the general obligation of States parties contained in article 2 of the Convention. The discrimination of women based on sex and gender is inextricably linked with other factors that affect women, such as race, ethnicity, religion or belief, health, status, age, class, caste, and sexual orientation and gender identity. States parties must legally recognize and prohibit such intersecting forms of discrimination and their compounded negative impact on the women concerned (para. 18). Accordingly, the Committee finds that an act of intersectional discrimination has taken place against the author.

10.3 As to the author's allegation regarding violations of her rights under article 2, paragraphs (d) and (e), of the Convention, the Committee recalls that the said article calls on States parties to ensure that public authorities and institutions refrain from engaging in any act or practice of discrimination against women and to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise. Article 2, paragraph (d), of the Convention establishes an obligation for States parties not only to abstain from engaging in any act or practice of direct and indirect discrimination against women, but to ensure that any laws, policies or actions that have the effect or result of generating discrimination are abolished. Further, article 2, paragraph (e), of the Convention requires the State party to adopt measures that ensure the practical realization of the elimination of discrimination against women, which includes measures enabling women to make complaints about violations of their rights under the Convention and have effective remedies. As the author is an aboriginal woman who is in a vulnerable position, the State party is obliged to ensure the effective elimination of intersectional discrimination.

10.4 The Committee takes note of the State party's submission that several efforts were made by the Northwest Territories Housing Corporation to rectify the situation faced by the author when it was brought to their attention that her name had been removed from the Assignment of Lease, including offering her other homes in the community or monetary compensation, but that these offers were rejected by the author. It also notes the submission that the Northwest Territories Housing Corporation was no longer the registered owner of the property at the time that the settlement negotiations were ongoing, and thus was unable to offer the author a one-half interest in the property. The Committee, however, observes that the Northwest Territories Housing Corporation was administering the property when it removed the name of the author from the Assignment of Lease and reassigned the author's share to her partner, who was not eligible for such accommodation in the first place according to the Corporation's own rules; that the alternative accommodations offered to the author were for rent and not ownership, and smaller in size than the house

from which she had been evicted; also that the monetary compensation offers were, according to her, insufficient to allow her to provide adequate accommodation for her and her children. The Committee also observes that the first offer made by the Housing Corporation did not take place until August 1996, three years after the author was evicted from her home. The Committee concludes that State party has failed to ensure that its agents provide effective legal protection by respecting the Agreement for Purchase and Sale, and failed to ensure that the new Assignment of Lease, on which the author's name was not included, was declared null and void.

10.5 The Committee further observes that the author was forced to change lawyers numerous times due to the pressures of settling for monetary compensation instead of the restitution of the property; and that the author suffered severe prejudice in relation both to her domestic violence complaint and her property-related lawsuits, by the action of the legal aid lawyers assigned to her case. The Committee refers to its general recommendation No. 28 and recalls that States parties have an obligation under article 2, paragraph (e), of the Convention to adopt measures that ensure women's equality with men, including measures that ensure that women have access to effective remedies (para. 36). Accordingly, the Committee is of the view that the rights of the author under article 2, paragraphs (d) and (e), of the Convention have been violated.

10.6 As to the author's allegation that the State party has contravened articles 14, paragraph 2 (h), and 15, paragraph 4, of the Convention, the Committee notes that the information before the Committee does not show that the act of discrimination suffered by the author is related to her originating from a rural area or that she was prevented from residing in another property in the community of Rae-Edzo, in the Northwest Territories of Canada. Accordingly, the Committee is of the view that the facts before it do not reveal a violation of articles 14, paragraph 2 (h), and 15, paragraph 4, of the Convention.

10.7 With respect to the author's allegations in regard to article 16, paragraph 1 (h), of the Convention, the Committee takes note of the State party's submission that the author has not pointed out any property laws or customs that discriminate against married or unmarried women; any discriminatory practices or laws that interfered with her ownership, acquisition, management, administration or enjoyment of the Rae-Edzo property in particular; or any discriminatory conduct on the part of the authorities in respect of the removal of her name from the Assignment of Lease for said property. The Committee, however, observes that even though the formal eligibility criteria did not require so, the author was advised by a Tenant Relations officer of the Rae-Edzo Housing Authority that her partner's application for housing would be considered if the author's name was added to the application. The Committee also observes that the author was a victim of domestic violence, a fact which was not contested by the State party; that her partner tried to stop her from working, thus limiting her ability to lead an independent economic life; and that she was evicted from her home while seeking protection from domestic violence in a battered women's shelter. The Committee further observes that, according to the State party's submission, both the author's income and the income of her partner were taken into account in determining their eligibility under the Northern Territorial Rental Purchase Program, yet when her name was removed from the Assignment of Lease, the Northwest Territories Housing Corporation did not take her contribution into consideration or inform her of the removal. These facts considered together indicate that the rights of the author under article 16, paragraph 1 (h), of the Convention have been violated.

11. Acting under article 7, paragraph 3, of the Optional Protocol to the Convention, and in the light of all the above considerations, the Committee is of the view that the State party has failed to fulfil its obligations and has thereby violated the rights of the author under articles 2, paragraphs (d) and (e), and 16, paragraph 1 (h), read in conjunction with article 1 of the Convention, and makes the following recommendations to the State party:

- (a) Concerning the author of the communication
  - (i) Provide housing commensurate in quality, location and size to the one that she was deprived of;
  - (ii) Provide appropriate monetary compensation for material and moral damages commensurate with the gravity of the violations of her rights;
- (b) General
  - (i) Recruit and train more aboriginal women to provide legal aid to women from their communities, including on domestic violence and property rights;

(ii) Review its legal aid system to ensure that aboriginal women who are victims of domestic violence have effective access to justice.

12. In accordance with article 7, paragraph 4, of the Optional Protocol, the State party shall give due consideration to the views of the Committee, together with its recommendations, and shall submit to the Committee, within six months, a written response, including any information on any action taken in the light of the views and recommendations of the Committee. The State party is also requested to publish the Committee's views and recommendations and to have them widely disseminated in order to reach all relevant sectors of society.

## **VI. COMMITTEE AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT**

### **A. Concluding Observations**

#### **1. Paraguay, CAT/C/PRY/CO/4-6, 14 December 2011**

##### **Protection of indigenous peoples**

27. The Committee takes note of the measures already taken by the State party to comply with the judgements and decisions handed down within the Inter-American human rights system on the protection of indigenous peoples in the territory of the State party. The Committee also takes note of the measures taken in collaboration with the International Labour Organization to combat the exploitation of indigenous peoples for their labour. However, the Committee is concerned by reports of the persistence of such exploitation of members of the indigenous peoples living in Paraguay, which is equivalent to inhuman treatment in violation of the Convention (art. 16).

The Committee recommends that the State party take all measures necessary to eliminate all forms of exploitation of members of indigenous peoples for their labour. The State party should also, within a reasonable time frame, fully comply with the judgements of the Inter-American Court of Human Rights that obligate it to adopt measures to protect indigenous peoples.

#### **2. Canada, CAT/C/CAN/CO/6, 25 June 2012**

##### **Violence against women**

20. While noting several measures taken by the federal and provincial governments to combat high violence against Aboriginal women and girls, including cases of murders and disappearances (CAT/C/CAN/Q/6/Add.1, paras. 76 ff), the Committee is concerned about ongoing reports that: (a) marginalized women, in particular Aboriginal women, experience disproportionately high levels of life-threatening forms of violence, spousal homicides and enforced disappearances; and (b) the State party failed to promptly and effectively investigate, prosecute and punish perpetrators or provide adequate protection for victims. Furthermore, the Committee regrets the statement by the delegation that the issues on violence against women fall more squarely within other bodies' mandate and recalls that the State bears responsibility and its officials should be considered as authors, complicit or otherwise responsible under the Convention for consenting to or acquiescing in acts of torture or ill-treatment committed by non-State officials or private actors (arts. 2, 12, 13 and 16).

The State party should strengthen its efforts to exercise due diligence to intervene to stop, sanction acts of torture or ill-treatment committed by non-State officials or private actors, and provide remedies to victims. The Committee recommends that the State party enhance its efforts to end all forms of violence against aboriginal women and girls by, inter alia, developing a coordinated and comprehensive national plan of action, in close cooperation with aboriginal women's organizations, which includes measures to ensure impartial and timely investigation, prosecution, conviction and sanction of those responsible for disappearances and murder of aboriginal women, and to promptly implement relevant recommendations made by national and international bodies in that regard, including the Committee on the Elimination of Racial Discrimination, the Committee on the Elimination of Discrimination against Women, and the Missing Women Working Group.

#### **3. Peru, CAT/C/PER/CO/6, 16 November 2012**

12. The Committee is concerned at allegations of excessive and disproportionate use of force, including firearms, by the national police and armed forces during social protests as well as arrests of human rights defenders, lawyers, representatives of the Ombudsman and members of the indigenous population during such situations and that to date there have been no convictions regarding the incidents in Bagua, Celendín or Bambamarca (arts. 2, 10, 12, 13 and 16).

The State party should:

- (a) Ensure that law enforcement officials receive training on the absolute prohibition of torture, and on international standards on the use of force and firearms, including on the liabilities in cases of excessive use of force;
- (b) Expedite the investigation and prosecution of such cases and sanction officials found guilty of such offences with appropriate penalties.

21. The Committee is concerned at reports on forced labour practices amounting to slavery, debt bondage (*enganche*) and serfdom in such sectors as agriculture, stock-raising and forestry that particularly concern indigenous communities, and also at the situation of domestic workers living in conditions of domestic servitude. It is further gravely concerned at the increasing number of children affected by the worst forms of child labour in various sectors such as mining, brick-making and saw mills and that one third of persons in domestic servitude are children. The Committee is particularly concerned that the prohibition of slavery and forced labour is not adequately covered in the Penal Code. The Committee is further concerned at the trafficking in human beings for labour and sexual exploitation and in particular of women and young girls from impoverished rural regions in the Amazon who are recruited and coerced into prostitution in brothels located in mining shantytowns (arts. 2, 12, 13, 14 and 16).

The State party should strengthen its efforts to:

- (a) Adopt legislative measures to eradicate forced labour, serfdom and domestic servitude;
- (b) Ensure in practice the elimination of such contemporary forms of slavery and in particular protect children;
- (c) Carry out prompt investigation, prosecution and adequate punishment of perpetrators and provide protection, free legal aid, rehabilitation and compensation for victims of forced labour and trafficking;
- (d) Raise awareness of and train law enforcement personnel, judges and prosecutors on trafficking in persons and to improve the identification of victims of trafficking;
- (e) Amend the Penal Code and the Domestic Workers Act so that they are brought in line with international standards.

#### **4. Mexico, CAT/C/MEX/CO/5-6, 15 November 2012**

26. The State party is encouraged to widely disseminate the report submitted to the Committee and the present concluding observations, in particular in the languages of the indigenous peoples of the State party, through the official media and non-governmental organisations.

## **VII. COMMITTEE ON THE PROTECTION OF THE RIGHTS OF ALL MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES**

### **A. Concluding Observations<sup>78</sup>**

#### **1. Paraguay, CMW/C/PRY/CO/1, 16 May 2012**

46. The Committee notes with concern that, according to information brought to its attention, members of the indigenous population settled near the border between Bolivia and Paraguay regularly cross the border to work in the State party and that some of them, particularly agricultural workers, are subject to threats of abuse, forced labour and debt servitude. In view of the fact that indigenous migrants are generally in a vulnerable position, the Committee is concerned about the consequences of this migration flow.

47. The Committee invites the State party to provide for the protection of the rights of this group of migrant workers in accordance with the Convention.

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<sup>78</sup> The Committee reviewed Mexico, Argentina, Chile, Rwanda and Guatemala during 2011-12, but made no observation or recommendation specific to or otherwise directed at indigenous migrant workers.

## VIII. COMMITTEE ON THE RIGHTS OF PERSONS WITH DISABILITIES

### A. Concluding Observations

#### 1. Peru, CRPD/C/PER/CO/1, 9 May 2012

##### **Equality and non-discrimination (art. 5)**

12. The Committee is concerned that, albeit the existence of a large number of different ethnic groups in Peru, indigenous and minority persons with disabilities are not considered as being at high risk of suffering multiple discrimination and that no data on their number and situation exists. In this connection, the Committee expresses its concern at the situation of indigenous and minority persons with disabilities, in particular women and children with disabilities that live in rural areas, as well as persons with disabilities of African descent.

13. The Committee urges the State party to improve its data gathering in order to have clear statistics on indigenous and minority persons with disabilities. The Committee recommends that the State party place emphasis on the development of policies and programmes on indigenous and minority persons with disabilities, in particular women and children with disabilities that live in rural areas, as well as persons of African descent, in order to address the multiple forms of discrimination that these persons may suffer.

##### **Children with disabilities (art. 7)**

16. While taking note that the Code on Children and Adolescents (Law 27337) recognizes certain rights of children with disabilities, the Committee is concerned at their de facto enjoyment of those rights. The Committee is concerned at the invisibility of children with disabilities, in particular indigenous children, in statistical data of the State party.

17. The Committee recommends that the State party make special care and assistance to children with disabilities, in particular indigenous children, a matter of high priority, and invest to the maximum extent of available resources in the elimination of discrimination against them, as well as gather accurate data to monitor the upholding of their rights. The Committee further recommends that the State party take steps to prevent violence, abuse and extreme abandonment of children with disabilities.

##### **Education (art. 24)**

36. While taking note with appreciation of a number of Ministerial Directives aimed at establishing the framework of an inclusive education system, the Committee is concerned at the existing gaps in the de facto implementation of these provisions, in particular at the illiteracy rate among the indigenous peoples and Afro-Peruvian communities, and the impact that this may have on the indigenous and minority children with disabilities.

37. The Committee recommends that the State party allocate sufficient budget resources to achieve advances in the progress for an inclusive education system for children and adolescents with disabilities, and take appropriate measures to identify and reduce illiteracy among children with disabilities, especially indigenous and Afro-Peruvian children.

##### **Statistics and data collection (art. 31)**

46. The Committee regrets the low level of disaggregated data on persons with disabilities. The Committee recalls that such information is indispensable to: understanding the situations of specific groups of persons with disabilities in the State party who may be subject to varying degrees of exclusion, especially indigenous people, women and children with disabilities and persons who live

in rural areas; developing laws, policies and programmes adapted to their situations; and assessing the implementation of the Convention.

47. The Committee recommends that the State party systematize the collection, analysis and dissemination of data, disaggregated by sex, age and disability; enhance capacity-building in this regard; and develop gender-sensitive indicators to support legislative developments, policymaking and institutional strengthening for monitoring and reporting on progress made with regard to the implementation of the various provisions of the Convention, taking into consideration the changes from the medical to the social model.

## **IX. COMMITTEE ON ENFORCED DISAPPEARANCES**

### **A. Documents and Guidelines**

#### **1. Guidance for Submission of Requests for Urgent Action to the Committee on Enforced Disappearances, 2011**

Article 30 of the International Convention for the Protection of All Persons from Enforced Disappearance grants the Committee on Enforced Disappearances the competence to receive and consider requests, submitted by the relatives of the disappeared person or their legal representatives, their counsel or any person authorized by them, as well as any other person having a legitimate interest, that a disappeared person should be sought and found as a matter of urgency. The requests for urgent action may only be received if the enforced disappearance has occurred in a country that is a State Party to the Convention. A list of States Parties to the Convention can be found at the following link: <http://treaties.un.org>

The full Guidelines are available at:

<http://www.ohchr.org/EN/HRBodies/CED/Pages/CEDIndex.aspx>

#### **2. Guidance for the Submission of Communications to the Committee on Enforced Disappearances**

Article 31 of the International Convention for the Protection of All Persons from Enforced Disappearance mandates the Committee on Enforced Disappearances to receive and consider communications (complaints) from, or on behalf of, individuals who claim to be victims of violations of the rights protected by the Convention. The complaints can be received from the date in which the State Party has recognized the competence of the Committee to do so. A list of the States Parties to the Convention and the dates in which they recognized the competence of the Committee can be found at the following link: <http://treaties.un.org>

The full Guidelines are available at:

<http://www.ohchr.org/EN/HRBodies/CED/Pages/CEDIndex.aspx>

## X. HUMAN RIGHTS COUNCIL

### A. Resolutions

#### 1. Human rights and indigenous peoples, A/HRC/18/L.23, 13 October 2011<sup>79</sup>

*The Human Rights Council,*

*Recalling* Commission on Human Rights resolutions 2001/57 of 24 April 2001, 2002/65 of 25 April 2002, 2003/56 of 24 April 2003, 2004/62 of 21 April 2004 and 2005/51 of 20 April 2005 on human rights and indigenous issues,

*Recalling also* Human Rights Council resolutions 6/12 of 28 September 2007, 6/36 of 14 December 2007, 9/7 of 24 September 2008, 12/13 of 1 October 2009 and 15/7 of 30 September 2010,

*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 on 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 can assist representatives of indigenous peoples' organizations and communities to participate in sessions of the Human Rights Council and of 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 inviting States to contribute to the 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,

*Recognizing also* that the study on education of the Expert Mechanism on the Rights of Indigenous Peoples<sup>80</sup> highlights the fact that education is an important way to contribute to the maintenance of indigenous cultures,

*Recognizing further* the need to find ways and means of promoting the participation of recognized indigenous peoples' representatives in the United Nations system on issues affecting them, given that they are not always organized as non-governmental organizations,

1. *Welcomes* the report of the United Nations High Commissioner for Human Rights on the rights of indigenous peoples,<sup>81</sup> 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;

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<sup>79</sup> See also *Human Rights and Indigenous Peoples*, A/HRC/21/L.21, 21 September 2012. Available at: <http://daccess-dds-ny.un.org/doc/RESOLUTION/LTD/G12/169/54/PDF/G1216954.pdf?OpenElement>.

<sup>80</sup> A/HRC/12/33

<sup>81</sup> A/HRC/18/26.

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,<sup>82</sup> and encourages all Governments to respond favourably to his requests for visits;
3. *Requests* the Special Rapporteur to report on the implementation of his mandate to the General Assembly at its sixty-seventh session;
4. *Welcomes* the work of the Expert Mechanism on the Rights of Indigenous Peoples and takes note with appreciation of the report on its fourth session;<sup>83</sup>
5. *Also welcomes* the practice adopted during the third and fourth sessions of the Expert Mechanism of devoting specific time to the discussion of updates relevant to past mandated thematic studies of the Expert Mechanism, recommends that the Expert Mechanism adopt this practice on a permanent basis, and encourages States to continue to participate in and contribute to these discussions;
6. *Encourages* States to consider, in cooperation with indigenous peoples and on the basis of past advice of the Expert Mechanism, initiating and strengthening, as appropriate, legislative and policy measures that prioritize education in the design and implementation of national development strategies affecting indigenous peoples, including measures that will strengthen the culture and languages of indigenous peoples;
7. *Welcomes* the completion by the Expert Mechanism of its final study on indigenous peoples and the right to participate in decision-making<sup>84</sup> and the inclusion of the examples of good practices at different levels of decision-making therein, including those in connection with the activities of extractive industries, and encourages all interested parties to consider them a practical guide on how to attain the goals of the United Nations Declaration on the Rights of Indigenous Peoples;
8. *Requests* the Expert Mechanism to continue to build on its previous studies, including its study on indigenous peoples and the right to participate in decision-making, as laid out in the Expert Mechanism's latest report;
9. *Also requests* the Expert Mechanism to prepare a study on the role of languages and culture in the promotion and protection of the rights and identity of indigenous peoples, and to present it to the Human Rights Council at its twenty-first session;
10. *Further requests* the Expert Mechanism to undertake, with the assistance of the Office of the High Commissioner, a questionnaire to seek the views of States 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;
11. *Welcomes* the adoption of General Assembly resolution 65/198, in which the Assembly decided to organize a high-level plenary meeting of the General Assembly, to be known as the World Conference on Indigenous Peoples, to be held in 2014, in order to share perspectives and best practices on the realization of the rights of indigenous peoples, including to pursue the objectives of the United Nations Declaration on the Rights of Indigenous Peoples, and stresses the importance of the open-ended consultations that will be conducted by the President of the Assembly with Member

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<sup>82</sup> A/HRC/18/35

<sup>83</sup> A/HRC/18/43.

<sup>84</sup> A/HRC/18/42.

States and with representatives of indigenous peoples in order to determine the modalities for the meeting, including the participation of indigenous peoples in the Conference;

12. *Also welcomes*, in this regard, the preparatory process, and requests the Expert Mechanism, in accordance with General Assembly resolution 65/198, to discuss the upcoming World Conference and, together with other relevant mechanisms on indigenous peoples' issues, to contribute to the exploration of the modalities for the meeting, including indigenous peoples' participation in the World Conference and its preparatory process;

13. *Requests* the Secretary-General, in cooperation with the Office of the High Commissioner, the Office of Legal Affairs and other relevant parts of the Secretariat, to prepare a detailed document on the ways and means of promoting participation at the United Nations of recognized indigenous peoples' representatives on issues affecting them, given that they are not always organized as non-governmental organizations, and on how such participation might be structured, drawing from, inter alia, the rules governing the participation in various United Nations bodies by non-governmental organizations (including Economic and Social Council resolution 1996/31) and by national human rights institutions (including Human Rights Council resolution 5/1 of 18 June 2007 and Commission on Human Rights resolution 2005/74 of 20 April 2005), and to present it to the Council at its twenty-first session;

14. *Decides* to hold, on an annual basis and within existing resources, a half-day panel discussion on the rights of indigenous peoples and, in this regard, to hold, at its twenty-first session, a half-day panel discussion on access to justice by indigenous peoples;

15. *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 (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 and, in that regard, welcomes the initiative by the Office and national human rights institutions to develop an operational guide for such institutions with the objective of attaining the goals of the United Nations Declaration on the Rights of Indigenous Peoples, and encourages its widest dissemination upon its completion;

16. *Also 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 this regard, their permanent effort to promote the United Nations Declaration on the Rights of Indigenous Peoples;

17. *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 on accepted universal periodic review recommendations concerning indigenous peoples, as well as serious consideration to follow-up to treaty body recommendations on the matter;

18. *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;

19. *Welcomes* the fourth anniversary of the adoption of the United Nations Declaration on the Rights of Indigenous Peoples, and encourages States that have endorsed it to take measures to pursue the objectives of the Declaration in consultation and cooperation with indigenous peoples, where appropriate;

20. *Also welcomes* the establishment of the United Nations-Indigenous Peoples Partnership, and encourages the Partnership to carry out its mandate regarding the United Nations Declaration on the Rights of Indigenous Peoples through the mobilization of resources and in close cooperation and coordination with States, indigenous peoples, Human Rights Council mechanisms, United Nations bodies and agencies relating to indigenous peoples, national human rights institutions and other stakeholders;

21. *Decides* to continue consideration of this question at a future session in conformity with its annual programme of work.

## **2. Human rights and the environment, A/HRC/RES/19/10, 19 April 2012**

*Reaffirming* the purposes and principles of the Charter of the United Nations,

*Recalling* Human Rights Council resolutions relevant to the relationship between human rights and the environment, including resolution 16/11 of 24 March 2011 on human rights and the environment, resolutions 7/23 of 28 March 2008, 10/4 of 25 March 2009 and 18/22 of 30 September 2011 on human rights and climate change, resolutions 9/1 of 24 September 2008 and 12/18 of 2 October 2009 on the adverse effects of the movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights, and resolution 18/11 of 29 September 2011 on the mandate of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, as well as relevant Commission on Human Rights resolutions, including resolutions 2003/71 of 25 April 2003 and 2005/60 of 20 April 2005 on human rights and the environment as part of sustainable development,

*Bearing in mind* General Assembly resolutions 60/251 of 15 March 2006 and 65/281 of 17 June 2011, and Human Rights Council resolution 16/21 of 25 March 2011,

*Recalling* Human Rights Council resolutions 5/1, on institution-building of the Council, and 5/2, on the code of conduct for special procedures mandate holders of the Council, of 18 June 2007, and stressing that the mandate holder shall discharge his or her duties in accordance with those resolutions and the annexes thereto,

*Recalling also* the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child,

*Recalling further* the Declaration of the United Nations Conference on the Human Environment, the Rio Declaration on Environment and Development, Agenda 21, the Programme for the Further Implementation of Agenda 21, the Johannesburg Declaration on Sustainable Development and the Plan of Implementation of the World Summit on Sustainable Development,

*Recalling* the principles of the Rio Declaration on Environment and Development,

*Cognizant* of the importance of the United Nations Conference on Sustainable Development, to be held in Rio de Janeiro, Brazil, in June 2012,

*Reaffirming* the Millennium Development Goals, in particular Goal 7 on ensuring environmental sustainability, as well as the commitments made by the international community, as contained in the outcome document of the High-level Plenary Meeting of the sixty-fifth session of the General Assembly,<sup>1</sup> to make every effort to achieve the Millennium Development Goals,

*Recognizing* that human beings are at the centre of concerns for sustainable development, that the right to development must be fulfilled in order to meet the development and environment needs of present and future generations equitably, and that the human person is the central subject of development and should be the active participant and beneficiary of the right to development,

*Recalling* the guiding principles on business and human rights, as endorsed by the Human Rights Council in its resolution 17/4 of 16 June 2011,

*Mindful* that certain aspects of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment require further study and clarification,

1. *Notes with appreciation* the analytical study on the relationship between human rights and the environment submitted by the United Nations High Commissioner for Human Rights pursuant to Human Rights Council resolution 16/11;<sup>2</sup>

2. *Decides* to appoint, for a period of three years, an independent expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, whose tasks will be:

(a) To study, in consultation with Governments, relevant international organizations and intergovernmental bodies, including the United Nations Environment Programme and relevant multilateral environment agreements, human rights mechanisms, local authorities, national human rights institutions, civil society organizations, including those representing indigenous peoples and other persons in vulnerable situations, the private sector and academic institutions, the human rights obligations, including non-discrimination obligations, relating to the enjoyment of a safe, clean, healthy and sustainable environment;

(b) To identify, promote and exchange views on best practices relating to the use of human rights obligations and commitments to inform, support and strengthen environmental policymaking, especially in the area of environmental protection, and, in that regard, to prepare a compendium of best practices;

(c) To make recommendations, consistent with her or his mandate, that could help the realization of the Millennium Development Goals, in particular Goal 7;

(d) To take into account the results of the United Nations Conference on Sustainable Development to be held in June 2012, and to contribute a human rights perspective to follow-up processes;

(e) To apply a gender perspective by, inter alia, considering the particular situation of women and girls and identifying gender-specific discrimination and vulnerabilities;

(f) To work in close coordination, while avoiding unnecessary duplication, with other special procedures and subsidiary organs of the Human Rights Council, relevant United Nations bodies and the treaty bodies, taking into account the views of other stakeholders, including

relevant regional human rights mechanisms, national human rights institutions, civil society organizations and academic institutions;

(g) To submit a first report, including conclusions and recommendations, to the Human Rights Council at its twenty-second session and annually thereafter;

3. *Requests* the High Commissioner to ensure that the Independent Expert receives the resources necessary to enable him or her to discharge the mandate fully;

4. *Calls upon* all States, United Nations agencies, other relevant international organizations and non-governmental organizations, the private sector and national human rights institutions to cooperate fully with the Independent Expert, and invites them to share best practices with the Independent Expert and to provide him or her with all the necessary information relating to the mandate to enable him or her to fulfil the mandate;

5. *Encourages* the Office of the High Commissioner to participate in the United Nations Conference on Sustainable Development in order to promote a human rights perspective;

6. *Decides* to continue its consideration of the matter under the same agenda item at its twenty-second session.

## **B. Universal Peer Review Mechanism**

### **1. Australia, A/HRC/17/10, 24 March 2011**

#### **Presentation by the State under review**

10. The delegation drew attention to the Australian Government's commitment to reconciliation, helping all Australians to move forward with a better understanding of the past and how it affects the lives of indigenous peoples today. It noted the historic formal Apology to Indigenous Peoples made in 2008, and described the establishment of a new national representative body for Aboriginal and Torres Strait Islanders called the National Congress of Australia's First Peoples.

#### **Interactive dialogue and responses by the State under review**

13. The United Kingdom stated that it looked forward to hearing about how the measures established under the Australian Human Rights Framework have worked in practice. It welcomed the steps taken to improve relations with indigenous peoples; noted that they continued to be amongst the most disadvantaged Australians; and hoped that Aboriginal and Torres Strait Islander communities are fully consulted when designing programmes to meet their needs.

14. Singapore welcomed the Government's efforts to reset the relationship with the Aboriginal and Torres Straits Islanders through the establishment of the National Congress of Australia's First People and its historic apology to the "Stolen Generation". It noted the efforts to address discriminatory practices through different initiatives, the legislative framework and policy measures to recognize gender equality initiatives to promote multiculturalism.

15. Algeria praised Australia for its long tradition of promoting and protecting human rights and referred to the exemplary measure of the formal Apology to Australia's Indigenous Peoples. It welcomed the announcement in 2010 of the Human Rights Framework and the progress in the promotion of economic, social and cultural rights. It noted the need to further improve the situation of human rights in Australia.

16. China commended Australia's positive efforts for protecting and promoting human rights and welcomed the measures adopted to protect the rights of indigenous peoples....
17. Malaysia expressed appreciation for the challenges faced by Australia in areas such as access to education, health and other services for the indigenous community, together with issues of racism and discrimination against migrant communities, and challenges in the area of administration of justice and rule of law. It noted the commitment of Australia to address these issues.
18. Sweden noted that the Constitution did not provide the safeguards against discrimination required under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), and some current laws appeared to discriminate against persons belonging to indigenous communities on the basis of race and asked a related question. ...
19. Japan noted that indigenous peoples were disadvantaged in the area of employment, housing, education and health care and praised the Government for the various measures taken to overcome this situation, particularly the "Closing the Gap" campaign. ...
20. Canada congratulated Australia on its new Human Rights Framework. Australia's apology to the Stolen Generation of Aboriginal Children was an important step towards healing and reconciliation. Canada noted the extensive public consultations conducted by the National Human Rights Consultation Committee and asked how Australia was planning to follow-up on the recommendations of this Committee..
22. ... Indonesia praised the establishment of the National Congress of Australian's First Peoples which reflected the commitment of the Government towards indigenous communities.
24. Cambodia commended Australia's efforts to be a fairer and more inclusive country, with respect of human rights as core principles of living in harmony. It complimented the National Plan of Action on Human Rights to outline future action for the promotion of social harmony. It appreciated Australia's acknowledgement of the important role of cultural heritage in the National Reconciliation between Indigenous and non-Indigenous Australians.
25. Nepal ... recognised Australia commitment to the welfare of Aboriginals and encouraged Australia to continue its efforts to empower the most vulnerable and protect the rights of all, including the migrants.
26. The Islamic Republic of Iran stated that it was deeply concerned by the increasing gap in the standards and quality of life between indigenous and non-indigenous people. Iran expressed concern, inter alia, with, the use of force by law enforcement officials and the use of "Tasers" by the police; and reported sub-standard prison conditions as well as persistent problems leading to the death of indigenous people in custody and disproportionate incarceration rates. Iran made recommendations.
28. Pakistan, while acknowledging the efforts by the Government for the promotion and protection of human rights, noted with concern that indigenous groups are still discriminated against. ...
29. Hungary welcomed the launching of the "Closing the Gap" campaign and hoped it would remedy the increasing number of discriminatory acts against indigenous peoples and other minorities. Hungary made recommendations.

30. Morocco applauded Australia for the progress towards the rights of indigenous peoples, particularly through the formal Apology to Australia's Indigenous Peoples, the establishment of the National Congress of Australian's First Peoples and other measures aiming at the improvement of their socio-economic standards. ...

34. The delegation addressed questions about the rights of Indigenous Australians. The Australian Government was pleased to announce its support for the Declaration on the Rights of Indigenous Peoples in April 2009 and stated that ILO Convention 169 (1989) has been identified as a priority Convention for consideration.

35. The delegation referred to the establishment of a new national representative body for Indigenous Australians, the National Congress of Australia's First Peoples. It noted that in addition to the apology to the Stolen Generations in 2008, the Australian Government has made a commitment to pursue constitutional recognition of Indigenous Australians.

36. The delegation acknowledged that many indigenous people in Australia face significant disadvantages and challenges in enjoying their human rights. The 'Closing the Gap' agenda aims to reduce significantly the gap in life expectancy within a generation, halve the gap in mortality rates for Indigenous children under five by 2018, and halve the gap in reading writing and numeracy for Indigenous children by 2018, among other clear and specific targets. Already, a range of actions has been taken to achieve these targets.

37. The delegation noted that in relation to the Northern Territory Emergency Response, the Racial Discrimination Act 1975 was fully reinstated by legislation passed in June 2010, following extensive consultation with Indigenous peoples.

39. Botswana noted with satisfaction the many achievements outlined in the national report, such as the establishment of the National Congress of Australia's First People which will become operational during this year and the adoption of an ambitious human rights framework. ...

40. Slovenia commended Australia for its "Closing the Gap" initiative to overcome indigenous disadvantage. It noted that the Northern Territory Emergency Response, discriminating against the rights of Aboriginal people, was in breach of Australia's human rights obligations. It noted the reinstatement of the Racial Discrimination Act. ...

41. Bolivia appreciated the Government's significant acknowledgement of the historic and present discrimination of indigenous peoples in their territory and the will shown to improve their living conditions.

42. Brazil commended Australia's decision to set up specific targets to address the poorer living conditions of the indigenous population. ...

44. India referred to the initiatives of Australia, such as the Human Rights Framework in 2010, and its commitment to reconciliation with indigenous peoples. ...

45. ... France noted with satisfaction the efforts deployed to remedy the underprivileged condition of Aboriginals, particularly through the "Closing the Gap" campaign. ...

47. Austria commended the Government's historical apology to advance the rights of

Indigenous people and the steps taken to redress the disadvantage of Aboriginal and Torres Straits Islanders and their overrepresentation in prisons. Austria asked about the effectiveness of measures taken and how the Government intends to tackle the issues of reported excessive use of force by law enforcement officials including against indigenous peoples and persons with disabilities.

48. Belgium welcomed the various initiatives launched, particularly the historic apologies to the “Stolen Generations” but expressed concern about persisting discrimination against indigenous peoples. Belgium asked about the first results of the strategy aimed at reducing socio-economic disparities between the indigenous and the rest of the population. ...

50. Germany welcomed the “Closing the Gap” campaign and asked about the concrete steps taken and the future plans in relation to this campaign. ...

57. Turkey appreciated the Government’s commitment to recognize the Aboriginal and Torres Straits Islander peoples in the Constitution. It praised Australia for the establishment of the position of “the Aboriginal and Torres Straits Islanders Social Justice Commissioner” in the structure of the Australian Human Rights Commission. Turkey made a recommendation.

58. The Republic of Korea noted with appreciation the announcement of Australia’s Human Rights Framework. It also welcomed the formal apology made to indigenous population for past mistreatment. Korea asked about the measures taken or to be taken to reduce the gap between indigenous and non-indigenous peoples in their quality of life

59. Colombia praised the Government for its frank acknowledgment of the problems and challenges facing Australian society in terms of the human rights of indigenous peoples. It welcomed the steps taken since 2008 promoting and protecting the rights of indigenous peoples and the progress in combating all forms of discrimination.

62. The Maldives ... requested to know about the specific measures adopted to address the disproportionately higher number of indigenous persons in custody.

63. Timor-Leste commended Australia for its efforts to promote human rights for all Australians. It welcomed the national apology and the designation as a national priority to advance indigenous recognition through a possible Constitutional amendment, and encouraged its realization. ...

64. The United States asked whether Australia had an action plan to enforce its legal prohibitions against disparate treatment of individuals because of race, religion, gender or national origin, especially in relation to discrimination against indigenous persons.

65. Jordan appreciated the ongoing efforts of Australia in the promotion and protection of human rights, particularly with respect to indigenous people and hoped for more progress in that regard.

69. [Australia] described the priorities for the Australian Government’s social inclusion agenda, which prioritizes ... closing the gap for Indigenous Australians.

75. Bosnia and Herzegovina stated that treaty bodies expressed concerns that the rights to equality and non-discrimination were not comprehensively protected in federal law and requested information on the steps taken to ensure non-discrimination. It referred to Indigenous peoples rights ....

77. Mexico ... hoped that Australia would ratify the international instruments it is not yet a party to yet, particularly ICRMW and ILO Convention No. 169.

78. Ghana stated that it applauded Australia for the important steps it had recently taken to re-set its relationship with the Indigenous peoples. ...

80. Guatemala appreciated Australia's commitment to reconciliation with indigenous peoples through positive initiatives such as their constitutional recognition, the "Closing the Gap" campaign, the preservation of indigenous languages and a unified law against discrimination. ...

81. Denmark commended Australia for the endorsement of the Declaration on the Rights of Indigenous Peoples. ...

84. Norway raised concerns about the reported high level of violence against women, particularly in indigenous communities. It welcomed the 2008 National Human Rights Consultation as well as Australia's national apology to indigenous peoples, the reinstatement of the Racial Discrimination Act and support for the United Nations Declaration on the Rights of Indigenous Peoples. It noted that a Human Rights Act had not yet been adopted and that there were reports of discrimination and socio-economic disadvantage of indigenous peoples.

#### **Conclusions and/or recommendations**

86. The following recommendations will be examined by Australia which will provide responses in due time, but no later than the seventeenth session of the Human Rights Council in June 2011:

86.11. Ratify ILO Convention No. 169 and incorporate it into its national norms (Bolivia);

86.12. Consider ratifying ILO Convention No. 169 (Norway);

86.23. Focus on nationwide enforcement of its existing anti-discrimination law, plan adequately for nationwide implementation, especially as it relates to discrimination against indigenous persons (United States);

86.24. Fully implement the Racial Discrimination Act and the revision of federal laws to be compatible with the United Nations Declaration on the Rights of Indigenous Peoples (Norway);

86.25. Consider reinstating, without qualification, the Racial Discrimination Act into the arrangements under the Northern Territory Emergency Response and any subsequent arrangement (Canada);

86.26. Consult with Aboriginal and Torres Strait Islander people, and take into consideration the guidelines proposed by the Australian Human Rights Commission before considering suspension of the Racial Discrimination Act for any future intervention affecting the Aboriginal and Torres Strait Islander people (Slovenia);

86.36. Consider implementing the recommendations of human rights treaty bodies and special procedures concerning indigenous people (Jordan);

86.37. Implement the recommendations made by the United Nations Special Rapporteur on the rights of indigenous people after his visit in 2009 (Norway);

86.53. Develop and implement policies to ensure gender equality throughout society and strengthen the promotion and protection of the rights of women, especially women from indigenous communities (South Africa);

86.60. Take measures towards ensuring the equal and the full enjoyment of the basic rights of all its citizens including persons belonging to indigenous communities, and to effectively prevent and, if necessary, combat racial discrimination (Sweden);

86.80. Implement the National Action Plan to reduce violence against women and their children, including through an independent supervision mechanism that involves civil society organizations and take into account the specific situation of indigenous women and migrants (Mexico);

86.92. Increase the provision of legal advice to indigenous peoples with due translation services reaching especially indigenous women of the most remote communities (Bolivia);

86.93. Implement measures in order to address the factors leading to an overrepresentation of Aboriginal and Torres Strait Islander communities in the prison population (Austria);

86.94. Examine possibilities to increase the use of non-custodial measures (Austria);

86.95. Enhance the contacts and communication between Aboriginal and Torres Strait Islander communities and representatives of the law enforcement officials and enhance the training of those officials with respect to cultural specificities of the above communities (Austria);

86.97. Establish a National Compensation Tribunal, as recommended in the “Bringing Them Home” report, to provide compensation to Aboriginal and Torres Strait Islander people that are negatively affected by the assimilation policy, particularly as it applies to children unfairly removed from their families and the parents of those children (Slovenia);

86.101. Step up efforts to ensure that people living in the remote and rural areas, in particular the indigenous peoples, receive adequate support services relating to accommodation and all aspects of health and education (Malaysia);

86.102. Reform the Native Title Act 1993, amending strict requirements which can prevent the Aboriginal and Torres Strait Islander peoples from exercising the right to access and control their traditional lands and take part in cultural life (United Kingdom);

86.103. Institute a formal reconciliation process leading to an agreement with Aboriginal and Torres Strait Islander people (Slovenia);

86.104. Continue in particular the process of constitutional reform in order to better recognize the rights of indigenous peoples (France);

86.105. Continue to implement its efforts to attain the constitutional recognition of indigenous peoples (Colombia);

86.106. Revise its Constitution, legislation, public policies and programmes for the full implementation of the United Nations Declaration of the Rights of Indigenous Peoples (Bolivia); ensure effective implementation of the Declaration on the Rights of Indigenous People, including in the Northern Territory, and provide adequate support to the National Congress of Australia’s First Peoples to enable it to address the needs of indigenous people (Ghana); develop a detailed framework to implement and raise awareness about the Declaration in consultation with indigenous peoples (Hungary); take further steps to ensure the implementation of the Declaration on the Rights of Indigenous Peoples (Denmark);

86.107. Launch a constitutional reform process to better recognize and protect the rights of the Aboriginals and Torres Strait Islanders which would include a framework covering the principles and objectives of the United Nations Declaration on the Rights of Indigenous Peoples and would take into account the opinions and contributions of indigenous peoples (Guatemala);

86.108. Include in its national norms recognition and adequate protection of the culture, values and spiritual and religious practices of indigenous peoples (Bolivia);

86.109. Promote the inclusion and participation of indigenous peoples and Torres Strait Islanders in any process or decision-making that may affect their interests (Bolivia);

86.110. Strengthen efforts and take effective measures with the aim of ensuring enjoyment of all rights for indigenous people, including participation in decision-making bodies at all levels (Bosnia and Herzegovina);

86.111. Ensure that its legislation allows for processes of consultations in all actions affecting indigenous peoples (Mexico);

86.112. Continue to engage with the Aboriginal population and Torres Strait Islanders and ensure the equal protection of their fundamental rights (Indonesia);

86.113. Increase the participation of the Aboriginal and Torres Strait Islander communities in the process of closing the gap in opportunities and life outcomes (Austria);

86.114. Continue the implementation of policies aimed at improving the living standards of indigenous peoples and take all the necessary measures to eradicate discrimination against them (France);

86.115. Continue its efforts to narrow the gap in opportunities and life outcomes between indigenous and non-indigenous Australians (Singapore);

86.116. Intensify its on-going efforts to close the gap in opportunities and life outcomes between Indigenous and non-Indigenous peoples, especially in the areas of housing, land title, health care, education and employment (Thailand);

86.117. Continue addressing effectively the socio-economic inequalities faced by indigenous people (Jordan);

86.118. Carry out, in consultation with the communities concerned, a comprehensive assessment of the effectiveness of actions and strategies aimed at improving socio-economic conditions of indigenous peoples and if necessary correct these actions (Belgium);

86.119. Take immediate legal measures to remove restrictions against access of indigenous women and children to appropriate health and education services and employment opportunities (Islamic Republic of Iran);

86.120. Continue efforts to increase the representation of indigenous women in decision-making posts (Morocco)....

**Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review (A/HRC/17/10/Add.1, 31 May 2011)**

**Response of Australia to Recommendations:**

3. Australia accepts the following recommendations on the basis that they are reflected in existing laws or policies and that Australia will continue to take steps to achieve relevant outcomes: **12, 14, 20, 23, 29, 30, 35, 36, 38, 40, 41, 45, 46, 47, 49, 50, 51, 53, 54, 56, 58, 66, 67, 68, 83, 85, 86, 112, 113, 114, 115, 116, 117, 120, 121, 134, 141, 142, 143, 144, 145.**

**Recommendation 8, 11: Accepted-in-part:** Australia cannot commit to becoming party to the CED or ILO 169, but will formally consider becoming a party to these treaties.

**Recommendation 24: Accepted-in-part:** The *Racial Discrimination Act 1975* has been fully reinstated in relation to the Northern Territory Emergency Response as of 31 December 2010. The Australian Government supports promotion of and respect for the principles in the Declaration on the Rights of Indigenous Peoples, and considers that current federal laws are consistent with the spirit of the Declaration.

**Recommendation 25: Accepted:** The *Racial Discrimination Act 1975* has been fully reinstated in relation to the Northern Territory Emergency Response as of 31 December 2010.

**Recommendation 26: Accepted:** The Australian Government will continue to consult with Indigenous peoples regarding the application of the *Racial Discrimination Act 1975*.

**Recommendation 37: Accepted-in-part:** The Australian Government has already implemented many recommendations of the Special Rapporteur, including fully reinstating the *Racial Discrimination Act 1975* in relation to the Northern Territory Emergency Response, and has provided a statement to the Human Rights Council.

**Recommendation 90: Accepted:** The Australian Government will continue to address Indigenous incarceration and deaths in custody, including by funding prevention, diversion and rehabilitation programs. States and Territories will continue to implement programs aimed at preventing Indigenous deaths in custody.

**Recommendation 92: Accepted:** The Australian Government has increased funding by 14.5% for Indigenous-specific legal services over 2010-14. It will continue to work with States and Territories to build the capacity of Indigenous language interpreter services.

**Recommendation 93: Accepted:** See recommendation 90. The Australian Government will continue to address over-representation of Indigenous people in prison, including by funding Indigenous-specific Legal Services (see recommendation 92) and diversion and recidivism programs. States and Territories have a range of programs in place to address this issue.

**Recommendation 94: Accepted:** Imprisonment will continue to be viewed as a sentence of last resort in Australian courts. A range of alternatives is available, including home-detention orders and other community-based orders.

**Recommendation 97: Rejected:** In February 2008, the Australian Government offered the National Apology in recognition of the grief and suffering inflicted on Stolen Generations. The Australian Government will continue to work in partnership to address the immediate and practical needs of the Stolen Generations. Some States have introduced compensation schemes for children abused in state care or removed from their families.

#### **Recommendation 102**

**Accepted-in-part:** The Australian Government continually reviews the operation of the native title system through practical, considered and targeted reforms. Legislation provides for Indigenous Australians to access, and to perform cultural activities on, their traditional lands through statutory regimes and cultural heritage laws.

**Recommendation 103: Accepted-in-part:** The Australian Government is committed to the process of reconciliation between Indigenous and other Australians, but does not intend to enter into a formal agreement. See recommendation 110.

**Recommendations 104, 105, 107: Accepted:** The Australian Government is committed to pursuing recognition of Indigenous peoples in the Australian Constitution and has appointed an Expert Panel to develop options and lead a wide-ranging national public consultation and engagement program.

**Recommendation 106: Accepted-in-part:** The Australian Government supports promotion of and respect for the principles in the Declaration. The Australian Government has committed funding in support of the establishment and early operation of the National Congress of Australia's First Peoples.

**Recommendation 108: Accepted:** Where appropriate in law and in policy, the Australian Government will continue to recognise and protect the culture and heritage of Indigenous peoples.

**Recommendation 109: Accepted:** The Australian Government recognises the importance of engaging in good faith consultation with Indigenous peoples in relation to decisions that affect them. See recommendation 110.

**Recommendation 110: Accepted:** The National Congress of Australia's First Peoples will provide a central mechanism with which government, the corporate and community sectors can engage and partner on reform initiatives.

**Recommendation 111: Accepted:** The Australian Government recognises the importance of engaging in good faith consultation with Indigenous peoples in relation to decisions that affect them. No legislative barriers to consultation have been identified.

## **2. Myanmar (Burma), A/HRC/17/9, 24 March 2011**

### **Interactive dialogue and responses by the State under review**

18. Malaysia welcomed Myanmar's democratization efforts, 2010 elections and Aung San Suu Kyi's release. It noted need for improvement in women and children's rights, personal security, education, health, justice and humanitarian assistance, particularly for indigenous and minority groups. ...

### **Conclusions and/or recommendations**

106. The following recommendations will be examined by Myanmar, which will provide responses in due course. The responses of Myanmar to these recommendations will be included in the outcome report adopted by the Human Rights Council at its seventeenth session.

106.35. Incorporate the rights enshrined in the United Nations Declaration on the Rights of Indigenous Peoples into domestic law and ratify ICERD (Denmark); ...

### **Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review (A/HRC/17/9/Add.1, 27 May 2011)**

#### **Response of Myanmar to Recommendations:**

#### **Recommendations 106.21, 106.22, 106.35, 106.45**

10. In his first inaugural address, the President of the Republic of the Union of Myanmar stated to review laws to be in line with the State Constitution. The ministries concerned are in the process of reviewing the laws they executed to be in line with the State Constitution and the international norms. In addition, the President has formed the legal advisory committee and advisory group to facilitate the review of legal matters including domestic legislature.

### **3. Namibia, A/HRC/17/14, 24 March 2011**

#### **Presentation by the State under review**

14. Regarding the rights of indigenous communities, the Government identified certain communities that were particularly deprived (the San, the Ovato and the Ovatjimba) and had implemented support programmes to raise their standard of living.

15. There are approximately 60,000 San people in Namibia, but only about 2,000 of them still follow a traditional way of life. As Namibia is a signatory to the United Nations Declaration on the Rights of Indigenous Peoples, it is committed to ensuring that these formerly marginalized groups are fully integrated in mainstream society and the economy.

16. The 1991 Land Conference resolved that there would be no claims to ancestral lands by any person in Namibia. In an effort to assist indigenous groups, the Government bought and continues to acquire land for formally disadvantaged Namibians for resettlement.

17. All the indigenous communities have free access to health facilities and antiretroviral medicine is offered to them free of charge.

18. The Ministry of Home Affairs and Immigration employed mobile teams in all 13 regions to go to the remote areas and assist citizens, and especially the formally marginalized groups, in obtaining national identity documents. Parliament had passed legislation to enable members of the formally marginalized groups to actively take part in economic activities without being discriminated against as was the case before independence.

#### **Interactive dialogue and responses by the State under review**

41. Swaziland noted Namibia's policy of national reconciliation entailing forgiveness of those who resisted freedom and independence. It commended its efforts to integrate indigenous minority groups into mainstream society and economy, particularly the San Development Programme aimed at improving the San's socio-economic lives. ...

47. ... India sought information on planned measures to reduce high income inequalities and address perennial food deficits and encouraged Namibia to continue improving the administration of justice and expanding participation of indigenous peoples and minorities in development.

63. Austria ... also requested information on steps taken to end discrimination of indigenous groups and minorities.

64. ... Norway commended Namibia for its initiative in protecting the rights of indigenous peoples and marginalized communities.

65. ... Malaysia noted that some areas require further efforts, including difficulties related to unemployment, income disparity, HIV/AIDS, and the rights of the indigenous and minority groups. Malaysia was convinced of the Government's commitment to make improvements in those areas. Malaysia made recommendations.

72. Burkina Faso ... encouraged Namibia to pursue efforts to improve indigenous peoples' and women's rights.

73. Mozambique commended Namibia for promoting the rights of indigenous peoples, including Bank funds, farm allocations, employment-related affirmative action and feeding programmes. ...

75. ... Concerning prevailing discrimination against indigenous populations, impacting access to health care, income, education and basic services, France sought information on planned remedial measures.

93. The Democratic Republic of the Congo commended Namibia's efforts to protect minority indigenous peoples and welcomed the social, legal and political progress in empowering women. ...

### **Conclusions and/or recommendations**

96. The following recommendations formulated during the interactive dialogue/listed below enjoy the support of Namibia:

96.14. Continue its policy of promoting and protecting the rights of indigenous peoples by consolidating it with further measures to ensure the full exercise of the rights of all components of Namibian society while respecting its traditions and identity (Morocco);

96.65. Increase efforts to reduce poverty and stimulate development of the most marginalized groups, particularly indigenous communities, involving them in the decisions regarding their rights and interests (Mexico);

96.67. Ensure access to education, employment, health care and other basic services for the members of all ethnic communities, including the San and Himba communities (Slovenia);

96.70. Formulate a white paper in accordance with the United Nations Declaration on the Rights of Indigenous Peoples and that recommendations from the Committee on the Elimination of Racial Discrimination, the International Labour Organization (ILO) and the African Commission's Working Group on Indigenous Populations/Communities are taken into consideration in this process (Norway);

98. The following recommendations will be examined by Namibia which will provide responses in due time, but no later than the seventeenth session of the Human Rights Council in June 2011:

98.26. Strengthen measures to end discrimination, exclusion and marginalization of indigenous groups and minorities, in particular the San people (Austria);

**Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review (A/HRC/17/14/Add.1, 31 May 2011)**

**Response of Namibia to Recommendations:**

Strengthen measures to end discrimination, exclusion and marginalization of Indigenous groups and minorities, in particular the San Community

22. **Accepted:** The Government of the Republic of Namibia already has effective programmes for the San and other indigenous groups being implemented.

**4. Nepal, A/HRC/17/5, 8 March 2011**

**Presentation by the State under review**

12. The National Human Rights Commission is a constitutional body with full autonomy. The National Foundation for the Development of Indigenous Nationalities, National Women's Commission and National Dalit Commission are also national human rights institutions established for the promotion and protection of the human rights of indigenous people, women and Dalit, respectively.

16. Nepal is committed to the protection and promotion of rights of the indigenous nationalities, Dalit and marginalized groups. Nepal referred to significant achievements in social development in recent years despite having emerged from over a decade-long armed conflict.

**Interactive dialogue and responses by the State under review**

49. Regarding cooperation with United Nations mechanisms, Nepal indicated that periodic reports under the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Rights of the Child (CRC), the Convention on the Elimination of All Forms of Racial Discrimination (CERD) and ILO Convention 169 are under consideration of the Cabinet. ...

65. Malaysia welcomed Nepal's Three-Year Interim Plan focussing on poverty alleviation and human rights. Malaysia was of the view that more could be done to improve and safeguard human rights, particularly of indigenous peoples, ethnic minorities and other marginalized and vulnerable sections of society.

87. The Plurinational State of Bolivia noted the inclusion of women, Dalits and indigenous peoples in the Legislative Assembly. It highlighted the strategy to fight poverty based on structural reform.

...

98. Regarding ILO Convention No. 169, Nepal noted that 218 of the 601 Members of the Constituent Assembly are indigenous people, a testimony of positive outcome of policies and programmes in these fields.

**Conclusions and/or recommendations**

106. The recommendations formulated during the interactive dialogue/listed below have been examined by Nepal and enjoy its support:

106.1. Give its full support to ensure that the Constituent Assembly successfully fulfils its mandate of drafting a new Constitution by May 2011, giving due consideration to the views of the different groups that compose Nepalese society (Republic of Korea); ensure full participation of ethnic groups

and castes in the Constitution-making process, in particular in the Constituent Assembly (Poland); Accelerate steps towards framing a new Constitution (Egypt); frame a new Constitution and undertake a democratic, inclusive and progressive State restructuring (China); complete the new Constitution on time and take into account that peaceful coexistence requires that the right to freedom of religion for all citizens be clearly included and formulated according to international standards (Holy See); ensure that the new Constitution fully guarantees the right to freedom of religion or belief and the right to equality and non-discrimination in line with international standards (Italy);

106.49. Improve food safety of vulnerable groups, particularly indigenous people, former bonded labourers, Dalits, Muslims, persons with disabilities and those who are infected with HIV/AIDs (Hungary);

107. The following recommendations enjoy the support of Nepal which considers that they are already implemented or in the process of implementation:

107.28. Take more effective measures to increase the involvement of the indigenous peoples, minorities and vulnerable groups in the civil service, law enforcement agencies and local authorities (Malaysia).

108. The following recommendations will be examined by Nepal, which will provide responses in due time, but no later than the seventeenth session of the Human Rights Council in June 2011:

108.11. Review and adopt relevant legislation and policies, including bills related to caste-based discrimination, the Women's Commission, the Dalit Commission, the rights of indigenous peoples and the rights of the child, to ensure full compliance with international human rights standards (Norway);

### **Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review (A/HRC/17/5/Add.1, 1 June 2011)**

#### **Response of Nepal to Recommendations:**

108.11 Review and adopt relevant legislation and policies, including bills related to Caste-based discrimination, the Women's Commission, the Dalit Commission, the rights of Indigenous Peoples and the Rights of the Child, to ensure full compliance with international human rights standards (Norway)

**Response:** Several statutory mechanisms including the National Human Rights Commission, National Women's Commission, National Dalit Commission and National Foundation for Development of Indigenous Nationalities exist to address all possible violations of rights. The GON remains committed to the promotion of their rights in conformity to its international obligations.

### **5. Paraguay, A/HRC/17/18, 28 March 2011**

#### **Presentation by the State under review**

17. For the Paraguayan Government, there was no doubt that education was critical when talking about human rights. ... . In addition, there was also a specific education programme for indigenous peoples.

23. With respect to the rights of indigenous peoples, in recent years the Executive had enacted important presidential decrees to establish policies, such as Decree No. 1,945/09 which created the National Integral Programme of Indigenous Peoples. The consultation process established in the International Labour Organization (ILO) Convention No. 169 had also been established.

25. The Minister presented to the consideration of the delegations the following documents: (a) Resolution No. 2039 of 2010 of the Paraguayan Indigenous Institute, establishing compliance with the minimum requirements and obligations of the Consultation on the framework of ILO Convention No. 169 and its direct application; (b) Concept Paper on National Public Security Policy; (c) Resolution of the Inter-American Commission on Human Rights, revoking preventive measures in the case “Hospital Neurosiquiátrico”.

### **Interactive dialogue and responses by the State under review**

30. ... Guatemala was concerned about the rights of indigenous people and requested information about the measures adopted to support indigenous people.

40. Canada welcomed the efforts made by Paraguay to address indigenous rights and land settlement issues. ...

42. Poland noted with appreciation the fact that the rights of indigenous peoples had been set as a priority, and encouraged Paraguay to continue its efforts to eliminate discrimination by the indigenous population resulting in various inequalities for children. ...

43. Cuba ... noted the remaining challenge to address illiteracy among the indigenous populations. ...

45. ... While noting the legal recognition of indigenous rights in Paraguay, the United Kingdom encouraged more effective protection and promotion of those rights, in particular to resolve land claims, through the institutional framework. It asked what steps the Government was taking to implement the judgments of the Inter-American Court of Human Rights with regard to the Yakye Axa and Sawhoyamaxa communities. ...

48. ... Norway commended Paraguay for the efforts to enhance the human rights situation of indigenous peoples. ...

49. ... Switzerland observed that the recognition of the rights of the indigenous population was not always fully ensured.

55. The delegation recalled that the Constitution recognized the right of indigenous peoples and that Law No. 904/81 on the Status of Indigenous Communities recognized the legal status of these communities, 60 per cent of which had already obtained a legal title. In that regard, in 2010, 156,000,718 hectares had been granted to 17 communities. For its part, the Paraguayan Indigenous Institute had worked on three strategic areas since August 2009: land and territory, participation and ethnic development. For 2011, the institute was planning the establishment of a protocol for consultations. Provisionally, it had adopted Resolution No. 2039 of 2010, establishing compliance with the minimum requirements and obligations of the consultation on the framework of ILO Convention No. 169 and its direct application.

58. France noted that, according to the Permanent Forum on Indigenous Issues, nearly 90 per cent of the indigenous population did not have access to medical services. In addition, according to the Special Rapporteur on the right to education, the illiteracy rate among the indigenous population over the age of 15 had risen to 40 per cent. France also highlighted continuing difficulties faced by the Yakya Axa and Sawhoyamaxa communities regarding access to land. ...

62. The ...Republic of Korea observed the marginalization of indigenous groups in the areas of land opportunities and education.

63. Hungary acknowledge[ed] the legal recognition of indigenous peoples and their collective right to land, but noted remaining concerns. ...

64. The Plurinational State of Bolivia valued the normative framework on the rights of indigenous peoples. ... It encouraged Paraguay to continue with its efforts.

72. Mexico recognized progress made by Paraguay in the recognition of the right of indigenous people to collective land property and the implementation of policies to fight poverty and social inequality. ...

73. Australia ...was concerned by harassment of and discrimination against women, minorities and indigenous peoples. ...

76. Peru ... noted progress, such as the establishment of the Truth and Justice Commission, important efforts to address poverty and efforts to ensure free and mandatory basic education and bilingual education in Guaraní and Spanish. ...

82. Finally, the delegation answered the questions relating to the rulings of the Inter-American Court on Human Rights related to indigenous issues in Paraguay. In order to facilitate their compliance it was necessary to reach consensus with various stakeholders within Paraguayan society. The cases were complex and required a high content of mutual understanding and concessions from all parties.

### **Conclusions and/or recommendations**

84. The recommendations formulated during the interactive dialogue and listed below enjoy the support of Paraguay:

84.20. Undertake a participatory and inclusive process with civil society organizations, including indigenous peoples organizations, in the implementation of universal periodic review recommendations (Norway);

84.42. Step up efforts to improve the literacy rate among the indigenous communities and the people who live in rural areas (Malaysia);

84.43. Continue with its literacy efforts, access to bilingual education and the promotion and protection of the Guaraní language, in all its territory (Plurinational State of Bolivia);

84.44. Consider taking comprehensive measures to address indigenous peoples' claims, giving due consideration to the United Nations Declaration on the Rights of Indigenous Peoples (Republic of Korea);

84.45. Redouble efforts to resolve the problem of indigenous lands and prioritize support for the National Indigenous Institute (Switzerland);

84.46. Take further measures to protect the collective property rights of all indigenous citizens (Hungary)....

85. The following recommendations enjoy the support of Paraguay which considers that they are already implemented or in the process of implementation:

85.60. Step up its efforts in providing equal opportunities to education and work to both vulnerable groups and minorities (Thailand);

85.61. Accord special attention, within its public policy on teaching, to the education of indigenous persons and children living in poverty (Costa Rica);

- 85.62. That constant protection be provided to indigenous people and their rights over their lands and the preservation of their culture (Holy See);
- 85.63. Strengthen its efforts for the protection of the rights of the indigenous population. Create a specific national mechanism to address any complaint by the indigenous population in relation to the use of its traditional land, and ensuring the participation of indigenous groups and their representatives (Spain);
- 85.64. Strengthen implementation of the comprehensive public policy for indigenous peoples, with a view to promoting and protecting all their rights, and strengthen the Paraguayan Indigenous Institute to ensure the right to consultation and participation of indigenous peoples in decision-making, in accordance with its obligations under the ILO Convention No. 169 (Plurinational State of Bolivia);
- 85.65. Establish an effective mechanism to address the claims of indigenous people to their traditional lands, with the appropriate participation of indigenous groups, and that resulting decisions are implemented (United Kingdom);
- 85.66. Take measures in order to ensure the compliance with the ILO Convention No. 169 and the Declaration on the Rights of Indigenous Peoples, including the recognition of the right to land and natural resources of all indigenous peoples in Paraguay (Norway);
- 85.67. Develop a comprehensive and forgery-proof land registry to enable indigenous communities to hold legal titles to their ancestral land (Germany);
- 85.68. Fully implement the rulings of the Inter-American Court on Human Rights regarding indigenous land claims by the Yakyé Axa and Sawhoyamaxa indigenous communities quickly and effectively (Canada);
- 85.69. Take measures to implement rulings from the Inter-American Court of Human Rights on land rights of indigenous communities in Paraguay (Norway);
- 85.70. Implement the rulings of the Inter-American Court of Human Rights relating to the Yakyé Axa and Sawhoyamaxa communities, rendered in 2005 and 2006 respectively, which stipulate, particularly, that the lands claimed by these two communities must be restored to them (France);
- 85.71. Institutionalize a consultation mechanism with indigenous community assemblies in order to include them in any decision-making that might affect their rights and interests (Mexico);
- 85.72. Pursue appropriate, efficient policies to address the access of its indigenous population to employment, medical services, education and housing (Slovakia)....

86. The following recommendations will be examined by Paraguay which will provide responses in due time, but no later than the seventeenth session of the Human Rights Council in June 2011.

- 86.2. Develop an action plan to address disparities in socio-economic indicators between persons belonging to indigenous communities and nonindigenous persons (Sweden);
- 86.5. Take the necessary measures to eliminate the socio-economic disparities affecting indigenous populations (France)....

**Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review (A/HRC/17/18/Add.1, 31 May 2011)**

**Response of Paraguay to Recommendations:  
Recommendation 86.2.**

3. The Government of Paraguay **accepts** this recommendation on the understanding that it is in the process of being implemented. As part of its public policy, Paraguay is carrying out programmes to combat poverty and promote social inclusion. These initiatives include the National Indigenous Policy Programme for Mitigation and support (PRONAPI), which works in the areas of mitigation

and support for food production for home consumption, and the ÑEMITY programme, which develops differentiated, sustainable agricultural production strategies.

4. Also, the implementation of a food security programme benefiting 76 indigenous communities funded by the Paraguayan-Brazilian Itaipú Binacional venture. Other initiatives now under implementation include the “Development Project for Indigenous Communities in Paraguay” funded with a grant from Japan Development and the “Sustainable Rural Development Project” (PRODERS), which will benefit 73 indigenous communities.

5. The Ministry of Agriculture and the Ethno-Development Directorate of the Paraguayan Institute for Indigenous Peoples (INDI) are working to promote family farming. Paraguay does not adopt measures to promote assimilation that fail to take into account the feelings and interests of the people involved. Based on the participation of indigenous peoples, INDI sets up participatory economic development projects for indigenous communities through the EthnoDevelopment Directorate.

### **Recommendation 86.5.**

15. The Government of Paraguay **accepts** this recommendation on the understanding that it is in the process of being implemented. Paraguay is conducting the Sustainable Rural Development Project (PRODERS) which will benefit 73 indigenous communities. In addition, the Secretariat for Social Action has executed the “Indigenous Community Food Support Plan for 2009–2010”. Also, a “Development Project for Indigenous Communities in Paraguay” is being implemented, funded by a grant from Japan Development, and is building capacity through technical and financial assistance and training in production and income-generating skills. The “San Fernando Indigenous Community Development Project” is another example of the application of public policy at the state level.

16. Attention should also be drawn to Act No. 3728/09 that provides “*the right to a maintenance claim for adults over 65 years of age and who are living in poverty*” in indigenous communities. The regulation provides that Paraguayans over 65 years of age who are living in poverty are entitled to a pension, and this includes older adults who belong to indigenous groups and communities in other departments around the country.

17. The public social development policy for 2010–2020 entitled “Paraguay for Everyone” provides for universal social and economic policies focusing on the entire population and for specific or targeted policies for families, groups and communities whose members are living in poverty and are excluded from the rest of society. There are 11 flagship programmes, including an INDI programme “Indigenous Peoples secure their TERRITORIES” and “Improving LIVING conditions” a housing improvement programme of the Secretariat for Housing and Habitat (SENAVITAT) which built a total of 252 dwellings for indigenous communities in 2010 and plans to build another 452 housing units in 2011.

## **6. Rwanda, A/HRC/17/4, 14 March 2011**

### **Presentation by the State under review**

20. The delegation stated that legislation was in place outlawing discrimination of any kind, and that it was a serious offence under national law. The question of the Batwa has been aggressively addressed, and it was expected that by 2020 they would be at parity with all other Rwandans. ...

### **Conclusions and/or recommendations**

79. The following recommendations enjoy the support of Rwanda, which considers that they are in the process of being implemented:

79.20. Adopt measures aimed at reducing poverty in the Batwa community, and its full integration in society (Chile)....

80. The following recommendations will be examined by Rwanda, which will respond in due course, but no later than the seventeenth session of the Human Rights Council in June 2011. The responses will be included in the outcome report adopted by Council at its seventeenth session:

80.15. Adopt concrete measures to avoid discrimination and protect the rights of the Batwa community and other minorities, as well as request technical assistance from the United Nations to identify their basic social needs (Spain);

81. The following recommendations did not enjoy the support of Rwanda:

81.3. Intensify measures to improve access by minority groups and indigenous people to basic social services, such as health, education, employment, and occupation (Malaysia);

82. Rwanda considers the above recommendations as either not applicable or irrelevant.

### **Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review (A/HRC/17/18/Add.1, 31 May 2011)**

#### **Response of Rwanda to Recommendations:**

**Recommendation no 69:** Adopt concrete measures to avoid discrimination and protect the rights of the peoples of the Batwa community and other minorities as well as request technical assistance from the United Nations to identify their basic social needs ( Spain)

13. The Rwandan Government is committed to the prevention and the fight against all forms of discrimination: the Government of Rwanda has put in place legal, administrative and institutional measures to combat discrimination. Various programs on social protection benefit to all the vulnerable groups, including the Batwa population. They receive free health insurance; adequate houses were constructed to them; they benefit from other programs such as “Free 9 Years Basic Education”; “one cow per poor family; Vision 2020 Umurenge (VUP); free legal aid, etc. And all this is done to all vulnerable and marginalized people, without any distinction.

14. The Special Rapporteur on minorities, Mrs McDougall, travelled around the country early February 2011 and assessed the rights enjoyed by the Batwa population and other marginalized groups. The Government of Rwanda hopes that her report will explain more on the situation of the Batwa population and other minorities.

### **7. Denmark, A/HRC/18/4, 11 July 2011**

#### **Presentation by the State under review**

6. The delegation stated that public hearings had been arranged in Copenhagen, Århus, Greenland and the Faroe Islands. A draft report was made publicly available on the UPR website of the Ministry of Foreign Affairs. The delegation welcomed the written submissions to the OHCHR by 15 stakeholders ahead of the UPR of Denmark.

8. The national report includes separate sections on the human rights situation in Greenland and the Faroe Islands.

17. The representative of the Government of Greenland stated that the indigenous people of Greenland, the Inuit, constitute a large majority of 88 per cent. On 21 June 2009, Greenland celebrated the inauguration of Greenland Self-Government. The Act on Greenland Self-Government introduces new arrangements regarding mineral resource activities in Greenland and economic relations between Greenland and Denmark. It describes the cooperation between Greenland and

Denmark regarding foreign policy, recognizes Greenlandic as the official language in Greenland and describes the country's access to independence – a decision to be taken by the people of Greenland.

18. The representative reported that the full mineral resources area has been taken over by the Government of Greenland, while the administration of justice and family law remain, for the time being, the responsibility of Denmark.

19. Greenland is working diligently to ensure that fundamental human rights principles form the basis of any legislative initiative and that the civil society is duly included in the preparatory process. It is the policy of the Government of Greenland that international human rights instruments be extended to Greenland. However, in accordance with the Act on Greenland Self-Government, the lifting of reservations to conventions ratified by Denmark and relating to Greenland will require prior presentation to the Parliament of Greenland.

20. It is the responsibility of the Government of Greenland to ensure the implementation of international conventions in areas taken over by Greenland. As a result, the Government of Greenland also participates actively in the reporting by Denmark to the treaty bodies of the United Nations.

21. In 2008, the Parliament of Greenland requested the Government to consider options regarding the establishment of a human rights capacity in Greenland, taking into account the relatively small size of the Greenland population.

22. It is important to point out that the Government of Greenland is a public government rather than an indigenous self-government. However, with the majority of the population being of Inuit descent, the Government and Parliament of Greenland place great emphasis on the rights of indigenous peoples.

23. One of the first actions of the Government of Greenland was to introduce new legislation on language policy and integration aimed at strengthening the role and use of Greenlandic.

24. The principle of collective ownership to land also applies to natural resources. As such, the Government of Greenland recognizes the importance of civil society involvement in decision making, not least concerning oil and minerals extraction and major development projects.

25. The representative stated that the Government is putting strong emphasis on improving the lives of children and youth in Greenland. Within the framework of the programme "A Safe Childhood 2010," several initiatives are in progress. The Government of Greenland has substantially increased the grants for shelters for women and children, and family centres.

26. The Government of Greenland is preparing a strategy on children and youth, which will be presented to the Parliament of Greenland later this year. The strategy addresses issues such as failure of care for the child, violence and addiction.

27. Within the framework of the public health programme, "Inuuneritta," one of the focus areas is violence and sexual health. A wide range of initiatives has already been implemented under this programme.

### **Interactive dialogue and responses by the State under review**

37. Canada welcomed the inclusion of Greenland in 2005 in the act establishing the Danish Institute for Human Rights, yet noted resource constraints limiting its presence in Greenland....

69. The delegation of the Government of Greenland responded to questions on the ratification of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, which has been approved by the Parliament of Greenland, but awaited the necessary adaptation of Greenland legislation.

70. The Government of Greenland actively promotes equal representation of men and women in public office. The issue of domestic violence is dealt with in a holistic manner and linked with many of the Government's initiatives. The Government of Greenland is preparing a strategy on children and youth which will be presented to Parliament in 2011.

71. The Parliament of Greenland has passed broad-based legislation concerning gender equality, which is regularly reviewed. Equal representation of men and women on boards and committees is strongly emphasized with respect to publicly owned companies and institutions. Fair and equal wages are ensured through collective agreements in the public and private sector.

### **Conclusions and/or recommendations**

106. The recommendations formulated during the interactive dialogue and listed below will be examined by Denmark which will provide responses in due course, but no later than the eighteenth session of the Human Rights Council in September 2011.

106.1. Extend the applicability of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children to Greenland and to the Faroe Islands (Hungary);

106.24. Greenland and Faroe Islands to ratify the following international instruments: Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and ensure their application (Ecuador);

106.44. Consider launching an action plan to combat domestic violence in Greenland (Spain);

106.47. Implement effectively the United Nations Declaration on the Rights of Indigenous Peoples (Islamic Republic of Iran)

106.81. Continue efforts to prevent and combat violence against women and domestic violence, in particular in the Faroe Islands and Greenland (Poland)....

## **8. Papua New Guinea, A/HRC/18/18, 11 July 2011**

### **Presentation by the State under review**

16. Papua New Guinea stated further that the current economic situation would change significantly due to the development of the multibillion-dollar liquefied natural gas project in the country. Aided by that important economic project, the country would experience unprecedented economic growth and development and, by 2020, the projected gross domestic product would be about US\$ 24 billion.

### **Interactive dialogue and responses by the State under review**

26. Algeria noted that Papua New Guinea was a young country, emerging from the long and complex night of colonialism and, like Algeria, had the moral duty to be constantly engaged in decolonization. It noted that despite the country's natural resource wealth, guaranteeing economic and social rights continued to be a challenge, notably the rights to food, to health, to housing and to access to drinking water and sanitation.

33. Thailand welcomed the steps taken towards the establishment of a national human rights institution, noting that once established, the institution could join the Asia Pacific Forum of National Human Rights Institutions. It was concerned that poverty, and certain traditional values and cultures, placed women and children in vulnerable positions. It noted a need to ensure that the local village system of court justice met international human rights standards.

35. Maldives stated that it was important that the Working Group on the Universal Periodic Review understand that Papua New Guinea, like Maldives, faced enormous challenges because of its size, geography and capacity constraints. Noting that the projected gross domestic product of Papua New Guinea would nearly double by 2020, it stated that business projects should be people-centred, and executed with respect for human rights and caution because of their environmental risk. Such projects, in the opinion of Maldives, had the potential to further enhance the promotion of human rights.

43. On sorcery, Papua New Guinea acknowledged that it had been a major issue but reiterated that the country's great diversity was a challenge and called on the international community to assist the country to address that reality. It recalled that the legislation concerning the matter was currently under review, and provided details of the process, which was being conducted by the Constitutional and Law Reform Commission.

44. Regarding questions on education, it was highlighted that the issue was also being addressed and that the economic projects described should have a positive impact in that area. It was explained that one of the issues that should be kept in mind was that 400 of the 800 languages that existed in the country were used in the elementary schools.

50. Norway welcomed the recent commitment by Papua New Guinea to halt deforestation, a step that would help protect the indigenous habitat and ecosystem, but it was concerned at reports that the 2010 amendment to the Environment Act undermined the rights of indigenous communities regarding their customary lands. ...

54. Mexico ... asked about the vulnerability of indigenous peoples to natural disasters. ...

59. In relation to the Environment Act, [the State] explained that the Act was currently before the courts and the constitutionality of it was being challenged.

64. The Holy See noted that about 800 tribes with diverse languages and cultural traditions made Papua New Guinea a true mosaic of peaceful coexistence and respect. It congratulated the efforts made to conserve and protect the identity of those groups and to ensure the freedom of religion and expression.

### **Conclusions and/or recommendations**

78. The recommendations listed below have been examined by Papua New Guinea and enjoy its support:

78.21. Accelerate its review of the law on sorcery and sorcery-related killings and strengthen the enforcement of relevant legislation (Czech Republic);

78.22. Review the law on sorcery and sorcery-related killings and investigate, prosecute and punish perpetrators of such crimes (Poland)....

79. The following recommendations will be examined by Papua New Guinea, which will provide responses in due time, but no later than the eighteenth session of the Human Rights Council in September 2011:

79.15. Consider ratifying International Labour Organization Convention No. 169 (1989) concerning Indigenous and Tribal Peoples in Independent Countries and take operational steps to implement the United Nations Declaration on the Rights of Indigenous Peoples (Norway);

79.51. Provide adequate judicial review and compensation for cases of government projects that have negative environmental impact on the land and resources of traditional landowners to ensure that their rights to property and right to environment are duly respected. Engagement with local communities in the decision-making process of any government project should also be promoted (Thailand);

79.57. Step up efforts to improve and conserve the environment, including by strengthening the relevant laws and providing the public with the necessary information, education and awareness regarding the impacts of climate change and environmental pollution and degradation (Malaysia);

79.58. Increase its scrutiny over extractive and logging industries and associated companies and businesses, with a view to reducing its negative impact on the environment and, consequently, its negative effects on the full enjoyment of human rights (Maldives);

79.67. Work closely with its citizens, especially the indigenous population, in order to promote environmental protection (Norway);

79.68. Stop the increasing deforestation and indiscriminate exploitation of minerals since, on one hand, this limits the right of indigenous peoples to live in their traditional agricultural lands and, on the other hand, it contributes enormously to the ecosystem's imbalance and accelerates climate change with the negative consequences it brings (Holy See);

79.69. Review the 2010 amendment to the Environment Act in order to ensure consistency with the objectives of the United Nations Declaration on the Rights of Indigenous Peoples (Norway).

### **Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review (A/HRC/18/18/Add.1, 30 September 2011)**

#### **Response of Papua New Guinea to Recommendations:**

79.15.	Reject	PNG does not have issues pertaining to indigenous rights and issues and the legal instrument may not be fully compatible with PNG laws and policies.
79.51.	Accept	This touches on the sovereign independence of our Judiciary. Any matter regarding judicial review is a matter for our Courts to decide based on the uniqueness of each case.
79.57.	Accept	It is an important ongoing priority of the PNG Government.
79.58.	Accept	Refer to reasons under 57.
79.67.	Accept	That is the policy direction of the PNG Government.
79.68.	Reject	PNG economically depends on its many mining projects and the Government cannot stop the exploration of mines in the country.
79.69.	Reject	Indigenous rights are non issues in PNG and it may not be consistent to link the UN

## **9. Suriname, A/HRC/18/12, 11 July 2011**

### **Presentation by the State under review**

15. Concerning the questions from the Netherlands, Norway and the United Kingdom with respect to paragraph 130 of its national report, which referred to the initiatives that Maroons and indigenous people had taken against the Government of Suriname for their collective rights, the delegation stated that the Inter-American Court of Human Rights ruled in 2007 that Suriname should recognize, among others, collective rights to land of the Saramaka people.

16. In that connection, the delegation indicated that Suriname had implemented several aspects of the Court's judgment; other aspects called for more in-depth consultation with the communities concerned. Accordingly, the Government held weekly consultations with the representative authorities of Maroons and indigenous peoples on the land right issues. The consultations would continue in collaboration with relevant stakeholders and the private sector.

17. Implementation of the part of the judgment, which dealt with the amendment of laws and regulations, was pending. Suriname had requested information and technical assistance on best practices regarding the drafting of legislation on the issue and procedures to be enacted, including consultation procedures. In that regard, the delegation referred to the visit of the Special Rapporteur on the rights of indigenous people, James Anaya, to Suriname. He had shared his views with the Government of Suriname, and his report contained valuable insights on how to proceed in the matter.

18. Furthermore, the delegation stated that the Government of Suriname was considering convening a national conference on the issue. Suriname was determined to provide equitable treatment and equal opportunities to all of its citizens, and that would be the guiding principle in analysing information and reports and taking decisions.

21. As for the question from Norway regarding the timeframe in which Suriname intended to ratify and implement the International Labour Organization Convention No. 169 (1989) concerning Indigenous and Tribal Peoples in Independent Countries, the delegation stated that the essence of that Convention was the recognition of the rights of indigenous people, including their collective land rights. Given the current state of affairs in relation to the consultative process, Suriname was not yet able to ratify the Convention No. 169.

### **Interactive dialogue and responses by the State under review**

40. ... Canada welcomed efforts to give effect to the rights of the Amerindian and Maroon, noting, however, that recognition of rights was often at the individual level, disregarding collective rights.

44. Norway ... observed that Suriname had stated that it would comply with the 2007 judgment of the Inter-American Court of Human Rights in the Saramaka case.

45. Hungary ... commended Suriname for efforts in recognizing the collective rights of indigenous peoples but remained concerned about their plight, in particular regarding land rights and reports of illegal logging and mining in indigenous areas. ...

50. Germany requested information ... on the country's policy towards national minorities (i.e., the Amerindians and the Maroons) and the implementation of the 2007 decision of the Inter-American Court of Human Rights on collective landownership....

53. Chile noted that the Surinamese national report acknowledged that the implementation of treaty bodies' recommendations and the decisions of the Inter-American Court of Human Rights represented one of the main challenges to its human rights policy. It therefore considered that cooperation with the multilateral protection system requires technical assistance of the United Nations. ...

55. The United States of America expressed concern that Surinamese laws did not afford any special protection for or recognition of indigenous people and that indigenous persons continued to be disadvantaged in a number of areas. It also noted problems faced by indigenous persons with illegal and uncontrolled mining on their lands. ...

57. Mexico ... highlighted work carried out towards the adoption of a law to combat domestic violence, to support the United Nations Declaration on the Rights of Indigenous Peoples and to prepare a draft law on the rights of indigenous peoples. ...

59. Slovakia ... noted reports of discrimination suffered by indigenous peoples and the lack of specific legislative framework to guarantee the realization of their rights.

60. Ecuador welcomed Surinamese efforts to consult with and to include civil society in the preparation of its national report. It recalled that Suriname was a country rich in natural resources, racially and ethnically diverse, with a high percentage of its population from indigenous and tribal groups.

63. The delegation thanked the States for their comments and took note of the concerns that still remained, such as education in the interior, the rights of indigenous peoples and Maroons, especially their collective human rights and land rights, the rights of women and children, death penalty, prison conditions, ratification of treaties and so forth.

65. As for education, the delegation furthermore stated that the situation in the capital and other areas in Suriname was quite acceptable, while serious concerns remained in the interior, because of the fact that those were rural areas and very deep in the Amazon rainforest. One particular problem was finding qualified teachers willing to go there and work in hard conditions. Those were the matters being looked at carefully, and projects and programmes were being developed by the Ministry of Education.

67. The delegation stated that it had concrete plans to involve stakeholders in its commitment to indigenous peoples and Maroons concerning their collective land rights, because Suriname was very diverse and there were more than six ethnic groups. Suriname would like all these groups to be involved in the process to reach the solution for the issue of Maroons and indigenous peoples. The delegation furthermore stated that the situation in Suriname was somewhat different from other Latin American countries which had indigenous peoples. The Maroon community in Suriname was not small and in fact larger than indigenous communities, and they had been living in the interior for more than three hundred years. The judgment of the Inter-American Court of Human Rights stated that they should have the same rights as indigenous peoples. In some areas, there was a clear overlap of land rights matters. Therefore, it was just not a matter of copying what had happened in other countries in the region. Suriname needed to find a Surinamese solution, and that was why Suriname would ask for some time to deal with this matter.

70. As to migrant workers in Suriname, the delegation indicated that they were involved in gold-mining in hinterlands in the interior inhabited by Maroons and indigenous peoples. By dealing with migrant workers' issues, Suriname needed to take into consideration the land rights of indigenous peoples and Maroons. If assistance was needed, Suriname would ask for it, as it did by asking James Anaya to come over to Suriname to look at the issues of land rights of the indigenous and Maroons peoples.

### **Conclusions and/or recommendations**

72. The recommendations formulated during the interactive dialogue and listed below enjoy the support Suriname:

72.8. Continue to work with the Special Rapporteur on the rights of indigenous persons (United States of America);

72.28. Continue efforts aimed at improving access to education, particularly in the rural areas, including by, inter alia, increasing the number of teachers, ensuring adequate infrastructure, learning materials and educational tools (Malaysia);

72.30. Take expeditiously efficient steps to improve access to free basic education to all children, with particular focus on those living in the interior areas and those belonging to indigenous and minority groups (Slovakia);

72.31. Continue its dialogue with indigenous persons (United States of America);

73. The following recommendations will be examined by Suriname which will provide responses in due time, but no later than the eighteenth session of the Human Rights Council in September 2011:

(1989) concerning Indigenous and Tribal Peoples in Independent Countries (Norway);

73.11. Ratify the International Labour Organization Convention No. 169 (1989) concerning Indigenous and Tribal Peoples in Independent Countries in order to ensure greater protection, as it is merited, by the special situation of indigenous and tribal population of the country, and consequently in this vein, comply with the decision of the Inter-American Court of Human Rights regarding their collective titles to property (Ecuador);

73.30. Adopt and implement efficient measures to eliminate discrimination on any grounds and against all vulnerable groups, with particular care on indigenous population (Slovakia);

73.31. Establish the legal conditions that are necessary in order to avoid discrimination of Maroons and indigenous peoples in terms of socio-economic development, health status, and access to health care (Germany);

73.53. Recognize the collective rights of indigenous peoples to their lands and resources, giving the matter priority when the issue of land rights is raised in Parliament as indicated in the Government's statement in October 2010 (Canada);

73.54. Acknowledge legally the rights of indigenous and tribal peoples to own, develop, control and use their lands, resources and communal territories according to customary law and traditional land-tenure system (Hungary);

73.55. Take the necessary steps to act in compliance with the verdict rendered in 2007 by the Inter-American Court of Human Rights in the Saramaka People case and to respect the right of indigenous people and Maroons to land (Norway);

73.56. Ensure that its indigenous communities, as far as possible, benefit fully from the provision of public services and that their land rights are legally recognized, including via implementation of the 2008 decision of the Inter- American Court of Human Rights (United Kingdom);

73.57. Execute fully the judgement of the Inter-American Court of Human Rights regarding logging and mining concessions in the territory of the Saramaka people and enshrine land rights of indigenous and Maroon groups in the Surinamese legal framework (Netherlands)....

**Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review (A/HRC/18/12/Add.1, 13 September 2011)**

**Response of Suriname to Recommendations:**

4. The following recommendations which were examined also enjoy the support of Suriname:

73.30 Adopt and implement efficient measures to eliminate discrimination on any grounds and against all vulnerable groups, with particular care on indigenous population (Slovakia);

73.31 Establish the legal conditions that are necessary in order to avoid discrimination of Maroons and Indigenous Peoples in terms of socio-economic development, health status, and access to healthcare (Germany)....

6. ... Recommendations which cannot be supported, concern the following issues:

11. *Indigenous Rights and land Rights Issues (recommendations 73.52-73.58)*

Prior to the upcoming National land Rights conference, there has been discussion with stakeholders, NGO's and civil society, as well as with the UN special rapporteur on land rights. The consultation regarding land rights is aimed at preparing both the Government as well as indigenous and maroon organizations for effective participation in the upcoming National land Rights Conference. This national debate will officially commence a broad national effort for a just and balanced solution to the issue of land rights.

13. These are the recommendations which cannot be supported:

73.10 Ratify the International Labour Organization Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries (Norway);

73.11 Ratify the International Labour Organization Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries in order to ensure greater protection, as it is merited, by the special situation of indigenous and tribal population of the country, and consequently in this line, comply with the decision of the Inter-American Court of Human Rights regarding their collective titles to property (Ecuador);

73.52 Continue efforts to recognize and uphold the collective rights of the indigenous people (Trinidad and Tobago);

73.53 Recognize the collective rights of indigenous people to their lands and resources, giving the matter priority when the issue of land rights is raised in Parliament as indicated in the government's statement last October (Canada);

73.54 Acknowledge legally the rights of indigenous and tribal peoples to own, develop, control and use their lands, resources and communal territories according to customary law and traditional land-tenure system (Hungary);

73.55 Take the necessary steps to act in compliance with the verdict rendered in 2007 by the Inter-American Court of Human Rights in the "Saramaka People Case" and to respect Indigenous People and Maroons right to land (Norway);

73.56 Ensure that indigenous communities, as far as possible, benefit fully from the provision of public services and that their land rights are legally recognized, including via implementation of the 2008<sup>85</sup> decision of the Inter-American Court of Human Rights (United Kingdom);

73.57 Execute fully the judgment of the Inter-American Court of Human Rights regarding logging and mining concessions in the territory of the Saramaccan people and enshrine land rights of Indigenous and Maroon groups in the Surinamese legal framework (Netherlands).

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<sup>85</sup>Judgment rendered in 2007.

14. Although a number of recommendations are not accepted at this time, the State is aware of the fact that they represent challenges to an ideal Human Rights climate in Suriname. Therefore they will enjoy the continued attention of the Government of the Republic of Suriname.

## **10. Thailand, A/HRC/19/8, 8 December 2011**

### **Presentation by the State under review**

7. ... The delegation also provided information about the Government's efforts to protect marginalized groups, such as children, women, persons with disabilities, older persons, ethnic groups and migrants.

### **Interactive dialogue and responses by the State under review**

30. ... Japan commended Thailand for the protection and promotion of human rights of displaced persons and expected that it would continue to take measures to foster the self-reliance of displaced persons.

61. Germany asked whether the Government would revise the lese-majesty law. It enquired about Thailand's intentions to ratify the Convention relating to the Status of Refugees, the 1967 Protocol, and the Convention relating to the Status of Stateless Persons as well as about the steps it would take to achieve the birth registration of refugee children.

67. The Bolivarian Republic of Venezuela valued Thailand's efforts to achieve universal and equitable socio-economic development through the reduction in the poverty rate and the eradication of hunger. It acknowledged the policies and programmes on social participation and assistance to vulnerable people, such as the equitable land and resources distribution and the universal health coverage.

### **Conclusions and/or recommendations**

88. The recommendations formulated during the interactive dialogue and listed below enjoy the support of Thailand:

88.23. Strengthen the implementation of policies and measures to protect vulnerable social groups like women, children, poor people, ethnic minorities, migrants (Viet Nam);

88.24. Continue its efforts in promoting and protecting the human rights of its people, in particular those of vulnerable groups (Brunei Darussalam);

88.25. Continue to strengthen the general concept recognizing social and ethnic diversity in Thai society and protect fundamental rights (Oman);

88.26. Combat discriminatory practices against children and adolescents belonging to minorities or in a situation of special vulnerability (Uruguay);

88.80. Address further the fundamental structural problem of social inequality and unequal access to opportunities and services of the poor and marginalized to enable the people to enjoy their rights as indicated in the reform programme and policies (Cambodia)....

### **Voluntary pledges and commitments**

94. Thailand will issue a standing invitation to all the special procedures of the Human Rights Council.

97. Thailand will promote the right to education for disadvantaged and marginalized children so that these children are able to access education for all on an equal basis with others.

**Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review (A/HRC/19/8/Add.1, 6 March 2012)**

**Response of Thailand to Recommendations:**

22. The following recommendation enjoys our support:

**89.22.** Thailand has issued a standing invitation to all Special Procedures and is in the process of establishing an initial calendar of visits.

**11. Tanzania, A/HRC/19/4, 8 December 2011**

**Presentation by the State under review**

7. The thematic areas included in the national report had been agreed upon by stakeholders [and include]: ... minorities and indigenous people's rights....

24. Concerning the issue of indigenous people, there was no consensus definition of indigenous peoples in Tanzania. Generally, all ethnic Tanzanians were regarded as indigenous. The position of the Government was that there were special groups that needed special protection within the country. Those included the Maasai, Hadzabe and Barbaig. The Government had taken various measures to provide political, social and cultural amenities to such groups in the fields of health, politics, employment and education.

25. Regarding forced evictions and toxic spillage into drinking water, the Constitution guaranteed the right to property, and land laws prevented forced evictions and provided for compensation where land was used for public interest. As for water control, the National Water Policy of 2002 was in place. The Water Supply and Sanitation Act of 2009 provided for the punishment of persons responsible for water pollution, and the Environmental Management Act established the Environmental Management Council, the duties of which included, inter alia, evaluating projects, potential environmental risks and impacts in that area.

**Interactive dialogue and responses by the State under review**

36. ... Finland referred to forceful and unlawful evictions of indigenous people and asked about actions to implement the recommendations of the Special Rapporteur on the rights of indigenous peoples, as well as legislative measures that the Government intended to take to effectively protect the rights of indigenous peoples.

61. Denmark ... was concerned by the denial or curtailing of indigenous people's rights to ancestral lands, resulting in numerous forced evictions. ...

67. The Netherlands ... drew attention to the security of pastoralist groups and their right to land and natural resources.

75. ... Mexico encouraged Tanzania to continue its efforts to provide justice in rural zones, safeguard child rights, and protect minorities and indigenous peoples.

**Conclusions and/or recommendations**

86. The following recommendations will be examined by Tanzania, which will provide responses in due time, but no later than the nineteenth session of the Human Rights Council in March 2012. The response of Tanzania to these recommendations will be included in the outcome report adopted by the Human Rights Council at its nineteenth session:

- 86.45. Hold responsible alleged perpetrators of forced evictions and pollution of drinking water in the area around the big mines (Norway);
- 86.46. Align policies to ensure access to land and water for pastoralists with the African Union Framework on Pastoralism and to conclude regional agreements to facilitate cross-border pastoralism (Netherlands);
- 86.48. Recognise the notion of indigenous peoples with a view to effectively protecting their rights (Denmark);
- 86.49. Adopt measures to protect and preserve the cultural heritage and traditional way of life of indigenous peoples and undertake effective consultations with indigenous peoples based on free, prior and informed consent (Denmark);
- 86.50. Launch a credible investigation of forced evictions and land conflicts and use the results of this investigation to help draft new legislation, which fully takes the rights of indigenous peoples into account (Finland);
- 86.51. Promote a legal framework giving legal certitude in terms of property, in particular with regard to land ownership and protection against force evictions and recognition of the rights of indigenous people, pastoralists, hunters and gathering peoples (Mexico);
- 86.52. Set up an effective statutory consultation mechanism with organizations working on the rights of indigenous peoples to help avoid further conflicts (Finland)....

**Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review (A/HRC/19/4/Add.1, 12 March 2012)**

**Response of Tanzania to Recommendations:**

- 86.45. The recommendation does not enjoy our support. Regarding forced evictions and toxic spillage into drinking water, the Constitution guarantees right to property and also land laws prevent forced evictions and provide for compensation where land is used for public interest. As for water control, the National Water Policy of 2002 is in place. The Water Supply and Sanitation Act of 2009 provides for punishment to persons responsible for water pollution and the Environmental Management Act establishes the Environmental Management Council which amongst its duties is to evaluate projects, potential environmental risks and impacts in this area.
- 86.46. The recommendation enjoys our support in part. Tanzania has no problem with its policies to ensure access to land and water for pastoralists. The Land use Policy has been translated into legislation and the pastoralists, like other land users has the right to use the land and the water facilities available. However, the issue of cross boarder pastoralism requires further analysis and consultations with all relevant stakeholders.
- 86.48. The recommendation does not enjoy our support. Tanzania wishes to reiterate its position stated during the UPR of its National Report in October 2011. We indicated that the term ‘an indigenous peoples’ is not applicable as all Tanzanians of African descent are indigenous to Tanzania. However, the Government recognizes the vulnerability of some of the marginalized communities and to this end it has been responsive to their needs and it will surely continue to do so.

- 86.49. The recommendation does not enjoy our support. The Government of Tanzania is always committed to preserving its cultural and traditional way of life to its people. To this end it has established a Ministry entrusted with Cultural affairs to oversee these issues. The recommendation is rejected in as far as it relates to the protection and preservation of the way of life of indigenous peoples, a concept which is still contentious in Tanzania.
- 86.51. The recommendation does not enjoy our support. The Land Act as well as the Village Land Act of 1999, provides for a legal framework giving legal certitude in terms of property in particular with regard to land ownership and eviction. However the notion of recognition of the rights of indigenous peoples is rejected for the reasons advanced under 86.48 above.
- 86.52. The recommendation does not enjoy our support. In the absence of indigenous peoples in Tanzania, there is no need to set up such a mechanism. See 86.48 above.

## **12. Uganda, A/HRC/19/16, 22 December 2011**

### **Interactive dialogue and responses by the State under review**

40. Nepal ... commended the success achieved in areas such as ... the rights of children, disabled persons and indigenous people....

50. Senegal stated that the national report of Uganda provided useful information on various measures taken for women and children and other vulnerable groups, such as persons with disabilities, indigenous populations and refugees. ...

97. The Congo ... noted, however, that ... the situation of the rights of indigenous populations, in particular the Batwas people, were a cause of concern. ...

### **Conclusions and/or recommendations**

111. The recommendations formulated during the interactive dialogue listed below have been examined by Uganda and enjoy the support of Uganda:

111.6. Continue to take measures to ensure an effective compliance with the legislations regarding the most vulnerable groups of the population (Costa Rica);

111.98. Continue efforts to protect the rights of marginalized and vulnerable population (Nepal);

111.99. Pursuing accommodative dialogue with indigenous communities, with a view to minimize disruptive approaches to their lifestyle and traditions while improving their life conditions (Algeria);

111.100. Continue to take legislative and administrative measures to improve the rights of BATWAS people<sup>8</sup> (Congo)....

## **13. Venezuela, A/HRC/19/12, 7 December 2011**

### **Presentation by the State under review**

17. The Constitution set forth for the first time a system to protect indigenous and Afro-descendant populations, valuing the contributions of their cultures to the Venezuelan identity and social institutions. This system had incorporated political participation mechanisms at all levels, which guaranteed that indigenous populations were represented in instances such as the National Assembly.

### **Interactive dialogue and responses by the State under review**

23. Bolivia (Plurinational State of) highlighted Venezuela's recognition of human rights in its Constitution, particularly those of indigenous peoples and Afro-Venezuelans. It noted that the Committee on the Elimination of Racial Discrimination had also recognized the multiethnic and multicultural nature of Venezuelan society. It praised the participation of indigenous peoples in Parliament, elected with respect to their customs. It welcomed the Organic Education Law, its School Food Program and the Canaima Program on technology for education.

31. China ... noted that significant progress has made against crime and drugs, in women's participation and indigenous rights.

36. Regarding the right to property, it was indicated that this right was a priority from an individual, collective, social and public point of view, and this Government had granted more credits for houses, companies, goods and equipment, tourism, fostering of community economy and fishing, among others.

54. Malaysia ... was interested to learn ... about steps taken to reduce structural economic inequalities affecting minorities and indigenous people.

56. Qatar ... acknowledged that the Constitution recognized the rights of indigenous peoples.

59. The Dominican Republic commended Venezuela for the implementation of policies in the field of education particularly designed to develop and promote the right to use information and communication technologies through the Canaima Education Project. ...

63. The Attorney General, Luisa Ortega Diaz, indicated that the access to justice was a constitutional right and that all people had a right to free, impartial, transparent, autonomous, independent and expedite justice, and, for this purpose there were district attorney's offices, courts, offices of ombudsmen that received claims; offices that provided care and protection to victims, and offices that provided guidance to citizens, paying special attention to the most vulnerable areas such as children, adolescents, indigenous populations and women.

67. The Holy See congratulated Venezuela for ... the promotion and protection of the rights of women and indigenous peoples. ...

72. Belarus ... noted the achievements in the implementation of social programs and ensuring the rights of indigenous peoples.

84. Cambodia ... noted the challenges Venezuela still faced in the area of rights of children, women and indigenous people.

88. Australia recognized the ongoing efforts of the Government to strengthen the country's legislative framework on indigenous rights and on economic and social rights. ...

91. The Minister of People's Power for Indigenous Populations, Ms. Nicia Maldonado, indicated that the Bolivarian Revolution led by Commander Hugo Chavez arrived 500 years after the European invasion to transform the excluding system into a democratic, participatory society in which the people played the leading role, one that loved peace and recognized the rights of historically excluded populations like Afro-descendant and indigenous people, farmers, women and people with disabilities. These rights had been concretized in 46 laws, thereby complying with the obligations

established in international instruments: laws that ensured prior and informed consultations, intercultural and multilingual education, that translated texts into indigenous languages that were now official, created an indigenous university, university campuses, a Ministry of People's Power for Indigenous Peoples, a health system that ensured the formation of indigenous doctors, including 1,583 community workers, 310 defenders of indigenous health, people giving vaccinations, cultural paramedics. A special format for Afro-descendants and indigenous peoples had been incorporated into the national census. Finally, Racial Discrimination Act had been adopted.

### **Conclusions and/or recommendations**

94. The following recommendations enjoy the support of the Bolivarian Republic of Venezuela, which considers that they are already implemented or in the process of implementation:

94.11. Continue to consolidate the rights of women and people belonging to vulnerable groups, including indigenous peoples and persons of diverse sexual orientation and gender identity, both within its legal framework and in practice (Canada);

94.25. Further enhance effective access to legal aid for women from all regions, including indigenous women and women of African descent (Sri Lanka);

94.65. Continue advancing in policies and programs dignifying and fully realizing the rights of indigenous peoples (Cuba);

94.66. Continue carrying out its sound public policies from the Ministry of Popular Power for Indigenous Peoples, to guarantee the respect and observance of the rights of Indigenous Peoples and Afro-descendant Communities (Bolivia);

94.67. Intensify efforts to improve the literacy rate among indigenous peoples and those living in the rural areas (Qatar);

94.68. Expedite and systematize the process of demarcation of indigenous collective lands and habitat, and update the census data of indigenous communities and peoples, ensuring the participation of communities in this process (Ecuador)....

### **Voluntary pledges and commitments**

98. The Bolivarian Republic of Venezuela undertook commitments with regard to the following issues: ... (h) To update census data of communities and indigenous peoples. To ensure the participation of the own communities in this process....

## **14. Ecuador, A/HRC/21/4, 5 July 2012**

### **Presentation by the State under review**

11. With regard to the situation of economic, social and cultural rights, Ecuador noted that it had taken affirmative action to incorporate into the public sector persons who were part of priority groups, such as persons with disabilities, indigenous peoples, Afro-Ecuadorians and Montubio people, and women.

30. To conclude, the delegation indicated that Ecuador saw itself as a plurinational and intercultural State and therefore had placed emphasis on the rights of indigenous peoples, Afro-Ecuadorians and Montubio people.

31. Within the framework of the intercultural bilingual education system, for the year 2010, 2,000 education centres, with 6,000 teachers from various nationalities and indigenous populations, had been established in 16 of the country's 24 provinces.

### **Interactive dialogue and responses by the State under review**

51. Ethiopia ... highlighted efforts made by Ecuador to promote the rights of indigenous, Afro-descendent and Montubio people. ...

62. Germany was pleased to note that the Ecuadorian Constitution recognized the rights of indigenous peoples. However, it noted that no mechanism had been adopted yet to ensure their right to be consulted. ...

64. The Holy See noted the measures taken by Ecuador to protect the environment and indigenous and Afro-descendants' rights; and to combat poverty and illiteracy. ...

83. With regard to comments on prior consultation with indigenous peoples, Ecuador had ratified International Labour Organization Convention No. 169 (1989) concerning Indigenous and Tribal Peoples in Independent Countries, and the 2008 Constitution included prior consultation with indigenous peoples. The Constitution provided for indigenous communities to receive a share of development project profits and compensation where appropriate. Furthermore, the courts had stipulated how prior consultations should take place, requiring the participation of and dialogue with indigenous authorities, and the conducting of cultural, environmental and social impact studies prior to oil or mining projects.

103. Slovenia ... noted discrepancies in access to education and the persistence of discrimination faced by indigenous and Afro-descendent women.

126. Ecuador had launched a national plan to combat racial discrimination and for the first time in its history, in March 2012 21 indigenous persons (11 Afro-Ecuadorians and 10 Montubios), out of a total of 70 persons, had been selected through a competitive exam and affirmative action, to enter the diplomatic service.

### **Conclusions and/or recommendations**

135. The following recommendations enjoy the support of Ecuador, which considers that they are already implemented or in the process of implementation:

135.33. Strengthen its efforts to achieve universal birth registration, including by establishing permanent and automated birth registration services in all pre-and post natal healthcare institutions. These services should be accessible to all people throughout the whole country, including in rural areas (Finland); Take actions to achieve universal birth registration (Mexico); Take targeted measures to address the situation of girls and the challenge of ensuring the accessibility to registration for indigenous peoples and people of African descent as well as for migrant families. The right of every child to a name and nationality should be guaranteed (Finland);

135.37. Ensure that community activists and indigenous leaders can exercise their right to peaceful assembly and protest and that anti-terrorist legislation is not misused to inappropriately censure such activities (Canada);

135.55. ... Develop a mechanism to gather statistics on education of indigenous groups (Slovenia)...;

135.57. Adopt special measures for the realisation of collective rights of indigenous peoples and the adoption of mechanisms to ensure their right to be consulted (Hungary); Undertake effective measures to further strengthen the existing mechanisms for consultation with the indigenous population on issues which have an impact on the economic and social aspects of the indigenous population (Malaysia); Continue to improve the promotion and protection of the rights of indigenous peoples, in particular the respect of their cultural and linguistic diversity, and further think about programmes and policies for indigenous peoples, particularly focusing on women and children

(Morocco); Institutionalize the right to consultation of the indigenous population and involve civil society and indigenous groups in the elaboration of a functioning consultation mechanism in line with Ecuador's commitments under ILO-Convention 169 (Norway);

135.58. Adopt legislation to guarantee the fulfilment of the collective rights of the indigenous population and Afro-Ecuadoreans, so as to increase affirmative actions in favours of racial and gender equality (Paraguay);

136. The recommendations below did not enjoy the support of Ecuador which provided comments:

136.3. Establish clear consultation procedures in order to implement the right to free, prior and informed consent of indigenous peoples as contained in the Constitution (Germany);

The Constitution of the Ecuadorian State establishes consultation as a right of all Ecuadorians, but particularly for communities, peoples and nationalities, a previous, free and informed consultation, but not their consent. Additionally, it is necessary to indicate that Ecuador recognizes the existence of indigenous peoples living in voluntary isolation, with the consequent obligation of guaranteeing their lives, of respecting and making others respect their self-determination and will to remain in isolation, and defend the validity of their rights, which turns unviable obtaining their consent.

## **15. Tunisia, A/HRC/21/5, 9 July 2012**

### **Conclusions and/or recommendations**

114. The recommendations formulated during the interactive dialogue/listed below enjoy the support of Tunisia:

114.76. Engage in an all-inclusive and participatory reform process and ensure that all sections of the population, including women, persons with disabilities, minority and indigenous groups and civil society organisations are brought on board (Ghana)....

## **16. Morocco, A/HRC/21/3, 6 July 2012**

### **Presentation by the State under review**

23. Considering the cultural diversity of Morocco, several constitutional gains have been achieved with regard to the enjoyment of cultural rights. The Amazigh language is considered as an official language of the State and a shared heritage belonging to all Moroccans, and a national council for languages and Moroccan culture is provided for. In addition, Morocco ensured that its efforts are enhanced to integrate the Amazigh and Sahrawi Hassani cultures in the areas of education, training, media, communication and cultural creativity.

### **Interactive dialogue and responses by the State under review**

47. Australia commended Morocco for ... the recognition of Berber as an official language....

127. On cultural diversity and rights, there is an increased number of beneficiaries of Amazigh education, more teachers have been trained and textbooks which focus on cultural specificities reports on Amazigh culture are used.

### **Conclusions and/or recommendations**

130. The following recommendations enjoy the support of Morocco which considers that they are already implemented or in the process of implementation:

130.11. Give particular attention to all measures to improve the human rights situation in Western Sahara, in particular develop and implement independent and credible measures to ensure full respect for human rights and guaranteeing such basic rights as freedom of association and expression (Ireland);

130.12. Take measures to ensure the adequate protection of human rights in the Western Sahara in light of the reported cases of enforced disappearances, torture and ill-treatment, restrictions on freedom of expression, association and assembly by Moroccan security forces (Spain).

131. The recommendations below did not enjoy the support of Morocco:

131.4. Ensure that the procedures governing registration of civil society organizations, including organizations advocating for the Saharawi people's right to self-determination, are in conformity with international standards (Norway).

132. The following recommendation is rejected by Morocco which considers that it does not fall within the scope of the mandate of the Human Rights Council:

132.1. Accept the establishment of a permanent human rights component in the United Nations Mission for the Referendum in Western Sahara (MINURSO), being the only peacekeeping mission not having this component (Uruguay).

## **17. Indonesia, A/HRC/21/7, 5 July 2012**

### **Interactive dialogue and responses by the State under review**

36. Switzerland expressed concern about acts of intolerance and discrimination perpetrated against religious and ethnical minorities ....

46. The United Kingdom of Great Britain and Northern Ireland welcomed Indonesia's ratification of the CRPD and efforts to address challenges in Papua and West Papua, where it noted an increase in violence. ...

47. The United States of America commended Indonesia's pursuit to promote prosperity and address grievances in the Papuan provinces though it remained concerned about allegations of abuses. ...

72. France remained concerned by the acts of violence committed by the police against human rights defenders. It deplored the violations of human rights against persons belonging to religious minorities, in particular against Ahmadis and the Papuan community. France made recommendations.

73. Germany asked Indonesia whether it intended to release Filep Karma and other political detainees. Regarding the conflict in the Papua provinces, it valued the efforts made to resolve the conflict through dialogue, but noted that serious human rights violations remained to be addressed. ...

83. ... Italy asked Indonesia to provide an update on the implementation of the 2001 special law granting autonomy to the region of West Papua.

84. ... Japan voiced concern at reported human rights violations in Papua.

92. Maldives ... noted OHCHR reports that Indonesia loses around two million hectares of forest annually to illegal logging and land conversion. It requested that Indonesia describe steps taken to combat illegal logging and the illicit trade in forest products and do justice to natural resource management.

98. New Zealand was encouraged by Indonesia's establishment of the Unit for the Acceleration of Development in Papua and West Papua and the intended change from a "security approach" to a "welfare and justice approach" for Papuans. ...

99. Nicaragua ... requested information on challenges faced concerning land rights and how the draft law on agrarian reform would help solve outstanding problems.

100. Norway ... noted that some human rights defenders experience challenges in operating freely in the Papua provinces.

102. Responding to observations made, the delegation referred to the situation in the provinces of Papua and West Papua. In order to optimize the implementation of Special Autonomy and expedite the development in Papua as well as West Papua, the Government has established the Special Unit for the Acceleration of Development in Papua and West Papua, through Presidential Decrees No. 65/2011 and No. 66/2011. This special Unit has formulated several quick programmes related to the enhancement of food security, poverty eradication, community-based economic development, education, health, and basic infrastructures. The Government continues to be committed to implement and optimize the special autonomy for the two provinces and to pursue the welfare and development approach in the two provinces. Responding to the comment raised on a reported general climate of impunity, the delegation explained that, unlike the past, members of the police and TNI who committed excesses in carrying out their responsibilities to maintain law and order have been held accountable and brought before the relevant courts. The delegation underscored the fact that the Government is keen to ensure that no cases or excesses occur on the part of the military or police in the carrying out of their responsibilities to maintain law and order in the two provinces.

### **Conclusions and/or recommendations**

108. The recommendations formulated during the interactive dialogue and listed below enjoy the support of Indonesia:

108.42. Implement comprehensive human rights training, with regular reviews to ensure effectiveness, for all military and police personnel, including those working in the Papua and West Papua provinces (New Zealand);

108.60. Enhance equal access to social services for all people, paying special attention to the needs of vulnerable communities living in remote regions (Myanmar);

108.61. Establish a fully implementable national action plan which guarantees full protection of vulnerable groups (Bahrain);

108.95. Hold accountable officials of all ranks responsible for human rights violations in the Papua provinces (Germany);

108.114. Ensure free access for civil society and national journalists to Papua and West Papua (France);

108.115. Enhance efforts to provide adequate protection to human rights defenders and to improve the human rights situations of ethnic and religious groups in certain regions, including Papua (Republic of Korea);

108.118. Ensure a safe and enabling environment for all human rights defenders (Norway);

109. The following recommendations will be examined by Indonesia which will provide responses in due time, but no later than the 21st session of the Human Rights Council in September 2012.

109.7. Consider ratifying ILO Convention N° 169 (Norway);

109.10. Immediately grant access to the delegates of ICRC to the Papua provinces in order for them to fulfil their mandate (Germany);

- 109.15. Extend an invitation to ... the Special Rapporteur on the rights of indigenous peoples in order that they visit Indonesia, particularly Papua (Mexico);
- 109.30. Ensure free access for foreign journalists to Papua and West Papua (France);
- 109.33. Take steps, particularly in Papua, to increase protection for human rights defenders against stigmatization, intimidation and attacks and to ensure respect for freedom of expression and peaceful protest, including through a review of regulations that can be used to restrict political expression, in particular article 106 and 110 of the criminal code, and the release of those detained solely for peaceful political activities (Canada);
- 109.36. Ensure the rights of indigenous peoples and local forest dependent peoples in law and practice, in particular regarding their rights to traditional lands, territories and resources (Norway).

## **18. Finland, A/HRC/21/8, 5 July 2012**

### **Interactive dialogue and responses by the State under review**

21. ... Morocco requested information about the progress made in the negotiations with Sweden and Norway on the Nordic Convention on the status of the Sami, as indigenous peoples. Morocco made a recommendation.

26. Nicaragua ... encouraged Finland to address domestic human rights issues, particularly persistent discrimination against ethnic and Sami communities.

30. The delegation reported on the intention of Finland to ratify ILO Convention No. 169 by 2015, with the aim of strengthening the participation of Sami, especially with regard to access to land and water. In this respect, Finland has amended the Mining and Water Acts to ensure rights of the Sami to participate in decision-making. A national programme for revitalizing the Sami language s has been adopted. A Nordic Sami Convention is being drafted with the participation of the representatives of the Government and Sami.

37. Romania welcomed specific measures, including legislative measures, adopted by Finland in the field of human rights, particularly ... to improve the rights of immigrants and the Sami community.

...

79. Guatemala welcomed that Finland's programme and policy to give particular attention to the rights of ... indigenous peoples.... Guatemala also looked favourably upon the ratification of various international instruments and requested information about the steps taken to ratify the ILO Convention No. 169. ...

### **Conclusions and/or recommendations**

89. The recommendations formulated during the interactive dialogue and listed below have been examined by Finland and enjoy the support of Finland:

89.8. Ratify promptly the ILO Convention 169 (Nicaragua) / Conclude as soon as possible the process towards the ratification of the ILO Convention (169) on indigenous and tribal peoples in independent countries and carry out the necessary internal normative adjustments to this end (Mexico) / Ratify ILO Convention No. 169 on Indigenous and Tribal Peoples in Independent Countries within the term of office of the current government administration (Norway)....

## **19. India, A/HRC/21/10, 9 July 2012**

### **Presentation by the State under review**

11. The Armed Forces Special Powers Act (AFSPA) 1948 was held to be constitutional by the Supreme Court. Several checks and balances had been introduced with strict guidelines when dealing with terrorists and insurgents, and that violations were dealt with swiftly and transparently. The implementation of this Act remained under constant review.

14. The last four years had seen tremendous strides in focusing on groups needing special attention including children, women, the disabled, the elderly, minorities, Scheduled Castes and Scheduled Tribes.

15. India's efforts in the sphere of social and economic advancement had been significant. Poverty had declined by 9 per cent in a decade. MGNREGA played an extremely crucial role and provided 54 million households with employment in 2010 and 2011. Forty-eight per cent of the employment created was for women. The declining trend in the unemployment rate between the years 2004–05 and 2009–10 was equally visible among Scheduled Castes and Scheduled Tribes and minorities.

24. Several recent steps have been taken to impact positively on the lives of the Scheduled Castes as well as the tribal population. Under the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, as of February 2012, India had settled 2.72 million claims out of the 3.17 million filed, or 86 per cent of the total claims and 1.25 million titles distributed. The Prime Minister's new 15-point programme for the welfare of minorities was being actively pursued. Certain proportion of development projects was being earmarked for minorities' concentration areas.

### **Interactive dialogue and responses by the State under review**

43. Trinidad and Tobago commended India for the National Green Tribunal Act, the Sexual Harassment Bill, 2010, the Right to Education Act, the Scheduled Tribes and other Forest Dwellers Act and the Right to Information Act.

83. Regarding the AFSPA, the delegation reiterated that the issue had already been covered in the opening statement.

89. The delegation stated that more than 84 per cent of households had drinking water. According to the Joint Monitoring Programme Report 2012 by WHO and UNICEF, India was on track to achieving its Millennium Development Goal (MDG) target of safe drinking water. To ensure equitable access, specific percentages of the National Rural Drinking Water Programme allocations were earmarked for Scheduled Castes and Tribes concentrated habitations.

132. With regard to the prosecution of Armed Forces, it was emphasized that the Army and paramilitary forces maintained continuous vigilance to prevent human rights violations. The Army established the Human Rights Cell even before the NHRC was established.

### **Conclusions and/or recommendations**

138. The recommendations formulated during the interactive dialogue and listed below will be examined by India who will provide its responses in due time, but no later than the 21st session of the Human Rights Council in September 2012. These responses will be included in the outcome report adopted by the Human Rights Council at its 21st session:

138.4. Ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and end impunity for security forces accused of committing human rights violations (United States of America);

138.5. Continue efforts to accede to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as well as its optional protocol, and the International for the Protection of All Persons from Enforced Disappearances; and ratify ILO Conventions No. 169 and no. 189 (Iraq);

138.26. Ratification of ILO Conventions Nos. ... 169 concerning Indigenous and Tribal Peoples in Independent Countries ... (Ghana);

138.35. Review the law on the special powers of the armed forces to align it with its obligations under the International Convention on Civil and Political Rights (Switzerland);

138.43. Enact a law on the protection of human rights defenders, with emphasis on those defenders facing greater risks, including those working on minority rights and the rights of scheduled castes and tribes (Czech Republic);

138.44. Repeal the Armed Forces Special Powers Act or adopt the negotiated amendments to it that would address the accountability of security personnel, the regulation concerning detentions as well as victims' right to appeal in accordance to international standards (Slovakia);

138.45. Carry out an annual review of the 1958 Armed Forces Special Powers Act aiming to gradually reduce its geographic scope (France);

138.47. Take adequate measures to guarantee and monitor the effective implementation of the Prevention of Atrocities Act, providing legal means for an increased protection of vulnerable groups like the Dalit, including the access to legal remedies for affected persons (Germany);

138.68. Implement the recommendations made by the Special Rapporteur on the rights of human right defenders following her visit in 2011, with particular emphasis on recommendations that concern defenders of women's and children's rights, defenders of minorities rights, including Dalits and Adivasi, and right to information activists (Norway);

138.72. Ensure that laws are fully and consistently enforced to provide adequate protections for ... adivasi groups ... (United States of America);

138.73. Monitor and verify the effectiveness of, and steadily implement, measures such as quota programmes in the areas of education and employment, special police and special courts for effective implementation of ... the Scheduled Caste and Scheduled Tribes Act ... (Japan);

138.75. Put in place appropriate monitoring mechanisms to ensure that the intended objectives of the progressive policy initiatives and measures for the promotion and protection of the welfare and the rights of the vulnerable, including women, girls and children, as well as the scheduled castes and scheduled tribes and minorities are well achieved (Ghana);

138.87. Continue to promote the rights of women in their choice of marriage and their equality of treatment independently of caste and tribe or other considerations (Holy See);

138.118. Prevent and pursue through the judicial process, all violent acts against religious and tribal minorities, Dalits and other casts (Holy See);

138.119. Guarantee effective access to justice in cases of human rights violations committed by security forces personnel with regard to the use of torture (Spain);

138.120. Implement effective judiciary proceedings making possible the bringing to justice security forces personnel who have committed human rights violations (France)....

**Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review (A/HRC/21/10/Add.1, 17 September 2012)**

**Response of India to Recommendations:**

**Recommendations Accepted by the Government of India**

Put in place appropriate monitoring mechanisms to ensure that the intended objectives of the progressive policy initiatives and measures for the promotion and protection of the welfare and the rights of the vulnerable, including women, girls and children, as well as the Scheduled Castes and Schedules Tribes and Minorities are well achieved.

**20. Brazil, A/HRC/21/11, 9 July 2012**

**Presentation by the State under review**

12. Turning to the area of respect for diversity and combating stigma, Ms. Nunes pointed out that Brazil has a vast array of measures covering ... elimination of racism, religious freedom, protection of human rights defenders, the rights of indigenous, Quilombola and Roma communities....

**Interactive dialogue and responses by the State under review**

21. Mozambique praised legal improvements by Brazil in the areas of women's and children's rights, persons with disabilities, rights of minorities and indigenous peoples, inter alia.

26. Norway ... expressed concern for the situation of indigenous peoples and human rights defenders and perpetrators' impunity.

44. On the subject of human rights defenders, Ms. Nunes pointed out that Brazil promotes a global policy for their protection ... [and] has assisted 464 persons and currently has 299 people under protection, including individuals from indigenous and Quilombola communities. ...

45. Regarding indigenous peoples, Ms. Nunes stated that the Federal Constitution ensures their exclusive rights to their land. She also said that there are currently 660 indigenous lands in Brazil, which corresponds to 13 per cent of the total national territory, or 1.1 million km<sup>2</sup>. In the last five years, 49 new lands have been demarcated. Paulo Pankararu, Ombudsman of the National Indigenous Foundation, stated that, in 2010, 800,000 Brazilians declared themselves as indigenous (in 1970, there were around 200,000). Regarding land protection, 196 lawsuits were registered in 2011 to combat invaders and prevent illegal occupation. He informed the Council that Brazil currently has 2,819 schools for indigenous people and there are 83,000 indigenous families that benefit from the "Bolsa Família" Programme. Mr Pankararu also highlighted the creation of the Special Secretariat of Indigenous Health in 2010.

46. In response to questions concerning International Labour Organization (ILO) Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries, the Deputy Secretary of Social Articulation in the President's Office, Juliana Miranda, recalled the policy of full social participation in Brazil, and that Brazil has initiated regulation of the previous consultation process provided for in the Convention, with the participation of all relevant stakeholders.

52. Switzerland ... was concerned by the difficulties in ensuring respect for the rights of indigenous communities.

58. The United Kingdom ... urged Brazil to enhance protection of human rights defenders and indigenous population.

65. Angola welcomed the implementation of recommendations related to reduction of poverty, social equality, child labour, the rights of indigenous peoples....

78. ... Congo noted its concern on issues of inequality, discrimination and the situation of indigenous peoples.

80. Cuba ... recognized improvements in the area of health, right to food and rights of indigenous peoples.

90. Egypt ... encouraged Brazil to guarantee the rights of indigenous peoples....

94. Germany ... voiced particular concern about indigenous people not benefiting from the economic progress.

96. ... Guatemala asked Brazil about the normative content of the indigenous people's statute which had been up for adoption in Parliament since 2009....

98. Honduras ... expressed the need to examine the observations of the Committee on the Elimination Discrimination against Women vis-à-vis the gender wage gap, and the segregation of indigenous and Afro-descendant women in the workplace....

114. Ms. Nunes stated that Brazilian National development policies promote human rights, including those of indigenous and Quilombola populations. ...

115. With regard to indigenous peoples, Ms. Nunes said that the current development projects contribute not only to economic growth, but also to the creation of clean energy, which accounts for a large part of the country's supply. Moreover, infrastructure creates regional and local benefits.

### **Conclusions and/or recommendations**

119. The following recommendations will be examined by Brazil, which will respond in due course, but no later than the twenty-first session of the Human Rights Council in September 2012. These responses will be included in the outcome report adopted by the Human Rights Council at its 21st session:

119.31. Pay particular attention to seek even more effective results in the implementation of policies addressing the following issues: protection of the rights and promotion of the socio-economic situation of indigenous peoples and Afro-descendent Quilombo communities; access to justice and combating impunity; extra-judicial executions, torture in detention and; protection of human rights defenders (Cape Verde);

119.32. Continue in its effort to eliminate extreme poverty and include in its social policies those who are most vulnerable, especially women, children, Afro-descendants, indigenous peoples, the elderly and persons with disabilities (Ecuador);

119.50. Follow up on the recommendation of ILO to continue efforts to ensure full equality of opportunity and treatment for women, persons of African Descent and indigenous persons (Turkey);

119.82. Ensure the protection of human rights defenders, notably the leaders of indigenous communities fighting for their rights (Switzerland);

119.84. Ensure adequate safeguards are in place to ensure protection of human rights defenders, including those working within indigenous communities (United Kingdom);

119.138. Continue to address the grievance of and empower vulnerable groups – particularly women, children, indigenous people, and people of African descent – by reducing urban-rural discrepancies

and promoting equal access to opportunities for all, especially access to health care, education, employment, housing and social security (Thailand);

119.144. Ensure equal access to poverty reduction programmes, particularly for indigenous families (Egypt);

119.158. Take adequate measures to combat illiteracy and guarantee to all citizens the enjoyment of the right to education, especially for poor people, those living in rural areas or indigenous minorities (Holy See);

119.162. Strengthen the awareness campaigns on the rights of indigenous populations and persons of African descent, notably through the implementation of the provisions of the specific laws adopted in this domain (Morocco);

119.163. Further entrench in standard administrative procedures the right of indigenous peoples to be consulted, in accordance with ILO Convention 169 (Netherlands);

119.164. Ensure the rights of indigenous peoples, in particular the rights to traditional lands, territories and resources, and their right to be consulted (Norway);

119.165. Conclude pending demarcation processes, in particular related to the Guaraní Kaiowá (Norway);

119.166. Continue promoting internal debates towards a better regulation of the consultation processes with indigenous peoples on issues that affect them directly (Peru);

119.167. Ensure that indigenous peoples are able to defend their constitutional right to ancestral lands without discrimination and their prior, informed consent is sought in cases of projects that may affect their rights (Slovakia);

119.168. Pay more attention, at all administrative levels, to the rights of indigenous peoples, especially to ensure their land rights (Poland);

119.169. Ensure indigenous peoples adequate consultation as well as full participation in all legislative or administrative measures affecting them (Germany)....

### **Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review (A/HRC/21/11/Add.1, 13 September 2012)**

#### **Response of Brazil to Recommendations:**

#### **Rights of indigenous people**

21. All recommendations on the subject enjoy the support of Brazil: **119.163, 119.164, 119.165, 119.166, 119.167, 119.168** and 119.169.

22. In what concerns **recommendation No. 119.167**, the Federal Constitution provides that indigenous communities shall be listened, and that the Congress shall issue an authorization for the use of water resources, research and mining of mineral resources in indigenous lands. Moreover, the Convention 169 of the ILO, internalized in Brazil in 2004, provides for previous consultation of indigenous people. The Brazilian State, therefore, already acts accordingly with the recommendation.

#### **21. Philippines, A/HRC/21/12, 9 July 2012**

#### **Presentation by the State under review**

29. The Philippines continues to promote and protect the rights of indigenous peoples and indigenous cultural communities and observes the provisions of the Indigenous Peoples Rights Act. It advocates responsible mining through the application of more stringent rules under a new mining policy that takes into account the impact of extensive mining operations on indigenous peoples and the environment.

### **Conclusions and/or recommendations**

129. The recommendations formulated during the interactive dialogue and listed below enjoy the support of the Philippines:

129.11. Intensify its efforts to protect the rights of other vulnerable groups, especially persons with disability, minorities and indigenous peoples so as to allow them equal access to social, educational, health and other services (Thailand)...;

129.44. Implement the Indigenous Peoples' Rights Act to ensure that economic activity, in particular mining; does not negatively affect the rights of indigenous peoples (Mexico);

129.45. Continue its efforts for the preservation and sustainability of the environment (Ecuador); Intensify efforts on a national scale for the sustainable use of natural resources (Myanmar).

## **22. South Africa, A/HRC/21/16, 9 July 2012**

### **Presentation by the State under review**

15. While the apartheid regime provided for the well-being of a mere 5 million White people, the new democratic Government was immediately faced with the mammoth task of providing for the well-being of the total population—in excess of 40 million people. The implication of that task entailed, among others, ensuring the progressive realization to food security, access to health services, quality education, social security, adequate housing, water and sanitation, rural development, land reform and land restitution, and electrification of rural and peri-urban areas—with very limited resources.

### **Interactive dialogue and responses by the State under review**

99. China commended endeavours to safeguard the rights of women, children, persons with disabilities, indigenous peoples and veterans. ...

100. The Congo commended South Africa for measures such as ... the National Languages Bill....

107. Ecuador ... highlighted ... the South African national languages draft bill.

110. France ... inquired about the conformity of provisions of the draft bill on transferring judicial powers to traditional chiefs with the principles enshrined in the Constitution....

### **Conclusions and/or recommendations**

124. The following recommendations will be examined by South Africa, which will provide responses in due time, but no later than the twenty-first session of the Human Rights Council in September 2012. The response of South Africa to these recommendations will be included in the outcome report adopted by the Human Rights Council at its twenty-first session:

124.33. Strengthen mechanisms to advance more effectively, in the creation of a climate of tolerance and respect towards people of different ethnic groups or cultures (Chile);

124.34. Continue its policy to combat racism and all forms of discrimination and racial intolerance and continue implementing affirmative actions for vulnerable groups (Ecuador);

124.95. Ensure that the proposed new Traditional Courts Bill, if adopted, does not violate South Africa's international obligations or its own Constitution in the area of women's rights and gender equality (Norway);

124.119. Pursue its efforts in the development of its rural policies to improve the existing strategies and policies and gradually strengthen the right to food for vulnerable groups (Côte d'Ivoire)....

### **23. Argentina, A/HRC/22/4, 12 December 2012**

#### **Presentation by the State under review**

20. With regard to indigenous peoples, legislation had been adopted, including Act 26.637, which called for the indigenous participation in the drafting of a bill on community property, established the Office of Indigenous Rights, and granted powers to the State to order the return of human remains to their communities. With regard to indigenous lands, while continuing to expand the application of law 26.160, a Law for the Protection of the national domain was adopted in December 2011. This legislation establishes that the land was not a trading good but a strategic and non-renewable resource which should be preserved. Likewise, there was an initiative to incorporate a new title in the chapter of property rights of the draft unified Civil and Commercial Code recognizing the indigenous community as the sole subject having right to communal indigenous property.

#### **Interactive dialogue and responses by the State under review**

31. China welcomed Argentina's great efforts at promoting employment and improving health and education. It noted that Argentina attaches great importance to promoting gender equality and that women's status in political and economic life has greatly improved. China expressed appreciation for Argentina's active protection of the rights of vulnerable groups such as children, disabled and indigenous peoples. China made a recommendation.

33. Belarus welcomed that Argentina had acceded to new human rights instruments and had voluntarily provided an interim report on UPR recommendations. It noted chronic human rights problems, including: discrimination against indigenous peoples....

57. Regarding indigenous peoples, the delegation noted that the 2010 national census of population and housing had included indigenous and African self-identification. The results reflected around a million people of Indian descent and some 70,000 people of African descent. The results allowed the formalization of individual policies for each of these groups.

58. The delegation stated that the current administration had enacted laws that implemented ILO Convention 169, and mentioned as examples the norm on intercultural bilingual education and the demarcation of indigenous land. On this last point, more than three and a half million hectares had been assessed and 14,000 evictions were prevented. Similarly, within the general policy of implementing the right to housing, there were specific programs for indigenous communities.

59. The delegation pointed out that the draft Civil Code incorporated the right to identity and name in indigenous languages and a close follow-up of the births of children belonging to indigenous peoples.

76. South Africa recognized progress made in establishing institutional mechanisms, enacting laws to protect the rights of indigenous peoples and children and strengthening protection in the area of violence against women. ... Persistent challenges remain in ensuring effective consultation of indigenous peoples. ...

95. Several delegations had referred to the existence of patterns of discrimination in Argentina that had to be overcome. The State acknowledged this situation and considered that such discrimination was not a problem coming from the victim but from society. Three elements were needed to improve the situation: information, visibility and political action. The delegation listened and gathered

information and recommendations put forward by other delegations to develop public policies in order to improve the situation of people of ... indigenous peoples....

### **Conclusions and/or recommendations**

The following recommendations will be examined by Argentina which will provide responses in due time, but no later than the 22nd session of the Human Rights Council in March 2013.

99.27. Declare discrimination as an offense in its domestic law and implement the recommendation of CERD to step up efforts to recognize itself as a multi-ethnic State (South Africa);

99.32. Continue its work to combat discrimination against vulnerable sectors and against all forms of discrimination, while encouraging the application of affirmative action policies for indigenous peoples and the migrant population (Bolivia (plurinational State of));

99.109. Continue systematically its efforts regarding the rights of indigenous peoples (Greece);

99.110. Continue the efforts aimed at stepping up participation and consultation with indigenous peoples on public policies that affect them (Peru);

99.111. Expedite the granting of communal land title to indigenous communities and consider appropriate compensation in this regard (South Africa);

99.112. Improve the situation of indigenous minorities, particularly regarding the right to property, access to housing, right to participation and intercultural education (Spain);

99.113. Strengthen the integration of indigenous peoples and immigrants, giving more rights to these categories (Oman)....

## **24. Gabon, A/HRC/22/5, 13 December 2012**

### **Presentation by the State under review**

15. With regard to the two recommendations relating to the rights of minorities, the Constitution condemns all forms of discrimination, including those based on race and ethnicity. Gabon has ratified several instruments which protect the rights of indigenous peoples and makes no distinction between Bantu and Pygmy in its public policies. While there is scope for improvement of the Pygmies' situation in Gabon, it is not deplorable. Gabon affords the same rights to both Pygmies and Bantu.

### **Interactive dialogue and responses by the State under review**

40. ... Hungary remained concerned about the high mortality rate of the Pygmy peoples in Gabon....

56. With regard to the rights of minorities, Gabon recognises that the Pygmies have the same rights as all the other peoples. The Pygmies have an attachment to their environment. The Delegation noted that leprosy no longer exists in Gabon and that the Pygmies possess knowledge of the plants that keep them in good health.

### **Conclusions and/or recommendations**

101. The recommendations formulated during the interactive dialogue/listed below have been examined and enjoy the support of Gabon:

101.45. Adopt the necessary measures to guarantee easy and effective access to free birth registration, including to Pygmy children (Mexico);

101.96. Adopt effective measures to guarantee and protect the rights of minorities without discrimination and provide them with all rights (Iraq);

101.97. Continue efforts to combat the various forms of discrimination and strive for the respect of the rights of minority ethnic groups (Argentina);

101.98. Take additional measures to ensure the integration of indigenous peoples in public institutions (Burundi);

- 101.99. Pay attention to the rights of minorities and equality and non-discrimination of women (Cape Verde);
- 101.100. Encourage the participation of minorities, such as the Pygmies, in the political, economic and social life of the country (Costa Rica);
- 101.101. Adopt a specific plan to protect the rights of indigenous peoples and a strategy to make basic services more accessible to the Pygmy minority (Slovenia);
- 101.102. Strengthen its policies designed to better integrate the Pygmies in the society (Angola);
- 101.103. Ensure full and equal access to public health services for Pygmy peoples in all areas of the country in particular by increasing the number of health care facilities and ensure proper registration of children at birth (Hungary);
- 101.104. Protect the rights of Pygmy minority and elevate their health conditions and make all health services accessible to them, while facilitate their attainment of different health services in an easy way (Iraq);
- 101.105. Keep the necessary measures to combat continued deforestation in order to ensure the effective enjoyment of economic, social and cultural rights (Egypt).

## **25. Guatemala, A/HRC/22/8, 31 December 2012**

### **Presentation by the State under review**

8. Guatemala was part of indigenous Latin America, different to the Euro-descendants or the mestizo Latin Americas. Due to its multi-ethnic, multicultural and multilingual characteristics, it required deep reforms. The current legal and institutional order, created in the early years of independence, did not correspond to those characteristics, and results in discrimination and exclusion. Those Guatemalan realities, disregarded by some States and by some Guatemalans people, were the guiding framework of the three national pacts, which prioritized the Government's objectives, and of the proposed legal and institutional reform, which included a constitutional reform that incorporated fundamental changes, necessary for a new Guatemala, democratic and inclusive. Two reforms derived from the peace agreements. The first one referred to the multi-ethnic, multicultural and multilingual character of the nation, recognizing the identity as peoples of indigenous nationals and their related rights, such as the recognition of their languages as official languages, thus enabling the end of discrimination and exclusion. The second reform was aimed at establishing limitations to the Army's functions in internal security, as temporary and extraordinary support to the civilian Security Forces, under the command of the civil authority. The Army would submit a report to the civil authority at the end of the mission.

26. The Public Prosecutor's Office had honoured its commitment to double the number of interpreters in indigenous languages. At that time, Guatemala had 40 Maya interpreters in place, a number which would progressively increase.

34. Guatemala concluded indicating that the Ministry of Social Development supported the enjoyment of indigenous rights, by extending the participation of indigenous peoples in social programmes and assisting them in strengthening their identity; and that development plans were being carried out in regions such as *El Polochic*.

35. Guatemala stated that, through the National Policy of Promotion and Integral Development, and its Plan of Equality of Opportunities (2008–2023) Guatemala gave priority to the implementation of the rights of Maya, Garifuna, Xinca and mestizo women. It referred to actions taken to protect and promote the rights of women such as: (a) the Lands Fund and the Secretary of Agrarian Affairs working together to respond to the women requests to access to land and housing; (b) the concept of peasant economy being incorporated into the policy of rural integral development,

for which peasant women were a priority – in that regard, actions have been taken with the banking institutions; (c) the gender and ethnic dimensions being taken into account when designing the budget structure; and (d) the creation of a specific cabinet for women, headed by the Vice-President.

38. Guatemala indicated that, through the unit for health care for indigenous peoples, the Ministry of Public Health and Social Assistance had designed a proposal for a complaint procedure that had been supported by the hospitals and health centres in four departments and its implementation in the whole country was expected.

39. Since 2011, the “restitution of rights” programme had been implemented. It was aimed at creating favourable conditions for restitution of rights to victims and giving them a living project allowing them to satisfy their basic, emotional and social requirements.

### **Interactive dialogue and responses by the State under review**

43. The Bolivarian Republic of Venezuela appreciated efforts to implement ... the Presidential Committee against Racism and Discrimination of Indigenous Peoples, recognizing the multi-ethnic nature of Guatemala. The Bolivarian Republic of Venezuela made a recommendation.

48. Bangladesh recognized the three major national pacts to address pressing social needs. It acknowledged the commitment of Guatemala to cooperation despite challenges and obstacles. It reiterated concerns about violence against indigenous peoples and others. It requested information on measures taken to address this situation. Bangladesh made a recommendation.

50. Brazil noted measures to follow up on recommendations. It also noted ... the Presidential Commission against Discrimination and Racism against Indigenous Peoples and the programme to defend indigenous women. ...

56. Cuba commended significant human rights progress. It highlighted the ... efforts to protect indigenous peoples’ rights, particularly women’s literacy. Cuba made recommendations.

59. Finland welcomed efforts to protect children’s rights but expressed concern over illegal international adoptions and the vulnerability of poor and indigenous families in this regard. ...

62. Greece ... acknowledged positive measures on adoption and recognized positive efforts made on the rights of indigenous peoples.

65. Hungary ... was concerned about public security, requesting information on plans to address it, overcrowded prisons and discrimination against indigenous peoples. ...

68. Ireland ... was concerned about reports that indigenous populations had been removed from their land without prior consultation and that protesters had been ill-treated.

69. ... Italy recognized progress ... [on] regional bureaus to defend indigenous women.

72. Malaysia was encouraged by the Guatemalan ... assertive approach to ... strengthening legislation on the rights of children, adolescents and indigenous people.

73. Mexico welcomed the progress of Guatemala on indigenous peoples’ rights and the administration of justice for serious violations that had occurred during the armed conflict.

78. Paraguay welcomed the country's openness to international human rights mechanisms; ... and discrimination against indigenous peoples. It praised its ... leadership in indigenous peoples' rights.
82. The Republic of Korea.... A number of social vulnerabilities within the country's indigenous population were also noted.
88. Slovenia ... raised concerns that indigenous people remained excluded from social, political and cultural spheres.
90. Sri Lanka ... welcomed the ... commitment to promoting equality of indigenous peoples' rights....
92. ... Switzerland was concerned by discrimination against the indigenous population....
93. Thailand commended the Guatemalan Government's serious promotion and protection of the rights of indigenous peoples....
95. The United Kingdom welcomed the establishment of task forces on specific issues as a step toward long-term, sustainable resolutions and the recognition of the needs of indigenous people in proposals to reform the Guatemalan Constitution.
97. In closing remarks, Guatemala gave thanks for the received recommendations that were in accordance with governmental policies and stated that therefore Guatemala accepted the majority thereof. A reply had been given to most of the questions posed in the preliminary interventions of the delegation, as well as in the document transmitted to the States replying to their advanced questions.
98. It highlighted that:
- (a) In order to legally regulate consultation with the indigenous peoples, in conformity with ILO Convention No. 169, the Cabinet of the Government had received ILO representatives and high officials of the Government of Peru – which was the only country having a law and rules in that regard. Guatemala expected that its regulatory law would be enacted soon....

### **Conclusions and/or recommendations**

99. The recommendations formulated during the interactive dialogue/listed below have been examined by and enjoy the support of Guatemala:
- 99.11. Adopt legislation concerning indigenous people based on international standards (Hungary);
  - 99.68. Implement a specific strategy of birth registration for indigenous communities based on the respect of their culture (Uruguay);
  - 99.71. Prepare and implement a specific birth registration strategy for indigenous peoples (Slovenia);
  - 99.78. Follow up its Constitutional Court decision that urges the legislative power to reform the legislation concerning access of indigenous people to radio frequencies to promote, develop and diffuse their languages, traditions and other cultural expression and reform the law on radio communication in order to guarantee the proper and free functioning of local radios (Norway);
  - 99.94. Take steps to ensure access to safe drinking water for all the indigenous communities (Slovenia);

- 99.95. Increase the coverage and accessibility of medical services for women, with a special focus on the needs of indigenous women and women in rural areas (Liechtenstein);
- 99.104. Continue to move forward in the execution of projects aimed at protecting women, specifically indigenous women (Bolivia (Plurinational State of));
- 99.105. Ensure the highest standards for the protection of indigenous peoples in order to eliminate the remaining structural inequalities that continue to have an adverse impact on indigenous peoples (Bolivia (Plurinational State of));
- 99.106. Undertake a dialogue process with indigenous peoples to seek an appropriate consultation mechanism regarding the adoption of measures affecting indigenous peoples (Costa Rica);
- 99.107. Systematically continue the positive efforts undertaken regarding the rights of indigenous peoples (Greece);
- 99.108. Continue its efforts to facilitate and promote indigenous peoples' access to education, sanitation, property, and public positions (Holy See);
- 99.109. Adopt national legislation to fully implement the ILO Convention No. 169 on indigenous and tribal peoples. Particular focus should be put on the indigenous peoples' right to be consulted at all levels of decision-making, in policy, legislative, administrative and development processes affecting them.(Norway);
- 99.110. Continue its efforts aimed at regulating the consultation process so that public policies reflect the effective participation of indigenous peoples in its implementation (Paraguay);
- 99.111. Continue efforts aimed at establishing and implementing a consultation mechanism with indigenous peoples, in accordance with national and international legislation (Peru);

100. The recommendations formulated during the interactive dialogue/listed below were noted by Guatemala. The views of Guatemala on the recommendations noted are included in an addendum to the report of the Working Group, A/HRC/22/8/Add.1)

- 100.9. Adopt a legal instrument to protect the rights of the indigenous population especially in cases of land disputes and mining development (Republic of Korea);
- 100.19. Take measures to improve the participation of all stakeholders, with a focus on women and indigenous people in decision making processes that could have an impact on future development of rural communities (Canada);
- 100.20. Thoroughly implement legislation and develop procedures involving civil society to ensure the protection of indigenous people, especially in the context of land disputes and forced evictions (Austria)
- 100.21. Protecting indigenous populations against mining companies and make them play a part in decision making (Iraq);
- 100.22. Implement a legislative framework for an appropriate and meaningful consultation procedure that will ensure genuine, free and informed consent of indigenous peoples in land disputes, as set out in the United Nations Declaration on Indigenous Peoples Rights (Ireland);
- 100.23. Safeguard legitimate rights of individuals belonging to indigenous communities in relation to land disputes, in particular in rural areas, reforming eviction procedures to comply with international standards (Slovakia);
- 100.24. Guarantee effective consultations with communities that might be affected by development projects and exploitation of natural resources (Slovenia);
- 100.25. Reform the Mining Law to guarantee indigenous peoples' right to their land, territories and natural resources (Norway);
- 100.26. Full participation of indigenous peoples in decision making concerning them, and that they are consulted during the planning and implementation of major economic projects (Switzerland);

100.27. Develop a process, trusted by the public, for regular community-government consultations regarding concerns of indigenous peoples and local community groups, including construction of infrastructure and other projects on their lands (United States of America)....

## **26. Japan, A/HRC/22/14, 14 December 2012**

19. Japan continued its active efforts toward building a rich and cohesive society in which Ainu people could live with a sense of pride. In 2008, the Diet adopted a resolution calling for the recognition of the Ainu as an indigenous people. Since 2010, the Council for Ainu Policy Promotion, with Ainu representation, has been promoting Ainu policies comprehensively and effectively.

### **Interactive dialogue and responses by the State under review**

107. Burundi ... noted recognition of the Ainu people.

110. Cape Verde noted measures for raising awareness of public officials regarding ... rights of ... indigenous peoples.

## **27. Peru, A/HRC/22/15, 27 December 2012**

### **Presentation by the State under review**

11. On the protection and promotion of the human rights of vulnerable persons, Peru highlighted developments in protecting the rights of indigenous peoples, persons with disabilities and the elderly.

12. With regards to indigenous peoples, it underscored the adoption, in 2011, of the Act on the Right of Indigenous Peoples to Prior Consultation (hereinafter, Prior Consultation Act) and the corresponding regulations, both of which were realized with the participation of representatives of indigenous peoples.

### **Interactive dialogue and responses by the State under review**

49. United States of America ... was concerned about high levels of child labour, especially among indigenous children, and anti-union discrimination.

50. Uruguay welcomed legislative and institutional advances, particularly in the areas of the rights of indigenous peoples....

58. The Plurinational State of Bolivia congratulated Peru on the series of measures and legislation it had adopted to ... ensure the rights of indigenous peoples, not least their right to prior consultation on measures affecting, inter alia, their identity, culture and collective rights.

63. Spain congratulated the Government of Peru on enacting the Prior Consultation Act and regulations, in accordance with ILO Convention No. 169....

80. Greece ... recognized Peruvian efforts regarding indigenous peoples' rights, including the recent Prior Consultation Act. ...

81. The Holy See ... welcomed the adoption of the Prior Consultation Act. ...

83. Hungary ... commended the enactment of the 2011 Prior Consultation Act. Hungary encouraged Peru to strengthen its efforts to address the high dropout rates and the high illiteracy rate

among indigenous peoples. It asked Peru to elaborate on how it intended to ensure that teaching staff was adequately trained to ensure bilingual education in all parts of the country.

86. Italy ... noted the adoption of the Prior Consultation Act and asked how Peru intended to implement the legislation to guarantee the involvement of the indigenous communities in decisions affecting them.

88. Kyrgyzstan noted with appreciation progress made in improving the protection of human rights of vulnerable groups. While noting the enactment of the Prior Consultation Act, it encouraged Peru to achieve full implementation of the legal standards established by the Inter-American Human Rights system on the rights to free and informed consultation and consent. ...

95. Norway noted progress achieved regarding the protection of social and economic rights for marginalized groups and the poverty reduction. It commended the steps taken to ensure prior consultations with the indigenous communities. ...

98. Poland expressed appreciation for the positive institutional and legislative changes in Peru, including considerable achievements in fighting poverty. It noted the lack of consultative mechanisms prior to the adoption of a new legislation in Peru, especially regarding mining projects.

...

### **Conclusions and/or recommendations**

116. The recommendations formulated during the interactive dialogue/listed below enjoy the support of Peru:

116.31. Eliminate effectively gender-based discrimination in accessing education and health care, particularly in rural areas and among indigenous communities (Slovakia);

116.56. Carry out a thorough and independent investigation on the policy of forced sterilization undertaken by the authorities in the 1990s, so as to ensure that those persons responsible do not enjoy impunity and that victims can obtain reparation (Belgium);

116.103. Continue the efforts to provide high quality education to all children and adolescents in the Peruvian territory, particularly to those belonging to groups in situations of vulnerability, such as indigenous peoples, Peruvian afro-descents, Afro-Peruvian communities and persons with disabilities (Costa Rica);

116.108. Systematically continue its efforts in the area of rights of indigenous peoples (Greece);

116.109. Intensify its efforts to ensure that Indigenous Peoples and the Afro-Peruvian community fully enjoy economic, social and cultural rights, as enshrined in the Universal Declaration on Human Rights (Trinidad and Tobago);

116.110. Continue working to reduce existing inequality gaps regarding indigenous peoples (Bolivia (Plurinational Republic of));

116.111. Ensure that the new legislation of 'Consulta Previa' is effectively implemented in order to protect the rights of the indigenous population (Germany);

116.112. Take the necessary steps in cooperation with the ILO to ensure an inclusive consultation process with indigenous peoples aiming at a more effective implementation of the relevant legislation (Hungary);

116.113. Involve indigenous peoples and peasant communities in the implementation and planning of projects related to the extractive sector (Mexico)....

## XI. EXPERT MECHANISM ON THE RIGHTS OF INDIGENOUS PEOPLES

### A. Advice

#### **1. Expert Mechanism Advice No 2 (2011): Indigenous peoples and the right to participate in decision making, A/HRC//18/42, 17 August 2011**

1. Indigenous peoples are among the most excluded, marginalized and disadvantaged sectors of society. This has had a negative impact on their ability to determine the direction of their own societies, including in decision-making on matters that affect their rights and interests. This can still be a major factor contributing to their disadvantaged position. Decision-making rights and participation by indigenous peoples in decisions that affect them is necessary to enable them to protect, inter alia, their cultures, including their languages and their lands, territories and resources. In many cases, however, indigenous peoples practised or continue to practise their own forms of governance.

2. The right of indigenous peoples to participation is well established in international law. More recently, the indigenous-rights discourse has seen increased focus on rights not only allowing indigenous peoples to participate in decision-making processes affecting them, but to actually control the outcome of such processes.

3. This spectrum of rights is well illustrated by the Declaration on the Rights of Indigenous Peoples, which contains more than 20 general provisions pertaining to indigenous peoples and decision-making. These rights range from the right to self-determination encompassing a right to autonomy or self-government to rights to participate and be actively involved in external decision-making processes. Other provisions establish specific duties for States to ensure the participation of indigenous peoples in decision-making, inter alia, to obtain their free, prior and informed consent; to consult and cooperate with indigenous peoples; and to take measures in conjunction with them.<sup>86</sup>

4. As a normative expression of the existing international consensus regarding the individual and collective human rights of indigenous peoples in a way which is coherent with already existing international human rights standards, the Declaration on the Rights of Indigenous Peoples provides a framework for action aiming at the full protection and implementation of the rights of indigenous peoples, including their right to participate in decision-making.

5. With regard to participatory rights, international human rights law refers to the right to participate in public affairs in both general and specific forms, including as set out in various human rights treaties, such as in article 25 of the International Covenant on Civil and Political Rights and in the Indigenous and Tribal Peoples Convention, 1989 (No. 169) of the International Labour Organization (ILO).<sup>87</sup> Participation in public affairs in its general form includes involvement in the conduct of public affairs. Electoral participation is only one specific expression of the right to participation. Moreover, the right to take part in public affairs is not limited to participation in formal political institutions, as it also includes participation in civil, cultural and social activities of a public nature. The right to participate in public affairs has conventionally been understood as a civil and political right of the individual. In the context of indigenous peoples, however, the right also takes on a collective aspect, implying a right of the group as a people to exercise decision-making authority.

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<sup>86</sup> Arts. 3-5, 10-12, 14, 15, 17-19, 22, 23, 26-28, 30-32, 36, 37, 38, and 40-41.

<sup>87</sup> Arts. 2, 5-7, 15-17, 20, 22, 23, 25, 27, 28, 33 and 35.

6. The right of indigenous peoples to participate in decision-making is also affirmed in international jurisprudence more generally, such as in the decision of the Inter-American Court of Human Rights in which the Court recognized indigenous peoples' right to organize themselves in ways that are consistent with their customs and traditions under State electoral laws.<sup>88</sup> The African Commission on Human and Peoples' Rights has expressed concern about the exclusion of indigenous peoples from decision-making about the treatment of their lands.<sup>89</sup>

7. Article 6 of ILO Convention No. 169 requires that consultations with indigenous peoples be carried out through institutions that are representative of indigenous peoples. Indigenous peoples should control the process by which representativeness is determined, in accordance with human rights standards as set out in, inter alia, the Declaration on the Rights of Indigenous Peoples.<sup>90</sup>

8. The requirement that consultations be carried out through appropriate procedures implies that general public hearing processes are not normally regarded as sufficient to meet this procedural standard. Consultation procedures need to allow for the full expression of indigenous peoples' views, in a timely manner and based on their full understanding of the issues involved, so that they may be able to affect the outcome and consensus may be achieved.

9. Moreover, consultations should be undertaken in good faith and in a form appropriate to the relevant context. This requires that consultations be carried out in a climate of mutual trust and transparency. Indigenous peoples must be given sufficient time to engage in their own decision-making process, and participate in decisions taken in a manner consistent with their cultural and social practices. Finally, the objective of consultations should be to achieve agreement or consensus.

10. As indicated above, the duty to consult indigenous peoples is further reflected in a number of provisions of the Declaration on the Rights of Indigenous Peoples.<sup>91</sup> Like ILO Convention No. 169, Declaration articles 19 and 32(2) require States to consult indigenous peoples in good faith, through appropriate procedures, with the objective of obtaining their agreement or consent when measures that may affect indigenous peoples are considered.

11. Moreover, a number of United Nations human rights treaty bodies have established that States have a duty, within the framework of their treaty obligations, to effectively consult indigenous peoples on matters affecting their interests and rights and, in some cases, to seek to obtain the consent of indigenous peoples.<sup>92</sup>

12. The duty of States to consult with indigenous peoples and to obtain their consent are also expressed in the jurisprudence of, inter alia, the universal periodic review of the Human Rights Council,<sup>93</sup> the Inter-American Court of Human Rights and the Inter-American Commission on Human Rights,<sup>94</sup> the African Commission on Human and Peoples' Rights,<sup>95</sup> the Special Rapporteur

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<sup>88</sup> Inter-American Court of Human Rights, *Yatama v. Nicaragua*, judgement of 23 June 2005

<sup>89</sup> African Commission on Human and Peoples' Rights, *Endorois Welfare Council v. Kenya*, 4 February 2010.

<sup>90</sup> A/HRC/EMRIP/2010/2.

<sup>91</sup> Arts. 10, 11, 15, 17, 19, 28, 29, 30, 32, 36, 37 and 38.

<sup>92</sup> See A/HRC/EMRIP/2010/2. See also CCPR/C/79/Add.109 and Add.112, CCPR/CO/69/AUS and CCPR/CO/74/SWE; *Official Records of the General Assembly, Fiftieth Session, Supplement No. 40 (A/50/40)*, vol. II, annex X, section I, para. 9.6; CERD/C/CAN/CO/18, paras. 15 and 25; CERD/C/NZL/CO/17, para. 20; CERD/C/IDN/CO/3, para. 17; CERD/C/COD/CO/15, para. 18; CERD/C/ECU/CO/19, para. 16; CERD/C/USA/CO/6, para. 29; CERD/C/NAM/CO/12, para. 18; CERD/C/SWE/CO/18, para. 19; CCPR/C/NIC/CO/3, para. 21; CCPR/C/BWA/CO/1, para. 24; CCPR/C/CRI/CO/5, para. 5; CCPR/C/CHL/CO/5, para. 19; *Official Records of the General Assembly, Fifty-second Session, Supplement No. 18 (A/52/18)*, annex V; and E/C.12/GC/21.

<sup>93</sup> See, for example, Human Rights Council decision 12/106.

<sup>94</sup> For example, *Yatama v. Nicaragua* (see footnote 65) and *Saramaka People v. Suriname*, judgement of 28 November 2007.

<sup>95</sup> *Endorois Welfare Council v. Kenya* (see footnote 66).

on the rights of indigenous peoples,<sup>96</sup> and in international policy,<sup>97</sup> some of which is described in the Expert Mechanism's progress report on indigenous peoples and the right to participate in decision-making.<sup>98</sup> In the progress report, the Expert Mechanism noted that several treaties between States and indigenous peoples affirmed the principles of indigenous peoples' consent as an underpinning of the treaty relationship between States and indigenous peoples.<sup>99</sup>

13. The right to full and effective participation in external decision-making is of fundamental importance to indigenous peoples' enjoyment of other human rights. For instance, the right of indigenous peoples to identify their own educational priorities and to participate effectively in the formulation, implementation and evaluation of education plans, programmes and services is crucial for their enjoyment of the right to education.<sup>100</sup> When implemented as a treaty right, the right to education can offer a framework for reconciliation. Truth and reconciliation commissions offer a model for improved relations between States and indigenous peoples as well.<sup>101</sup>

14. The participation of indigenous peoples in external decision-making is of crucial importance to good governance. One of the objectives of international standards on indigenous peoples' rights is to fill the gap between their rights on the one hand and their implementation on the other hand.

15. Many indigenous peoples remain vulnerable to top-down State interventions that take little or no account of their rights and circumstances. In many instances, this is an underlying cause for land dispossession, conflict, human rights violations, displacement and the loss of sustainable livelihoods.

16. The duty to consult indigenous peoples applies whenever a measure or decision specifically affecting indigenous peoples is being considered (for example, affecting their lands or livelihood). This duty also applies in situations where the State considers decisions or measures that potentially affect the wider society, but which affect indigenous peoples, and in particular in instances where decisions may have a disproportionately significant effect on indigenous peoples.<sup>102</sup>

17. With regard to the right to self-determination, the Declaration on the Rights of Indigenous Peoples affirms that indigenous peoples, in exercising their right to self-determination, have the right to develop and maintain their own decision-making institutions and authority parallel to their right to participate in external decision-making processes that affect them. This is crucial to their ability to maintain and develop their identities, languages, cultures and religions within the framework of the State in which they live.

18. Article 3 of the Declaration on the Rights of Indigenous Peoples mirrors common article 1, paragraph 1, of the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights. Consequently, indigenous peoples have the right to determine their own economic, social and cultural development and to manage, for their own benefit, their own natural resources. The duties to consult with indigenous peoples and to obtain their free, prior and informed consent are crucial elements of the right to self-determination.

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<sup>96</sup> A/HRC/12/34.

<sup>97</sup> For example, see the Akwe: Kon Voluntary Guidelines for the implementation of article 8(j) of the Convention of Biodiversity, and the European Bank for Reconstruction and Development, Environmental and Social Policy (May 2008).

<sup>98</sup> A/HRC/EMRIP/2010/2.

<sup>99</sup> *Ibid.* In Canada, treaties 6, 7 and 8 contain provisions on indigenous peoples' consent. For instance, Treaty No. 6, concluded in 1876, provides that "and whereas the said Indians have been notified and informed by Her Majesty's said Commissioners that it is the desire of Her Majesty to open up for settlement, immigration and such other purposes ... and to obtain the consent thereto of Her Indian subjects inhabiting the said tract" (para. 3).

<sup>100</sup> A/HRC/12/33.

<sup>101</sup> A/HRC/15/36, para. 11.

<sup>102</sup> See A/HRC/12/34, paras. 42-43.

19. As affirmed in articles 5, 18, 36 and 37 of the Declaration on the Rights of Indigenous Peoples, and within the ambit of the right to self-determination, indigenous peoples have the right to make independent decisions in all matters relating to their internal and local affairs, and to effectively influence external decision-making affecting them if they choose to participate in such processes.

20. As mentioned above, the right to free, prior and informed consent is embedded in the right to self-determination. The procedural requirements for consultations and free, prior and informed consent respectively are similar. Nevertheless, the right of free, prior and informed consent needs to be understood in the context of indigenous peoples' right to self-determination because it is an integral element of that right.

21. The duty of the State to obtain indigenous peoples' free, prior and informed consent entitles indigenous peoples to effectively determine the outcome of decision-making that affects them, not merely a right to be involved in such processes. Consent is a significant element of the decision-making process obtained through genuine consultation and participation. Hence, the duty to obtain the free, prior and informed consent of indigenous peoples is not only a procedural process but a substantive mechanism to ensure the respect of indigenous peoples' rights.

22. The Declaration on the Rights of Indigenous Peoples requires that the free, prior and informed consent of indigenous peoples be obtained in matters of fundamental importance for their rights, survival, dignity and well-being. In assessing whether a matter is of importance to the indigenous peoples concerned, relevant factors include the perspective and priorities of the indigenous peoples concerned, the nature of the matter or proposed activity and its potential impact on the indigenous peoples concerned, taking into account, *inter alia*, the cumulative effects of previous encroachments or activities and historical inequities faced by the indigenous peoples concerned. Premised on the right to self-determination, article 10 of the Declaration prohibits the forcible removal of indigenous peoples from their lands and territories. In contrast, ILO Convention No. 169, article 16(2), includes procedural elements that permit forced relocation as an exceptional measure, without the consent of the indigenous peoples concerned. The Declaration moreover requires States to obtain the free, prior and informed consent of indigenous peoples in certain other situations, as reflected in its articles 11(2), 19, 28(1), 29(2), 32(2) and 37.

23. The duty to obtain the free, prior and informed consent of indigenous peoples presupposes a mechanism and process whereby indigenous peoples make their own independent and collective decisions on matters that affect them. The process is to be undertaken in good faith to ensure mutual respect. The State's duty to obtain free, prior and informed consent affirms the prerogative of indigenous peoples to withhold consent and to establish terms and conditions for their consent.

24. The elements of free, prior and informed consent are interrelated; the elements of "free", "prior" and "informed" qualify and set the conditions for indigenous peoples' consent; violation of any of these three elements may invalidate any purported agreement by indigenous peoples.

25. The element of "free" implies no coercion, intimidation or manipulation; "prior" implies that consent is obtained in advance of the activity associated with the decision being made, and includes the time necessary to allow indigenous peoples to undertake their own decision-making processes; "informed" implies that indigenous peoples have been provided all information relating to the activity and that that information is objective, accurate and presented in a manner and form

understandable to indigenous peoples; “consent” implies that indigenous peoples have agreed to the activity that is the subject of the relevant decision, which may also be subject to conditions.<sup>103</sup>

### **Measures**

26. Reform of international and regional processes involving indigenous peoples should be a major priority and concern. In particular, multilateral environmental processes and forums should ensure full respect for the rights of indigenous peoples and their effective participation including, for example, in relation to the negotiation of the Nagoya Protocol.

27. Respect for indigenous peoples’ right to participate in decision making is essential for achieving international solidarity and harmonious and cooperative relations. Consensus is not a legitimate approach if its intention or effect is to undermine the human rights of indigenous peoples. Where beneficial or necessary, alternative negotiation frameworks should be considered, consistent with States’ obligations in the Charter of the United Nations and other international human rights law.

28. Free, prior and informed consent implies that States have a duty to obtain indigenous peoples’ consent in relation to decisions that are of fundamental importance for their rights, survival, dignity and well-being. States should ensure that consultations and negotiations with indigenous peoples as required by article 18 of the Declaration on the Rights of Indigenous Peoples and consistent with other human rights standards.

29. States have a duty to respect indigenous peoples’ right to participate in all levels of decision-making, including in external decision-making, if the indigenous peoples concerned so choose and in the forms of their choosing, including, where appropriate, in co-governance arrangements.

30. States should respect and assist both traditional and contemporary forms of indigenous peoples’ governance structures, including their collective decision-making practices.

31. States should enact and implement constitutional and other legal provisions that ensure indigenous peoples’ participation in decision-making consistent with the Declaration on the Rights of Indigenous Peoples, in particular where that is sought by affected indigenous peoples.

32. Indigenous women often face exceptional impediments to participation in decision-making. States, international organizations, indigenous peoples and other decision-making entities should therefore conduct more intensive studies and design appropriate mechanisms to facilitate the participation of indigenous women in their activities and increase their access to address difficulties facing indigenous women seeking to fully participate in decision-making. Likewise, the inclusion of indigenous youth in decision-making is essential in both internal and external, including legislative, decision-making.

33. States and relevant international and domestic organizations should ensure that indigenous peoples have the financial and technical capacity to engage in consultation and consent-seeking exercises and to participate in regional and international decision-making processes.

34. States should also recognize that the right to self-determination of indigenous peoples constitutes a duty for States to obtain indigenous peoples’ free, prior and informed consent, not merely to be involved in decision-making processes, but a right to determine their outcomes. Treaties, as evidence

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<sup>103</sup> For an interpretation of free, prior and informed consent, see E/C.19/2005/3.

of the right to self-determination, and the relationship they represent are the basis for a strengthened partnership, consistent with the Declaration on the Rights of Indigenous Peoples.

35. States shall respect indigenous peoples' right to self-determination consistent with the Declaration on the Rights of Indigenous Peoples and other international standards. States shall ensure that indigenous peoples have the means to finance their autonomous functions.

36. The United Nations should, in accordance with the Declaration on the Rights of Indigenous Peoples, establish a permanent mechanism or system for consultations with indigenous peoples' governance bodies, including indigenous parliaments, assemblies, councils or other bodies representing the indigenous peoples concerned, to ensure effective participation at all levels of the United Nations.

37. ILO should enable effective representation by indigenous peoples in its decision-making, and especially with regard to the implementation and supervision of ILO Conventions and policies relevant to indigenous peoples.

38. UNESCO should enable and ensure effective representation and participation of indigenous peoples in its decision-making, especially with regard to the implementation and supervision of UNESCO Conventions and policies relevant to indigenous peoples, such as the 1972 World Heritage Convention. Robust procedures and mechanisms should be established to ensure indigenous peoples are adequately consulted and involved in the management and protection of World Heritage sites, and that their free, prior and informed consent is obtained when their territories are being nominated and inscribed as World Heritage sites.

39. National human rights institutions, as independent bodies, should play an important role in bringing together representatives of Government and indigenous peoples, thus promoting indigenous peoples' participation in discussions and decisions on issues that concern them. National human rights institutions can also stress the need for all stakeholders to ensure indigenous representatives are involved in decision-making. Such institutions, through their own programmes, could also actively involve indigenous peoples in decision-making on related issues.

## **2. Advice No. 3 (2012): Indigenous peoples' languages and cultures, A/HRC/21/53, 16 August 2012**

### **A. General**

1. Distinct cultures and languages are often a central and principal feature of indigenous peoples' identities as collectives and as individuals, providing unity. Indeed, the distinctiveness of indigenous peoples' languages and cultures is a common feature of many indigenous peoples and the global indigenous peoples' movement. Indigenous cultures cannot be divorced from indigenous peoples' histories, often including colonization and dispossession, which have had a powerful impact on their languages and cultures.

2. Healthy indigenous peoples' languages and cultures, while rooted in history, must not be understood as static. It is essential that States, indigenous peoples, international institutions, national human rights institutions, non-governmental institutions and the private sector take a perspective on cultures that enhances their vitality, allowing them to live and breathe and take on new forms and shapes as voluntarily and customarily determined by indigenous peoples themselves. Contemporary expressions and forms of indigenous languages and cultures are important modern extensions of their age-old traditions and an indicator of the good health of their cultures.

3. Indigenous cultures include their ways of life, protected by the right to self-determination, and indigenous peoples' relationships, including spiritual connections, with their lands, territories and resources. They include manifestations of cultural practices, including economically driven activity, traditional knowledge, cultural expressions, jurisprudence, cosmovisions, spirituality, philosophies, membership codes, dispute resolution techniques, social values, arts, dress, song and dance.
4. Cultural diversity is a value in its own right, supported by the international legal framework, particularly as established by UNESCO.
5. The Declaration on the Rights of Indigenous Peoples should be the basis of all action, including at the legislative and policy level, on the protection and promotion of indigenous peoples' rights to their languages and cultures. Many of the rights in the Declaration relate to indigenous cultures and languages, especially indigenous peoples' rights to self-determination and to lands, territories and resources.
6. The impact of assimilationist policies on indigenous peoples' languages and cultures has been in many cases extremely harmful, leading to the near extinction of indigenous languages and cultures. The deliberate use of boarding, residential schools and orphanages for indigenous children, with a focus on integrating them into non-indigenous mainstream societies, has been tragically harmful for indigenous peoples and their cultures and languages and the health of indigenous individuals, including the inter-generational trauma suffered by the children and grandchildren of attendees of such schools.
7. Strong action is required to address the effects of historical and ongoing discrimination against indigenous peoples and individuals based on their cultures and use of their languages. Their languages and cultures will only flourish in environments when they are more broadly respected in their own right and for their contribution to an understanding of humanity.
8. Significant attention should be focused on understanding the historical and ongoing impact of the denigration of, and discrimination against, indigenous cultures and languages, which can lead to social, mental and physical ill health. Policies to address the social, mental and physical ill health of indigenous peoples cannot be divorced from an understanding of indigenous peoples' histories of marginalization and dispossession. In many cases, the revitalization of indigenous cultures and languages, instilling pride in indigenous peoples on account of their distinctiveness, can be beneficial in addressing social problems associated with indigenous peoples' loss of their cultures and languages.
9. Where indigenous peoples' cultures are alleged to discriminate against individual members, the circumstances should be examined from the perspective of all the indigenous individuals involved, taking into account indigenous philosophies and the alleged victims' positions. In general, indigenous peoples should be supported in their efforts to address the issues in the way that they choose. Unapproved non-indigenous interference in indigenous cultures alleged to discriminate is not to be recommended unless sought by those who are the alleged victims of the discrimination.
10. Many of the ongoing threats to indigenous cultures and languages can be traced to the impact of the private sector on indigenous peoples, as is too often the case when indigenous peoples' lands, territories and resources are exploited for business purposes. As the Guiding Principles on Business and Human Rights clarify, business enterprises have the responsibility to respect human rights, including indigenous peoples' rights to languages and cultures and traditional knowledge.

## **B. States**

11. The protection and promotion of indigenous peoples' languages and cultures requires States to recognize them in their constitutions, laws and policies.

12. Indigenous peoples have the right to cultural self-determination, including the right to cultural autonomy, together with the right to advance their cultures within mainstream societies. This right includes duties to obtain indigenous peoples' free, prior and informed consent when developing and implementing laws and policies related to indigenous languages and cultures, including to promote indigenous peoples' control over the development of their languages and cultures and their traditional knowledge.

13. States must take measures to protect indigenous peoples from discrimination and violence, and from measures that would result in their forced assimilation.

14. States, in partnership with indigenous peoples, must advance the protection, promotion and respect for indigenous cultures, languages, traditions and customs. State laws and policies addressing indigenous peoples' languages and cultures must go beyond symbolism and be effective in practice, setting out clear and practical methods to support indigenous peoples in their own promotion and protection of their languages and cultures, in accordance with their right to self-determination. This must include the allocation of sufficient financial, legal and policy support for the learning of indigenous languages, the teaching of indigenous cultural values and the training of indigenous educators. Also, States must provide incentives for indigenous peoples to transmit their languages and cultures to younger generations, recognition of place names in indigenous languages, strategic plans for implementing public awareness campaigns about indigenous cultures and languages, incorporating indigenous language and cultures in relevant media, publishing books (for example, textbooks) and establishing immersion and bilingual schooling.

15. States are encouraged to create an environment of tolerance and understanding where indigenous peoples' languages and cultures are celebrated within the State, promoting an understanding of the value of cultural difference within the society at large.

16. States should provide incentives for museums and other places where indigenous remains, artifacts and other cultural heritage are stored to inform the relevant indigenous peoples when they hold such treasures and to establish mechanisms to have them restored to indigenous peoples when they so desire.

17. There is a need for the recognition of the continuing value to communities and society of indigenous peoples' traditional knowledge, including spiritual, cultural and linguistic knowledge. This will require long-term financial investments in measures for the reclaiming and relearning and sharing of this knowledge. The resources spent on this should be, at a minimum, commensurate with the monies and efforts previously spent to destroy such knowledge.

18. Indigenous peoples should have the necessary support to speak their languages in both the public and private domains, including in schools, legal proceedings, and in places providing health services. In addition, it may be appropriate to establish mechanisms to monitor States' compliance with indigenous peoples' rights to speak their languages and practise their cultures, such as an ombudsman to address complaints about failures to respect, protect and promote indigenous cultures and languages.

19. In protecting, promoting and respecting indigenous peoples' rights to their cultures, States should treat all indigenous languages equally and take precautions not to favour supporting indigenous languages spoken by larger numbers of individuals. It is especially important that numerically small indigenous groups receive the support necessary to assist them in retaining their languages.

20. States should establish mechanisms, including monitoring, to ensure that indigenous peoples' traditional knowledge is not expropriated without the free, prior and informed consent of indigenous peoples and provision is made for appropriate access and benefit sharing arrangements.

21. States should ensure that non-indigenous third parties, especially the private sector, do not infringe indigenous peoples' rights to languages and culture and understand the flow-on effects that their activity on indigenous peoples' lands, territories and resources can have on their languages and cultures.

22. When developing and implementing laws and policies to address social problems facing indigenous peoples, it is imperative that States take an approach that is sensitive to the impact of historical marginalization and dispossession on indigenous peoples and their cultures and languages.

23. In providing redress to indigenous peoples for the negative impacts of State laws and policies on indigenous peoples, States should prioritize the views of indigenous peoples on the appropriate forms of redress, which can include the return of lands, territories and resources, recognition of indigenous peoples' governance structures, including their laws and dispute resolution processes and the finances necessary to enable indigenous peoples to implement their own techniques to revitalize and protect their languages and cultures. Customs, values and arbitration procedures of indigenous peoples should be recognized and appropriately respected by the courts and legal procedures.

### **C. Indigenous peoples**

24. Indigenous peoples have the primary responsibility to take control of the promotion and protection of their languages and cultures, with the support of the State as outlined above. Thus, for example, indigenous peoples have a responsibility to work together to pass on their languages and cultures to younger generations and indigenous youth have a responsibility to learn their cultures and languages.

25. When indigenous peoples' consent is necessary for the State to enact or implement laws and policies that relate to their cultures and languages, indigenous peoples are encouraged to establish their own methods to facilitate the consent-seeking process, which should include all members of the indigenous peoples concerned.

26. Indigenous peoples have the responsibility to ensure that their cultures are enjoyed equally by all indigenous individuals and especially those who may be vulnerable to exclusion. This includes the responsibility to establish mechanisms to effectively address allegations of human rights violations.

### **D. International institutions**

27. The United Nations should dedicate resources and expertise to the promotion and protection of indigenous peoples' languages and culture.

28. It is imperative that United Nations institutions and related entities take a human rights-based approach to the development of international legal standards and policies on traditional knowledge, traditional cultural expressions and genetic resources, including in relation to access and benefit sharing, to ensure that they conform to the Declaration. In addition, it is essential that such processes

include the direct, full and equal participation of indigenous peoples to protect indigenous peoples' traditional knowledge.

29. Indigenous peoples should be included in the development of all local, national, regional and international endeavours to address climate change and a human rights approach to climate change mitigation and adaptation should be adopted at all levels.

#### **E. National human rights institutions**

30. National human rights institutions have an important role to play in the revitalization and protection of indigenous languages and cultures, including promoting and monitoring States' laws and policies to protect and revitalize their cultures and languages and providing technical support for the implementation of indigenous peoples' rights to their cultures and languages. National human rights institutions are also well placed to create public awareness of cultures and languages, especially when dealing with indigenous peoples' issues.

#### **F. International donors**

31. While States have the primary obligation to respect, protect and promote indigenous peoples' rights, it is essential that other entities, including the private sector and development agencies, respect indigenous peoples' rights to control development as it affects them. For example, international donors who fund educational projects in States with indigenous peoples should pay special attention to the ways in which their policies might impact on their languages and cultures.

32. The international donor community should make resources available to communities for the revitalization of indigenous peoples' languages and cultures. This could be done through the creation of an international fund for the revitalization of indigenous languages and cultures. It is essential that beneficiaries are indigenous peoples and that the establishment, management and disbursement of funds is carried out with the full and effective participation of indigenous peoples. Such an international fund must ensure the protection of indigenous peoples' intellectual property rights, based upon the principles of indigenous ownership, access, control, and possession of any research on indigenous peoples' languages and cultures.

#### **G. Media**

33. The media are encouraged to promote and protect indigenous languages and cultures. Further, the media should not demonize indigenous cultures or in any other way promote discrimination against them.

#### **H. Keepers of indigenous peoples' cultural heritage**

34. Museums and other places in which indigenous peoples' cultural heritage is stored should inform the relevant indigenous peoples and develop mechanisms to facilitate the return of such cultural heritage where sought by the indigenous peoples concerned.

### **3. Advice No. 4 (2012): Indigenous peoples and the right to participate in decision-making, with a focus on extractive industries, A/HRC/21/55, 16 August 2012**

#### **A. Background**

1. The present advice is in follow-up to advice No. 2,<sup>104</sup> and is based on relevant law and policy relating to, inter alia, the permanent sovereignty of indigenous peoples over natural resources, sustainable development and environmental responsibilities and rights; an analysis of the Guiding

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<sup>104</sup> Final report of the study on indigenous peoples and the right to participate in decision-making (A/HRC/18/42, annex).

Principles on Business and Human Rights (A/HRC/17/31, annex); and the United Nations Declaration on the Rights of Indigenous Peoples and other key international laws, norms and standards.

2. One emerging trend in the context of resource extraction on indigenous lands and territories is the application for licences and permits by small-scale enterprises that are then sold to large-scale enterprises prior to or during development. In some cases, the larger the corporation, the greater the likelihood for adverse human rights impacts, given the imbalance of power. This can be somewhat guarded against by ensuring that agreements regarding human rights protections adopted by the small-scale corporations are incorporated into the terms of the sale to, or takeover by, the large-scale corporations. The responsibility to respect human rights applies fully and equally to all business enterprises, including those owned and operated by indigenous peoples or corporations.

3. The advice is necessarily expressed at a general level; it should be interpreted flexibly in the light of the specific context within which an extractive activity is taking place or is being planned, and purposively.<sup>105</sup>

## **B. Law**

### **1. Scope of the right of indigenous peoples to participate in decision-making**

4. The right of indigenous peoples to participate in decision-making in relation to extractive industries is interrelated with the right to self-determination, the right to autonomy, the right to be consulted and the duty of States to seek to obtain the free, prior and informed consent of indigenous peoples, as set out by the Expert Mechanism on the Rights of Indigenous Peoples (see A/HRC/18/42).

### **2. States should provide clarity on consultation and consent seeking**

5. States are under an obligation to provide businesses and indigenous peoples with clarity on how the right of indigenous peoples to participate in decision-making can be realized.<sup>106</sup> Such clarity must be provided with a view to ensuring business respect for the international human rights framework applicable to indigenous peoples.

### **3. Right to participate is not confined to recognized legal entitlements to lands, territories and resources**

6. The right of indigenous peoples to participate in decision-making in relation to extractive activities is not confined to situations where indigenous peoples have a State recognized title to the lands, territories and resources on or near which the extractive activity is to take place.<sup>107</sup> It extends to situations where indigenous peoples have traditionally owned or otherwise occupied and used land, territories and resources under their own indigenous laws. This applies to areas near or on which extractive activities take place or are proposed to take place.<sup>108</sup>

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<sup>105</sup> Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people (A/HRC/12/34), paras. 37 and 43.

<sup>106</sup> See Guiding Principles on Business and Human Rights, principle 3.

<sup>107</sup> A/HRC/12/34, para. 44. Note also the comment by the tripartite committee of the International Labour Organization (ILO) Governing Body, cited by the Special Rapporteur, that under ILO Convention No. 169 (1989) concerning Indigenous and Tribal Peoples in Independent Countries “consultations... are required in respect of resources owned by the State pertaining to the lands that the peoples concerned occupy or otherwise use, whether or not they hold ownership title to those lands” (ibid.).

<sup>108</sup> Report of the Special Rapporteur on the rights of indigenous peoples on extractive industries operating within or near indigenous territories (A/HRC/18/35).

7. Indigenous peoples have a right to participate in decision-making in relation to extractive enterprises on or near territories which are of importance to them, including where they have not possessed or do not permanently possess, traditionally and/or currently, those lands, territories and resources.

#### **4. Range of duties, from consultation to consent**

##### **(a) Consultation**

##### **(i) Duties of the State and/or extractive enterprise**

8. States must take full responsibility in ensuring that adequate consultation is undertaken to obtain consent. A State cannot delegate its responsibility, even where it engages third parties to assist in consultation mechanisms (A/HRC/18/35, para. 63). Consultation is often the starting point for seeking the free, prior and informed consent of indigenous peoples. If the potential impact or impact is minor, the requirement to seek the free, prior and informed consent of indigenous peoples may not necessarily be required. Nonetheless, as stated in advice No. 2, “the objective of consultations should be to achieve agreement or consensus” (A/HRC/18/42, annex, para. 9).

9. While the State is the primary bearer of duties under international human rights law, business enterprises also have a responsibility to respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.<sup>109</sup>

10. Accordingly, business enterprises, including those in extractive industries, should take steps to avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur, and seek to prevent or mitigate adverse human rights impacts with which they are involved through their business relationships, including with State entities. When operating in relation to the lands, territories and resources of indigenous peoples, they should pay special attention to risks of adverse impacts on the rights of indigenous peoples, with a view to prevent or mitigate such risks and effectively address adverse impacts that do occur. In particular, if enterprises in extractive industries are not able to prevent or mitigate such risks or address impacts, including infringements on the right of indigenous peoples to participate in decision making, when operating in the context of their lands, territories or resources, the activities should not proceed. Thus, there is an onus on business enterprises in their assessments and own stakeholder engagement processes to ensure that indigenous peoples have participated in decision-making in relation to the proposed or ongoing extractive activities consistently with their rights, outlined below.

##### **(ii) Jurisprudential basis for the right of indigenous peoples to consultation**

11. The human rights treaty bodies have reiterated on numerous occasions the right of indigenous peoples to consultation in the context of extractive enterprises.<sup>110</sup>

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<sup>109</sup> Guiding Principles on Business and Human Rights, principle 11.

<sup>110</sup> See, *inter alia*, concluding observations of the Committee on the Elimination of Racial Discrimination: CERD/C/304/Add.76, para. 16; CERD/C/ECU/CO/19, para. 16; CERD/C/COD/CO/15, para. 18; CERD/C/USA/CO/6, paras. 19 and 29; CERD/C/NIC/CO/14, para. 21; CERD/C/NGA/CO/18, para. 19; CERD/C/GTM/CO/12-13, para. 11; and decision 1 (68) (United States of America). Human Rights Committee concluding observations CCPR/CO/80/COL, para. 20; communication No. 1457/2006, *Poma Poma v. Peru*, Views adopted on 24 April 2009. Committee on Economic, Social and Cultural Rights concluding observations E/C.12/1/Add.74, para. 33; E/C.12/CO/MEX/4, para. 28; and E/C.12/IND/CO/5, para. 31. The issue of consultation with indigenous peoples has also been addressed during the Human Rights Council’s universal periodic review (A/HRC/16/6, para. 69.32).

**(iii) When the duty to consult with indigenous peoples arises**

12. As the Special Rapporteur on the rights of indigenous peoples has noted, special processes to consult with indigenous peoples may not be strictly necessary in relation to all State decisions that may affect them, but instead “whenever a State decision may affect indigenous peoples in ways not felt by others in society...even when the decision may have a broader impact” (A/HRC/12/34, para. 43). The appropriate starting point from which to make this assessment is the perspective of indigenous peoples on the potential broader impact, as noted in advice No. 2.

13. To meet this duty, States would be well advised to establish permanent mechanisms to assess when and how indigenous peoples should be consulted consistent with international standards.

**(iv) Design of the procedures to consult with indigenous peoples**

14. Indigenous peoples should be engaged at all stages in the design of appropriate consultation mechanisms.<sup>111</sup> Consultation with indigenous peoples in relation to proposed extractive activities should begin at the earliest stages of the planning process, including its proposal and design.<sup>112</sup>

**(v) With whom to consult: representation of indigenous peoples**

15. States, extractive enterprises and others must bear in mind that indigenous peoples have the right to determine their own representatives themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions. Furthermore, account should be taken of potential changes in the traditional authority structures of indigenous peoples as a result of outside influences.

16. Indigenous peoples should make clear to governments and extractive enterprises who should be consulted and from whom to seek consent.<sup>113</sup> Where there are conflicting views on the legitimate representatives and/or representative structures of an indigenous people, the group should establish its own appropriate procedures to determine with whom governments and extractive enterprises should consult and/or seek consent. If necessary and desired, indigenous peoples can seek outside, independent assistance, including financial, to determine disputes.

17. Where indigenous peoples have conflicting views on proposed or ongoing extractive activities, they should seek to work together to determine their joint response.

**(b) Free, prior and informed consent**

18. Depending on the indigenous peoples’ decision-making processes concerned and the nature of the activity concerned, consent may not always require indigenous peoples to reach a unanimous consensus agreement to the extractive activity for it to proceed.<sup>114</sup> On the other hand, and again dependent on the particular decision-making processes of the indigenous peoples concerned, majority support may also not be adequate. There may be traditional mechanisms that set out other requirements.

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<sup>111</sup> Guiding Principles on Business and Human Rights, principle 18.

<sup>112</sup> International Finance Corporation (IFC) Performance Standard 7: Indigenous Peoples (effective 1 January 2012), para. 11. The Inter-American Court of Human Rights clarifies that consultation is not only necessary “when the need arises to obtain approval from the community”. Inter-American Court of Human Rights, *Saramaka People v. Suriname*, Judgement of 28 November 2007, para. 133.

<sup>113</sup> The Special Rapporteur on the rights of indigenous peoples states, “indigenous peoples may also need to develop or revise their own institutions, through their own decision-making procedures, in order to set up representative structures to facilitate the consultation processes” (A/HRC/18/35, para. 52).

<sup>114</sup> IFC Performance Standard 7 states that “free, prior and informed consent does not necessarily require unanimity and may be achieved even when individuals and groups within the community explicitly disagree” (para. 12).

19. At the start of a consultation process indigenous peoples should make clear, and agree on, how they will make a collective decision on the extractive activity, including the threshold to indicate there is consent.

**(i) Mandatory requirement to obtain indigenous peoples' consent**

20. In some cases, the duty to obtain the free, prior and informed consent of indigenous peoples is mandatory. Article 10 of the United Nations Declaration on the Rights of Indigenous Peoples prohibits the forcible removal of indigenous peoples from their lands or territories, which includes forcible removal in relation to proposed or ongoing extractive activities. It states: "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." Equally, article 29, paragraph 2, states that "States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent".

**(ii) Contextual requirement to obtain indigenous peoples' consent**

21. In other cases, such as where the approval of projects will affect indigenous peoples' lands, territories and resources although they are not situated on such lands, territories and resources, the requirement to obtain indigenous peoples' consent will depend on context. Article 32 states that "States shall 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".

22. In the final report on its study on indigenous peoples and the right to participate in decision-making, the Expert Mechanism provides further clarification:

The Declaration on the Rights of Indigenous Peoples requires that the free, prior and informed consent of indigenous peoples be obtained in matters of fundamental importance to their rights, survival, dignity and well-being. In assessing whether a matter is of importance to the indigenous peoples concerned, relevant factors include the perspective and priorities of the indigenous peoples concerned, the nature of the matter or proposed activity and its potential impact on the indigenous peoples concerned, taking into account, inter alia, the cumulative effects of previous encroachments or activities and historical inequities faced by the indigenous peoples concerned.<sup>115</sup>

23. The potential impact of the proposed activities is also relevant in an assessment as to when indigenous peoples' consent is necessary. The Special Rapporteur on the rights of indigenous peoples has stressed that "a significant, direct impact on indigenous peoples' lives or territories establishes a strong presumption that the proposed measure should not go forward without indigenous peoples' consent" (A/HRC/12/34, para. 47).

24. Similarly, the Inter-American Court of Human Rights has also determined that the impact on the indigenous peoples' territory is relevant when assessing when indigenous peoples' consent is necessary. It stated in one case that "regarding large-scale development or investment projects that would have a major impact within Saramaka territory, the State has a duty, not only to consult with

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<sup>115</sup> A/HRC/18/42, para. 22.

the Saramakas, but also to obtain their free, prior and informed consent, according to their customs and traditions”.<sup>116</sup>

25. The Committee on the Elimination of Racial Discrimination has repeatedly noted the obligation on States to ensure adequate consultation and the acquisition of indigenous peoples’ free, prior and informed consent in relation to development activities and especially resource extraction.<sup>117</sup> Its jurisprudence is highly instructive, as it has set out the factual circumstances in which it has found that indigenous peoples’ consent is required.

26. In its Performance Standard 7 (paras. 13-17), the International Financial Corporation describes a number of situations in which indigenous peoples’ free, prior and informed consent is required, including those involving:

- (a) Impacts on lands and natural resources subject to traditional ownership or under customary use (including where the indigenous peoples do not hold legal title to those lands and resources);
- (b) Relocation of indigenous peoples from lands and natural resources subject to traditional ownership or under customary use;
- (c) Impacts on certain cultural heritage, such as sacred sites.

27. In summary, the factors relevant to assessing whether the duty to obtain indigenous peoples’ consent arises in the context of proposed and ongoing extractive activities include:

- (a) Matters of fundamental importance to rights, survival, dignity and wellbeing, assessed from the perspective and priorities of the indigenous peoples concerned, taking into account, inter alia, the cumulative effects of previous encroachments or activities and historical inequities faced by the indigenous peoples concerned;
- (b) The impact on indigenous peoples’ lives or territories. If it is likely to be major, significant or direct, indigenous peoples’ consent is necessary;
- (c) The nature of the measure.

### **(iii) Mutual consent, as set out in treaties**

28. The fundamental requirement for mutual consent to be obtained is foundational to treaties between indigenous peoples and States, as recognized by numerous United Nations studies. This has been affirmed by article 37 of the United Nations Declaration on the Rights of Indigenous Peoples and preambular paragraphs 14 and 24, which underscore the importance of forming partnerships between indigenous peoples and States.

29. In advice No. 2, the Expert Mechanism noted that “several treaties between States and indigenous peoples affirmed the principles of indigenous peoples’ consent as an underpinning of the treaty relationship between States and indigenous peoples” (para. 12).

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<sup>116</sup> Saramaka People v. Suriname (note 9 above), para. 134. This approach was endorsed by the African Commission on Human and Peoples’ Rights in Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of the Endorois Welfare Council v. Kenya (Case 276/2003), para. 227.

<sup>117</sup> See, for example, the Committee’s concluding observations CERD/C/IND/CO/19, para. 19; CERD/C/ARG/CO/19-20, para. 26; CERD/C/PHL/CO/20, paras. 22 and 26; CERD/C/CHL/CO/15-18, para. 22; CERD/C/PER/CO/14-17, para. 14; CERD/C/CMR/CO/15-18, para. 18; CERD/C/GTM/CO/11, para. 19. See also the Committee’s Urgent Action-related activity (<http://www2.ohchr.org/english/bodies/cehd/early-warning.htm>) in relation to India (communications dated 15 August 2008 and 12 March 2010); Peru (communications dated 3 September 2007 and 7 March 2008); Canada (communication dated 13 March 2009); Suriname (Decision 1 (69), adopted on 18 August 2006). See also jurisprudence from other United Nations human rights treaty bodies, including the Committee on Economic, Social and Cultural Rights, concluding observations E/C.12/NIC/CO/4, para. 11 and E/C.12/COL/CO/5, para. 9; and the Human Rights Committee, concluding observations CCPR/C/PAN/CO/3, para. 21.

## **C. Policy**

1. States should provide clarity on consultation and consent seeking based on the legal framework identified above

### **(a) Objective of consultations**

30. Consent should always be the objective of consultations, as noted in advice No. 2 (para. 9).

### **(b) How to consult, collaborate and build partnerships**

#### **(i) Clarity of information**

31. Information about the potential impact of extractive activities should be presented in a way that is understandable to indigenous peoples (A/HRC/12/34). Depending on the circumstances, this may require that the information be presented orally to indigenous peoples with interpretation into indigenous languages.

#### **(ii) Provision of information**

32. As stated by the Inter-American Court of Human Rights:<sup>118</sup>

(a) Information must be provided and accepted also;

(b) Indigenous peoples must be informed of the possible risks, “including environmental and health risks, in order that the proposed development or investment plan is accepted knowingly and voluntarily”.

#### **(iii) Ongoing communication**

33. The duty to consult with indigenous peoples “entails constant communication between the parties”.<sup>119</sup>

#### **(iv) Culturally appropriate procedures**

34. Consultation procedures should be culturally appropriate for the indigenous peoples concerned;<sup>120</sup> information sharing is required during the planning stages of the consultation process. In addition, consultation should take into account the indigenous peoples’ traditional methods of decision-making.<sup>121</sup>

#### **(v) Good faith**

35. Consultations must be undertaken in good faith.<sup>122</sup>

## **2. The need for independence in the assessment of the potential scope and impact of extractive activities on indigenous peoples, their lives and territories**

36. The interests of indigenous peoples and those of the State and business in extractive activities may not align, complicating the capacity of the State and business to assess and evaluate the impact of extractive activities on indigenous peoples. Thus, it is advisable to ensure independent assessments of the potential scope and impact of extractive activities on indigenous peoples, their lives and their lands, territories and resources.<sup>123</sup>

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<sup>118</sup> Saramaka People v. Suriname (note 9 above), para. 133.

<sup>119</sup> Ibid.

<sup>120</sup> Ibid.

<sup>121</sup> Ibid.

<sup>122</sup> Ibid. See also A/HRC/12/34.

<sup>123</sup> IFC similarly holds that where free, prior and informed consent is necessary, “the client will engage external experts to assist in the identification of the project risks and impacts” (Performance Standard 7, para. 11).

### **3. Limitations on indigenous peoples' rights relating to their lands, territories and resources**

37. Participation is relevant to an assessment of the degree to which States may limit indigenous peoples' rights in relation to their lands, territories and resources.

38. In accordance with the decision of the Inter-American Court of Human Rights in *Saramaka People v. Suriname*,<sup>124</sup> limitations on indigenous peoples' rights to their resources are permissible only where the State:

- (a) Ensures the effective participation of members of the indigenous peoples, in conformity with their customs and traditions, regarding any development, investment, exploration or extractive plan;<sup>125</sup>
- (b) Guarantees that the indigenous peoples will receive reasonable benefit from any such plan within their territory;
- (c) Ensures that no concession will be issued within indigenous peoples' territory unless and until independent and technically capable entities, with the State's supervision, perform a prior environmental and social impact assessment.

### **D. Conclusion**

#### **1. Practical advice for States on how to meet their obligations to consult and seek the consent of indigenous peoples in the context of extractive industry**

39. The Expert Mechanism advises States to establish, together with indigenous peoples, (permanent) mechanisms<sup>126</sup> to enable consultation with indigenous peoples which can provide guidance on:

- (a) When the context requires consultations with indigenous peoples in line with the present advice;
- (b) How to reach indigenous peoples;
- (c) Identifying the representatives with which consultation should take place;
- (d) How to ensure an independent assessment of consultation practices;
- (e) How to undertake the requisite environmental and social impact studies associated with proposed and ongoing extractive activities;
- (f) Providing translation and interpretation services so that information relevant to indigenous peoples' decisions and interests can be provided for indigenous peoples in an understandable way;
- (g) Enabling indigenous peoples to obtain expert independent and technical assessments of the potential impact of extractive activities on them, including on their lives, lands and territories;
- (h) How to ensure that indigenous peoples' perspectives on the extractive activity are taken into account, including their ideal benefit-sharing arrangements if they so choose;

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<sup>124</sup> Note 9 above, para. 129.

<sup>125</sup> This is consistent with the decision of the Human Rights Committee in communication No. 547/1993, *Mahuika et al. v. New Zealand*, Views adopted on 27 October 2000, where the Committee stated that "the acceptability of measures that affect or interfere with the culturally significant economic activities of a minority depends on whether the members of the minority in question have had the opportunity to participate in the decision-making process in relation to these measures and whether they will continue to benefit from their traditional economy" (para. 9.5).

<sup>126</sup> The Special Rapporteur on the rights of indigenous peoples has stated that "One excellent way to ensure that companies respect indigenous peoples' right to participate in decisions concerning the measures affecting them is to establish permanent institutional fora for consultation and dialogue, in which the peoples and communities concerned, companies and local authorities are appropriately represented" (A/HRC/15/37, para. 69).

(i) How to ensure that the permitting and monitoring boards of State corporations and extractive enterprise include indigenous peoples' representation and effective participation, which will also ensure human rights accountability at the corporate level.

## **2. Practical advice for extractive industries on how to meet the requirement to respect the right of indigenous peoples to participate in decision-making in the context of extractive industry**

40. States retain the primary obligation to ensure indigenous peoples' right to participate is respected; nevertheless, to meet their own responsibility to respect human rights, extractive businesses should ensure, and make their own assessment as to, compliance with the right of indigenous peoples to participate in decision-making. Indeed, positive experience illustrates that extractive industries should work in partnership with States and indigenous peoples at all planning and implementation stages of extractive activities that might impact on indigenous peoples' interests.

41. Enterprises in extractive industries should, together with indigenous peoples, assess the risks and actual impacts on the rights of indigenous peoples arising from their activities and business relationships. Commitment to respecting the rights of indigenous peoples should be reflected in the business enterprise's policies and processes; such policies and processes should be put in place by the enterprise in order to meet its responsibility to respect human rights. Enterprises are advised to assess company compliance with indigenous peoples' rights and establish a company policy on how best to meet their responsibility to respect such rights, where possible by including indigenous peoples affected by their operations. When activities may affect indigenous peoples, the business enterprise must take adequate steps to ensure meaningful and effective engagement with indigenous peoples. As part of implementing their responsibility, business enterprises engaged in extractive activities must ensure that employees have an understanding of the content of indigenous peoples' rights, including their right to participate in decision making.

42. The Special Rapporteur on the rights of indigenous peoples notes that

companies must exercise due diligence by identifying, prior to commencing their activities, various matters relating to the basic rights of indigenous peoples, and by paying adequate attention to those matters as the activities are being carried out. Such matters include recognition of the existence of indigenous peoples and of their own social and political structures; indigenous possession and use of land, territory and natural resources; exercise by the State of its duty to consult indigenous peoples in relation to activities that might affect them, and the related responsibility of business; impact studies and mitigation measures; and benefit sharing with indigenous peoples.<sup>127</sup>

43. Extractive industries are encouraged to support, including financially, mechanisms to ensure that the right of indigenous peoples to participate in decision-making is respected. This can include:

- (a) Devoting human and financial resources to appropriate consultation mechanisms;
- (b) Establishing partnerships with indigenous peoples;
- (c) Ensuring that corporate boards or board advisory panels include indigenous peoples' representation and effective participation in order to promote human rights accountability at the corporate level.

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<sup>127</sup> A/HRC/15/37, para. 46.

### **3. Practical advice for indigenous peoples on how to meet their responsibilities and protect their human rights in relation to extractive industries**

44. Indigenous peoples who choose to extract resources can continue to play a positive role in sustainable development by asserting their international human rights relating to extractive industries, with an emphasis on forming equal partnerships with States and business enterprises to engage in sustainable development where adequate environmental protections are in place.

45. Given indigenous peoples' permanent sovereignty over natural resources and the United Nations Declaration on the Rights of Indigenous Peoples, as set out in the international legal and policy framework of the present report, the right of indigenous peoples to participate in decision-making also includes the right not to consent to extracting resources as an exercise of their sovereignty.

## **XII. SELECTED SPECIAL PROCEDURES OF THE HUMAN RIGHTS COUNCIL**

### **A. Reports of the Special Rapporteur on the Rights of Indigenous Peoples**

- Report of the Special Rapporteur on the rights of indigenous peoples, [A/HRC/21/47](#), 6 July 2012
- Mission to the United States of America, [A/HRC/21/47/Add.1](#), 30 August 2012
- Mission to Argentina, [A/HRC/21/47/Add.2](#), 4 July 2012
- Observations on Communications, [A/HRC/21/47/Add.3](#), 7 September 2012
- Extractive industries operating within or near indigenous territories, [A/HRC/18/35](#), 11 July 2011
- Communications Report 2011, [A/HRC/18/35/Add.1](#), 22 August 2011
- The situation of the Sami people in the Sápmi region of Norway, Sweden and Finland, [A/HRC/18/35/Add.2](#), 6 June 2011
- *Observaciones sobre la situación de los derechos de los pueblos indígenas de Guatemala en relación con los proyectos extractivos y otro tipo de proyectos, en sus territorios*, [A/HRC/18/35/Add.3](#), 7 June 2011
- The situation of Maori people in New Zealand, [A/HRC/18/35/Add.4](#), 31 May 2011
- The situation of indigenous peoples in the Republic of Congo, [A/HRC/18/35/Add.5](#), 11 July 2011
- The situation of Kanak people in New Caledonia, Republic of France, [A/HRC/18/35/Add.6](#), 14 September 2011
- Measures needed to secure indigenous and tribal peoples' land and related rights in Suriname, [A/HRC/18/35/Add.7](#), 18 August 2011
- *La situación de los pueblos indígenas afectados por el proyecto hidroeléctrico El Diquís en Costa Rica*, [A/HRC/18/35/Add.8](#), 11 July 2011

### **B. Special Rapporteur on adequate housing as a component of the right to an adequate standard of living**

#### **1. Mission to Argentina, A/HRC/19/53/Add.1, 21 December 2011**

44. ...Evictions in rural areas affect indigenous and campesino communities and would seem to be mainly related to the lack of titling of indigenous lands and conflicts over the exploitation of natural resources in indigenous and campesino areas.

48. Lastly, the Special Rapporteur is concerned about the excessive use of force by State agents and private security personnel during evictions, in particular against vulnerable groups and those who have difficulty in accessing justice, such as migrants and members of indigenous communities. The Special Rapporteur also notes with concern that government officials are not present during many evictions, which is contrary to international standards, and that judges fail to provide for measures to control the execution of the eviction orders they issue. ...The Special Rapporteur also notes with deep concern the situation of the "La Primavera" community (Formosa province), which is made up of members of the Qom Navogoh people. During clashes in the context of a land conflict between the community and the province of Formosa in November 2010, a community member and a police officer were killed, the community was evicted from its ancestral lands and their homes were burned along with all their property. ...

49. The Special Rapporteur is particularly concerned about reports that indigenous peoples are discriminated against with regard to housing, that they do not have secure title to traditionally

occupied community lands and that they are the victims of particularly violent forced evictions related to oil, mining and agricultural projects, which are carried out without prior consultation with the affected communities and without their participation.

50. The Special Rapporteur recalls that under article 75, paragraph 17, of the National Constitution, Congress is required to “recognize the ... community possession and ownership of the lands that [the indigenous peoples of Argentina] traditionally occupy; and to regulate the granting of other lands that are adequate and sufficient for human development; none of [these lands] shall be sold, transmitted or subject to liens or attachments”. In this regard, the Special Rapporteur welcomes the adoption in 2006 of Act No. 26160, which suspends for four years<sup>61</sup> the execution of any ruling or procedural or administrative act involving the eviction of an indigenous community and which also establishes a programme providing for a legal cadastral survey with a view to regularizing indigenous community property.

51. Despite the adoption of this law, the Special Rapporteur notes with concern that indigenous communities in several of the country’s provinces are still being evicted (at times very violently), facing eviction orders or being threatened with the sale of part of their territory.<sup>62</sup> In addition, the regularization programme has been implemented only to a very limited extent, since to date very few communities have completed the land survey process;<sup>63</sup> in most provinces only the survey itself has been carried out and in others the process has not even started.

52. Lastly, the Special Rapporteur notes with concern that, although the State has invested in the construction of housing for the indigenous population, that housing is reportedly socially and culturally inadequate and in many instances of poor quality and without access to services.

71. The Special Rapporteur urges all the competent institutions to implement, in the shortest possible time, the programmes provided for under Act No. 26160 concerning the regularization of the property of indigenous communities, while respecting the right of the affected communities to consultation and participation.

72. Likewise, the Special Rapporteur urges the Government to observe the order suspending any ruling or procedural or administrative act involving the eviction of an indigenous community (Act No. 26160 and Act No. 26554) and recommends that the duration of the suspension be extended pending the regularization of indigenous community property throughout the country, with full respect for the rights of indigenous peoples.

73. The Special Rapporteur also urges the Government to further incorporate the aspect of cultural adequacy in its housing programmes and to ensure that the quality of housing, including access to services, is guaranteed in housing programmes for the indigenous population.

### **C. Special Rapporteur in the Field of Cultural Rights**

#### **1. The right to enjoy the benefits of scientific progress and its applications, A/HRC/20/26, 14 May 2012**

43. Reasons of the importance of the participation of individuals, communities and peoples in science-related decision-making include, in particular (a) the obligation to protect all persons, including marginalized populations, such as indigenous peoples, against the negative consequences of scientific testing or applications on, in particular, their food security, health or environment; and (b) the need to ensure that scientific research is conducted on key issues, including for the most

vulnerable. Major decisions regarding funding and research priorities, science policies, emerging areas of research, and new technological applications should entail a participatory process.

64. A separate, often raised concern relates to the threat posed by “bioprospecting” for traditional knowledge of indigenous peoples and other local communities. In response, many States are developing databases for the documentation and conservation of traditional knowledge. Interesting models for protecting traditional knowledge from misappropriation include the India Traditional Knowledge Digital Library ([www.tkdl.res.in/tkdl/langdefault/common/](http://www.tkdl.res.in/tkdl/langdefault/common/)), which provides national patent offices with access to 223,000 indigenous medicinal formulations. As a result, at least two patents have been withdrawn and more than 75 applications withdrawn, rejected or amended. Some States, such as, Brazil, Guatemala, Peru and Portugal, have taken measures to give legal protection to the rights of indigenous peoples and local communities to their accumulated scientific knowledge. Further discussion is needed, however, on the modalities and conditions under which others should benefit from such accumulated knowledge, and how to allow further development and dissemination of such knowledge while safeguarding the moral and material interests of the individual or collective creators. Agrobiodiversity, maintained and transmitted as a common public good by local farmers, also needs to be addressed. WIPO is currently conducting “text-based negotiations” with a view to reaching an agreement on an international legal instrument(s) which “will ensure the effective protection of genetic resources, traditional knowledge and traditional cultural expressions”.

## **2. Mission to Brazil (8-19 November 2010), A/HRC/17/38/Add.1, 21 March 2011**

24. The Federal Constitution establishes the legal framework for the protection of cultural rights. It recognizes, *inter alia*, that the national Government shall guarantee the full exercise of cultural rights and access to sources of national culture; support and promote the appreciation and diffusion of cultural expressions, including expressions of popular, indigenous and Afro-Brazilian cultures and other groups (article 215).

26. The protection of cultural rights with respect to education and the use of languages is also recognized by the Federal Constitution, which underscores that elementary school curricula shall respect national and regional cultural and artistic values (article 210). The Constitution recognizes specific rights of indigenous peoples (articles 210.2, 231 and 232) and encourages international cooperation in the area of culture and cultural integration within Latin American countries (article 4). The Act of Constitutional Temporary Provisions also recognizes specific rights to Quilombo communities<sup>9</sup> (article 68).

29. Brazil has adopted measures to promote appreciation for the value of cultural diversity in Brazil, including the adoption of laws on the cultures of indigenous peoples and Afro-descendants. These include Law 10.639 of 2003 which introduces the compulsory study of the general history of Africa and the history of people of African descent in Brazil, in primary and secondary schools, and Law 11.645 of 2008 which seeks to promote public awareness of indigenous cultures and rights in the media and in the general education system.

30. Stakeholders highlighted numerous factors that prevent the effective implementation of this law, such as the lack of appropriate pedagogical materials, adequately trained teachers, as well as insufficient coordination between the education authorities and other relevant State institutions. While teaching materials are being developed by public institutions, the need to enhance support, diversify educational staff to include persons of African descent as well as indigenous peoples, and to include them in these endeavours was stressed. The need to establish mechanisms at the Federal, State and municipal levels to monitor and make recommendations for the effective implementation

of these laws with the participation of Afro-descendants and indigenous peoples was also highlighted as a precondition for achieving the goals of these laws.

### **The right to enjoy one's own culture: the case of indigenous peoples**

66. Ensuring the cultural rights of persons belonging to specific cultural communities who differ from dominant majorities (Afro-descendent communities, indigenous peoples and other groups) implies providing them with the possibilities for bringing their own individual and collective cultural viewpoints to the shaping of cultural and social developments, while preserving in parallel those elements of their culture that they desire to maintain. It also implies promoting and protecting the rights of minorities and indigenous peoples recognized at the international level, which protect minorities and indigenous peoples' cultures understood as a way of life, including their language, religion and system of beliefs, traditions, customs and other artistic and cultural manifestations.

#### **1. Legal recognition and protection**

67. The Federal Constitution recognizes a number of rights of indigenous peoples, directly related to their cultural survival and protection. This includes the State's obligation to ensure to indigenous communities the use of their native languages and their own learning procedures in elementary education, which is provided in the Portuguese language (article 210.2). Rights include the recognition and protection of the social organization, customs, languages, creeds and traditions of indigenous peoples; rights to the lands they have traditionally occupied and ensuring respect for all their property (article 231) and resort to effective remedies to enforce these rights, including the intervention of the Federal Prosecutor's Office for the defence of indigenous peoples (article 232). Progress has been made in developing culturally sensitive and appropriate education for indigenous people: more than 300 bilingual textbooks have been prepared keeping in mind the cultural perspective of communities on education, and a reported 95 per cent of teachers are from the community.

68. The Law 11.645 of 2008 seeks to promote public awareness of indigenous cultures and rights in the media and the general educational system. The independent expert especially urges the Government to take all steps to implement this law, as during her visit, she received information about a television programme, aired in November 2010, which portrayed indigenous peoples as practicing infanticide, and which gave rise to attacks against persons of indigenous origin in the city of Manaus (Amazonas State).

#### **2. Institutional and policy framework**

69. The National Indian Foundation (FUNAI) is the State agency that formulates and implements national policies on indigenous peoples in accordance with the Federal Constitution. FUNAI has achieved great success in the promotion and protection of indigenous peoples' rights, including the protection of their lands. However, the independent expert notes that greater participation of indigenous peoples in the management and operation of FUNAI would reinforce the recognition of indigenous peoples' right to be masters of their own future, as a major goal recognized in both the ILO Convention No. 169 and the United Nations Declaration on the Rights of Indigenous Peoples. In this regard, the independent expert shares the concerns expressed by the Special Rapporteur on the rights of indigenous peoples on the need to revisit how FUNAI is implementing its mandate, with a view to overcoming paternalistic approaches (A/HRC/12/34/Add.2).

#### **3. Guaraní indigenous communities**

70. In Brazil, the Guaraní total between 3,000 and 4,000 persons divided into three different indigenous groups: Mbya, Nhandeva and Kayova. They speak the Guaraní language of the Tupi-

guarani linguistic family, and live in states in the south and southeast of Brazil, including Mato Grosso do Sul and Pará.<sup>14</sup>

71. During her visit, the independent expert visited Guarani indigenous peoples in Mato Grosso do Sul State in the proximities of Dourados and Campo Grande. Two contrasting trends were observed in situ by the independent expert. On the one hand, she observed and interacted with Guaraní communities involved in ongoing land rights disputes. State interventions reported in these communities include the provision of subsidies for families to alleviate poverty and specific subsidies for the elderly. Nevertheless, the community reportedly suffers high rates of suicide and school drop-out, malnutrition, domestic and other forms of violence and alcoholism, together with a lack of self-esteem and the systematic loss of cultural identity.

72. On the other hand, the independent expert observed and interacted with Guaraní communities, which together with religious groups, the academia and the local government have constituted a cultural point (Teko Arandu) in the Aldea Te'yikue in Caarapó, where they teach in their own language and build the capacity of indigenous peoples as video producers and journalists. They have rebuilt places for religious activities in close proximity to schools so as to enable culturally appropriate transmission of cultural heritage, teaching their belief systems to indigenous children and promoting their cultural manifestations, including, sometimes, for tourism.

73. Taking into consideration these contrasting trends, the independent expert encourages indigenous peoples, in line with the recommendation made by the Special Rapporteur on the rights of indigenous peoples, to endeavour to strengthen the capacities of local communities to control and manage their own affairs and to participate effectively in all decisions affecting them, in a spirit of cooperation and partnership with Governmental authorities and the CSOs with which they choose to work (A/HRC/12/34/Add.2, paragraph 99). Further, a review of the dissimilar impact that programmes have on different communities can provide the basis for tailoring interventions to the specific needs of particular communities.

## **The right to use one's own language**

### **1. Endangered languages in Brazil**

82. UNESCO indicates that in Brazil, 97 languages are vulnerable to extinction, 17 are definitely endangered, 19 severely endangered, 45 critically endangered and 12 are already extinct. Information provided by the Government indicates that there are an estimated 150 to 180 surviving indigenous languages in Brazil, out of the approximately 1,200 languages recorded at the time of colonization. Consequently, nearly 85 per cent of native languages have disappeared and with them entire cultural configurations, as well as substantial sources of knowledge and cultural diversity.

83. In the Latin American region, Brazil possesses one of the highest linguistic densities, with one of the lowest demographic concentrations per language. The number of speakers can range from 20,000 (Guarani, Tikuna, Terena, Macuxi, and Kaingang) to a handful or, in some cases, a lone surviving speaker. According to UNESCO, the average number of speakers per language is 200. Yet even those languages with a relatively large number of speakers cannot be classified as "safe", which means that there is no certainty that those languages will remain living languages by the end of this century.

### **2. Main policies and programmes to protect endangered languages in Brazil**

84. The Government of Brazil, in partnership with UNESCO and other stakeholders, has undertaken a number of steps to protect languages at risk of disappearing. Measures taken include a partnership between the Linguistics Division of the Museum Goeldi and UNESCO (2007-2008) to conduct

language documentation and build capacity on modern documentation methods in three indigenous groups in the States of Mato Grosso, Rondônia and Pará.

85. A partnership project, based in Rio de Janeiro, between FUNAI, the Banco do Brasil Foundation, and UNESCO to document indigenous languages in Brazil has been launched through the Museum of Indigenous Peoples (*Museu do Índio*), a scientific and cultural agency entrusted with protecting and promoting the culture of indigenous peoples as part of Brazilian cultural heritage. The project seeks to ensure the preservation of existing materials held in private collections, and in public and private institutions, and to document 20 endangered languages. The selection is based on, but not limited to, the following criteria: degree of threat to the language's survival; existence of adequate conditions for the execution of high-level work by teams of competent linguists, which includes indigenous persons in research training positions; a positive response on the part of the concerned communities with respect to the efforts to preserve or reclaim their native languages.

86. The Indigenous Language Documentation Project (*Projeto de Documentação de Línguas Indígenas*) is coordinated and managed by experts and overseen by a scientific committee composed of renowned linguists specializing in Brazil's indigenous languages. Expected outcomes include a social and linguistic diagnostic study; a digital collection with content drawn from audio and video recordings on culturally relevant aspects, including annotations containing at least a transcription and translation of the main points and headings; a dictionary; a basic grammar guide; educational primers, publicity material (videos, CDs, DVDs) and scientific publications.

### **3. Other aspects related to the protection of the right to use one's own language**

87. The independent expert welcomes efforts undertaken in Brazil for the protection of the right to use one's own language, particularly regarding the documentation of indigenous languages and wishes to stress the importance of the revival, strengthening and development of indigenous languages in general and endangered languages in particular. In her view, this major goal should aim to facilitate the provision of culturally appropriate and bilingual education to all indigenous peoples of Brazil, in accordance with the provisions of the Federal Constitution. In this regard, the independent expert encourages the Government, through FUNAI, to compile and disseminate examples of participatory approaches to bilingual education for indigenous peoples, and programmes offering an educational system that is culturally aware of indigenous cultures and cosmo-visions.

91. The Government of Brazil should consider undertaking comprehensive and State-wide assessments, with the assistance of United Nations agencies, academic institutions, and other stakeholders, as and when deemed pertinent, on:

(a) Successful interventions and innovative approaches so as to extract lessons learnt from implementation, such as the Territories of Identity programme in the states of Bahia and São Paulo that takes into consideration socio-cultural and economic variations in planning, programming and budgeting....

92. The independent expert encourages Brazil to:

... (b) Continue adopting all necessary steps to address the concerns highlighted by the Committee on Economic, Social and Cultural Rights in 2009 (E/C.12/BRA/CO/2, paragraphs 26 and 33), particularly by ensuring the wider availability of cultural resources and assets, especially in smaller cities and regions, and ensuring, in this regard, a special provision through subsidies and other forms of assistance for those who lack the means to participate in the cultural activities of their choice; incorporating rights education into the school curricula, in particular those guaranteed under article 15 of ICESCR; taking the necessary measures to combat continued

deforestation in order to ensure the effective enjoyment of economic, social and cultural rights, especially by indigenous and vulnerable groups of people;

(c) Address the concerns expressed by the Special Rapporteur on the rights of indigenous peoples, particularly in connection with land demarcation and ensuring indigenous peoples' right to self-determination (A/HRC/12/34/Add.2)....

93. The independent expert also encourages indigenous peoples, in line with recommendations made by Special Rapporteur on the rights of indigenous peoples, to endeavour to strengthen their capacities to control and manage their own affairs, and to participate effectively in all decisions affecting them, in a spirit of cooperation and partnership with Governmental authorities and the CSOs with which they choose to work (A/HRC/12/34/Add.2, paragraph 99).

97. The independent expert calls on the mass media in Brazil to uphold their social function and take all necessary steps to:

(a) Avoid the demonization or degradation of cultural communities and persons, particularly those of African descent or indigenous origin, when exercising their obligation to provide impartial information to the general public, and

(b) Contribute to enhancing tolerance and understanding among communities and peoples within Brazil.

### **3. Preliminary conclusions and observations by the Special Rapporteur in the field of cultural rights at the end of the Visit to the Russian Federation, 16-26 April 2012**

The United Nations Special Rapporteur in the field of cultural rights, Ms. Farida Shaheed, thanks the Government of the Russian Federation for inviting her to conduct a country mission from 16 to 26 April. Ms. Shaheed visited Moscow, Saint Petersburg, Barnaul (Altai Krai) and Kazan (Tatarstan). She met with senior Government officials at the federal and regional levels working in the areas of culture, education and regional development, as well as members of legislative bodies interested in those issues. She also met with artists, directors of cultural and educative institutions, representatives of civil society and of indigenous peoples including from regions other than those she visited.... A particular focus was on the enjoyment of cultural rights by specific categories of the population, such as children, persons with disabilities, women, indigenous peoples and minorities.

... Mechanisms are needed to ensure people's participation in decision making relating to the identification, interpretation and stewardship of cultural heritage which plays an important part in self-identification processes and sense of community belonging. These participatory mechanisms are needed regardless of whether the heritage in question is listed as World Heritage by UNESCO or not, and also in the Federation's subjects where important cultural heritage of indigenous peoples is located. In this regard, the Special Rapporteur wishes to relay the concerns voiced by interlocutors regarding the planned building of a gas pipeline over the Ukok Plateau in the Altai Republic, which is part of a UNESCO World Heritage Site. It is alleged that such construction would seriously damage the sacred site of the local indigenous peoples, who were excluded from the decision-making process. On that particular issue, the Special Rapporteur recommends that consultations be conducted urgently, using mechanisms and processes fully agreed to by the local indigenous peoples.

In 2010, the Russian Federation adopted a law to transfer property rights or to grant free usage to religious organizations of buildings and artefacts of religious significance, which had been nationalized during the soviet years. Numerous transfers have been made, in particular to the Russian Orthodox Church. In the view of the Special Rapporteur, the restitution of cultural heritage, whether movable or immovable, is a complex and multi-faceted issue requiring careful consideration. Care

should be taken, for example, to ensure that restitution does not hinder the right of individuals to access cultural heritage. ... Finally, she recommends that the authorities address the issue of land of indigenous peoples that was nationalized during the soviet times.

The recognition by the Russian Federation of its multi-ethnic and multi-confessional character is reflected in important constitutional provisions, including in the area of education and language. However, the Special Rapporteur is concerned at the uneven application of these provisions and that many minorities lack support from the federal and regional authorities in this regard. In particular, the production and publication of textbooks in minority or indigenous languages proves to be difficult, unless assistance can be garnered from neighbouring countries or regions using the same language.

The visibility and participation of diverse communities is supported through houses of friendship, ethnic theatres and various festivals ... More generally, she recommends that measures be taken at the federal and regional levels to ensure a higher visibility of the history and contribution of all the peoples of the Russian Federation, including minorities, migrants, indigenous and small indigenous peoples.

#### **D. Special Rapporteur on the Right to Food**

##### **1. Mission to MexicoA/HRC/19/59/Add.2, 17 January 2012**

7. There are also marked differences in relevant right to food indicators between indigenous and non-indigenous populations. For both groups, child malnutrition rates have gradually decreased. Nevertheless, one in three (33.2 per cent) indigenous children under the age of 5 years suffered from chronic malnutrition in 2006, compared with one in 10 (10.6 per cent) non-indigenous children. ...

8. As a party to all nine core international human rights treaties, Mexico has the legal obligation to respect, protect and fulfil the right to adequate food, as set out in the International Covenant on Economic, Social and Cultural Rights and other human rights treaties. Recent reforms of the Constitution underline the commitment of Mexico to strengthen the protection of right to food. On 13 October 2011, a constitutional reform process was completed, involving the inclusion of the right to food in articles 4 and 27 of the Constitution. In addition, article 1 of the Constitution now stipulates that all persons enjoy the human rights recognized in the international treaties to which Mexico is a party. Prior to these amendments, the Constitution already referred to the right of children to satisfy their dietary needs (art. 4) and to the obligation of States to support the nutrition of indigenous peoples through food programmes (art. 2 (B) (III and VIII)).

#### **C. Large-scale development projects and the right to food**

32. During his visit, the Special Rapporteur heard testimonies from people from different regions of the country who faced the threat of expropriation of land or resettlement because of major development projects, such as the construction of dams (for example, La Parota and the Paso de la Reyna) large-scale infrastructure projects (for example highways, as in the case of the Proyecto Carretero de Huejuquilla El Alto) and mining, as in Cerro de San Pedro, San Luis Potosi.

33. International human rights law establishes safeguards that protect people against arbitrary displacement from their homes or provide certain guarantees in the resettlement phase; these safeguards are restated in particular in the Guiding Principles on Internal Displacement<sup>18</sup> and in the basic principles and guidelines on development-based evictions and displacement.<sup>19</sup> While the full set of norms applicable to evictions or displacements cannot be repeated here, the basic requirements may be briefly summarized.

36. With regard to indigenous peoples, the right to full and prior informed consent regarding relocation is explicitly provided for in the Indigenous and Tribal Peoples Convention, 1989 (No. 169) of the International Labour Organization (ILO), which Mexico has ratified, as well as in the United Nations Declaration on the Rights of Indigenous Peoples, which provides that “States shall 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.”<sup>22</sup> Although the right to free, prior and informed consent is specific to the case of indigenous peoples, the principle is increasingly seen as central to all local populations.

37. Third, where resettlement is unavoidable, the people concerned must be provided with fair compensation and not be deprived of their sources of livelihood. People who are resettled should be compensated with land commensurate in quality, size and value, or better.

38. In the testimonies presented to the Special Rapporteur by communities affected by large-scale development projects, a common concern expressed was the lack of both adequate consultation and efforts to ensure free and prior informed consent by the relevant authorities. Another common concern was the lack of fair compensation and excessive delays in its provision. The testimonies showed that courts and administrative tribunals can protect communities against arbitrary resettlement that would have an adverse impact on their right to food and other human rights. At the same time, the Special Rapporteur received information according to which court orders were in some cases not complied with. The Special Rapporteur visited the community of Temacapulín, where, since 2006, inhabitants have tried to stop the construction of El Zapatillo Dam, a project worth 10 billion pesos that would inundate their town of about 400 inhabitants, but that is designed to improve the supply of water to the Guadalajara metropolitan area and to serve the development of Los Altos de Jalisco and the city of León, Guanajuato. Following his discussions with a representative of the State Water Commission and people living in Temacapulín, he noted the strong opposition to the resettlement expressed by the community and expressed his concern that the land offered as compensation was dry and arid, and would not allow the inhabitants of Temacapulín to continue growing the crops on which the livelihood of many depended.

39. The above-mentioned case illustrates what appears to be a larger problem. The attention of the Special Rapporteur was drawn to the consultations that took place, in Temacapulín and in other localities affected by large-scale development projects, in accordance with section VI of the Reglamento de la Ley General del Equilibrio Ecológico y la Protección al Ambiente en Materia de evaluación del Impacto Ambiental that concerns “public participation and the right to information”. He also noted how article 27 of the Constitution, which allows for expropriation in the public interest, was implemented. It is not up to the Special Rapporteur, in the context of the mission, to assess whether an adequate balance was made between the public interest and the rights and interests of the communities affected, either for the construction of El Zapatillo Dam or in other projects; however, it appears from all the information collected or provided that a comprehensive review of the procedures in place, and followed by bodies such as the State Water Commission, should take place without delay. This review should ensure that the procedures comply fully with international treaties that are binding on Mexico and with international standards.

40. The Special Rapporteur is especially concerned by three issues, which such a comprehensive review should serve to examine in detail. First, the consultations that are organized with the population who may have to be resettled in the implementation of development projects should take

place at the initial stage of the feasibility study of the project, not during the final phases where only issues of compensation or relocation remain to be discussed. The communities concerned must be given a real possibility to influence the decision of the authorities on whether to implement the project in the light of all alternatives to displacement that the consultations may have served to identify. In the case of Temacapulín, while one consultation did take place early in the project (on 21 April 2006), most meetings were organized in March and April 2011, when the project was far too advanced for these meetings to be meaningful.

41. Second, contrary to what seems the purpose of articles 40 to 43 of the Reglamento de la Ley General del Equilibrio Ecológico y la Protección al Ambiente en Materia de evaluación del Impacto Ambiental, the consultations should not serve only to identify which measures could be taken to mitigate the negative environmental impact on the communities affected. They should be comprehensive in scope, and cover all the issues relevant to the communities affected by the project, including livelihood options.

42. Third, the identified relocation sites must fulfil the criteria for adequate housing. Such criteria include, in particular, access to employment options, health-care services, schools, childcare centres and other social facilities, whether in urban or rural areas, and culturally appropriate housing.

43. The Special Rapporteur emphasizes the need for a comprehensive review of the procedures in place, which do not appear adequate in practice. Such procedures should serve to build trust, when in fact he could witness a high level of mistrust. Consultations should allow for solutions to be identified with the communities concerned, when in fact they appear more as a means to inform communities about the solutions proposed to them. And where, following a fair, inclusive and well-informed consultation, resettlement appears unavoidable, it must not infringe on the right of the communities to the continuous improvement of their living conditions.

44. Finally, it was brought to the attention of the Special Rapporteur that, in a number of cases, people engaged in social protests related to the expropriation of land and loss of livelihoods were subject to threats or prosecuted. In this regard, the Special Rapporteur recalls the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms,<sup>25</sup> and underlines the importance of ensuring adequate protection of human rights defenders, including those who seek to defend the right to a clean and healthy environment and the right not to be deprived of their livelihoods.

60. The Special Rapporteur recommends that the Government of Mexico: ...

(d) Provide without delay a comprehensive review of the procedures in place to ensure that large-scale development projects comply with international standards on the basis of the Guiding Principles on Internal Displacement and of the basic principles and guidelines on development-based evictions and displacement, and ensure compliance with ILO Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries and the United Nations Declaration on the Rights of Indigenous Peoples. ...

## **2. Guiding principles on human rights impact assessments of trade and investment agreements, A/HRC/19/59/Add.5, 19 December 2011 (Excerpts)**

1. In paragraph 34 of its resolution 13/14, the Human Rights Council encouraged the Special Rapporteur to explore, in consultation with Member States and relevant stakeholders, ways and means of raising the capacity of countries, particularly developing countries, including least

developed and net food-importing countries, to ensure the realization and protection of the right to adequate food for their populations, and to report his findings to the Council. The guiding principles on human rights impact assessments of trade and investment agreements (see appendix) are one contribution in the fulfilment of this part of the mandate. The guiding principles are intended to provide States with guidance on how best to ensure that the trade and investment agreements they conclude are consistent with their obligations under international human rights instruments.

2. Human rights treaty bodies and special procedures of the Human Rights Council have regularly called upon States to prepare human rights impact assessments of the trade and investment agreements that they conclude.<sup>128</sup> ... Yet, States have been provided with little guidance as to how such human rights impact assessments should be prepared, what is specific to a human rights impact assessment (as distinct, for instance, from sustainability impact assessments or social impact assessments), and how the conduct of human rights assessments relates to the undertakings of States under human rights treaties.

3. The guiding principles are intended to provide such advice. They are also intended as an operational tool that may be useful for human rights treaty bodies and the special procedures of the Human Rights Council, to the extent that their mandate includes assessing the consistency of trade and investment agreements with the human rights undertakings of States. In addition, these guiding principles could serve as a source of inspiration for companies carrying out human rights due diligence, in order to identify, prevent, mitigate and account for the human rights impacts of their activities, particularly in the negotiation and conclusion of investment agreements with the host States in which they invest.<sup>129</sup> Since the preparation of human rights impact assessments is a way for the State to discharge its human rights obligations, by ensuring that it does not conclude agreements that make it more difficult or impossible for the State to comply with such obligations, it is recommended that the process of preparing human rights impact assessments be stipulated in legislation, rather than left to the ad hoc choices of the Executive.

4. The guiding principles are also a response to a key recommendation of an international expert seminar held under the auspices of the mandate in Geneva on 23 and 24 June 2010. The seminar, at which a variety of stakeholders from all regions were represented, underlined the need for a set of principles for conducting human rights impact assessments of trade and investment agreements.<sup>130</sup> This set of principles is intended to provide a methodology. It is also aimed at maximizing the effectiveness of such assessments and ensuring that they are not undermined by actors who misappropriate the term “human rights impact assessment.”

## **Guiding principles on human rights impact assessments of trade and investment agreements**

### **1. All States should prepare human rights impact assessments prior to the conclusion of trade and investment agreements.**

#### *Commentary*

1.1 By preparing human rights impact assessments prior to the conclusion of trade and investment agreements, States are addressing their obligations under the human rights treaties. First, since States

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<sup>128</sup> See, for example, Committee on Economic, Social and Cultural Rights, concluding observations regarding Ecuador (E/C.12/1/Add.100), para. 56; Committee on the Rights of the Child, concluding observations regarding El Salvador (CRC/C/15/Add.232), para. 48; Committee on the Elimination of Discrimination against Women, concluding observations regarding Colombia (CEDAW/C/COL/CO/6), para. 29, regarding the Philippines (CEDAW/C/PHI/CO/6), para. 26, and regarding Guatemala (CEDAW/C/GUA/CO/6), para. 32; report of the Special Rapporteur on the right to food on his mission to the World Trade Organization (A/HRC/10/5/Add.2), paras. 37-38.

<sup>129</sup> See the Guiding Principles on Business and Human Rights (A/HRC/17/31), principle 17.

<sup>130</sup> The report of the seminar is available from [http://www2.ohchr.org/english/issues/food/docs/report\\_hria-seminar\\_2010.pdf](http://www2.ohchr.org/english/issues/food/docs/report_hria-seminar_2010.pdf).

are bound by these pre-existing treaty obligations, they are prohibited from concluding any agreements that would impose on them inconsistent obligations. Therefore, there is a duty to identify any potential inconsistency between pre-existing human rights treaties and subsequent trade or investment agreements, and to refrain from entering into such agreements where such inconsistencies are found to exist.<sup>131</sup> Human rights impact assessments are a tool to ensure consistency and coherence between the obligations of States under international law and other international agreements to which they are parties, and thus to overcome, or at least mitigate, the problems resulting from the fragmentation of international law.<sup>132</sup>

1.2 Second, the right of every citizen to take part in the conduct of public affairs, recognized under the International Covenant on Civil and Political Rights (art. 25 (a)), implies that no trade or investment agreement should be concluded in the absence of a public debate, which in principle should be conducted by freely elected parliamentary assemblies for approval to ensure that the free expression of the will of the electors shall be fully respected (art. 25 (b) of the Covenant).<sup>133</sup> Human rights impact assessments serve to inform such public debate.

1.3 Third, since compliance with the obligations imposed under trade and investment agreements typically is ensured by the threat of economic sanctions or reparations authorized or awarded by an agreement-specific dispute settlement mechanism or international arbitral tribunals, it is important that any inconsistency with pre-existing human rights obligations imposed on the State are identified beforehand, to the fullest extent possible. Where an inconsistency between the human rights obligations of a State and its obligations under a trade or investment agreement becomes apparent only after the entry into force of the said agreement, the pre-existing human rights obligations must prevail. This follows both from the duty of all States to cooperate towards the full realization of human rights under the Charter of the United Nations,<sup>134</sup> and from the specific depend entirely on reciprocity among States.<sup>135</sup> It also follows from the fact that human rights are *jus cogens* norms, accepted and recognized by the international community of States as a whole as norms from which no derogation is permitted, so that treaties or provisions within these treaties inconsistent with human rights should be considered void and terminated.<sup>136</sup>

**2. States must ensure that the conclusion of any trade or investment agreement does not impose obligations inconsistent with their pre-existing international treaty obligations, including those to respect, protect and fulfil human rights.**

**3. Human rights impact assessments of trade and investment agreements should be prepared prior to the conclusion of the agreements and in time to influence the outcomes of the negotiations and, if necessary, should be completed by ex post impact assessments. Based on the results of the human rights impact assessment, a range of responses exist where an incompatibility is found, including but not limited to the following:**

**(a) Termination of the agreement;**

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<sup>131</sup> Vienna Convention on the Law of Treaties, arts. 26 and 30, para. 4 (b).

<sup>132</sup> See the report of the Study Group of the International Law Commission on the fragmentation of international law: difficulties arising from the diversification and expansion of international law (A/CN.4/L.682).

<sup>133</sup> This is also in line with article 2, paragraph 3, of the Declaration on the Right to Development.

<sup>134</sup> Article 103 of the Charter provides that: "In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail."

<sup>135</sup> Inter-American Court of Human Rights, *The Sawhoyamaya Indigenous Community v. Paraguay*, Judgment of 29 March 2006, Series C No. 146, para. 140.

<sup>136</sup> Vienna Convention on the Law of Treaties, arts. 53 and 64; and the conclusions of the Study Group of the International Law Commission on fragmentation of international law: difficulties arising from the diversification and expansion of international law, *Official Records of the General Assembly, Sixty-first Session, Supplement No. 10 (A/61/10)*, chap. 12, para. 251 (41).

- (b) Amendment of the agreement;**
- (c) Insertion of safeguards in the agreement;**
- (d) Provision of compensation by third-State parties;**
- (e) Adoption of mitigation measures.**

*Commentary*

...

3.3 Not all the impacts of the entry into force of a trade or investment agreement can be anticipated. Therefore, ex ante human rights impact assessments should be complemented by human rights impact assessments performed ex post, once the impacts are measurable. A human rights impact assessment should be conceived of as an iterative process, taking place on a regular basis, for instance, every three or five years. Safeguard clauses should be inserted into the trade or investment agreement to ensure that, should such ex post assessments lead to the conclusion that the State is unable to comply with its human rights obligations within the constraints of the agreement, it should be released from such constraints to the extent of the incompatibility. However, even in the absence of such safeguard clauses, human rights impact assessments that arrive at the conclusion that the obligations imposed under a trade or investment treaty cannot be upheld without violating human rights obligations should lead the State to consider the trade or investment treaty, or the problematic provisions within the treaty, as void, or to denounce it. While the possibility of denunciation or withdrawal should be provided for in any trade or investment agreement entered into by the State, a right of denunciation or withdrawal may be implied in any trade or investment agreement to the extent necessary for a State to comply with its human rights obligations, even in the absence of such an explicit clause. This follows from the fact that human rights obligations prevail over other treaty obligations.<sup>137</sup>

**4. Each State should define how to prepare human rights impact assessments of trade and investment agreements it intends to conclude or has entered into. The procedure, however, should be guided by a human rights-based approach, and its credibility and effectiveness depend on the fulfilment of the following minimum conditions:**

- (a) Independence;**
- (b) Transparency;**
- (c) Inclusive participation;**
- (d) Expertise and funding; and**
- (e) Status.**

*Commentary*

...

4.5 *Inclusive participation.* The human rights impact assessment should consider the views of the communities directly affected by the trade or investment agreement by ensuring participation in the conduct of the assessment. For this participation to be meaningful, those consulted should be provided with all the available information on the potential impacts, and the assessment should refer explicitly to their concerns and how these concerns could be addressed.

**5. While each State may decide on the methodology by which human rights impact assessments of trade and investment agreements will be prepared, a number of elements should be considered:**

- (a) Making explicit reference to the normative content of human rights obligations;**

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<sup>137</sup> Vienna Convention on the Law of Treaties, art. 56; and see Inter-American Court of Human Rights, *The Sawhoyamaya Indigenous Community v. Paraguay*, para. 140.

- (b) Incorporating human rights indicators into the assessment; and**
- (c) Ensuring that decisions on trade-offs are subject to adequate consultation (through a participatory, inclusive and transparent process), comport with the principles of equality and non-discrimination, and do not result in retrogression.**

*Commentary*

5.1 *Explicit reference to the normative content of human rights obligations.* Human rights impact assessments are distinct in that they examine the intended and unintended impacts of trade and investment agreements on the ability of the States parties to these agreements to respect, protect and fulfil human rights (see commentary following principle 2). They therefore should be based explicitly on the normative content of human rights, as clarified by the judicial and non-judicial bodies that are tasked with monitoring compliance with human rights obligations. References in impact assessments to development goals or to poverty, therefore, are not a substitute for a reference to the normative components of human rights. ...

5.3 In order to ensure compliance with the human rights requirement of non-discrimination and that due attention is paid to the situation of the most vulnerable groups, particularly women, it is essential that these indicators provide information broken down by gender, by disability, by age group, by region and by ethnicity, or on other grounds, based on a contextual, country-level appreciation of the groups that are most vulnerable.<sup>138</sup> In addition, the process itself of negotiating and concluding a trade or investment agreement should be assessed as regards its compliance with the principles of participation, transparency, and accountability (see commentary following principle 4): certain indicators should be adopted that allow the human rights impact assessment to take into account this dimension.

**6. States should use human rights impact assessments, which aid in identifying both the positive and negative impacts on human rights of the trade or investment agreement, to ensure that the agreement contributes to the overall protection of human rights.**

**7. To ensure that the process of preparing a human rights impact assessment of a trade or investment agreement is manageable, the task should be broken down into a number of key steps that ensure both that the full range of human rights impacts will be considered, and that the assessment will be detailed enough on the impacts that seem to matter the most:**

- (a) Screening;**
- (b) Scoping;**
- (c) Evidence gathering;**
- (d) Analysis;**
- (e) Conclusions and recommendations; and**
- (f) Evaluation mechanism.**

*Commentary*

7.1 First, the human rights impact assessment should include a preliminary analysis of which human rights are most likely to be affected, with respect to which population groups, as a result of the trade or investment agreement (*screening*): this should allow the determination of which elements of the trade or investment agreement shall be subject to a full assessment, and with regard to their impacts on which human rights.

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<sup>138</sup> See, for instance, Committee on the Rights of the Child, general comment No. 5 (2003) on general measures of implementation of the Convention on the Rights of the Child, paras. 48-50 (“Collection of sufficient and reliable data on children, disaggregated to enable identification of discrimination and/or disparities in the realization of rights, is an essential part of implementation [of the Convention on the Rights of the Child]”).

7.2 Second, those in charge of the human rights impact assessment should determine the set of questions that will have to be addressed and the methodology to be applied, including the use of indicators, for the full assessment in the areas identified at the screening stage (*scoping*). The scoping stage becomes more complex in an ex ante assessment, which might not have a negotiating text available before it and, thus, might have to examine several possible outcomes of a negotiation. Accordingly, the human rights impact assessment might have to consider at least two scenarios, and the scoping stage could identify these.

7.3 Third, *evidence gathering* shall include the use of both quantitative (including economic modelling and regression analysis) and qualitative research (including consultations with rights holders or their representatives, and where feasible using participatory research methodologies), in order to determine the impacts as precisely as possible. The contribution of human rights impact assessments to improving participation and accountability in the process of the negotiation of trade and investment agreements should be kept in mind in defining how evidence shall be gathered: the involvement of the groups affected, directly or through their legitimate representatives, is both a means to inform the process and an end in itself (see commentary following principle 4).

7.4 Fourth, the impacts of the trade or investment agreement on the ability of the State to respect, protect and fulfil human rights should be assessed, taking into account what has been said above about trade-offs (*analysis*). Such an analysis may include recommendations as to how any tension between the trade or investment agreement on the one hand, and human rights obligations on the other hand, may be addressed, although the identification of the measures that might be adopted in order to address such tensions could be left to the parliamentary committee receiving the human rights impact assessment to guide its deliberations. The outcome of the human rights impact assessment, in any case, should be made public, since it should feed into the public debate about the preparation or implementation of the trade or investment agreement considered.

### **3. Mission to Canada, 6-16 May 2012. End of Mission Statement.**

On 16 May 2012, the Special Rapporteur on the right to food conveyed to the Government of Canada his preliminary reflections on his visit. Later that day, he held a press conference in Ottawa at the National Press Theatre. He opened the press conference with some preliminary remarks on the visit. The statement is set out below.

The Special Rapporteur on the right to food undertook an official visit to Canada, at the invitation of the Government, from 6 to 16 May 2012. The purpose of the mission was to examine the way in which the human right to adequate food is being realized in Canada. ...

The Special Rapporteur also had the occasion to meet with aboriginal groups and communities in Quebec, Ontario, Manitoba and Alberta, including the Inuit Tapiriit Kanatami and the Congress of Aboriginal Peoples. In particular, the Special Rapporteur would like to warmly thank the Assembly of Manitoba Chiefs, Manitoba Keewatinowi Okimakanak and Southern Chiefs Organization for facilitating his visits within Manitoba to the Sagkeeng First Nations (where he had the opportunity to meet with chiefs, council and community members from Chemawawin Cree, Colomb, Lake Manitoba, Peguis, Swan Lake and Treaty 3 First Nations) and to God's River, Manto Sipi Cree and Wasagamack First Nations around the Island Lakes area. The Special Rapporteur also extends his gratitude to the Confederacy of Treaty Six First Nations, the Alexis Nakota Sioux First Nation and the International Indian Treaty Council for facilitating his visits in Alberta (where he had the opportunity to meet with chiefs, council members and communities from Treaties 4, 6, 7, 8, the

Enoch Cree First Nation and the Northwest Territories). He is especially honoured by the hospitality and generous spirit in which he was received into First Nations communities, and he thanks them for their time and engagement with him.

The Special Rapporteur was particularly struck by the vibrant and active engagement by farmers, fishers, and civil society working on human rights, poverty, food security and aboriginal issues during the visit. He is encouraged by how alive the right to food movement is in Canada. He is especially grateful for their initiatives to connect him with affected communities and victims. The Special Rapporteur wishes to extend a special word of thanks to all those who shared their personal and moving stories with him.

...

The Special Rapporteur was disconcerted by the deep and severe food insecurity faced by aboriginal peoples across Canada living both on- and off-reserve in remote and urban areas. Statistics on First Nations specific food insecurity are few, however the First Nations Regional Longitudinal Health Survey (RHS 2008/10) indicates that 17.8 per cent of First Nations adults (age 25–39) and 16.1 per cent of First Nations adults (age 40–54) reported being hungry but did not eat due to lack of money for food in 2007/2008.

...

Under the International Covenant on Economic, Social and Cultural Rights, Canada has a duty to dedicate the maximum amount of available resources to progressively achieve the full realization of economic, social and cultural rights, including the right to food, and to prioritize the needs of the most marginalized members of society. The concept of progressive realization recognizes the obstacles faced by countries, even developed countries like Canada. Like other countries, Canada has experienced an increase in its public debt, particularly in the wake of the 2008 economic and financial crises. Nevertheless, the current situation does not justify refraining from taking action that could guarantee the right to food in the country.

...

According to a joint report from the Public Health Agency of Canada and the Canadian Institute for Health Information based on 2007-2009 data, over one in four Canadian adults are obese, as are 8.6 per cent of children between the ages of 6-17; overweight and obesity combined affect 62.1 per cent of the population. Obesity rates have increased significantly since the early 1980s, and it is becoming more severe. On-reserve First Nations have particularly high obesity rates, at 36 per cent in 2002-2003: the risk of dying from diabetes and its complications is five times higher among women living in First Nations communities than among Canadian women of the general population. The health impacts are considerable. Obesity alone cost the Canadian economy at least CAD 4.6 billion in 2008 in direct (health care) and indirect (lost productivity) costs, when taking into account the eight non-communicable diseases most frequently associated with obesity. Within remote Aboriginal communities, the consequences of high rates of diabetes are particularly disturbing, since specialized services may be inaccessible.

### **VIII. Indigenous Peoples**

In Canada, indigenous peoples comprise First Nations, Inuit and Métis. There are roughly 1 million status “Indians” from 630 First Nations; 45,000 to 55,000 Inuit across 53 communities; and around 400,000 Métis. Like others, the Special Rapporteur welcomes the decision by Canada in November 2010 to lend its support for the United Nations Declaration on the Rights of Indigenous Peoples. This is a positive step, whereby Canada joined global consensus.

A long history of political and economic marginalization has left many indigenous peoples with considerably lower levels of access to adequate food relative to the general population. In addition, 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.

### **1. Nutrition North Canada**

Recognizing the importance of access to nutritious food in isolated communities in the North, the Government launched the Food Mail programme in the 1960s. Concerns regarding the escalating costs of the Food Mail programme led to a series of reviews that resulted in a decision to replace the programme with a more focused food subsidy programme called Nutrition North Canada in April 2011.

The objective of the Nutrition North Canada programme is to improve access to perishable healthy foods in isolated Northern communities, and the Special Rapporteur welcomes this initiative. Yet, the Rapporteur also has concerns about its implementation. In particular, he is concerned that the retail subsidy is not being fully passed on to the consumer and that in the absence of adequate monitoring by those it is intended to benefit, the programme is not achieving its desired outcome. Furthermore, he is concerned that it was designed and implemented without an inclusive and transparent process providing the Northern communities with an opportunity to exercise their right to free, active and meaningful participation. Concerns were raised in particular regarding the eligibility criteria of which communities fall within the scope of the programme and which items are subsidized.

### **2. Access to traditional/country foods**

Historically, indigenous peoples have had their own food systems, relying on traditional knowledge of hunting, fishing, trapping and gathering. Although communities can, and often do, pursue a diet based on traditional/country foods, obtaining this food is not without cost. Issues with accessing traditional foods include: 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 necessary for hunting/fishing/harvesting; and lack of requisite skills and time.

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.

### **3. Access to land**

In many parts of Canada access to country foods requires access to land. As such, on-going land claims across the country have implications for the right to food among aboriginal Canadians.

Concerns have been raised that although aboriginal title is recognized under Canadian law, the Government has made attempts to extinguish title through onerous 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. The Special Rapporteur recalls that article 8.2(b) of the Declaration provides that States shall 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.”

The Special Rapporteur notes the existence of “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 article 19 of the United Nations Declaration on the Rights of Indigenous Peoples, which 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.”

The Special Rapporteur 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 of strengthening indigenous peoples’ own self-determination and decision-making over their affairs at all levels.

#### **4. Mission to Cameroon, 16-23 July 2012. End of Mission Statement (Preliminary Conclusions)**

##### **b) Indigenous peoples**

In Cameroon, the indigenous communities comprise the indigenous forest peoples or “Pygmies” who live off hunting, fishing and gathering (the Bagyeli or Bakola, Baka and Bedzan); the nomadic Mbororo pastoralists (the Wodaabe, Jafun, and Galegi); and the Kirdi mountain communities. The total number of Pygmies is estimated at 30,000–50,000, representing approximately 0.25% of the entire population. The Mbororo are part of a larger group, about 1.85 million people (approximately 9% of the total population).

A number of studies demonstrate that Cameroon’s indigenous communities are under particular threat as regards enjoyment of their right to adequate food. The Special Rapporteur applauds the various efforts aiming to combat the discrimination experienced by the indigenous peoples and the efforts to pay particular attention to these groups in public policy. He encourages the government to intensify its efforts by offering specific recognition to the indigenous groups, in conformity with international law. In particular, he encourages the Government to ensure that the bill relating to marginalized peoples currently being drafted incorporates the definition of indigenous peoples as adopted in the United Nations Declaration on the Rights of Indigenous Peoples.

Indigenous populations have been granted specific protection under international law. According to the Declaration on the Rights of Indigenous Peoples, these peoples “shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return” (Article 10). Furthermore, States shall 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” (Article 13).

The Pygmies’ means of subsistence is through hunting and gathering, as well as the use of non-timber forest products (honey, wild yams, caterpillars, fruit, snails, etc.). In consequence, they are directly dependent on access to the forest for their food, and the forest forms an integral part of their cultural identity. However, his meetings with different groups of Pygmies lead the Special Rapporteur to conclude that, to date, their opinion has not been taken into consideration in decisions regarding concessions on the territories that these communities depend on for their subsistence. Furthermore, these groups generally derive no benefit at all from the industrial forestry on their territories.

Without appropriate measures to protect their rights, development projects, such as logging and large-scale plantations, far from improving the indigenous peoples' situation, will further increase their marginalization. Thus, above all, when devising the system for protecting land users, it is advisable to take into account the fact that the Pygmies have a mobile existence and do not practise agriculture, which makes it impossible for them to provide proof that they 'farm' a specified area; and when organising the distribution of forestry fees, it is necessary to take into account that the sedentary Bantu communities do not represent the interests of all the communities in the area who may be affected by the logging: the interests of the Pygmies warrant, and demand, specific representation.

## **E. Special Rapporteur on freedom of religion or belief**

### **1. Mission to Paraguay, A/HRC/19/60/Add.1, 26 January 2012**

#### **Situation of indigenous peoples in Paraguay**

45. Indigenous peoples in Paraguay have a long history of suffering from discrimination, neglect, harassment and economic exploitation. An indigenous leader of the Chaco summarized the challenges they faced in an interview with the Permanent Forum on Indigenous Issues in 2009:

We are unable to have access to our ancestral territories, since everything is private property and so it is very difficult to recover it. Our traditional territory has been split up and destroyed through cattle farming. Non-indigenous society imposes projects and plans on us without consultation, although we are talking about ancestral territory. Traditional culture is also affected, including indigenous religious practices and beliefs, which were already completely overrun and not respected at all. In the communities there are also representatives of other religions who do not let the shamans work. There is practically no health service available. We need access to education, but Government support is lacking and not all the communities have schools. The Government and its agencies do not communicate with the communities or ask their opinion and do not respect the distinctive form of our organization. In addition, we are very poorly paid for the work we do.<sup>139</sup>

46. The Committee on the Rights of the Child, in its concluding observations on Paraguay of January 2010,<sup>140</sup> expressed concern at the limited enjoyment of rights by indigenous children and, in particular, their limited access to education and health and disproportionately high malnutrition rate, and relevant infant and maternal mortality rates. The Committee recommended that Paraguay should take all necessary measures to protect the rights of indigenous children against discrimination and guarantee their enjoyment of the rights enshrined in domestic law and in the Convention on the Rights of the Child.

47. Reports from and discussions with representatives of different indigenous peoples conducted by the Special Rapporteur in Asunción, Ciudad del Este and Filadelfia revealed that the imposition of religious doctrines and practices against their will seems to persist to a certain degree today. This critical assessment was corroborated by the Chairman of the National Institution for Indigenous Populations (Instituto Paraguayo del Indígena), as well as by other experts working in this field.

48. Interlocutors from indigenous peoples mostly agreed that the general attitude towards their traditional beliefs and practices had become more respectful in recent years. While in the past

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<sup>139</sup> Permanent Forum on Indigenous Issues, Mission to Paraguay, available from [www.un.org/esa/socdev/unpfii/documents/UNPFII\\_Mission\\_Report\\_Paraguay\\_EN.pdf](http://www.un.org/esa/socdev/unpfii/documents/UNPFII_Mission_Report_Paraguay_EN.pdf), p.11.

<sup>140</sup> CRC/C/PRY/CO/3, paras. 79-80.

traditional cultural or religious practices, such as shamanist healing rituals, were denounced as “satanic” by some Christian missionaries, such attitudes have fortunately become rather exceptional. Moreover, efforts to recapture the cultural, linguistic and spiritual heritage of indigenous peoples can now count on the political and financial support of major streams in Christian churches in Paraguay and internationally. The Catholic Church in particular seems to have largely abandoned its former paternalistic attitude for active solidarity with indigenous peoples in their struggle for better living conditions. Such positive examples were also cited with regard to Protestant churches.

49. In spite of such encouraging developments, however, members of indigenous peoples also reported on persisting practices or policies of religious paternalism that may violate their freedom of religion or belief. For example, they mentioned a number of instances in which material benefits or jobs given to indigenous individuals were made dependent on their compliance with religious norms. This problem was particularly tangible during the Special Rapporteur’s visit to Filadelfia, a town in the Chaco region established three generations ago by Mennonite settlers. The Mennonites are a Protestant community, with roots in the Netherlands and Germany, who themselves endured centuries of religious persecution. The ancestors of many of those now living in Filadelfia fled from the former Soviet Union, where Mennonites were exposed to harsh discrimination and political persecution, including deportation and killings. Since settling in the Chaco from the late 1920s onwards, the Mennonites have increasingly become a socially and economically powerful community. They now run large agro-industrial companies in large parts of the Chaco. As a consequence of the Mennonites’ impressive economic success, however, members of the indigenous population traditionally inhabiting the same region often find themselves in a situation of unilateral economic dependency. This situation in turn renders them vulnerable to the imposition of religious norms and practices, sometimes against their will. Indeed, some Mennonites implicitly corroborated such allegations made by indigenous individuals by expressing their convictions that moral trustworthiness, which they strongly linked to the observance of Christian values, could be a legitimate criterion for employing –or not employing –an indigenous person.

50. Moreover, some missionary groups, such as the “People of God” or the “New Tribes Mission”, are alleged to have exerted psychological pressure on members of indigenous communities to completely abandon traditional religious rituals by threatening harsh punishments in the hereafter. The aggressive methods reportedly used by those groups were strongly criticized by representatives of indigenous peoples as well as by the National Institution for Indigenous Populations.

51. The Special Rapporteur reiterates in this context that missionary activities per se clearly fall within the scope of freedom of religion or belief. According to article 18 of the International Covenant on Civil and Political Rights, individuals deserve respect and protection in their freedom to have or adopt a religion or belief of their own choice. Having a choice in questions of religion or belief, however, obviously depends on the possibility of communicating one’s own religious or non-religious convictions, receiving information and trying to persuade others. Freedom of religion or belief thus has a marked dimension of a communicative right, which includes personal or organized missionary activities. At the same time, it is equally clear that missionary activities must never amount to a de facto imposition of convictions or norms against the will of targeted individuals or groups, for instance by exploiting their economic vulnerability. The Government bears responsibility for providing effective protection against such practices. In its general comment No. 22 (1993) on the right to freedom of thought, conscience and religion, the Human Rights Committee emphasized that article 18, paragraph 2, “bars coercion that would impair the right to have or adopt a religion or belief” and that “the same protection is enjoyed by holders of all beliefs of a non-religious nature”.<sup>141</sup>

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<sup>141</sup> *Official Records of the General Assembly, Forty-eighth Session, Supplement No. 40 (A/48/40), vol. I, annex VI, para. 5.*

52. Interlocutors from State institutions, civil society organizations, religious groups and indigenous peoples largely agreed that the main problem in this regard was the lack of efficient implementation mechanisms. This was particularly tangible in the Chaco region, and is most likely even further exacerbated in remote areas more or less completely outside of State control, including where the indigenous communities have chosen to remain in isolation.

53. In this context, in the draft Guidelines on the protection of indigenous peoples in voluntary isolation and in initial contact of the Amazon basin and El Chaco,<sup>142</sup> it is noted that:

... it is necessary to adhere to the international and regional obligations undertaken by the region's Governments and to apply, as a dispute settlement mechanism, the parameters established by the Inter-American Court of Human Rights in judgements such as *Yakye Axa Indigenous Community v. Paraguay* or *Sawhoyamaxa Indigenous* according to which the relationship that indigenous peoples in isolation and in initial contact maintain with their land and territories, and their situation of vulnerability, mean that their territorial rights can take precedence over economic interests and interests defined by the State.

Furthermore, the Inter-American Court of Human Rights has underlined that the close relationship of indigenous peoples with the land must be acknowledged and understood as the fundamental basis for their culture, spiritual life, wholeness, economic survival, and preservation and transmission to future generations.<sup>143</sup>

### **Conclusions and recommendations**

60. More important deficiencies relate to the second obligation of the State, namely, to efficiently protect human rights in society at large, given the general situation of weak implementation mechanisms compounded by pronounced inequalities in power in society. The most obvious example is the lack of an efficient State presence in areas such as the Chaco region, where many indigenous peoples live.

61. Even though the question concerning the extent to which indigenous peoples still suffer from the undue imposition of religious doctrines against their will remains controversial, there can be no doubt that their structural vulnerability should trigger proactive State intervention. From a human rights perspective, it is very clear that the possibility of pursuing missionary activities falls within the scope of freedom of religion or belief, which naturally includes the right to publicly disseminate one's beliefs and to try to persuade others. It is equally clear, however, that situations of structural vulnerability must never be exploited in the context of missionary activities. The State of Paraguay is under the obligation to do its utmost to reduce related risks, for instance by providing information, mediation and possibilities of judicial redress and outreach, especially to the indigenous population.

64. Against the background of these general observations, the Special Rapporteur encourages the Government: ...

(c) To continue to support the Permanent Interreligious Dialogue Forum while ensuring the open, transparent participation of all interested groups and sectors of society, including

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<sup>142</sup> A/HRC/EMRIP/2009/6, para. 45.

<sup>143</sup> See *Case of the Mayagna (Sumo) Awas Tingni Community*, judgement of 31 August 2001, Series C No. 79, para. 149; *Case of the Plan de Sánchez Massacre*, judgement of 19 November 2004, Series C No. 116, para. 85; and *Case of Yakye Axa Indigenous Community*, judgement of 17 June 2005, Series C No. 125, paras. 131 and 135 ("The culture of the members of the indigenous communities directly relates to a specific way of being, seeing, and acting in the world, developed on the basis of their close relationship with their traditional territories and the resources therein, not only because they are their main means of subsistence, but also because they are part of their worldview, their religiosity, and therefore, of their cultural identity.").

indigenous peoples, as well as appropriate awareness-raising among the communities concerned about its work and operations; ...

(f) To pay more systematic attention to the structural vulnerability of members of indigenous communities, especially in rural areas. Even though freedom of religion or belief naturally includes the freedom to engage in missionary activities, the Government should ensure –by means of clarification, mediation, judicial redress and other appropriate measures–that indigenous individuals are not pressured to attend religious ceremonies or to otherwise engage in religious activities as a de facto precondition for job opportunities or for receiving important material benefits....

## **F. Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health**

### **1. Mission to Guatemala, A/HRC/17/25/Add.2, 16 March 2011 (footnotes in part omitted)**

#### **Right to health of indigenous peoples**

30. Due to a confluence of factors, including historical repression and prejudice, and the civil war, indigenous peoples have faced significant barriers in realizing the right to health. Indigenous peoples have the right to specific measures to improve their access to healthcare facilities, goods and services that are culturally appropriate. The Committee on Economic, Social and Cultural Rights has noted that States should provide resources for indigenous peoples to design, deliver and control such services.<sup>18</sup> Unfortunately, the indigenous peoples in Guatemala have been systematically excluded from health-related decision-making, which has contributed to major gaps between indigenous and nonindigenous health outcomes.

31. The Committee also notes that, in indigenous communities, individual health is often linked to the health of the society as a whole, and has a collective or community dimension.<sup>19</sup> As mentioned previously, a number of underlying determinants of health directly contribute to whether a community progressively realizes the right to health (see para. 25). In many communities basic services are absent, resulting in widespread deprivation and poor health. The basic needs, including the provision of health-care services, of indigenous peoples must be met to effectively realize the right to health of this group.

#### **A. Historical background**

32. The indigenous peoples of Guatemala include the Maya, Xinca and Garifuna; in total, there are 25 socio-linguistic groups, 23 of which are of Mayan descent. Guatemala is the only republic in Central America in which indigenous people comprise a majority; currently, 51 per cent of the population is estimated to be Mayan. Although outside the scope of this report, the historical circumstances leading to the persistent repression of indigenous peoples elucidate the disadvantage and health-related barriers experienced by these people today.

33. Events from the Spanish Invasion in 1524, to the division of the population into indigenous and criollo groups in 1880, to subsequent forcible acquisition of indigenous peoples' lands by the elite, all contributed to the social and economic dispossession experienced by the indigenous peoples of Guatemala. Although this eased during the Government reforms of 1944-1954, the 1954 coup and subsequent internal conflict had devastating effect on the indigenous population. The Truth Commission of Guatemala determined that significant political mobilization occurred among indigenous people during the civil war, particularly in the early 1980s, but it was widely suppressed by the State to maintain social control.

34. Despite the continuation of the armed conflict until 1996, indigenous identity became increasingly acknowledged by law during this time. Article 66 of the Constitution provides for protection of indigenous communities, acknowledging that Guatemala is made up of diverse ethnic groups – including indigenous groups of Mayan descent – and that the State recognizes, respects and promotes their ways of life, customs, traditions, forms of social organization, and use of traditional dress, languages and dialects. Articles 67 to 69 outline specific areas in which protection is required: protection of land and indigenous agricultural cooperatives, and of the health and safety of migrant workers within the State.

35. Since 1982 Guatemala has ratified several international declarations and treaties concerning the rights of indigenous peoples. For instance, in 1996 Guatemala ratified the Indigenous and Tribal Peoples Convention of the International Labour Organization (ILO), which was subsequently deemed compatible with domestic law by the Constitutional Court.<sup>144</sup> The provisions of ILO Convention 169, along with various constitutional provisions, have since been applied in various cases. These include, inter alia, petitions allowing indigenous prison inmates to wear traditional dress,<sup>145</sup> and the application of customary Mayan law to movement of protected objects for use in Mayan rituals.<sup>146</sup> Guatemala has also ratified the International Convention on the Elimination of All Forms of Racial Discrimination.

36. Despite this recent progress and the constitutional protection of indigenous groups, there has been a clear and consistent failure to adequately address the situation of indigenous peoples within Guatemala. In the March 1995 Agreement on the identity and rights of indigenous peoples, concluded as part of the Peace Accords, it was acknowledged that the indigenous peoples had been subject to discrimination, exploitation and injustice, and had endured unequal and unjust treatment and conditions on account of their economic and social status. It further acknowledged that this “historical reality” continues to affect these peoples profoundly, denying them the full exercise of their rights and political participation. It is encouraging to see that some steps have been taken to enshrine and protect the rights of the indigenous peoples of Guatemala, but more practical steps must be taken to secure equality in respect of health outcomes.

### **Health status of indigenous populations**

37. The continuing reverberations of the civil war, together with marked structural and de facto discrimination and inequality have led to a stark contrast in health outcomes between the indigenous and criollo communities. Where disaggregated data is available, clear gaps between these communities are seen. For instance, 68 per cent of indigenous children under the age of five suffer from chronic malnutrition, compared to 49 per cent of children in the general population. Between 1987 and 2002 negligible gains were made in redressing malnutrition in the indigenous population generally: it was reduced from 71.7 per cent to 69.5 per cent, in comparison with an 8 per cent reduction in the general population. Similar figures are seen when indicators of the underlying determinants of health are examined. For instance, approximately 29 per cent of the indigenous people live in extreme poverty, in contrast to 15 per cent of non-indigenous people.

38. Although there have been encouraging increases in reproductive health-related indicators at the national level – 41 per cent of births are attended by skilled health personnel and contraceptive prevalence is recorded at 43.3 per cent – these changes do not appear to have a substantial effect

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<sup>144</sup> Case 199-95, advisory opinion on Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries (ILO), May 18, 1995.

<sup>145</sup> Legal protection No. 46-2003, case 1, judgement of October 30, 2003.

<sup>146</sup> File No. 517-2003, case I, judgement of November 18, 2003.

within indigenous communities. Of the births attended by skilled personnel, 70 per cent of those were deliveries of non-indigenous pregnant women, whilst only 30 per cent were of indigenous women. Similarly, only 40 per cent of those who utilized contraceptives were of indigenous descent.

39. Development-related activities that displace indigenous peoples from their traditional lands have been noted to negatively affect health outcomes. The consequences from this cultural disconnection notwithstanding, removing indigenous peoples from their land also contributes to poverty and food insecurity and alienation from mainstream society. Land ownership remains highly inequitable in Guatemala. The holdings of the largely indigenous poor are noted to be small, untitled, isolated and of poor quality; indeed, the main reason identified for welfare disparity between indigenous and non-indigenous households is low asset holdings.

40. Educational attainment is also significantly lower among indigenous peoples due to the many barriers indigenous children face in entering and completing schooling. Although educational coverage has increased significantly, with net primary school enrolment rates rising from around 50 per cent in the 1970s to approximately 80 per cent by 2000, approximately one-third of indigenous girls are not enrolled.<sup>35</sup> Illiteracy poses a major problem throughout Guatemala, and is most marked among indigenous peoples: 38 per cent of indigenous women are illiterate. This directly affects health outcomes, as use of planned methods of contraception is significantly lower in illiterate populations.

41. The above factors combined paint a bleak picture of indigenous living standards. There are difficult, systemic challenges for the Government, but this does not excuse it from taking steps that could immediately improve health outcomes and equality. Prompt implementation and enforcement of policies prohibiting discrimination – a core component of the right to health – is readily achievable, and adoption of this approach would do a great deal to address the plight of indigenous peoples immediately.

### **C. Barriers to improving indigenous health outcomes**

42. A major omission identified by the Special Rapporteur during the mission was the lack of a comprehensive policy or plan as related to the health care of indigenous peoples, particularly in rural and remote areas. A core obligation of the right to health is the adoption and implementation of a national public health strategy and plan of action that “shall give particular attention to all vulnerable or marginalized groups”.<sup>147</sup> There has also been little or no attempt to recognize and protect traditional medicine within indigenous communities – for instance, Guatemala has no specific legislation to protect or recognize indigenous medicines.

43. It is promising that an Indigenous Peoples Unit in the Ministry of Health (Unidad de Atención de la Salud de los Pueblos Indígenas e Interculturalidad) has recently been established in an attempt to redress the inequality inherent in the health system vis-à-vis indigenous peoples. Discrimination against persons of indigenous origin is a nationwide, multifaceted problem that clearly extends to the health system. The formulation of this Unit is a welcome initiative but, irrespective of this, until Government health programmes are completely restructured with cultural diversity at the forefront, there is unlikely to be a significant change in the health status of indigenous peoples.

44. There is a clear need to actively recruit persons of indigenous descent into national medical training courses, to redress the cultural imbalance in staffing of health centres in Guatemala. Targeted training of indigenous doctors and nurses would improve quality and acceptability of care

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<sup>147</sup> E/C.12/2000/4, para. 43(f).

for indigenous patients, and potentially redress staffing shortages in rural and remote areas throughout the country. There is also a major paucity in respect of cultural training for medical professionals, as health-care workers are not required to undergo any formal cultural training component as part of their tertiary education.

45. Mainstream doctors also do not speak the local native languages. At the health-care centres visited on the mission no interpretation service was available. Instead, patients relied on ad hoc and informal interpretation performed by bilingual nursing staff. This situation is clearly unacceptable in light of the proportion of the population who do not speak Spanish. In consultations with indigenous community members, the Special Rapporteur was informed of instances where people were turned away from medical facilities because they could not adequately explain their symptoms to the Spanish-speaking medical professional. One indigenous family was denied access to treatment for their child, who later died en route to the nearest public hospital; the family could not convey the length or severity of the child's febrile illness to the doctor in question, and no translator was available.

46. A stronger impetus is needed for medical professionals to become familiar with the dominant indigenous dialect in their operational catchment. Emphasis on language skills in recruitment of medical professionals may promote cultural change in the profession, whereby it is no longer acceptable to work within a community without having the ability to communicate with its indigenous members. In the interim period, this gap could be cheaply and quickly redressed through implementation of a central telephone interpreter service.

#### **Health-care services delivery to indigenous communities**

47. During his visit, the Special Rapporteur observed significant disparities between urban and rural health-care service delivery, which disproportionately affects indigenous people. Currently, 53 per cent of the workforce of the Ministry of Health is based in the department of Guatemala, and 80 per cent of the staff of the Instituto Guatemalteco de Seguridad Social is based in the metropolitan region, which indicates how centralized health-care service delivery is in Guatemala.

48. There are significant barriers to overcome in improving access to quality health-care services for indigenous people, in addition to the discrimination and language barriers addressed previously. Part of the difficulty encountered is the topography of Guatemala, and the remote location of certain communities. Over 70 per cent of households in the lowest two quintiles of the *Encuesta Nacional de Condiciones de Vida*, the national survey of living conditions, lacked access to a surfaced road, and 13 per cent of households could not access any motorable road at all. This directly affects health-care service delivery: lack of paved roads puts health-care services out of reach according to the WHO definition of access, which is less than 60 minutes.

49. Such obstacles, however, are not insurmountable, and it has largely been a result of a lack of political will and insufficient funding which has resulted in substandard delivery of health-care services in these locations. For instance, the Special Rapporteur visited Ixtahuacan, and was informed that a health centre in the locality had not been functioning for months. In many remote areas, non-government organizations have largely assumed control over health-care service provision. Although such efforts are admirable, this is not a sustainable substitute for State action.

50. The Mi Familia Progresá programme has had an observable impact, delivering funds to some of the most impoverished indigenous communities. This is commendable, but this conditional cash transfer programme simply cannot address fundamental issues concerning equitable access to health care. An indigenous woman noted that the 300 Quetzales (approximately \$37) required to purchase

medication for her child consumed almost the entire cash grant she received under the scheme. Routine use of these funds for various out-of-pocket expenditures further demonstrates the urgent need for the development of health infrastructure that ensures universal access to basic services. Moreover, the proportion of the grants being spent on health-related items is uncertain, and further monitoring and evaluation is necessary.

51. The development and implementation of a comprehensive national policy and plan addressing the health status of all Guatemalans, including indigenous people, in a participatory, transparent and inclusive process, will not only satisfy a core obligation of the right to health, but is also the first step to redress the long-standing inequalities. This, along with targeted assistance programmes and capacity building in the most disadvantaged areas of the nation, preferably driven by the Indigenous Peoples Unit within the Ministry of Health, will hopefully affect the changes necessary to achieve this goal.

### **The right to sexual and reproductive health for women**

56. Rural, indigenous women are among the most marginalized members of Guatemalan society. This is reflected in many indicators relating to reproductive health, such as contraceptive uptake and access to skilled birth attendants, as previously discussed. Throughout the mission, indigenous women informed the Special Rapporteur that they perceived judgment from non-indigenous medical professionals for having too many children, or for their preference for “natural” birth control methods or “vertical” delivery of children. There is also a clear tension between modern medical treatment and traditional healing methods, including utilization of traditional midwives, whose role is highly valued by many indigenous communities.

57. The Special Rapporteur was informed that previous attempts to integrate traditional midwives into a Western-style medical structure had largely failed, and that midwives had, on occasion, been made to undertake menial tasks when working in hospitals or health-care centres. Simply attempting to employ traditional midwives is not acceptable to either midwives or indigenous women, and alternative steps can be taken to address this.<sup>148</sup> Education of medical professionals regarding service delivery which is acceptable to indigenous women is essential, particularly vis-à-vis obstetric care.

### **Family planning**

63. The fertility rate remains high in Guatemala – 3.6 children per woman – and represents an independent risk factor for women’s health. The low rate of contraceptive uptake, particularly amongst indigenous women, is an important determinant of the fertility rate and, in turn, increases risk of maternal and infant mortality. The Special Rapporteur was pleased to note the passage of the Universal and Equitable Access to Family Planning Services Law, and the Government’s efforts to provide for free universal family planning services through other agencies.

64. Historically, it has been noted that it is difficult to implement a “Western” model of birth control in rural Guatemala, as such a model ignores beliefs of indigenous Mayans; namely, preference for a larger family size and childbirth being a God-given attribute, as well as suspicion of Western contraceptive methods. More culturally acceptable options for these communities include promotion of birth spacing, and postpartum abstinence. “Responsible parenthood” could also form a key aspect of education programmes: having fewer children in order to provide better for them.

65. It is clear that contraceptive use in Guatemala correlates with socio-economic status and ethnicity, but socio-economic status does not appear to serve as the barrier to contraceptive use

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<sup>148</sup> See e.g. A/HRC/14/20/Add.2

among criollo women that it does for indigenous women. Low socioeconomic status, however, has proved a less definitive predictor of contraceptive use over time: this suggests that an ideational shift in indigenous communities may be occurring. Contraceptive use and intent has increased for indigenous women despite no corresponding increase in adoption of Spanish, which suggests that economic and educational changes – rather than language – are responsible for any ideational change.

66. Ethnicity, however, remains a strong predictor of low contraceptive use and intent, and as such programmes which specifically target indigenous women and families are necessary in any global family planning strategy for the country, they must include culturally appropriate birth control options alongside more novel methods. In any event, any initiative that promotes family planning in indigenous communities must necessarily utilize community and religious leaders to ensure adequate engagement of communities. The Special Rapporteur also recommends the increasing inclusion of men in family planning decisions, although care must be taken to ensure that gender equality and empowerment of women is at the forefront of any initiative.

### **Recommendations**

88. The Special Rapporteur urges Guatemala to consider the following recommendations in the area of the health of indigenous peoples:

(a) Adopt a comprehensive health strategy for the promotion of rights of indigenous people, focused on non-discrimination, and increase investments from the national budget to improve accessibility to health-care facilities, goods and services in rural communities and increased quality of services and information.

(b) Incorporate and ensure the consultation and participation of indigenous community members in the development of policies and programmes related to the delivery of health services and goods into indigenous communities. ...

(d) Ensure that all health service institutions have adequate language support for indigenous community members. Ensure that over a period of time medical staff deployed to rural areas learn indigenous languages. Immediately develop a system of interpretation via telephone or an alternative method, if on-site interpreters are not available in all health-care facilities.

(e) Analyze the effectiveness of conditional cash transfers in improving health and other social indicators. If appropriate, expand and refine conditional cash transfer programmes in order to cover more municipalities and create greater incentives for impoverished indigenous households to spend their money on the health and education of their children.

(f) Introduce a voucher system for the purpose of transport to health services, in order to improve health outcomes for rural indigenous people, especially women.

89. The Special Rapporteur urges Guatemala to consider the following recommendations in the area of women's health, with a focus on sexual and reproductive health rights:

(a) Build the capacity of traditional midwives along with health-care professionals through human rights and other relevant training, and provide formal opportunities for information exchange between midwives and other health professionals, which can be facilitated by the Government. Allow traditional midwives to practise without undue interference or discrimination.

(b) Provide sensitivity training for health-care workers to enable them to recognize the importance of midwives in Mayan culture, as part of a larger programme to develop the sensitivity of health-care workers to indigenous peoples and their traditions more generally.

## **G. Special Rapporteur on extrajudicial, summary or arbitrary executions**

### **1. Follow-up country recommendations: Colombia, A/HRC/20/22/Add.2, 15 May 2012**

#### **Especially vulnerable groups**

55. In the mission report, the Special Rapporteur noted that vulnerable groups were disproportionately killed and threatened by State forces, paramilitaries and IAGs. The targets of killings included human rights defenders, indigenous persons and Afro-Colombians, trade unionists, lesbian, gay, bisexual and transgender individuals, and persons with physical or mental disabilities. The Special Rapporteur observed that human rights defenders were occasionally accused by Government officials of terrorism and undermining security policies and that those accusations placed them at risk.

56. It was further noted that indigenous and Afro-Colombian communities were particularly vulnerable and that, historically, paramilitaries, sometimes in collusion with State forces, had appropriated their lands and committed massacres. Furthermore, it was observed that guerrilla groups and IAGs fighting for control of land and the drug trade had killed or displaced community members. The Special Rapporteur noted that State forces often viewed efforts by indigenous communities to protect their rights as a form of subversion or collaboration with guerrillas.

...

59. Furthermore, the Special Rapporteur observes that the groups previously identified as vulnerable continue to be seriously affected by the armed conflict. The reported recent increase in killings of indigenous persons is of particular concern. Between January and October 2011, 79 indigenous people had been killed in the context of the armed conflict, representing an increase of 54.9 per cent over the same period in 2010 (*ibid.*, para. 98). Among the specific cases of killings of indigenous people, on 11 November 2011, two Awá children were murdered by the FARC-EP in Barbacoas in the department of Nariño, in events related to the desertion of another Awá child from this guerrilla group.

60. The Special Rapporteur regrets the lack of progress towards improved protection for indigenous persons and Afro-Colombians as ordered by the Constitutional Court in Orders 004 and 005 of 2009, following judgement T-025 of 2004. The lack of effective protection measures for indigenous and Afro-Colombian communities, including several who have been awarded precautionary and provisional measures through the Inter-American Human Rights System, is of particular concern.

61. Among the groups whose vulnerability has increased since 2009 are organizations and individuals seeking land restitution (A/HRC/19/21/Add.3, para. 43). Several incidents of killings and death threats against land claimants have been reported. Some of these cases relate to land that was appropriated by paramilitary groups after civilians were forcibly displaced during the armed conflict. The continuity between paramilitary groups and current groups, and the fact that the social, economic and political structures connected to paramilitarism were never dismantled, raise concerns that the post-demobilization groups have a vested interest in impeding land restitution.

62. Overall, the Special Rapporteur concludes that the persistent lack of accountability for violations committed against human rights defenders and vulnerable groups continues to place them at grave risk. The State is urged to reinforce its measures to effectively ensure their protection and the conduct of prompt and impartial investigations into violations against them. The Special Rapporteur reiterates that information about the progress and outcome of such investigations should be made publicly available.

## **Conclusions**

74. ... Specific measures should be adopted to protect persons seeking to claim their land back under the Victims' and Land Restitution Law (Law No. 1448).

76. The Special Rapporteur urges the State to significantly strengthen efforts to establish accountability for extrajudicial executions, ensure the effective protection of victims and witnesses and, through consultations with affected communities, take preventive protection measures for vulnerable groups. The behaviour aimed at discouraging human rights defenders and victims seeking justice is of serious concern.

## **H. Special Rapporteur on the human rights of internally displaced persons**

### **1. Mission to Kenya, A/HRC/19/54/Add.2, 6 February 2012**

10. Kenya has suffered repeated waves of internal displacement in its recent history, due to political, ethnic and land-related disputes, as well as to a number of other causes. Land policies during the colonial period entailed the dispossession of the lands of many indigenous communities, especially in the Rift Valley, Nyanza and the Western and Central provinces. During this period, an individual freehold title registration system was imposed which effectively legalized the dispossession of these lands, and replaced the customary mechanisms of land tenure. The freehold land title system was maintained after independence, alongside the implementation of a number of market-based resettlement schemes to deal with displacement. Neither of these policies and schemes questioned the injustice in the acquisition of the original land titles, nor compensated or assisted those who had been displaced and did not have the financial means to acquire lands under the market-based resettlement schemes.

11. Land-related issues and ethnic tensions were further aggravated due to a number of factors, including corruption and ethnic politics which favoured certain communities at the expense of others, during successive Governments. In the context of the rise of multiparty politics in the 1990s, and national elections in 1992 and 1997, ethnic identity was used as a political instrument, which led to ethnic clashes throughout that decade, leaving thousands dead and hundreds of thousands internally displaced. By the end of 2007, it was estimated that there were still 380,000 IDPs from the clashes of the 1990s.

12. The land grievances of communities such as the Kalenjin, Kikuyu and Maasai, which had originally been dispossessed by the British, later became a key feature of national politics, successive election platforms and related violence and displacement, as communities were intermittently either favoured or evicted from contested lands, depending on the Government in power. These unresolved ethnic and land-related grievances, as well as their political instrumentalization have persisted, resulting in a pattern of violence and displacement, most recently re-experienced in the 2007/2008 post-election violence, in which 1,300 persons lost their lives, and nearly 664,000 persons were internally displaced. The new Constitution attempts to remedy these grievances by reclassifying land into public, community and individual lands, establishing land redistribution mechanisms, and redressing historical land injustices.

14. Some displacements are due to a complex combination of causes. It is estimated, for example, that over the decades, thousands of pastoralists have been forcibly displaced from their homes in northern Kenya due to numerous causes, including violence, cattle raiding, land conflicts, natural and climatic disasters, human rights violations, border issues, activities of militant groups and the

proliferation of small arms. Mass evictions, both from forest areas and urban centres, have also displaced significant numbers of persons, often without housing, humanitarian assistance or durable solutions being planned beforehand. In June 2005, up to 50,000 persons were reported to be forcibly evicted from the Mau Forest and a further 12,000 persons were evicted in the latter part of 2009. The history of settlement in the Mau Forest is complex, and includes the stripping of the land of residents during the colonial period, land allocations by subsequent Governments in the 1990s (many now considered illegal or inappropriate), irregular settlement, and repeated waves of forced evictions.

30. Moreover, significant internal displacements have taken place despite the above initiatives, including due to inter-ethnic clashes, conflicts over land, and State-led disarmament programmes related to pastoralist communities, such as the 2009 Government disarmament operations which led to several deaths and the displacement of hundreds of people from a number of communities, and a similar operation in the Mount Elgon region in 2008, which also resulted in the displacement of thousands of persons. As detailed elsewhere in the present report, displacements have also taken place as a result of development and environmental conservation projects, with evictions often being conducted without effective redress and compensation mechanisms for affected communities and without sufficient assistance or alternative durable solutions in place.

43. Other categories of IDPs who have been displaced over the years due to a variety of causes (including natural disasters, conflicts over resources, inter-clan/communal conflicts, and forced evictions due to development and environmental conservation projects) have not been eligible for registration in the IDP database, nor been acknowledged as IDPs in most cases, and received either limited (food aid, for example) or no assistance. While internal displacements due to factors such as natural disasters have traditionally been for short periods, their increased frequency and severity, including due to climate change, point to more chronic situations likely to involve new, more prolonged or definitive displacements – and requiring more comprehensive displacement responses.

44. The figures are telling. For example, while an estimated 16,000 persons were affected by drought and required food aid in 1975, this figure reached 4.4 million during 1999-2001, and an estimated 3.5 million during 2004-2006. In 2011, a combination of drought-induced crop failure, poor livestock conditions, rising food prices and eroded coping capacities led to a food crisis, rendering 3.75 million people in Kenya food insecure, and to the worst malnutrition records in a decade. In 2010, an inter-agency mission to Maasai areas found displacement patterns induced by climate change. Increasingly severe and more frequent droughts, affecting in particular northern pastoralist communities, have eroded traditional livelihood strategies, made such communities increasingly dependent on aid, resulted in conflicts with other communities over resources and encroachment on lands, and forced many to search for new forms of livelihoods, including in urban areas. However, there has been a tendency in Kenya to consider that these groups are not displaced, since they are by definition mobile. Moreover, increased patterns of encroachment on lands (in search of increasingly scarce water and pasture) belonging to other communities, the commercialization of cattle rustling, and the proliferation of small arms, have led to more frequent and violent conflicts and State-led disarmament programmes, which have framed many of the issues primarily in relation to security and criminality.

45. The Special Rapporteur believes that strategies to respond to these increased vulnerabilities, potential new displacements, and current displacement trends already affecting pastoralist communities and others, will need to be more comprehensive and systematic in the future. These should include: profiling of vulnerable and affected communities, disaster risk reduction, prevention and mitigation of displacement, adaptation strategies (e.g. regarding alternative livelihoods and land use) and development policies that include displacement considerations. ...

47. The Special Rapporteur is also concerned by the situation of many forest evictees, who have been displaced due to environmental conservation projects.<sup>57</sup> During the country visit, he had the opportunity to visit displacement sites of IDPs who had been evicted from the Mau Forest complex in the latter part of 2009, when an estimated 12,000 people were displaced into makeshift camps in the periphery of the forest. That population is now spread over seven IDP satellite camps. In one such camp, the Tiriya camp, with a population of approximately 868 persons, he found that people, who are largely of the Ogiek community, were living in emergency-like conditions, years after having been displaced, under worn-out tents which no longer offer any real shelter from the harsh climatic conditions, receiving small amounts of food aid at irregular intervals, and had no meaningful access to health or educational facilities. According to reports received, the conditions in the other Mau Forest IDP camps were very similar. Like the Tiriya camp, most were isolated, and nearly inaccessible due to the lack of any adequate roads, making it extremely difficult for the IDPs to access services and assistance, and to effectively draw attention to their situation. In order to supplement food aid, women and children relied on obtaining scarce work in neighbouring farms.

48. Focused discussion groups with women in the camp further highlighted: the fact that many children could not attend school at all or on a regular basis due to hunger, the need to work or the inability of families to pay school fees; the dangers of collecting firewood (e.g. attacks by men or animals); the lack of bedding, clothing for children, and infant-feeding formulas (for those unable to breastfeed); maternal and infant health care; and the needs of vulnerable groups and the sick. There were also reports of deaths among children due to the very difficult life conditions, and exposure to cold and rain. The Special Rapporteur stresses that there is an urgent need for humanitarian assistance to address these gaps, and ensure basic life conditions until durable solutions are identified. He further notes that, to date, the residents of the camp had received no compensation or monetary allowances. According to information and documents provided by some families in the camp, members of the community had been evicted under the British administration, and in some cases later sold or reinstated small plots of land by the Government of Kenya, but they had all suffered multiple displacements afterwards.

## **Conclusions**

56. Kenya has experienced repeated waves of internal displacement in its recent history due to political, ethnic and land-related disputes, as well as a number of other causes. Addressing the root causes provoking many of these displacements is essential to the prevention of forced displacement in the future, including the repeated post-election violence displacement episodes that have impacted the country in the last two decades. The Special Rapporteur is pleased to note that under the agenda 4 reforms, the Government is putting in place frameworks, mechanisms and institutions to address the root causes of displacement in the country. However, the Kenyan population is also affected by multiple other factors likely to exacerbate internal displacements, including, inter alia: more severe and frequent natural disasters, both sudden and slow onset, due to the effects of climate change and other factors; environmental conservation and development projects; land and resource-based conflicts; and forced evictions, especially in urban areas.

## **Recommendations**

### **1. Recommendations to the Government of Kenya**

63. Adopt a broader, more flexible approach to durable solutions comprised of resettlement, return and local integration, and which includes but is not limited to land-based solutions, with a greater emphasis on livelihoods, documentation and access to basic services. Ensure that the choice of durable solutions by IDPs is informed, voluntary and safe; that they are provided with a meaningful opportunity for consultation and the opportunity to visit sites of return or potential resettlement

before making a decision; and that a process of consultation and sensitization with host or return communities is undertaken in order to ensure sustainable durable solutions and a community-based approach.

65. With regard to unregistered IDPs, and with the support of the international community and civil society: undertake, on a non-discriminatory basis, programmes to facilitate durable solutions for IDPs, many of whom have been displaced for several years, such as forest evictees; take into consideration the claims of IDPs with a particular attachment to their land and area of origin; and assist non-registered post-election-violence IDPs, including “integrated IDPs”, with outstanding durable-solution needs. Ensure that efforts in the areas of urban planning, national development strategies and land reforms include a cohesive approach to internal displacement issues, and the rights of IDPs. With regard to the latter, consider the establishment of a national land commission.

69. Ensure that all IDP activities and data-collection mechanisms support assistance to vulnerable groups, including, inter alia: particularly vulnerable groups of women; IDP women more broadly, with regard to protection from discrimination (for example, with respect to the right to information, participation, documentation, and all entitlements) and sexual and gender-based violence; internally displaced children; the chronically ill; and disabled or older persons. Share Government definitions of vulnerable groups/persons with the national and international response community.

## **J. Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance**

### **1. Bolivia: End of Mission Statement, 10 September 2012**

I undertook an official visit to Bolivia from 04 to 10 September 2012. During my visit, I have held meetings in La Paz, Sucre and Santa Cruz. I have met with representatives of the Government, both at the national, departmental, regional and local levels, members of the legislative and judicial branches, as well as representatives of civil society, non-governmental organizations, indigenous and peasant organizations, members of Afro-Bolivian community, victims of racism and racial discrimination, human rights lawyers, and other relevant groups and actors.

...

During my visit to Bolivia, I have paid special attention to the situation of indigenous populations, people of African descent, and other vulnerable groups. My visit to Bolivia has a particular significance as it is my first country visit since my appointment by the Human Rights Council as the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance.

My visit has been undertaken at an opportune moment when Bolivia is undergoing a period of important political and social transformation both at the national and local levels. I have observed that significant progress and achievements have been made that provide a favourable framework for the elimination of racism and racial discrimination in the country. These include the adoption of a new Constitution in 2009 and related legal, political and institutional reforms that the country has been undertaking to build a pluralistic and inclusive society in the face of considerable challenges. In particular, policy and legal measures undertaken to address the exclusion of indigenous peoples, Afro-Bolivians and other vulnerable communities and groups should be highlighted in this context. I would also like to note that all the issues addressed during my visit must be understood in the context of the history of Bolivia, in particular with regard to the situation of disadvantaged groups,

particularly indigenous and other racial and ethnic communities. My preliminary observations and recommendations are below.

### **Key legislative, institutional and political achievements**

Since the adoption of the new Constitution, Bolivia has made significant efforts to fulfill its international human rights obligations and commitments with respect to the situation of various disadvantaged indigenous communities and other racial and ethnic communities and the fight against racism, racial discrimination, xenophobia and related intolerance.

During the Universal Periodic Review of Bolivia at the Human Rights Council in 2010 the Government reaffirmed its commitment to intensify and continue to move forward in implementing programmes and measures aimed at combating racism and racial discrimination; to initiate sectoral policies taking into account the needs of certain vulnerable groups; to continue efforts to eliminate discrimination against indigenous peoples, Afro-Bolivians and other vulnerable communities; to take necessary measures to ensure that the traditional indigenous justice system complies with the provisions of the international human rights treaties that Bolivia has ratified; to take further measures to bring to justice all perpetrators of racist violence and abuse in order to eradicate impunity for those who commit human rights violations, to continue to strengthen the rights of indigenous peoples, placing priority on the adoption of a law to prevent and eliminate all forms of discrimination and criminalizing such offences; to intensify measures to ensure that indigenous peoples' rights are respected at all levels, and to continue to consolidate the rights of indigenous peoples both in practice and within its legal framework, thereby guaranteeing their participation and consultation.

While undertaking the assessment of the situation of racism, racial discrimination, xenophobia and related intolerance in Bolivia, I have noted that important legislative, institutional and political measures have been taken by the country. In this regard I would like to welcome the adoption of the Plurinational State Constitution of 2009, which prohibits all forms of discrimination and recognizes the rights of all persons and communities including peasants, indigenous peoples and Afro-Bolivian peoples, and the 2010 Law against Racism and All Forms of Discrimination (Act No. 045), and approval of the Policy of the State of Bolivia against Racism and All Forms of Discrimination (Action Plan 2012-2015). All these provide a fairly comprehensive and valuable legislative and policy framework for the elimination of racism and racial discrimination.

At the institutional level, important steps have been made such as the creation of the Vice-Ministry of Decolonization, which among others is tasked with prevention and elimination of racism and the establishment of the National Committee against Racism and All Forms of Discrimination.

### **Main challenges**

As I noted earlier, much has been achieved by the Government and the people of Bolivia in the last few years in combating racism and racial discrimination. However, challenges remain, particularly in relation to the implementation of the policy and legal measures. I would also like to highlight other areas that deserve specific attention and determined action by the Government at all levels.

While commending the achievements in enacting different pieces of legislation and in establishing the necessary institutions on combatting racism and racial discrimination, I note that the pace, as well as effective implementation are hindered by the lack of resources and capacity. In this regard, it is instrumental to allocate adequate resources to relevant institutions and strengthen their capacities and expertise. I therefore encourage different Ministries to include in their annual budgets adequate resources to tackle issues of racism and racial discrimination within their areas of responsibility and

maintain the continued cooperation with relevant UN agencies, and in particular with the Office of the High Commissioner for Human Rights in Bolivia.

Discrimination against indigenous people and other vulnerable communities and groups still persists, and this is exacerbated by underlying structural inequalities that reinforce their exclusion and vulnerability to racism and discrimination. In this regard, it is important to tackle the structural inequalities and exclusion especially in areas such as education, health and employment.

Access to justice still poses significant challenges to victims of racism and racial discrimination, in particular indigenous people and other vulnerable communities and groups. The delivery of justice is slow and expensive in general, and in many cases inaccessible for victims of racism and racial discrimination. In particular, it is important that the determination and conclusion of cases of racism and racial discrimination are speeded up to strengthen the credibility of the justice system and to address the demand for justice by victims. In addition to the efforts and judicial and administrative actions to address the cases of racial violence, it is important to enhance measures aimed at providing various forms of assistance to victims, in particular medical and psychological assistance and support for livelihood opportunities.

One of the most worrying issues is the situation of some of the highly vulnerable communities including various indigenous and peasant communities and those subjected to servitude or forced labour, as well as Afro-Bolivians. Various manifestations of racism against these groups include racist attacks and insults in many spheres of life. Therefore, it is of vital importance to suppress all forms of racism against these highly vulnerable groups by strengthening the implementation of legal and other useful measures such as awareness raising, education and training.

Education is a fundamental means of eradicating racism and racial discrimination. However, it is of great concern that there are reports of racist insults and discriminatory acts against vulnerable indigenous peoples and Afro-Bolivians within institutions of education at all levels. Discrimination also persists in terms of access to education. Such manifestations of racism should be eradicated through strict application of legal and administrative measures as well as adoption and implementation of internal anti-racism policies and codes of conducts within institutions of education.

There have been efforts to address the stigmatization and stereotyping of refugees and migrants. However, there are still serious concerns of discriminatory treatment by law enforcement agencies against certain groups of migrants which should be dealt through training of relevant officials, public education and awareness raising campaigns.

As stated in the Durban Declaration, media can make a positive contribution to the fight against racism, racial discrimination, xenophobia and related intolerance. However, it is of concern that some media outlets in Bolivia have at times disseminated ideas and messages of racial superiority that incite racial hatred, and are not doing enough to provide a balanced coverage that includes the voice of discriminated communities and groups. It is important that media takes more responsibility in combatting racism and racial discrimination.

I welcome the adoption of the Law 045, which is in fulfillment of the requirements of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) as well as recommendations of the Committee on the Elimination of Racial Discrimination (CERD) and the Durban Declaration and Program of Action on the need to enact anti-racism legislation. More specifically, the General Recommendation 7 of the CERD states that the obligation to enact

legislation to eradicate racism is mandatory. Furthermore, the International Covenant on Civil and Political Rights (ICCPR) also requires that any advocacy of racial hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law. I note that there are concerns over the compatibility of the Law 045 with the protection of freedom of expression. However, it is important to point out that according to the CERD and established international law, the prohibition of promotion of ideas of racial superiority and racist propaganda is compatible with the obligation to protect and respect freedom of expression and opinion.

In the ultimate instant, any compatibility or otherwise of Law 045 with the obligation to protect freedom of expression and opinion would have to be determined by the judiciary in accordance with the provisions of the Bolivian Constitution and in accordance with Bolivia's obligations under international human rights law.

### **Concluding remarks**

I am pleased to note that overall Bolivia has made considerable progress in addressing the problems of racism and racial discrimination, and offers important examples on measures that other States can undertake in their efforts to combat racism and racial discrimination. However, as I have observed, major challenges remain. In particular, all these efforts need to be consolidated so that effective outcome is achieved for the benefit of the most vulnerable communities and groups.

## **K. Special Rapporteur on contemporary forms of slavery, including its causes and consequences<sup>149</sup>**

### **1. Mission to Peru, A/HRC/18/30/Add.2, 15 August 2011**

#### **A. Root causes**

31. Peru is characterized by huge disparities in terms of economic development between urban and rural areas of the country. Indigenous peoples, and to a lesser extent mestizos, are subjected to a considerable amount of discrimination in the labour market and are particularly vulnerable to slavery-like practices, given that they face high rates of poverty, discrimination and exclusion and live in remote areas where the State is all but absent. The ILO Committee of Experts, when considering in 2009 the implementation by Peru of the Forced Labour Convention (No. 29), noted that members of indigenous communities were victims of forced labour practices (slavery, debt bondage and serfdom), particularly in such sectors as agriculture, stock-raising and forestry, referring in particular to the region of Atalaya, the harvesting of chestnuts in Madre de Dios and widespread forced labour in illegal timber activities in the region of Ucayali. The lack of a State presence and/or the State's feeble capacity to implement labour legislation in certain regions, as well as the high level of demand for cheap labour linked to the extraction of resources, all contribute to the persistence of contemporary forms of slavery.

#### **1. Forced labour**

32. Forced labour in Peru, as in other parts of Latin America, is most likely to be a result of a system of debt bondage called *enganche*. The system lures workers into a situation of debt bondage, typically in the areas of illegal logging, informal mining and the harvesting of chestnut and Brazil nuts. The Special Rapporteur, following her visits to the departments of Madre de Dios and Ucayali, focused her attention on forced labour in the mining and logging sectors.

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<sup>149</sup> See also Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Gulnara Shahinian. UN Doc. A/HRC/12/21, 10 July 2009 at *inter alia* para. 49 (stating that "The indigenous and minority populations are more vulnerable to bonded labour because in many countries, they have limited access to land for their traditional income-generating activities such as cultivation or hunting. The issue of land ownership is closely linked with the phenomenon of bonded labour").

**(a) Logging sector**

33. The Special Rapporteur received information on the extent of forced labour in the illegal logging sector in the Peruvian rainforest and on the way workers, many of them indigenous, are tricked into debt bondage with their employers. The rising global price of luxury hardwoods, such as mahogany and cedar, has led to an intensification of the illegal exploitation of Amazon timber, which is mostly found to take place inside national indigenous community reserves. The World Wildlife Fund estimates the scale of illegal logging in Peru at 80 per cent. These operations are conducted through the falsification of documents provided for wood extraction or concessions, a practice known as *blanqueo de madera*, or wood laundering. ILO estimated in 2005 that profits from illegal logging alone amounted to \$75 million. The same study found that as many as 33,000 workers were in a situation of forced labour situation in 2005. Information received leads the Special Rapporteur to believe that, although the extremely isolated locations and clandestine nature figures of 2005 are likely to reflect the reality in 2011.

34. The Special Rapporteur was informed of two main forms of forced labour in logging activities. First, indigenous communities are contracted to provide timber from their own land; second, timber bosses hire indigenous and mestizo men to work on their camps. In both instances, deception is used to entrap workers in a cycle of debt and servitude, which can be passed on from one generation to the next.

35. In the first case, which is the most frequent, the “authorizing logger” linked to large logging companies hands out a quantity of money to middlemen, who approach indigenous communities and offer them advances in the form of basic goods, public goods (such as the promise to build schools) or money. These advances are offered on the condition that the community members, who know the area and its trees better than anyone else, deliver cut timber of a certain quality. Generally these agreements are made through verbal or written contracts, where no reference is made to the market value of the timber, often deceiving indigenous people. Thus, when the workers deliver the timber, they are told that it is of inferior quality, not worth as much as agreed, and that, in order to be paid, they have to provide more timber. Concurrently, the workers accumulate debts with the middlemen by purchasing food and basic goods from them at three to five times the market price. The middlemen repeatedly postpone final payment on delivered timber while continuing to undervalue it, thereby increasing the debt incurred by the communities. Additionally, the communities’ “contracts” often state that they are not allowed to sell their timber or work for anyone else. The communities gradually find themselves trapped: they are increasingly indebted to the middlemen and underpaid for timber, and do not have the capacity to seek work or money from elsewhere to pay them back. Middlemen can exploit this situation by demanding that the debt be repaid by providing free labour at logging camps.

36. In the second case, forced labour is used in logging camps where a majority of mestizos from cities in the highlands and on the coast, but also indigenous workers from the local or neighbouring areas, are recruited. In some cases, local indigenous leaders themselves are contracted to recruit men from their communities; in rare cases, armed groups have been known to capture indigenous men and force them to work in the camps. As with the entrapment of indigenous communities, a cycle of indebtedness is created by the same modus operandi, namely recruitment by means of a wage advance, marking the beginning of a spiral of indebtedness, subsequent manipulation of the worker’s debt (as his work is not appropriately accounted towards the reimbursement of his debt), and obligations to buy food and other subsistence goods at inflated prices on credit at the camp store. In addition, debt also continues to increase because workers are often unpaid during the first two or three months of work. In illegal logging camps, there have been also many reports of workers being

threatened and documents and salaries being retained. The presence of armed guards to prevent workers from leaving the camps before all their debts are settled has also been reported, even though escape is virtually impossible owing to the extreme isolation of the camps. It has been reported that, on average, a logging camp is made up of 30 male loggers, a woman who cooks for the camp and another who is sexually exploited.

37. In both of the above cases, the system of wages advance progressively turns into a system of debt bondage where workers are retained without pay. The indebted worker has no choice but to pay the debt by working for the *enganchador* to whom he is indebted, entering into a circle of advances, deceit, more advances and more debt. Usually, this type of debt bondage is short term, lasting no more than one harvest, but cases have been reported of indigenous communities that have remained in debt bondage for decades or even generations.

38. The Special Rapporteur wishes to draw urgent attention to the detrimental impact on the environment of illegal logging activities, including their impact on the local fauna, deforestation and the high level of dioxin emissions.

#### **(b) Mining sector**

39. The Special Rapporteur received information on the extent of contemporary forms of slavery of both adults and children in the illegal small-scale mining sector, in particular in Madre de Dios, a region deeply affected by the gold rush which have seen the unregulated migration of people from the Andean regions and from adjacent countries, such as Bolivia (Plurinational State of) and Brazil. The remote and informal nature of small scale mining activities makes it difficult to identify the phenomenon; the Special Rapporteur did, however, witness the slavery-like conditions of victims in the mining sector. Men and adolescents are often recruited through deception, being offered working conditions and workers' rights that are subsequently not complied with in practice. Often, the workers receive advance payments in cash or goods during their first three months of work, which are then deducted from the salary, using a mechanism of overestimating the goods provided and underestimating the quantity and quality of the gold handed over, so that the worker is indebted to his "patron", a situation similar to the *enganche* system seen in the logging sector. They work long hours in very dangerous conditions, are exposed to toxic substance (such as mercury) and to serious diseases (such as malaria). Workers are poorly fed and have no form of labour protection or health and social security coverage. The Special Rapporteur heard disturbing allegations of cases of disappeared miners whose whereabouts remained unknown since, according to information received, investigation was impossible not only owing to the lack of State presence, but also to an environment where "employers" are known only by their nicknames, helping to perpetuate a climate of impunity. While mining is mostly performed by men, the women employed as cooks in the mining camps are at high risk of sexual exploitation.

40. With regard to children in the informal mining sector, the Special Rapporteur notes that, although the mechanization of mining activities has lessened the presence of children in both extracting and processing activities in some regions, such as Madre de Dios, the phenomenon of child labour still persists, in particular in very remote areas of the province as well as in others, such as Ayacucho and Puno. In 2006, it was estimated that around 20 per cent of the miners in small-scale mining in Madre de Dios were between 11 and 18 years old. Such children are involved in high-risk activities and handle highly toxic products, like mercury. Children are also exposed to serious injury and harm, breathe contaminated air and are exposed to soil and water that are contaminated with metals and chemical products. The Special Rapporteur considers that the work carried out by children in the mining sector, by its very nature and the conditions in which it is performed, qualifies as a contemporary form of slavery.

41. The Special Rapporteur notes that Act No. 28992 of 27 March 2007, which amends Act No. 27651 on the formalization and promotion of small-scale and artisanal mining, expressly prohibits the employment of persons under 18 years of age in mining of any description. She also notes the efforts of the Government to support the formalization of artisanal mining, including through the adoption of a national plan and a bill envisioning the establishment of an agency in charge of promoting the formalization of this sector. While regretting that none of those documents refer to the labour conditions of miners or to the prohibition of the use of children in the mines, it is nevertheless the Special Rapporteur's opinion that formalization is an effective tool to combat both forced labour and children working in the mines.

42. Illegal mining has brought with it a wider range of contemporary forms of slavery, most prominently trafficking in girls and young women from impoverished rural regions of the Amazon recruited and coerced into prostitution in brothels opened in mining shanty towns. Once in the brothel, victims are deprived of their identity documents and are forced to prostitute themselves. They are not allowed to enter or leave the premises at any time, are prohibited from leaving the dormitory (even to buy food) outside of working hours (from 7 p.m. to 4 a.m.), during which they are not allowed to use the bathroom or eat. If they break any of the rules of the brothel, they are liable to a fine.

43. The Special Rapporteur is alarmed at the degree of contamination and destruction of the Amazon forest. The mercury used to extract gold is seriously polluting rivers and endangers the flora, fauna and human population of the zone.

### **Conclusions and recommendations**

70. Peru has made genuine efforts to establish policies aimed at the elimination of contemporary forms of slavery affecting different sectors of the population.

71. Despite the progress made, the Special Rapporteur holds the view that contemporary forms of slavery persist in Peru and are directly related to pervasive instances of discrimination, in particular against indigenous peoples, lack of economic opportunities and poverty. Victims are generally unaware of their rights and the protection against contemporary forms of slavery offered by the State.

72. On the basis of her findings, the Special Rapporteur makes the recommendations outlined below.

### **Addressing legislative gaps and strengthening the implementation of legislation**

73. The Special Rapporteur recommends that the Government of Peru: ...

- (c) Ensure that the new bill on forestry expressly prohibits the use of any form of forced labour and respects the rights of indigenous people in accordance with ILO Convention No. 169;
- (d) Ensure that mining concessions contain a clear prohibition of forced labour and child slavery and that companies found to be in breach of this prohibition will have their concessions revoked, and ensure that those responsible are prosecuted in accordance with the law; ...

### **Effective remedies for victims of contemporary forms of slavery**

78. The Special Rapporteur further recommends that the Government:

- (a) Ensure easy access to information and complaint mechanisms to victims of contemporary forms of slavery, for instance by providing telephone hotlines with operators speaking in native languages; ...

- (f) Take the steps necessary to achieve effective protection from discrimination against indigenous peoples in various domains, in particular in employment, housing, health and education;
- (g) Pay special attention to the issues that indigenous peoples have raised to date in various forums, including those relating to their rights to lands and territories and projects for the exploitation of natural resources.<sup>150</sup>

## **L. 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, A/HRC/20/29, 10 April 2012**

1. In its resolution 17/4, the Human Rights Council unanimously endorsed the Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework. This landmark decision by the Council marked the first time an intergovernmental body of the United Nations had endorsed a normative document on the previously very divisive issue of business and human rights. The endorsement by the Council effectively established the Guiding Principles as the authoritative global standard for preventing and addressing adverse impacts on human rights arising from business-related activity.

2. In resolution 17/4, the Human Rights Council decided to establish a working group on the issue of human rights and transnational corporations and other business enterprises with a mandate to, inter alia:

- Promote the effective and comprehensive dissemination and implementation of the Guiding Principles
- Identify, exchange and promote good practices and lessons learned on the implementation of the Guiding Principles and to assess and to make recommendations thereon and, in that context, to seek and receive information from all relevant sources
- Support capacity-building and, upon request, provide advice and recommendations regarding the development of domestic legislation and policies relating to human rights and business
- Explore options and make recommendations for enhancing access to effective remedies available to those whose human rights are affected by corporate activities, including those in conflict areas
- Integrate a gender perspective throughout the work of the mandate and give special attention to persons living in vulnerable situations, in particular children
- Guide the work of the Forum on Business and Human Rights, open to relevant stakeholders, to discuss trends and challenges in implementing the Guiding Principles and promote dialogue and cooperation on issues linked to business and human rights

20. Governance gaps lie at the core of the human rights and business challenge. This remains the case for all States and regions and for companies of all sizes, sectors and operational contexts. The Working Group is aware of a broad range of such gaps, concerns and challenges, including in such areas as governance, corruption, conflict zones and persons living in vulnerable situations, including children, indigenous peoples, migrant workers, minorities and persons with disabilities. A gender perspective adds further dimensions to these concerns.

57. The Working Group recognizes that some groups and individuals face particularly significant obstacles when seeking remedies for business-related human rights grievances. Such groups may include indigenous peoples, children, women, migrant workers, older persons, persons with

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<sup>150</sup> A/HRC/12/34/ Add.8 para. 40.

disabilities, refugees, ethnic, religious and other minorities. Among these, the challenging nexus between the role of the State, business activities and the situation of indigenous peoples was emphasized by a range of stakeholders.

**67. Address the situation of groups vulnerable to impact of business activities, including indigenous peoples:** Many factors can influence the vulnerability of rights-holders to business-related human rights abuse. The Working Group will therefore accord broad interpretation to this aspect of its mandate in order to ensure appropriate attention to the wide range of rights-holders mentioned in the present report that are particularly vulnerable to the negative impacts of business activity. In particular, indigenous peoples in all regions are profoundly and disproportionately affected by business-related activities, such as resource extraction and infrastructure development. They frequently face discrimination in law and social practice and are marginalized in the development of policies, laws and regulations that have a bearing on business and human rights issues that affect them. Business-related human rights impact on individuals from groups or populations that may be at heightened risk of vulnerability or marginalization must be specifically addressed by States and companies in their implementation efforts.

**70. Provide further clarification on the application of the Guiding Principles:** Although they are universally applicable, the Guiding Principles are not intended as a tool kit, simply to be taken off the shelf and plugged in; in other words, when it comes to the means for implementation, “one size does not fit all”.<sup>32</sup> The implementation of the Guiding Principles will inevitably give rise to questions and some need for further clarification in specific areas and contexts of actual practice. ... With regard to the impact on specific groups, the implications for the State duty to protect, due diligence by business and provision of remedy with regard to the situation of indigenous peoples is yet another area for further clarification, including as it relates to the issue of consultation. ...

82. The Working Group aims to identify opportunities for strategic collaboration with those organizations identified within the resolution establishing the mandate, including relevant special procedures of the Human Rights Council, United Nations bodies, specialized agencies, funds and programmes, other international bodies, Governments, transnational corporations and other business enterprises, national human rights institutions, representatives of indigenous peoples, civil society organizations, regional and subregional organizations.<sup>38</sup> Further to these, the Working Group seeks to establish both direct and indirect collaboration with business associations, academic institutions and think tanks, industry round tables, multi-stakeholder initiatives, trade union federations, thought leaders, human rights defenders addressing business activities and grass-roots organizations.

## **2. Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework, A/HRC/17/31, 21 March 2011**

6. The Framework rests on three pillars. The first is the State duty to protect against human rights abuses by third parties, including business enterprises, through appropriate policies, regulation, and adjudication. The second is the corporate responsibility to respect human rights, which means that business enterprises should act with due diligence to avoid infringing on the rights of others and to address adverse impacts with which they are involved. The third is the need for greater access by victims to effective remedy, both judicial and non-judicial. Each pillar is an essential component in an inter-related and dynamic system of preventative and remedial measures: the State duty to protect because it lies at the very core of the international human rights regime; the corporate responsibility to respect because it is the basic expectation society has of business in relation to human rights; and access to remedy because even the most concerted efforts cannot prevent all abuse.

9. In its resolution 8/7, welcoming the “Protect, Respect and Remedy” Framework, the Council also extended the Special Representative’s mandate until June 2011, asking him to “operationalize” the Framework – at is, to provide concrete and practical recommendations for its implementation. This constitutes the mandate’s third phase. During the interactive dialogue at the Council’s June 2010 session, delegations agreed that the recommendations should take the form of “Guiding Principles”; these are annexed to this report.

### **General principles**

These Guiding Principles are grounded in recognition of:

- (a) States’ existing obligations to respect, protect and fulfil human rights and fundamental freedoms;
- (b) The role of business enterprises as specialized organs of society performing specialized functions, required to comply with all applicable laws and to respect human rights;
- (c) The need for rights and obligations to be matched to appropriate and effective remedies when breached.

These Guiding Principles apply to all States and to all business enterprises, both transnational and others, regardless of their size, sector, location, ownership and structure.

These Guiding Principles should be understood as a coherent whole and should be read, individually and collectively, in terms of their objective of enhancing standards and practices with regard to business and human rights so as to achieve tangible results for affected individuals and communities, and thereby also contributing to a socially sustainable globalization.

Nothing in these Guiding Principles should be read as creating new international law obligations, or as limiting or undermining any legal obligations a State may have undertaken or be subject to under international law with regard to human rights.

These Guiding Principles should be implemented in a non-discriminatory manner, with particular attention to the rights and needs of, as well as the challenges faced by, individuals from groups or populations that may be at heightened risk of becoming vulnerable or marginalized, and with due regard to the different risks that may be faced by women and men.

## **I. The State duty to protect human rights**

### **A. Foundational principles**

1. States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.
2. States should set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations.

### **B. Operational principles**

#### **General State regulatory and policy functions**

3. In meeting their duty to protect, States should:
  - (a) Enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights, and periodically to assess the adequacy of such laws and address any gaps;

- (b) Ensure that other laws and policies governing the creation and ongoing operation of business enterprises, such as corporate law, do not constrain but enable business respect for human rights;
- (c) Provide effective guidance to business enterprises on how to respect human rights throughout their operations;
- (d) Encourage, and where appropriate require, business enterprises to communicate how they address their human rights impacts.

### *Commentary*

...

Guidance to business enterprises on respecting human rights should indicate expected outcomes and help share best practices. It should advise on appropriate methods, including human rights due diligence, and how to consider effectively issues of gender, vulnerability and/or marginalization, recognizing the specific challenges that may be faced by indigenous peoples, women, national or ethnic minorities, religious and linguistic minorities, children, persons with disabilities, and migrant workers and their families.

### **The State-business nexus**

4. States should take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the State, or that receive substantial support and services from State agencies such as export credit agencies and official investment insurance or guarantee agencies, including, where appropriate, by requiring human rights due diligence.
5. States should exercise adequate oversight in order to meet their international human rights obligations when they contract with, or legislate for, business enterprises to provide services that may impact upon the enjoyment of human rights.
6. States should promote respect for human rights by business enterprises with which they conduct commercial transactions.

### **Supporting business respect for human rights in conflict-affected areas**

7. Because the risk of gross human rights abuses is heightened in conflict-affected areas, States should help ensure that business enterprises operating in those contexts are not involved with such abuses, including by:
  - (a) Engaging at the earliest stage possible with business enterprises to help them identify, prevent and mitigate the human rights-related risks of their activities and business relationships;
  - (b) Providing adequate assistance to business enterprises to assess and address the heightened risks of abuses, paying special attention to both gender-based and sexual violence;
  - (c) Denying access to public support and services for a business enterprise that is involved with gross human rights abuses and refuses to cooperate in addressing the situation;
  - (d) Ensuring that their current policies, legislation, regulations and enforcement measures are effective in addressing the risk of business involvement in gross human rights abuses.

### **Ensuring policy coherence**

8. States should ensure that governmental departments, agencies and other State-based institutions that shape business practices are aware of and observe the State's human rights obligations when fulfilling their respective mandates, including by providing them with relevant information, training and support.

9. States should maintain adequate domestic policy space to meet their human rights obligations when pursuing business-related policy objectives with other States or business enterprises, for instance through investment treaties or contracts.

10. States, when acting as members of multilateral institutions that deal with business related issues, should:

(a) Seek to ensure that those institutions neither restrain the ability of their member States to meet their duty to protect nor hinder business enterprises from respecting human rights;

(b) Encourage those institutions, within their respective mandates and capacities, to promote business respect for human rights and, where requested, to help States meet their duty to protect against human rights abuse by business enterprises, including through technical assistance, capacity-building and awareness-raising;

(c) Draw on these Guiding Principles to promote shared understanding and advance international cooperation in the management of business and human rights challenges.

## **II. The corporate responsibility to respect human rights**

### **A. Foundational principles**

11. Business enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.

12. The responsibility of business enterprises to respect human rights refers to internationally recognized human rights – understood, at a minimum, as those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labour Organization’s Declaration on Fundamental Principles and Rights at Work.

#### *Commentary*

...

Depending on circumstances, business enterprises may need to consider additional standards. For instance, enterprises should respect the human rights of individuals belonging to specific groups or populations that require particular attention, where they may have adverse human rights impacts on them. In this connection, United Nations instruments have elaborated further on the rights of indigenous peoples; women; national or ethnic, religious and linguistic minorities; children; persons with disabilities; and migrant workers and their families. ...

13. The responsibility to respect human rights requires that business enterprises:

(a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur;

(b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.

14. The responsibility of business enterprises to respect human rights applies to all enterprises regardless of their size, sector, operational context, ownership and structure. Nevertheless, the scale and complexity of the means through which enterprises meet that responsibility may vary according to these factors and with the severity of the enterprise’s adverse human rights impacts.

15. In order to meet their responsibility to respect human rights, business enterprises should have in place policies and processes appropriate to their size and circumstances, including:

- (a) A policy commitment to meet their responsibility to respect human rights;
- (b) A human rights due-diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights;
- (c) Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute.

## **B. Operational principles**

### **Policy commitment**

16. As the basis for embedding their responsibility to respect human rights, business enterprises should express their commitment to meet this responsibility through a statement of policy that:

- (a) Is approved at the most senior level of the business enterprise;
- (b) Is informed by relevant internal and/or external expertise;
- (c) Stipulates the enterprise's human rights expectations of personnel, business partners and other parties directly linked to its operations, products or services;
- (d) Is publicly available and communicated internally and externally to all personnel, business partners and other relevant parties;
- (e) Is reflected in operational policies and procedures necessary to embed it throughout the business enterprise.

### **Human rights due diligence**

17. In order to identify, prevent, mitigate and account for how they address their adverse human rights impacts, business enterprises should carry out human rights due diligence. The process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed. Human rights due diligence:

- (a) Should cover adverse human rights impacts that the business enterprise may cause or contribute to through its own activities, or which may be directly linked to its operations, products or services by its business relationships;
- (b) Will vary in complexity with the size of the business enterprise, the risk of severe human rights impacts, and the nature and context of its operations;
- (c) Should be ongoing, recognizing that the human rights risks may change over time as the business enterprise's operations and operating context evolve.

18. In order to gauge human rights risks, business enterprises should identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships. This process should:

- (a) Draw on internal and/or independent external human rights expertise;
- (b) Involve meaningful consultation with potentially affected groups and other relevant stakeholders, as appropriate to the size of the business enterprise and the nature and context of the operation.

19. In order to prevent and mitigate adverse human rights impacts, business enterprises should integrate the findings from their impact assessments across relevant internal functions and processes, and take appropriate action.

- (a) Effective integration requires that:
  - (i) Responsibility for addressing such impacts is assigned to the appropriate level and function within the business enterprise;
  - (ii) Internal decision-making, budget allocations and oversight processes enable effective responses to such impacts.
- (b) Appropriate action will vary according to:

- (i) Whether the business enterprise causes or contributes to an adverse impact, or whether it is involved solely because the impact is directly linked to its operations, products or services by a business relationship;
- (ii) The extent of its leverage in addressing the adverse impact.

20. In order to verify whether adverse human rights impacts are being addressed, business enterprises should track the effectiveness of their response. Tracking should:

- (a) Be based on appropriate qualitative and quantitative indicators;
- (b) Draw on feedback from both internal and external sources, including affected stakeholders.

21. In order to account for how they address their human rights impacts, business enterprises should be prepared to communicate this externally, particularly when concerns are raised by or on behalf of affected stakeholders. Business enterprises whose operations or operating contexts pose risks of severe human rights impacts should report formally on how they address them. In all instances, communications should:

- (a) Be of a form and frequency that reflect an enterprise's human rights impacts and that are accessible to its intended audiences;
- (b) Provide information that is sufficient to evaluate the adequacy of an enterprise's response to the particular human rights impact involved;
- (c) In turn not pose risks to affected stakeholders, personnel or to legitimate requirements of commercial confidentiality.

### **Remediation**

22. Where business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes.

### **Issues of context**

23. In all contexts, business enterprises should:

- (a) Comply with all applicable laws and respect internationally recognized human rights, wherever they operate;
- (b) Seek ways to honour the principles of internationally recognized human rights when faced with conflicting requirements;
- (c) Treat the risk of causing or contributing to gross human rights abuses as a legal compliance issue wherever they operate.

24. Where it is necessary to prioritize actions to address actual and potential adverse human rights impacts, business enterprises should first seek to prevent and mitigate those that are most severe or where delayed response would make them irremediable.

## **III. Access to remedy**

### **A. Foundational principle**

25. As part of their duty to protect against business-related human rights abuse, States must take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when such abuses occur within their territory and/or jurisdiction those affected have access to effective remedy.

## **B. Operational principles**

### **State-based judicial mechanisms**

26. States should take appropriate steps to ensure the effectiveness of domestic judicial mechanisms when addressing business-related human rights abuses, including considering ways to reduce legal, practical and other relevant barriers that could lead to a denial of access to remedy.

#### *Commentary*

...

Legal barriers that can prevent legitimate cases involving business-related human rights abuse from being addressed can arise where, for example: ...

- Where certain groups, such as indigenous peoples and migrants, are excluded from the same level of legal protection of their human rights that applies to the wider population.

### **State-based non-judicial grievance mechanisms**

27. States should provide effective and appropriate non-judicial grievance mechanisms, alongside judicial mechanisms, as part of a comprehensive State-based system for the remedy of business-related human rights abuse.

### **Non-State-based grievance mechanisms**

28. States should consider ways to facilitate access to effective non-State-based grievance mechanisms dealing with business-related human rights harms.

29. To make it possible for grievances to be addressed early and remediated directly, business enterprises should establish or participate in effective operational-level grievance mechanisms for individuals and communities who may be adversely impacted.

30. Industry, multi-stakeholder and other collaborative initiatives that are based on respect for human rights-related standards should ensure that effective grievance mechanisms are available.

### **Effectiveness criteria for non-judicial grievance mechanisms**

31. In order to ensure their effectiveness, non-judicial grievance mechanisms, both State based and non-State-based, should be:

- (a) Legitimate: enabling trust from the stakeholder groups for whose use they are intended, and being accountable for the fair conduct of grievance processes;
- (b) Accessible: being known to all stakeholder groups for whose use they are intended, and providing adequate assistance for those who may face particular barriers to access;
- (c) Predictable: providing a clear and known procedure with an indicative timeframe for each stage, and clarity on the types of process and outcome available and means of monitoring implementation;
- (d) Equitable: seeking to ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair, informed and respectful terms;
- (e) Transparent: keeping parties to a grievance informed about its progress, and providing sufficient information about the mechanism's performance to build confidence in its effectiveness and meet any public interest at stake;
- (f) Rights-compatible: ensuring that outcomes and remedies accord with internationally recognized human rights;

(g) A source of continuous learning: drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms;

Operational-level mechanisms should also be:

(h) Based on engagement and dialogue: consulting the stakeholder groups for whose use they are intended on their design and performance, and focusing on dialogue as the means to address and resolve grievances.

## **M. Independent Expert on the right to water and sanitation**

### **1. Mission to the USA, 22 February to 4 March 2011: End of Mission Statement**

I undertook an official mission to the United States, at the invitation of the Government, from 22 February to 4 March 2011. The purpose of the mission was to examine the way in which the human right to water and sanitation is being realized in the United States. ...

On 28 July 2010, the United Nations General Assembly recognized the right to water and sanitation. On 30 September 2010, the United Nations Human Rights Council affirmed, by consensus, the right and further specified that the right is derived from the right to an adequate standard of living. I wish to acknowledge that the United States joined this global consensus, which represents a political commitment to the realization of the right to water and sanitation. ...

Human rights require a focus on the most vulnerable, those who are most often excluded from progress. Often, these people are the most difficult to reach, but this cannot be a justification for neglecting them – on the contrary. Human rights require that there be universal access. Hence, merely addressing formal or direct discrimination will not ensure substantive equality. To eliminate discrimination in practice, special attention must be paid to groups of individuals, who suffer historical or persistent prejudice instead of merely comparing the formal treatment of individuals in similar situations.

### **4. Indigenous Peoples**

There are roughly 2.7 million American Indians, including Alaskan and Hawaiian Natives, living in the U.S. The vast majority of these belong to one of 565 recognized tribes. Nevertheless, many more belong to federally unrecognized tribes. In California alone there are over 300,000 American Indians that are federally unrecognized as members tribes. Many American Indian communities lack access to safe drinking water and basic sanitation in disproportionate numbers. Thirteen per cent of American Indian households do not have access to safe water and/or wastewater disposal. In non-native households, this number is 0.6 per cent. I understand that EPA has programmes to promote access to water and sanitation by American Indians.

Like others, I welcome the decision by the United States to lend its support for the UN Declaration on the Rights of Indigenous Peoples. This is a positive step, whereby the U.S. joined global consensus. In this context I recall that in human rights terms, tribal existence and identity do not depend on federal recognition or acknowledgment of the tribe.

I visited the Winnemen Wintu in Redding, California, where this federally unrecognized tribe faces challenges in accessing safe drinking water and sanitation. Furthermore, they have been unable to exercise the right to maintain their distinctive spiritual relationship with their traditionally used waters. Legal action to change the status of unrecognized and terminated tribes is necessary to enable all American Indians to gain the respect, privileges, religious freedom, and land and water rights to which they are entitled.

## IV. Conclusions

...  
In September 2010, a Cabinet-level meeting decided to reconvene the interagency working group on environmental justice. Furthermore, in December 2010, the White House Forum on environmental justice took place, focusing, inter alia, on access to water and sanitation for low-income minorities and indigenous peoples. Nevertheless, in the United States more concerted efforts are required to ensure targeting of policies and programmes to reach the hidden and poorest segments of the population.

“The US must do more to eliminate discrimination in practice,” said the Independent Expert mandated by the UN Human Rights Council to examine the issue of human rights obligations related to access to safe drinking water and sanitation. “I am concerned that several laws, policies and practices, while appearing neutral at face value, have a disproportionate impact on the enjoyment of human rights by certain groups.”

## N. Independent Expert on Minority Issues

### 1. Mission to Rwanda, 31 January–7 February 2011, A/HRC/19/56/Add.1, 28 November 2011

#### **The situation of Batwa communities in Rwanda**

49. While the Constitution rejects ethnic classifications, it does recognize an undefined group referred to as “historically marginalized people”. The 2011 National Social Protection Strategy states that: “historically marginalised people – who number around 25-30,000 in total – are believed to experience higher levels of poverty and worse social indicators than the general population, although little objective data is available” (p. 13). While the Batwa are considered to be in the category of “historically marginalized people”, there is a lack of clarity with regard to the category’s precise official definition. It is evident that the Government also includes other vulnerable groups among the category.

50. The Senate Commission in charge of Social Affairs, Human Rights and Social Issues published the *Report on the Conditions of Some Rwandans Disadvantaged Throughout History* (the Senate Report), widely understood to be focused on the Batwa. This report highlighted that: “some people still have the attitude of despising them, of not seeing them as genuine human beings, and they address them in words fuelling discrimination”.<sup>27</sup>

51. The Senate Report concluded that “these Rwandans have special and serious problems to be solved as a matter of urgency”, including: “not seeing themselves as people with importance and rights; living like animals, as they have no adequate accommodation; not having any land to cultivate or to be used for development activities; not having property or crafts to help them earn a living; not utilizing healthcare services; lacking income and jobs; not having their children in school; early marriage or promiscuity; ignorance; and not socializing with other Rwandans”. NGOs that the independent expert consulted stated that these findings remain accurate and little progress has been made in improving the situation of the Batwa.

52. The lack of disaggregated official statistics means that problems, including poor socio-economic conditions and declining Batwa numbers, are not apparent in official data. Disaggregated data would help reveal the full extent of such problems and allow informed and targeted policy and programme responses. Batwa representatives emphasize that a Government policy to treat all as equal has as a

consequence the failure of national Government and local authorities to acknowledge or respond to their particular economic and social circumstances.

53. In May 2009 the Human Rights Committee stated its concern regarding reports that members of the Batwa community are victims of marginalization and discrimination (art. 27 of the Covenant). The Committee recommended that Rwanda: “should take steps to ensure that members of the Batwa community are protected against discrimination in every field, that they are provided with effective remedies in that regard and that they take part in public affairs” (CCPR/C/RWA/CO/3, para. 22).

### **1. Identity**

54. Batwa representatives emphasize their ethnic and cultural distinctiveness.<sup>28</sup> It was noted by Batwa NGOs that Batwa have distinctive dialects and intonation comprehensible only to other Batwa, and unique elements of culture and customs. In contrast to the Government’s official version of the country’s ethnic history, Batwa historical narrative maintains that they were the original inhabitants of Rwandan forests following hunter-gatherer subsistence livelihoods. As other ethnic groups encroached onto their territories bringing livestock farming and cultivation, the Batwa were forced to move to ever more remote areas of forest. In the modern era, widespread subsistence and commercial agriculture, national parks and tourism development have forced Batwa to leave the remaining areas of forest which they occupied.

55. Community representatives in the vicinity of Musanze near the Volcanoes National Park stated that they were forced from the forests to areas on the lower slopes of the volcanoes after 1994. Some community members stated that they wished to return to the forest and traditional hunter-gatherer ways of life, but could no longer access the forests and their forest-based food and medicinal sources. The distinct hunter-gatherer identities of the Batwa and their deep knowledge of the forests have undoubtedly been lost by new generations.

56. NGOs working on Batwa rights note that, after the 2003 Constitution and the legislation and national policy which followed came into force, they faced accusations of “divisionism” when using the term Batwa, making claims for distinct Batwa identity or advocating for Batwa rights as such.

57. In 2011, the Committee on the Elimination of Racial Discrimination expressed regret at the Government’s policy of not recognizing the Batwa community as an indigenous people (CERD/C/RWA/CO/13-17, para. 11). The African Peer Review Mechanism of the African Union produced a country report in November 2005,<sup>29</sup> which stated: “with respect to the Batwa minority, the approach adopted by the authorities was based on a policy of assimilation. There appears to be a desire to obliterate distinctive identities and to integrate all into some mainstream socio-economic fabric of the country”. The Government was called upon to initiate an in-depth dialogue with the Batwa.

58. The Government stated in response that, “the Batwa community continues to have a disproportionate number of vulnerable members, and seem not to benefit sufficiently from the ongoing social economic integration of all Rwandans ... the Government has never had a policy of assimilation, since that is comparable to socio-cultural genocide ... it is clear that a targeted response to their specific problems is recommended and shall be reflected in the plan of action”.<sup>30</sup>

### **2. Housing, land and income**

59. In most Batwa communities visited by the independent expert, housing conditions were far below minimum standards and frequently not suitable for human habitation. Shelters were commonly small and fragile constructions of sticks, grass, plastic sheeting and/or pieces of textile. They provided little protection from the elements, including frequent heavy rainfall. These communities were commonly

located on steeply sloping hillsides that were not conducive to anything but small-scale shelters, but frequently housed whole families including children.

60. In December 2010, the Government's "Bye Bye Nyakatsi" programme required demolition of thatched roofed homes (*nyakatsi*) to be replaced by iron-roofed structures. NGOs are concerned that local authorities have demolished the houses of Batwa before any replacement houses or appropriate assistance has been provided. While the programme is not solely for the Batwa, the Batwa may be disproportionately affected, since they commonly live in rudimentary thatched shelters, exist in conditions of disadvantage and vulnerability and are poorly equipped to respond to difficulties created by the premature dismantling of their homes.

61. In one community near Butare, community members spoke from the remains of their homes, which they said had been demolished just prior to the independent expert's visit, leaving them without shelter and forced to rely on neighbours. A plot had been cleared for construction, but no houses had been provided. In every Batwa community visited with national NGOs, communities asked her to convey their plight to the Government and request urgent provision of adequate housing.

62. The Ombudsman's office stated that Batwa benefit equally from Government programmes to provide housing and iron roofing, but frequently sell the roofing provided or knock down the walls of houses to create a single room. Batwa were frequently referred to as "ignorant" and not capable of benefiting from Government assistance. Officials stated that they had received no complaints from Batwa, but undertook to assess the situation of the communities identified. Batwa representatives told the independent expert that discriminatory treatment and lack of confidence created barriers to their filing complaints with authorities.

63. Many Batwa are land-less agricultural labourers or, lacking paid employment, exist through begging or charity. Batwa-rights NGOs noted that Batwa were not used to land ownership or managing finances and often lacked cultivation skills enabling them to adapt to life outside of the forest. In recent years, pottery has become an important source of income and a significant aspect of Batwa identity. However, lack of access to clay and cheap modern alternatives to traditionally crafted pots have limited income from this activity. Many Batwa today live in extreme poverty.

64. The Ombudsman stated that under a Government public works programme, people without income are given work by the district authorities including cleaning and road maintenance. While Batwa should have access to this programme, it was evident that some communities were living in remote areas and under conditions of extreme hardship and that such Government assistance was failing to reach them.

65. The "Girinka" programme, a "One Cow per Poor Family" programme, aims to provide poor families occupying more than 0.7 hectares of land with a cow. NGOs point out that many Batwa do not have land that is suitable for livestock, and often lack animal husbandry skills, making them largely unable to meet the criteria for participating in or benefit from this programme.

### **3. Health**

66. Community members described the effects of their living conditions on their health and highlighted inadequate health-care provision. In Bwiza, a Batwa community near Kigali, high infant mortality rates, short average lifespans and falling population numbers are in stark contrast to the general population growth. Community members described frequently experiencing hunger and children showed obvious signs of malnutrition. Poor shelters and exposure to cold and rain have negative implication for Batwa health along with limited sources of drinking water.

67. According to representatives of the Community of Potters of Rwanda,<sup>31</sup> their research had demonstrated that the percentage of Batwa who had health-insurance coverage was declining. In Bwiza, community members said that the Batwa in that community had not benefited from the Government programme of subsidized insurance cards for the poorest members of society. Certain individuals displayed wounds clearly requiring medical treatment. The Government that “all indigents and other vulnerable persons have their health insurance paid by Government (Some 650,000 to 700,000 persons, including the historically marginalized people)”<sup>32</sup>

68. Batwa representatives emphasized the effects of poverty on the lives and health of Batwa women. Women in extreme poverty and with poor education and health information may be vulnerable to high rates of HIV/AIDS and sexually transmitted diseases. Poor levels of education and medical information also play a role. Very high infant mortality rates are a manifestation of poor living conditions and lack of access to adequate maternal health care.

#### **4. Education**

69. Research indicates that Batwa children experience significant obstacles to their right to education relative to other population groups, including low levels of enrolment, particularly at the post-primary level, very high dropout rates and poor education outcomes. According to a survey conducted by the Community of Potters of Rwanda,<sup>33</sup> only 23 per cent of Batwa can read and write. Very few Batwa proceed to higher education institutions. Research<sup>34</sup> in 2008 and 2009 revealed that 54 per cent of Batwa women and girls interviewed had not been to school.

70. The Government and NGOs highlighted that the Ministry of Education had initiated a policy of free primary and secondary education for children from marginalized and other vulnerable families in State schools in 2008/9. The Government has achieved commendable successes in the field of education and notes that Rwanda is close to reaching universal education in primary and secondary school. Primary school enrolment stands at 94 per cent for boys and 96.5 per cent for girls. However, the poor living conditions of some Batwa families are clearly affecting the ability of Batwa children to attend school or achieve good education outcomes. In one community visited near Musanze, hunger was highlighted as the primary factor contributing to poor school attendance. Batwa representatives also stated that children face discrimination in school and are often “chased away” from the classroom.

#### **5. Government responses**

71. The Government states that it “doesn’t deny the existence of a people called Batwa [but] refutes the tendency to allege that the Batwa population of Rwanda constitutes an ethnic group or an indigenous people”<sup>35</sup> It acknowledged that, in accordance with the policy on rural settlement and programme of natural forests and national parks, Batwa and other Rwandans were removed from forests and relocated to organized settlements across the country through a consultative process. The Government asserts that by living in organized settlements, historically marginalized people have greater access to essential services and are better able to benefit from socio-economic opportunities and assistance programmes.

72. The Government notes that historically marginalized people benefit from a variety of Government programmes such as universal education for all, the “One Cow per Poor Family” programme and other programmes as set out in Rwanda’s vision 2020 Umurenge Programme and Poverty Reduction Strategy Paper, among others (see CERD/C/RWA/13-17, paragraph 192). The independent expert visited villages, including Gahini in the Eastern Province and in Muhanga in the Southern Province, with the National Human Rights Commission and the National Unity and

Reconciliation Commission, in which Batwa individuals and families appeared well-integrated into wider communities. They had housing on a par with other families in the community, plots of land and were pursuing activities such as pottery and small-scale cultivation.

73. Batwa community members in those villages stated that they had received Government support to build tin-roofed housing. Some families had also benefited from the “One Cow per Poor Family” programme. They expressed general satisfaction with service provision including education and health care. However these examples stand in marked contrast to the situation of Batwa communities visited by the independent expert with NGOs.

75. The Batwa are particularly poorly represented in political structures and decision-making bodies. Eight seats in the Senate are reserved for representatives of historically marginalized people, however, it remains unclear which groups this quota was designed to assist. Currently there is only one Batwa Senator, who is appointed by the President rather than elected by the Batwa themselves. There are no Batwa in the Chamber of Deputies. The independent expert visited Batwa communities during local elections and was informed that Batwa candidates rarely achieve the required support since non-Batwa are unlikely to vote for them. Candidates are required to have six years of education which effectively excludes many Batwa. Batwa representatives claim that out of approximately 3,500 local officials, only about a dozen are Batwa.

76. The Constitution establishes a decentralized system which empowers elected local governments to plan and implement programmes (CERD/C/RWA/13-17, para. 149). While this policy of decentralization of administration offers the potential for localities to respond more effectively to local circumstances, the needs of certain excluded groups such as the Batwa are not being met due to their poor participation and representation in political life even at the local level.

77. The Senate Report of 2007 stated: “it is noticeable that leaders do not go up to them in order to know their problems ... do not go and see them so as to listen to their concerns ... [and] are not sufficiently concerned about their problems”.<sup>36</sup> It was evident from the independent expert’s consultations that local authorities continue to pay insufficient attention to Batwa issues.

### **Conclusions and recommendations**

83. Efforts by the Government to forge unity through a national Rwandan identity and to diminish the role of ethnicity as a destructive force are laudable. It is also important to guarantee the rights of individuals and communities to freely express their ethnic identity and culture. These are not incompatible, but Government suppression of identity is inconsistent with this second value. In fact, rather than suppressing discussion of ethnicity, at crucial points, Government may need to be explicit in demonstrating that all people are equal regardless of ethnicity by deliberately including members of all groups in every Government decision-making body, as has been done to recognise the equality of women.

93. The Batwa people face discrimination in Rwandan society. They have been forcibly removed from their ancestral forest lands without consent or compensation and deprived of their traditional livelihoods. Many are living in extreme hardship and poverty on the margins of mainstream society. Irreversible damage has been caused to the distinct lifestyles, livelihoods, cultures and traditional practices of communities by their displacement.

94. The Government should acknowledge the Batwa as a distinct population group and put focused energy into designing and implementing targeted programmes to improve their conditions. The

Batwa should participate in a meaningful way in all stages of policy formulation, programme design and implementation of decisions that affect them.

95. The Government should compensate displaced Batwa communities and, pursuant to effective consultation with those communities, develop initiatives to reconnect them with their ancestral habitats and cultural practices, recognize their rights to the natural resources of the forests, and develop programmes that value and preserve the traditional practices of their forest livelihoods.

96. The Government must be commended for the programmes that it has instituted to date that are targeted to benefit those who are considered the poorest people in every community, such as the “One Cow per Poor Family” programme, work relief for those who are unemployed and subsidies for housing, health insurance, and school costs, and initiatives that it outlines in its National Social Protection Strategy of 2011.

97. However, many Batwa communities are failing to benefit fully from Government initiatives and, in some instances, are facing negative impacts as a result of the manner in which certain initiatives are implemented at the local level. While not discriminatory per se, some policies and programmes may have a disproportionate negative impact on Batwa due to their disadvantaged situation. Equally, due to their social distance from and relative lack of contact with the mainstream society, Batwa are failing to take advantage of positive policies.

98. Batwa families should be allocated land sufficient for them to engage in agriculture or livestock farming and should receive the necessary training. Targeted poverty alleviation programmes should be developed with vocational training specifically targeted to their particular needs as a population group transitioning from a hunter-gathering livelihood and assistance to find employment.

99. Specific programmes to encourage and enable greater enrolment of Batwa children in primary and secondary schools are critical. A holistic approach must be taken that addresses the stigma that confronts Batwa children in schools. The independent expert draws the Government’s attention to the recommendations of the first session of the Forum on Minority Issues and the right to equal quality education and encourages implementation of those recommendations relevant to the situation of the Batwa.

100. The Government programme to demolish all *nyakatsi* houses should be reviewed urgently to ensure that it has not impacted negatively on vulnerable individuals, families or communities. Local authorities should act only according to strict guidelines ensuring that no person is left without shelter due to their actions.

101. Batwa women and children are particularly vulnerable to the effects of discrimination, social exclusion and poverty and their situation merits particular focused attention including ensuring adequate maternal and infant health care, access to education, adequate housing, food security, access to water and sanitation and protection from violence, including sexual violence and exploitation. The Government should undertake research and formulate specific, targeted programme responses as appropriate.

102. The Government should acknowledge the stigma attached to and discrimination against Batwa that exists in Rwandan society and assess the ways in which that stigma may be creating obstacles to the successful impact of programmes to address the inadequate living conditions faced by Batwa. That analysis should inform the redesign of programme initiatives in order to improve effectiveness.

Additionally, the Government should undertake a national public education campaign to combat stigma against the Batwa in consultation with and involving the Batwa themselves.

103. There is a lack of detailed information available regarding the overall situation of Batwa, their population, the location of distinct communities and their socio-economic position. To fully understand their problems and respond appropriately, it is necessary for the Government to undertake further research of both a quantitative and qualitative nature. The plan (part of the National Social Protection Strategy) to tabulate socio-economic data by ethnicity should be implemented urgently and the results made widely accessible.

104. The Government should act on the analysis and recommendations contained in the Senate's *Report on the Living Conditions of Some Rwandans Disadvantaged Throughout History* and other relevant Government and civil society reports.