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## **Human Rights Council**

**Expert Mechanism on the Rights of Indigenous Peoples**

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**United Nations Declaration on the Rights of Indigenous Peoples**

### **Summary of responses from the questionnaire seeking the views of States and indigenous peoples on best practices regarding possible appropriate measures and implementation strategies in order to attain the goals of the United Nations Declaration on the Rights of Indigenous Peoples**

### **Draft Report of the Expert Mechanism on the Rights of Indigenous Peoples**

#### *Summary*

The present conference room paper contains a draft summary of responses from States and indigenous peoples to the questionnaires seeking their views on best practices regarding possible appropriate measures and implementation strategies to attain the goals of the United Nations Declaration on the Rights of Indigenous Peoples, as requested by the Human Rights Council in its resolution 30/4. Following discussions at the ninth session, the Expert Mechanism will finalize this document for submission to the Human Rights Council at its thirty-third session.

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## I. Introduction

1. In its resolution 18/8 of 2011, the Human Rights Council first requested the Expert Mechanism on the Rights of Indigenous Peoples to undertake, with the assistance of the Office of the High Commissioner for Human Rights (OHCHR), a questionnaire on best practices concerning appropriate measures and implementation strategies to attain the goals set out under the Declaration on the Rights of Indigenous Peoples. Under resolution 21/24 (2012), 24/10 (2013) and 30/4 (2015) the Council requested the Expert Mechanism continue to undertake the questionnaire, in order to provide summaries of responses for presentation to the Council. This report builds upon previous reports presented to the Human Rights Council at its twenty-first, twenty-fourth, twenty-seventh and thirtieth sessions (A/HRC/21/54, A/HRC/24/51, A/AHRC/27/67 and A/HRC/30/54).

2. The questionnaire focuses on the best practices in the areas of self-determination; participation in decision making including free prior and informed consent; languages and culture; non-discrimination and equality; lands, territories and resources; treaties, agreements and other constructive arrangements; and measures taken to promote and protect the rights of women, youth, children, elders, persons with disabilities and other vulnerable groups.

3. The questionnaire developed for States and Indigenous peoples were designed to be as reasonably consistent as possible in order for the responses to be compared and to promote possible partnerships between States and Indigenous peoples in working towards the implementation of the Declaration. All of the questions put to the States and indigenous people are set out below. The responses from States and indigenous people have also been placed on the website of the Expert Mechanism.

4. The Expert Mechanism thanks all who participated in this year's questionnaires. Responses were received from Australia, Bolivia, Cuba, Denmark and Government of Greenland, Finland, Peru and Romania.

5. The Expert Mechanism also thanks the following Indigenous peoples, indigenous peoples' organizations and representative bodies, and NGOs for their responses: Agrupación de Derechos Humanos Xochitépetl A.C. Associacao Uniao das Aldeias Apinaje-Pempxa; Bubi People of Bioko Island; Chemudep Organization of Kenya; Congres Mondial Amazigh; FDAPID Hope for Indigenous Peoples; Gudang Clan of Far Northern Cape York Queensland; International Presentation Association; Organisation Tamaynut; Quixelos People.

## II. Responses from States and from indigenous peoples

6. This section summarizes the responses from States and from indigenous peoples to the questionnaire. It must be borne in mind that responses from States and indigenous peoples may have conflicting views on the benefits of measures adopted to implement the Declaration or the ideal strategies to achieve its implementation.

### A. National implementation strategies

7. The questionnaire posed the following question to States: *Does the state have an overarching national implementation strategy to attain the goals of the Declaration? If yes, please provide details, including the involvement of State institutions and indigenous peoples. If not, are there any plans to develop one?*

8. This question is linked to the commitment the States have made in the outcome document of the World Conference on Indigenous Peoples to develop and implement national action plans, strategies and other measures, and where relevant, to achieve the ends of the Declaration.

9. Australia stated that while it does not have an overarching national action plan to achieve the goals of the Declaration, it is working to achieve those goals through programs and policies that have a direct connection with the Article and principles of the Declaration. These policies and programs have been outlined in responses to the previous questionnaires.

10. Finland stated that as the Declaration is not a legally binding instrument, it is not necessary to prepare and adopt a national plan of action or strategy to promote the objectives and effective realization of the Declaration. However, as the Declaration is a political commitment, it is taken into account in national decision making. For example, the Declaration was considered in the first National Action Plan on Fundamental and Human Rights of 2012. The second National Action Plan on Fundamental and Human Rights is currently being developed and this will focus on specific themes such as the Sami people's right to participation. In Finland, all branches of government work to integrate human rights in their work.

11. Bolivia stated that Indigenous rights are enshrined in their constitution, and that both ILO Convention 169 and the Declaration are constitutionalized. In light of the Outcome Document of the WCIP, Bolivia passed an economic and social development plan that incorporates the right to development of indigenous peoples. Indigenous peoples and communities were involved in the development of the plan, as well as in the preparation of the Action Plan to implement the rights of Indigenous peoples in line with the Outcome Document.

12. Peru responded by highlighting the creation of the Ministry of Culture in 2010, as the main State institution in charge of indigenous peoples' issues. The Viceministry of Inter-culturality is the entity responsible for implementing specialized policies for indigenous peoples, and to provide technical assistance in consultation processes. It is also in charge of administering indigenous territorial reserves for indigenous peoples in voluntary isolation and initial contact.

13. Most indigenous peoples' organizations reported on a lack of national strategies or plans of action to achieve the ends of the Declaration although some did highlight specific policies to address certain provisions of the Declaration.

## **B. Self-determination and autonomy**

14. The questionnaire posed the following questions to States and indigenous peoples: "Have specific legislative, policy, or administrative measures relating to self-determination and autonomy been adopted in your country".

15. The importance of self-determination has been highlighted through the work of the Expert Mechanism, including in its studies on access to justice (see A/HRC/24/50 and A/HRC/27/65). The Expert Mechanism has repeatedly maintained that self-determination is an essential element for the fulfilment of other rights.

16. In their response, Denmark and Greenland refer to the 2009 Act on Greenland Self-Government following a report to the general Assembly Implementation of the Declaration on the Granting of Independence to Colonial Peoples and Countries (A/64/676) during its sixty-fourth session. The preamble to this Act recognizes that the people of Greenland are a people pursuant to international law with the right to self-determination. As such, the Act is

based on agreement between Naalakkersuisut (Government of Greenland) and the Danish government as equal partners. It provides for Greenland to assume new responsibilities and introduces new arrangements mineral resources and economic arrangements. The Act affirms that the Greenland self-government authorities exercise legislative and executive power in the fields of responsibility taken over.

17. According to Australia, it does not have specific legislative measures in regard to self-determination. However, Australia is a party to seven core international human rights treaties that recognize the right to self-determination. Australia recognizes that people have the right to internal self-determination as reflect in Article 46 of the Declaration on the rights of indigenous Peoples.

18. Article 289 of Bolivia's Constitution enshrines the rights of Indigenous peoples to self-governance and self-determination. Bolivia has a process for claiming Indigenous Autonomy that allows for political, judicial, social, economic, and cultural autonomy. In 2009, 11 indigenous municipalities acceded to autonomy through this process.

19. Peru highlighted policies and technical instruments for the protection of indigenous peoples in voluntary isolation and initial contact, including the protection and monitoring on territorial reserves.

20. Indigenous organizations mostly highlighted the lack of any legislation or plan to develop legislation in relation to the protection or promotion of self-determination and autonomy. Further, an indigenous peoples' organization from Brazil reported that there are several proposals currently before the Parliament that would undermine the rights of indigenous peoples.

### **C. Participation in decision-making and free, prior and informed consent**

21. States were asked the following question, "Have specific legislative, policy or administrative measures been adopted to implement rights relating to participation in decision-making, including the obligation to obtain free, prior and informed consent?" If yes please provide the details, if not please outline any plans to develop legislative, policy or administrative measures in this area.

22. Finland responded that it is intending to revise the Act on the Sami Parliament (974/1995) and that the Ministry in this context will reiterate that the current obligation to negotiate under Section 9 should be changed to better comply with the principle of free, prior and informed consent. Finland also referred to a state owned enterprise, Metsähallitus, which runs business activities on state owned land and waters. Under the administering Act, municipal advisory committees are appointed in the Sami Homeland regions and they have representation from various bodies including the Sami Parliament, the municipality, reindeer herding cooperatives, the fisheries region and commercial fisheries. These committees issues opinions to Metsähallitus.

23. Consistently with the Declaration on the Rights of Indigenous Peoples Australia recognizes the importance of engaging in good faith negotiations with Indigenous peoples in relation to decisions that affect them. On example is the Empowered Communities initiative being implemented in eight regions across Australia. Australia also interprets the principle of free, prior and informed consent as consistent with Australia's territorial and political sovereignty.

24. Bolivia's response highlighted the fact that the right to free, prior, and informed consultation is established in Bolivia's Constitution. The State also has a number of other pieces of legislation in relation to consultation in the context of specific activities, such as extractive operations.

25. Several indigenous peoples' organizations emphasized that free, prior and informed consent either is not referred to or is not well articulated in laws and policies and provided examples of large-scale public works, such as hydroelectric dams, or extractive industries going ahead on their lands without their consent.

#### **D. Participation of indigenous peoples in the development and implementation of legislative, policy or administrative measures that affect them**

26. Finland responded that the Act of Metsähallitus which includes municipal advisory committees in the Sami Homeland was drafted by a working group appointed to the Ministry of Agriculture and Forestry on 16 June 2013. This working group had representation of the Sami Parliament and the Skolt Sami Village Council.

27. Australia engages with a range of Aboriginal and Torres Strait Islander leaders, organisations and communities when designing policies, programs and implementing services. One example is the National Aboriginal and Torres Strait Islander Health Plan 2013-23 which recognizes the importance of Aboriginal and Torres Strait Islander peoples involvement in the planning, design and implementation of health services.

28. Denmark and Greenland state that the 2009 Act on Greenland Self-Government shows commitment and implementation of the Declaration of the Rights of Indigenous Peoples. The Act requires the Naalakkeruisut (Government of Greenland) to be heard on all other matters affecting Greenland and the Danish Government. It requires all Danish Government Bills that may be brought into force in Greenland to be submitted to the Self-Government for comments. The Danish Government is required to await these comments before presenting Bills to the Danish Parliament.

29. Peru reported on the establishment of the Working Group on Public Policies oriented towards indigenous peoples. This is described as a space for participation and dialogue between indigenous peoples and the executive power to coordinate, propose and monitor public policies involving indigenous peoples. Peru also highlighted its quota system in certain departments and provinces to address the gaps in the political representation of indigenous peoples. Peru also reported on consultation processes, highlighting that of 11 processes carried out in 2015/2016, 9 concluded with agreements between indigenous peoples and the State.

30. Answers from indigenous peoples' organizations described situations ranging from complete exclusion from decision making to *pro forma* processes for participation, carried out by the state simply to comply with protocols, but not in good faith. Other organizations stated that the non-recognition of their indigenous status by Government authorities hampered any attempts to participate in decision-making.

#### **E. Cultures and languages**

31. Are there specific legislative, policy or administrative measures adopted to implement rights relating to culture and languages?

32. The Government of Finland safeguards the Sami language social welfare and health care service by way of a separate discretionary transfer under its budget that is paid out through the Sami Parliament. In 2016 the discretionary transfer amount was EUR 480 000. The Sami Parliament prepares an annual plan for the spending of this money and this discretionary government transfer is a key channel for the Sami people to influence the provision, organization and contents of services arranged for them and thus to steer the

way in which Sami language and culture are maintained and developed in their homelands. Also, at a plenary session on 3 July 2014 the Government made a decision in principle on a program of measure to revive the Sami language and concerning all Sami languages spoken in Finland and which it considers to be under threat. The revival of language measures are underway and include securing funding for language nest activities and increased appropriate for the production of teaching materials in the Same language.

33. The response of Denmark and Greenland refers to the Act of Greenland Self Government which recognizes the Greenlandic language as the official language in Greenland.

34. Australia provides funding support to maintain, preserve and transmit the estimated 250 languages. This funding supports community based activities, languages research and the development of language resources. Aboriginal language is also now being taught in some schools and was in 2016 included in the New South Wales Higher School Certificate for the first time. Aboriginal languages are also supported though the Australian Curriculum, Assessment and Reporting Authority's draft Framework for Aboriginal and Torres Strait Islander Languages.

35. Bolivia responded by outlining the Avelino Sinani Law, which created the Plurinational Institute of languages and Cultures, which has the objective of promoting the development of indigenous languages and culture. It achieves this through the creation of the various Language and Culture Institutions for each Indigenous group, of which there are currently 16. Furthermore, the Ministry of Education has implemented the production of school textbooks in 23 indigenous languages. Education curriculums are also permitted to be regionally adapted to ensure Bolivia's education system remains plurinational. There are currently 11 regionalized curriculums.

36. Peru reported on the strengthening of its national register of interpreters and translators of indigenous languages, as well as on the development of a National Plan for Intercultural Bilingual Education.

37. Indigenous peoples' organizations described advances in this area, in one case with support from the private sector. In other cases, while constitutional recognition of indigenous languages exists, there are no measures taken to ensure their promotion and protection.

## **F. Non-discrimination and equality**

38. Have the States adopted any specific legislative, policy or administrative measures adopted to implement rights relating to non-discrimination and equality?

39. Finland has a new Non-Discrimination Act (1324/2014) which includes the appointment of a Non-Discrimination Ombudsman and expands the scope of protection against discrimination. The Act applies to all public and private activities and includes obligations for public authorities to develop 'equality plans' concerning education and employment. The Act is overseen by a new Tribunal which covers all discrimination grounds and may undertake conciliation between parties and impose fines in order to reinforce its prohibition or obligation decision.

40. Discrimination and vilification on the basis of race is prohibited in Australia under the *Racial Discrimination Act 1975 (Cth)* and individuals who experience such discrimination may make a complaint to the Australian Human Rights Commission.

41. Article 9 of Bolivia's constitution states that one of the essential functions of the State is to create a just society, free from discrimination and exploitation. Article 14 of the constitution states that the State prohibits and sanctions all forms of discrimination. Bolivia

also has a law against racism and all forms of discrimination. This law has the objective of establishing mechanisms and processes to prevent and sanction acts of racism and all forms of discrimination.

42. Peru reported on measures taken in the health sector to ensure indigenous peoples' access to health services on a non-discriminatory basis, as well as to ensure that these are inter-cultural in nature. Peru also has a national policy on the mainstreaming of a multi-cultural approach, which is mandatory for all State institutions.

43. Responses from indigenous peoples' organizations emphasized that despite constitutional and/or legislative guarantees, structural discrimination against indigenous peoples persists.

## **G. Lands, territories and resources**

44. Have the States adopted any specific legislative, policy or administrative measures adopted to implement rights relating to lands and territories?

45. Finland's response refers to a new Fishing Act (379/2015) and according to which a person who resides permanently in certain municipalities has a right to obtain a permit from Metsähallitus concerning fishing in the areas free of charge. There are some exceptions to this provision though.

46. The Government of Denmark and the Government of Greenland are currently in the process of resolving a claim to the continental shelf north of Greenland. The claim area is approximately 895,541km<sup>2</sup> beyond 200 nautical miles of the coast of Greenland. The claim material is with the Commission on the Limits of the Continental Shelf through the UN Secretary General in accordance with the UN Law of the Sea Convention, ratified by the Kingdom of Denmark in 2004.

47. Australia's response states that there are state and federal legislative schemes which recognize Aboriginal peoples rights to lands and territories. Under the Aboriginal Land Rights (Northern Territory) Act 1976 Aboriginal Lands Trust may apply for the grant of inalienable freehold title. About 50% of the land mass of the Northern Territory is under the Act and about 80% of the coastline is also under the Act. As such this is one of the most significant land rights legislation in Australia. At the federal level, the Native Title Act 1993 provides an avenue for Indigenous claimants to seek native title recognition of their land under Australian law.

48. Bolivia responded that their Constitution guarantees the possession, access, and title of indigenous territories in the framework of their self-determination, their right to autonomy, self-governance and culture. Since 2006, the State has transformed the agrarian property structure, and now 23.9 million hectares of land belong to Indigenous communities. In 2015 alone, the State awarded 295,000 titles of land to indigenous peoples and communities.

49. Peru reported on measures to prevent illegal logging on indigenous territories, as well as on measures to recognize the collective ownership of lands through formal titles.

50. Indigenous peoples' organizations responses ranged from a complete lack of legislative measures to address their claims over their lands, to situations in which, despite constitutional recognition of their lands and territories, demarcation processes have not moved forward sufficiently and land invasion and resource extraction persist.

## **H. Treaties, agreements and other constructive arrangements with States**

51. Are there specific legislative, policy or administrative measures adopted to implement rights relating to treaties, agreements and other constructive arrangements with States?

52. Finland is in the process of negotiations for a Nordic Sami Convention intended to develop the status of the Sami as an indigenous people. It has also ratified the Nagoya Protocol on Access to Genetic Resources and the Fair and equitable Sharing of Benefits Arising from their Utilization. The Government is further in the process of ratifying ILO Convention 169 and the Bill will utilize a study commissioned which draws on international norms, experiences and practices concerning the rights of indigenous peoples.

53. In Australia, international treaties and international human rights are given recognition through various Acts designed to implement such rights domestically, such as the Race Discrimination Act (1975). All bills of parliament must also be scrutinized in accordance with the Human Rights (Parliamentary Scrutiny) Act 2011 which requires that bills be accompanied by a statement of compatibility being an assessment of the compatibility of the proposed legislation with the human rights recognized under the core human rights treaties Australia has ratified.

54. In response to this question, Bolivia highlighted that the implementation of the first stage of a programme intended to protect indigenous peoples that live in voluntary isolation or are in initial contact.

## **I. Indigenous women, youth, children, elders, persons with disabilities and any other vulnerable groups**

55. Have there been any particular measures taken to promote and protect the rights of indigenous persons belonging to the following groups: women, youth, children, elders, persons with disabilities and other vulnerable groups (such as LGBT person).

56. Finland noted that the discretionary funding transfer to the Sami Parliament identified 2016 priority areas being services for older people and health care. The Ministry of Justice has also appointed an inter-governmental network of contact persons for fundamental human rights which will be tasked with developing a National Action Plan on Fundamental Human Rights. Gender equity policies are pursued under the Ministry of Social Affairs and Health which ensures gender is included in all areas of decision making and the Sami people are included in this work.

57. Sami children are entitled to child health services similar to all other children in a municipality. The government supports Sami youth through the Youth Council of the Sami Parliament which promotes linguistic and cultural rights of young Sami people.

58. Denmark and Greenland refer to legislation passed in 2014 to recognise 'legally fatherless' Greenlanders, being children born out of wedlock who had no rights to inheritance from their fathers. The Danish parliament has introduced legislation to improve the rights of such persons or children by allowing them to initiate proceedings to determine their father and establishing inheritance rights. Further, Greenlanders living in Denmark affected by social vulnerability are supported under the 'Strategy for vulnerable Greenlanders living in Denmark', and under which the amount of 13.4 million was earmarked for 2013-16.

59. Australia's response refers to federal, state and territory anti-discrimination laws which protect individuals from discrimination, and include the protection of women, children, persons with disabilities and LGBT persons.

60. Peru stated that emphasis in this area has been on three groups: indigenous persons who do not have identity documents, indigenous peoples living in border areas with difficult access, and indigenous women.

## **J. Raising awareness about the Declaration**

61. Has the State taken measures to raise awareness about the Declaration among various sectors of society, including Parliamentarians, the judiciary, the civil service and indigenous peoples?

62. The Ministry for Foreign Affairs in Finland is publishing the Declaration as well as the Outcome Document of the World Conference on Indigenous Peoples (2014).

63. Denmark advises that as an EU members state it contributes actively to bringing the EU policies in line with the Declaration on the Rights of Indigenous Peoples. It has provided the EU with a senior national advisor on indigenous issues to support an update of the EU policy and guidelines on indigenous peoples.

64. Australia has provided information previously (2014, 2015) about its efforts in this regard. The International Presentation of Australia notes that the Australian Human Rights Commission has developed a guide to the Declaration setting out what it means in practice for indigenous peoples.

65. Peru discussed training programmes carried out by the Ministry of Culture to improve awareness of collective rights enshrined in national and international legal frameworks. These programmes have reached 4454 indigenous leaders, 2384 civil servants, and 508 members of the general audience.

66. Indigenous peoples' organizations reported on measures including dissemination of printed copies of the Declaration, radio programmes, and training to increase awareness of indigenous peoples' rights.

## **K. Challenges**

67. What are the main challenges encountered in adopting measures and implementing strategies to achieve the ends of the Declaration.

68. Finland observed that a major challenge in this regard concerns the rights of Sami people who do not live in their homelands as is the case for 60% of Sami people. Sami people who live outside of their homeland have the constitutional right to language and culture and are assisted with educational needs. There are some Sami cultures (including Skolt Sami and Inari Sami), that are described as being on the 'verge of extinction' as not many people now speak the language. Another challenge concerns Sami victims of violence and discrimination. As the community is relatively small there is concern about confidentiality of sensitive issues. Some issues related to health and social services are also seen as 'taboo' and to counter these challenges, the government has implemented special measures into standard service.

69. Australia notes that barriers exist due to differences in Aboriginal and Torres Strait Islander life experiences, geography, discrimination and other factors. Australia has previously responded to the question and would appreciate hearing from other Member States as to best practices. Australia has previously provided information about this matter, and including the need for evidence to inform the development of programs and policies, the importance of engagement of Aboriginal and Torres Strait Islander peoples, and the recognition of the need for assessment and flexibility in [program design and delivery, to

assist in the achievement of the aims of the Declaration. Australia refers to the National Aboriginal and Torres Strait Islander Health Plan and Implementation Plan which recognizes the need to support Aboriginal and Torres Strait Islander wellbeing through connection to land, culture and community, as well as the need to ensure Indigenous people are involved in the planning, design, delivery and implementation of health services.

70. Some challenges identified by the International Presentation of Australia include the need for the State to take more responsibility to work in a cross cultural manner, language barriers and difficulties and the hurried nature of consultation that government frequently engage in. They argue that there needs to be a shift towards the joint development of policy solutions and increased willingness to share power on the part of government.

71. Denmark and Greenland report a roundtable with the International Work Group for Indigenous Affairs in October 2014 on 'Indigenous Peoples and the new Post 2015 Development agenda'. One of the issues discussed was how to link the implementation of the UNDRIP with the implementation of the Sustainable Development Goals.

72. Some indigenous peoples' organizations reported that their recognition as distinct peoples constitutes an over-arching challenge. Other challenges include a lack of political will from State authorities, gaps in the legal framework, and a lack of financial resources among indigenous peoples' organizations to carry out their mission.

## **L. Best practices**

73. States were asked to provide examples of best practices regarding possible appropriate measures and implementation strategies to attain the goals of the Declaration. The following practices were described by States in their responses.

74. Finland is engaging its government and the Sami Parliament on talks concerning the World Conference on Indigenous Peoples (2014) and is mapping relevant national action. It has organized meetings of government representatives with Indigenous people from Denmark, Finland, Norway and Sweden and including in relation to the review of the Expert Mechanism of the Rights of Indigenous Peoples as well as the participation of Indigenous Peoples at the United Nations.

75. The Metsähallitus is also enhancing measures to strengthen the participation of the Sami Parliament and the Skolt Sami Village Council in planning the management and use of State owned lands and waters in Sami Homeland. It has developed methods for participatory planning. For example, the management plan for Hammastunturi was based on Article 8(j) of the Convention on Biological diversity (Finnish Treaty Series 78/1994). Another example of best practice according to the State is reflected in Section 49 of the Environmental Protection Act (572/2014) which concerns the granting of environmental permits and requires as a precondition to the granting of such permits that the planned activities will not weaken the Sami people opportunities to carry on traditional livelihood or otherwise maintain and develop their Sami cultures.

76. In its joint response, Denmark and Greenland also state that they work closely to promote indigenous peoples rights at the international level. A recent example is the UN Permanent Forum on Indigenous Issues 15<sup>th</sup> session where Denmark and Greenland prepared two national statements and participated in four joint Nordic statements in support of the rights of Indigenous peoples.

77. In Australia, the Aboriginal community controlled health sector is described as a model of self-determination. The Aboriginal community controlled health organisations (ACCHO's) have in common the following key attributes: incorporated Aboriginal organisations, initiated by local communities, based in local communities, governed by an

Aboriginal body elected by the community, delivering holistic and culturally appropriate health services to the community. The importance of the ACCHO's is recognized in Australia's National Aboriginal and Torres Strait Islander Health Plan 2013-2023, and subsequent implementation plan, which builds on the DRIP and recognizes the importance of Indigenous partnerships.

78. Good practices highlighted by indigenous peoples include the joint ownership and management of lands in national parks, and programmes to teach indigenous languages to civil servants.

#### **M. Use of the studies and advice of the Expert Mechanism**

79. Has the State used the thematic studies advice of the Expert Mechanism in the formulation of laws, policies and programs pertaining to indigenous peoples' rights?

80. According to Australia, the thematic studies of the Expert Mechanism provide a background to support policy and program development. It also provides an opportunity to learn from other States and to provide different perspectives. The studies have not yet been used directly in the formulation of law, policies and programs but rather the information is being used indirectly.

81. Several indigenous peoples' organizations reported that, to their knowledge, the studies and advice of the Expert Mechanism are not being used by States when formulating laws and policies concerning indigenous peoples.

### **III. Concluding comments**

82. **The Expert Mechanism on the Rights of Indigenous Peoples very much appreciates the responses of States and of indigenous peoples and indigenous peoples' organizations to its questionnaire. The responses received allow the Expert Mechanism to evaluate some of the advances and challenges in the implementation of the Declaration from the perspectives of both States and indigenous peoples. However, the Expert Mechanism regrets the relatively low number of responses received and the fact that many States with indigenous peoples did not submit any information on their laws, policies and practices related to the implementation of the Declaration.**

83. **The majority of responses received from States provide information at a very general level. While information was provided on laws, policies and programmes relating to indigenous peoples, there was almost no information indicating the effectiveness of the measures taken. Most States provided only positive answers to questions. Answers outlining challenges would also provide a greater understanding of the barriers faced by States when implementing the Declaration.**

84. **The responses received suggest that very few States have developed comprehensive national strategies to implement the Declaration. Given the interdependence and inter-relatedness of the rights contained in the Declaration, its implementation requires comprehensive approaches and actions, as highlighted in the Outcome Document of the World Conference on Indigenous Peoples.**

85. **Several responses from States showed encouraging progress in terms of efforts to adopt national legislation relating to indigenous peoples' right to participate in decision-making. However, it was not always clear whether States were following the obligation to seek indigenous peoples' free, prior and informed consent.**

86. Responses from indigenous peoples provide examples of approaches and activities, including: advocacy and awareness-raising, development of resources on the Declaration, training for indigenous communities and organizations, and translating the Declaration into indigenous languages.

87. However, few of the indigenous peoples that responded proposed overarching strategies for implementation of the Declaration. This may partly be due to the fact that most of the indigenous respondents work at the local level and are generally limited by a lack of financial resources and, in some cases, by a lack of will from State institutions to cooperate and engage with indigenous peoples.

88. Most indigenous peoples' organizations reported a lack of attention from States in considering the Declaration and, more generally, the rights of indigenous peoples. These concerns hamper the effective implementation of the Declaration.

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