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**Mapping Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment**

**Individual Report on the Rights of Indigenous Peoples**

Report No. 8

Prepared for the Independent Expert on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy, and Sustainable Environment

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#  Introduction

1. This report examines States’ human rights obligations related to the environment as they pertain to the rights of indigenous peoples. The focus is on the work of the UN Special Rapporteur on the rights of indigenous peoples, although the report also takes into account the two principal international instruments on indigenous rights, the International Labour Organisation Convention Concerning Indigenous and Tribal Peoples in Independent Countries (ILO 169)[[1]](#footnote-1) and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).[[2]](#footnote-2)
2. This report is one of a series of reports that examine human rights obligations related to the environment, as they have been described by various sources of international law. Other reports in the series examine obligations as they have been elaborated under the United Nations’ core human rights treaties; the regional human rights systems; other Special Procedures of the Human Rights Council; and multilateral environmental agreements and non-binding international environmental instruments.
3. This mapping exercise supports the work of the United Nations Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment. Human Rights Council resolution 19/10 requests the Independent Expert, *inter alia*, to study the human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, and to identify and promote best practices on the use of human rights obligations and commitments to inform, support and strengthen environmental policy making.
4. The Independent Expert is undertaking this mapping exercise to provide greater conceptual clarity to the application of human rights obligations related to the environment. The goal is to provide a strong evidentiary basis, grounded primarily in existing international human rights law, for the clarification of the human rights norms relevant to the environment.

## ILO 169 and UNDRIP

1. ILO 169 was adopted by the ILO in 1989 as a means of reversing the assumptions that indigenous peoples should be integrated into the larger society and that “the State should make decisions on their development,” which underlay previous ILO Conventions.[[3]](#footnote-3) In contrast to this “integrationist” approach, ILO 169 is based on “the fundamental assumption that indigenous and tribal peoples constitute permanent societies with a right to determine their own priorities for the development process.”[[4]](#footnote-4) ILO 169 thus confers on indigenous peoples “the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development.”[[5]](#footnote-5) In the words of its preamble, ILO 169 arose partly out of the recognition that “in many parts of the world [indigenous] peoples are unable to enjoy their fundamental human rights to the same degree as the rest of the population of the States within which they live” and thus sets out safeguards for their protection.[[6]](#footnote-6) To date, ILO 169 has been ratified by 20 countries.[[7]](#footnote-7)
2. UNDRIP was adopted by the General Assembly in 2007. It sets “a standard of achievement to be pursued in a spirit of partnership and respect” by States with regard to the indigenous peoples living within their borders.[[8]](#footnote-8) UNDRIP represents the culmination of two decades of work by the United Nations Economic and Social Council as well as other bodies within the United Nations, including the Permanent Forum on Indigenous Issues.[[9]](#footnote-9) While not legally binding in itself, UNDRIP is a “comprehensive statement addressing the rights of indigenous peoples” that also requires states to adopt “new approaches to global issues,” especially the use of “participatory approaches in their interactions with indigenous peoples that will require meaningful consultations and the building of partnerships with indigenous peoples.”[[10]](#footnote-10)
3. Neither ILO 169 nor UNDRIP attempts to define the specific attributes of “indigenous” peoples. This reflects the reality that indigenous communities across the globe vary greatly in their lifestyle, outlook, needs and goals. However, as stated in the preamble to UNDRIP, indigenous peoples have suffered from “historic injustice as a result of, inter alia, their colonization and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests.”[[11]](#footnote-11) ILO 169 and UNDRIP are discussed in more detail throughout the report.

## The Mandate of the United Nations Special Rapporteur on Rights of Indigenous Peoples

1. In recognition of the hardships faced by indigenous peoples, many of which negatively impact their ability to enjoy human rights, the UN Commission on Human Rights created a thematic mandate on the rights of indigenous peoples in 2001. The mandate was renewed by the Commission in 2004, and renewed again by the Human Rights Council. The 2010 Human Rights Council resolution renewing the mandate requests the Special Rapporteur:

(a) To examine ways and means of overcoming existing obstacles to the full and effective protection of the rights of indigenous peoples … and to identify, exchange and promote best practices;

(b) To gather, request, receive and exchange information and communications from all relevant sources, including Governments, indigenous peoples and their communities and organizations, on alleged violations of the rights of indigenous peoples; [and]

(c) To formulate recommendations and proposals on appropriate measures and activities to prevent and remedy violations of the rights of indigenous peoples….[[12]](#footnote-12)

1. In his role as the Special Rapporteur on the rights of indigenous peoples from 2008 to 2014, Professor James Anaya has addressed a wide range of issues facing indigenous peoples, including States’ failure to comply with international and national law, threats to indigenous self-determination posed by non-state actors, and the devastation that has often been inflicted on indigenous territory as a result of natural resource extraction. The results of his work are reflected in dozens of reports prepared during his tenure as Special Rapporteur.
2. Professor Anaya’s reports fall into three broad categories: annual/thematic reports, which describe his work in the context of the mandate and address specific issues faced by indigenous peoples; country reports, which address the situation of indigenous peoples in specific countries (based largely on information gathered by Professor Anaya’s visits to those countries); and special reports, which contain in-depth analyses of specific situations. The reports reviewed span the period from 2008 through 2013.

## Overview of the Report

1. This report synthesizes information contained in Professor Anaya’s reports in his capacity as Special Rapporteur related to environmental protection, as well as certain provisions of ILO 169 and UNDRIP. Section II identifies rights of indigenous peoples that are threatened by environmental harm. Section III describes human rights obligations relating to the environment. Section IV addresses rights and obligations pertaining to various cross-cutting issues that cut across a range of possible rights and duties, including duties relating to transboundary environmental harm and duties relating to non-state actors.

#  Indigenous Rights Threatened by Environmental Harm

1. Professor Anaya has detailed many of the threats that natural resource extraction – particularly in the form of logging, mining and hydroelectric projects – poses to the territory occupied by indigenous peoples. His work in this regard shows a deep concern among indigenous peoples about the negative effects of natural resource extraction on their environment. According to the Special Rapporteur, in response to questionnaires submitted to various indigenous peoples about the impact of extractive industries, “[t]he majority of indigenous representatives and organizations ... listed environmental impact as a principal issue of concern” and:

Responses highlighted examples of the degradation and destruction of ecosystems caused by extractive industries, as well as the devastating resultant effects on indigenous peoples’ subsistence economies, which are closely linked to these ecosystems. Common negative environmental effects reported in the responses include the pollution of water and lands and the depletion of local flora and fauna.[[13]](#footnote-13)

1. For example, Professor Anaya has described human rights problems arising from an unhealthy environment among the Kanak people of New Caledonia – a south Pacific island group whose reserves of nickel have been exploited by foreign commercial interests for a century and a half. This history of unregulated open-pit mining has “led to considerable water and soil pollution and degradation.”[[14]](#footnote-14) At the time of the report, in 2011:

runoff from other open and abandoned mines has not abated. For example, in the northern areas of South Province, Kanaks have expressed frustration over the runoff from open-pit and abandoned mines. According to reports, the runoff clogs streams, suffocating fish, crabs and other living creatures, reduces the quality of the soil for farming and, as it washes out to sea, damages the reef.[[15]](#footnote-15)

## Right to Health

1. Professor Anaya has often described a link between environmental harm and interference with the enjoyment of the right to health. For example, he reported that “inadequately controlled extractive and other activities within or near remaining indigenous lands, including nuclear weapons testing and uranium mining in the western United States, has resulted in widespread environmental harm, and has caused serious and continued health problems among Native Americans.”[[16]](#footnote-16) He also heard many concerns from indigenous people about a lack of sufficient funding for environmental remediation to alleviate these (and other) chronic problems.[[17]](#footnote-17)
2. Professor Anaya described how aerial fumigation of illicit crops in Colombia has given rise to health problems.[[18]](#footnote-18) And he reported that in southeast Asia, indigenous peoples tend to face serious “[f]ood insecurity, chronic hunger and malnutrition … with obvious impacts on health. These conditions are attributable in large part to indigenous peoples’ loss of lands, which has had a profoundly negative impact on their self-sustained means of subsistence.”[[19]](#footnote-19) Professor Anaya also noted that “additional subsistence activities, including yak-raising, fishing, rice farming, and forest gathering, are also threatened by a range of infrastructure, development agro-industrial, and conservation projects.”[[20]](#footnote-20) Professor Anaya further noted the “unprecedented expansion in mining, oil and gas projects in indigenous peoples’ territories” in the region.[[21]](#footnote-21) Among other serious human rights violations, Professor Anaya notes that “[t]here are allegations of widespread health impacts” from such projects, including on the reproductive health of women.[[22]](#footnote-22)
3. The experience of the Kanak also illustrates how mining can cause environmental harm to the health of indigenous peoples living in modern urban communities, not just those living in remote, forested areas. Professor Anaya observed:

Urban Kanak communities in Nouméa suffer exposure to raw sewage and dangerously polluted water in the Bay of Tindu, a lagoon abutting the Tindu and Montravel neighbourhoods, which has been closed to swimming, fishing, crabbing and other traditional uses by the Kanak people since 1992, due to high levels of bacteria in the water. Despite the closure, the Kanak continue to use the bay, exposing themselves to high levels of contamination. . . .

Residents of Kanak neighbourhoods in Nouméa expressed additional concerns about exposure to dangerous toxins from the 100-year-old Doniambo nickel-processing plant, which has been engulfed by the expansion of Nouméa’s industrial and residential area. . . .

Residents claim that the plant dumps waste directly into the lagoon, damaging the mangroves that line the coast and provide essential habitat for crabs and fish on which Kanak sea clans traditionally depend. Levels of atmospheric sulphur in the area around the Doniambo plant were reportedly above international limits in 2010.[[23]](#footnote-23)

1. Professor Anaya also linked poor health among indigenous communities in Namibia to food insecurity, and, ultimately, to a lack of recognition of indigenous rights to their own territory:

The precarious land situation of San people in Namibia also affects their health. Specifically, insecure land tenure and restrictions on hunting and gathering traditional foods interferes with the San peoples’ ability to rely on their traditional food sources and results in many San relying on government food aid as a principle means of substance. However, food aid is often unreliable and insufficient, leading to situations of persistent hunger among San communities, which compromises their immune systems and their ability to resist disease.[[24]](#footnote-24)

1. Professor Anaya also noted that “over the years, the projects carried out by the agricultural and extractive industries in Argentina have undermined a whole series of indigenous peoples’ rights, including their rights to their lands and natural resources, as well as their rights to, inter alia, food, health, and development.”[[25]](#footnote-25)
2. Professor Anaya raised issues related to the health impacts surrounding gold and silver mines in Guatemala, many of which are located in areas traditionally inhabited by Guatemala’s indigenous population. After extensively reviewing the environmental impact of mining in Guatemala, particularly regarding the case of the Marlin mine in the San Marcos Department, Professor Anaya observed that water contaminated by arsenic and other heavy metals was likely responsible for negative environmental effects and has directly led to illness among the indigenous population as well as the deaths of livestock.[[26]](#footnote-26)

## Right to Property

1. ILO 169 confers on indigenous peoples “the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development.”[[27]](#footnote-27) Professor Anaya has described the importance that indigenous peoples typically attach to property in regards to these basic human rights, noting that “[c]haracteristically, indigenous peoples have strong cultural attachments to the territories they inhabit, and their presence in those territories predates that of others. They have been stewards of the lands and resources within their territories for generations past, and have sought to safeguard the lands and resources for future generations.”[[28]](#footnote-28)
2. For example, Anaya explained that the origin myths of the Kanak of New Caledonia:

invoke particular landscape features, and clan names often reference the place of origin of the clan’s founding ancestor. During ceremonies, a clan member may recite the names of places through which his ancestors would have passed, defining his origins and establishing alliances to other clans having rights over the places named.[[29]](#footnote-29)

1. In his 2010 report to the Human Rights Council, Professor Anaya cited General Recommendation XXIII of the Committee on the Elimination of Racial Discrimination, which places “special emphasis on the problem of the loss of indigenous lands and resources to, inter alia, ‘commercial companies’ and the threat that such loss posed to the ‘preservation of their culture and their historical identity.’”[[30]](#footnote-30)
2. For example, Professor Anaya investigated potential human rights violations of indigenous peoples in connection with a hydroelectric project in Costa Rica and noted that if the State implements the hydroelectric project, the reservoirs constructed for the project will flood several indigenous territories.[[31]](#footnote-31) Additionally, the construction of dams could affect the Rey Curre and Boruca peoples due to changes in river flow.[[32]](#footnote-32)

## Right to Traditional Means of Subsistence and Culture

1. Closely linked to environmentally-related threats to the health and property of indigenous peoples are threats to their traditional means of subsistence and their culture. Professor Anaya noted that in response to his questionnaire on extractive industries, indigenous peoples linked environmental degradation to the loss of their traditional livelihoods, which consequently threatens food security.[[33]](#footnote-33) For example, he noted that in the Benguet province of the Philippines, water pollution related to mining operations has seriously affected traditional fishing activities.[[34]](#footnote-34) Additionally in Alaska, he explained that “the matter of subsistence hunting and fishing remains crucial both for cultural purposes and for food security” of Alaska Natives.[[35]](#footnote-35) In Norway, he observed that the industrialization of fishing has “led to a deterioration of local control over and use of marine resources.”[[36]](#footnote-36) Likewise, “reindeer husbandry is potentially threatened by oil and gas development in the far north.”[[37]](#footnote-37)
2. In desert areas of northern Argentina, indigenous peoples expressed concern to the Special Rapporteur about the amount of water used by mining companies in connection with extraction projects:

For example, in the region of Salinas Grandes … it is feared that the proposed extraction of lithium will reduce the water level in this arid region, where water is needed to raise sheep, goats and llamas and is also essential to salt production and harvesting, an important activity within the traditional economy in the area.[[38]](#footnote-38)

1. The Maori people of New Zealand face similar threats to their traditional means of subsistence. Professor Anaya explained that to the Maori, the connection between the land, the people, and their traditional lifestyle is clear:

Maori tradition encompasses the concept of *turangawaewae* (“a place to stand”), which indicates a close connection between land, tribal and personal identity. Traditionally, Maori livelihood was based heavily on fishing and hunting, as well as on cultivating plants, with agricultural areas located near good fishing and birding locations. Under the traditional Maori land tenure system, land was held by tribal groups, but an individual or a family could claim the right to use an area for a garden, catching birds or fish, cutting down a tree or building a house.[[39]](#footnote-39)

However, he noted that “[t]he colonization of New Zealand by the British and the subsequent policies adopted by the colonial and New Zealand Governments led to the widespread loss and alienation of Maori land, and assaulted the social and cultural fabric of Maori communities.”[[40]](#footnote-40)

1. Professor Anaya also observed that the widespread dispossession of indigenous land in Asia is “having a profoundly negative impact on indigenous peoples’ social and cultural patterns and means of subsistence.”[[41]](#footnote-41) In general, the right to food of indigenous peoples in southeast Asia threatened by large scale agro-industrial projects.[[42]](#footnote-42) Similar problems exist in Argentina, where:

[a]s a result of the expansion of agricultural activities, indigenous peoples have lost large tracts of their traditional lands. Indigenous families have been moved out of the areas where they were living, and in some cases have had to migrate to nearby cities to look for work, often suffering from extreme poverty and marginalization. The clearing of land as part of these agricultural activities has also severely limited the availability of and access to game and fish, plants and honey, the materials used by indigenous peoples for housing construction, and access to sites of cultural and spiritual importance, such as burial grounds. These activities are also harmful to the health of indigenous people because crops are sprayed with toxic agrochemicals.[[43]](#footnote-43)

1. Indigenous people characteristically feel a close connection between their physical environment and their cultural and spiritual wellbeing. Thus, it is not surprising that deprivations of indigenous peoples’ rights to their traditional territories also pose threats to the integrity – and even survival – of their cultures. In Professor Anaya’s words, “[t]he desecration and lack of access to sacred places inflicts permanent harm on indigenous peoples for whom these places are essential parts of identity.”[[44]](#footnote-44) Natural resource extraction, in particular, jeopardizes the survival of indigenous cultures.[[45]](#footnote-45)
2. For example, Professor Anaya observed in the United States, “[w]ith their loss of land, indigenous peoples have lost control over places of cultural and religious significance.”[[46]](#footnote-46) Natural resource extraction, in particular, has been known to impede access to resources needed for the cultural survival of indigenous peoples.[[47]](#footnote-47) In one instance, mining and prospective mining development resulted in the destruction of a sacred ceremonial place.[[48]](#footnote-48) Moreover, within the United States, Professor Anaya linked the condition of disadvantage of indigenous peoples – including disproportionately high levels of poverty and disease – to the “well-documented” taking of indigenous lands with abundant resources by force or through coercion.[[49]](#footnote-49) The taking of Native American territory “meant the substantial or complete undermining of indigenous peoples’ own economic foundations and means of subsistence, as well as cultural loss, given the centrality of land to cultural and related social patterns.”[[50]](#footnote-50)
3. According to the Special Rapporteur, threats to traditional Sami livelihoods may also be linked to natural resource extraction:

The Sami way of life, especially in relation to reindeer husbandry, is threatened significantly by competing usage of land, often promoted by the Governments themselves through natural resource extraction or other development projects. In all three Nordic countries, various natural resource extraction and development projects threaten to diminish areas available for grazing.[[51]](#footnote-51)

1. Professor Anaya explained that these threats take a serious toll not only on the right of the Sami to subsist, but also to their right to maintain their cultural integrity, as “[t]he Sami people have traditionally relied on hunting, fishing, gathering and trapping and have a deep knowledge of the far north region that has been handed down for many generations. Reindeer herding, in particular, is of central importance to the Sami people.”[[52]](#footnote-52)

# Obligations on States Relating to the Environment

1. Professor Anaya has commented extensively on the human rights of indigenous peoples recognized by international agreements and other sources. Many of these relate to the environment, such as the rights to: property; non-discrimination in relation to lands, territories and natural resources; physical well-being arising from a clean and healthy environment; and the pursuit of their own priorities for development, including with regard to natural resources.[[53]](#footnote-53) According to Professor Anaya, it is well-established that “States have a responsibility for environmental protection in the context of respect for human rights.”[[54]](#footnote-54) The Special Rapporteur based his assertion on the fact that more and more “international, regional and national courts and human rights bodies are increasingly acknowledging environmental damage as a source of human rights violations.”[[55]](#footnote-55)
2. With regard to indigenous human rights and the environment, Professor Anaya frequently refers to ILO 169, which imposes special procedural obligations on the States that have ratified the convention, including by providing that indigenous peoples “should be consulted and participate in decision-making processes at all levels.”[[56]](#footnote-56) In addition to the fundamental requirements of consultation and participation, ILO 169 also requires State Parties to prevent discrimination against indigenous peoples, to adopt special measures needed to safeguard vulnerable indigenous communities (including with regard to their environment), to recognize the unique cultural identities of indigenous peoples, and to assure the right of indigenous peoples to decide their own priorities for development.[[57]](#footnote-57)
3. ILO 169 generally imposes on governments “the responsibility for developing, with the participation of the peoples concerned, co-ordinated and systematic action to protect the rights of these peoples and to guarantee respect for their integrity,”[[58]](#footnote-58) including:
4. ensuring that members of these peoples benefit on an equal footing from the rights and opportunities which national laws and regulations grant to other members of the population;
5. promoting the full realisation of the social, economic and cultural rights of these peoples with respect for their social and cultural identity, their customs and traditions and their institutions;
6. assisting the members of the peoples concerned to eliminate socio-economic gaps that may exist between indigenous and other members of the national community, in a manner compatible with their aspirations and ways of life.[[59]](#footnote-59)

As discussed further below, many of the specific procedural obligations imposed by ILO 169 apply to environmental protection.

1. Professor Anaya has also frequently cited UNDRIP, including in the context of environmental protection. UNDRIP outlines the fundamental rights of indigenous peoples as well as the corresponding obligations on states to recognize and protect those rights. Among the enumerated rights declared in UNDRIP are the rights to self-determination, life and physical integrity, the practice of cultural traditions, participation in decision-making, setting priorities for development, and the conservation and protection of the environment.[[60]](#footnote-60) To protect these rights, UNDRIP declares that States shall (among other obligations) “consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior, and informed consent before adopting and implementing legislative or administrative measures that may affect them.”[[61]](#footnote-61) States shall also give due recognition to indigenous peoples’ “laws, traditions, customs, and land tenure systems.”[[62]](#footnote-62) As discussed further below, many of the rights and obligations encompassed by UNDRIP relate to the environment.

## Procedural Obligations

1. The Special Rapporteur, ILO 169 and UNDRIP have articulated procedural obligations of State parties in relation to the protection of human rights of indigenous peoples against environmental harm. These include: (i) the obligation to allow self-determination and autonomy; (ii) the obligation to adopt measures to ensure recognition of the right to property of indigenous peoples, including the duty not to dispossess indigenous peoples from their lands; (iii) the obligation to ensure the effective participation of indigenous peoples in decision-making, including the obligation to obtain free, prior and informed consent of indigenous peoples; (iv) the obligation to provide access to indigenous peoples to effective remedy; v) the obligation to guarantee that the indigenous people derive reasonable benefit from development activities; vi) the obligation to conduct environmental and social impact assessments in connection with development activities on indigenous peoples’ land; and vii) the obligation to protect defenders of environmental rights.

### Obligation to allow self-determination and autonomy

1. Articles 3 and 4 of UNDRIP state that indigenous peoples have the right to self-determination and, when exercising this right, the right to autonomy or self-government in matters related to their internal or local affairs.[[63]](#footnote-63) Article 4 also recognizes the right to govern the ways and means for financing these autonomous functions.[[64]](#footnote-64)
2. Professor Anaya has referred to the right to self-determination in several of his annual and country reports. He has observed that States need to include indigenous peoples in the design and delivery of development programmes in a way that advances their self-determination and rights to maintain their distinct cultural identities, languages and connections with their traditional land.[[65]](#footnote-65) To support this position, Professor Anaya has cited article 23 of UNDRIP, which states that:

indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.[[66]](#footnote-66)

1. In his 2010 annual report to the General Assembly, Professor Anaya also asserted that the human right to self-determination “underpins” and informs the content of the right to participate in decision-making.[[67]](#footnote-67)

### Obligation to adopt measures to ensure recognition of the right to property of indigenous peoples, including the duty not to dispossess indigenous peoples from their lands

1. Several provisions in UNDRIP relate to the property rights of indigenous peoples. Article 10 recognizes the right of indigenous peoples “not to be forcibly removed from their lands.”[[68]](#footnote-68) Article 26 states that indigenous peoples have the right to use their traditional “lands, territories and resources.”[[69]](#footnote-69) Further, Article 26 recognizes the right of indigenous peoples to “own, use, develop and control” those lands and the right to have their ownership legally recognized by states.[[70]](#footnote-70) This recognition must be conducted with respect for the traditions and customs of the indigenous community concerned.[[71]](#footnote-71)
2. Articles 14 and 15 of ILO 169 place procedural obligations on governments relating to how they recognize and protect the interests of indigenous peoples in their ancestral territories. Specifically, article 14 requires governments to recognize the ownership and possession of indigenous peoples over the lands “which they traditionally occupy”; to “guarantee effective protection of their rights of ownership and possession”; and to take measures to safeguard the right of indigenous peoples to access and use land “not exclusively occupied by them” but “to which they have traditionally had access for their subsistence and traditional activities.”[[72]](#footnote-72) Article 15(1) provides that “[t]he rights of the peoples concerned to the natural resources pertaining to their lands shall be specially safeguarded. These rights include the right of these peoples to participate in the use, management and conservation of these resources.”
3. Article 15(2) of ILO 69 provides that:

In cases in which the State retains the ownership of mineral or sub-surface resources or rights to other resources pertaining to lands, governments shall establish or maintain procedures through which they shall consult these peoples, with a view to ascertaining whether and to what degree their interests would be prejudiced, before undertaking or permitting any programmes for the exploration or exploitation of such resources pertaining to their lands. The peoples concerned shall wherever possible participate in the benefits of such activities, and shall receive fair compensation for any damages which they may sustain as a result of such activities.

1. Professor Anaya has maintained that the indigenous people have a *sui generis* right to ownership of the land and natural resources that they have traditionally occupied in accordance with their distinct culture and occupation.[[73]](#footnote-73) He has noted that exercising ownership of such land and natural resources is not limited to economic activities; it also covers land used for spiritual, cultural and social activities.[[74]](#footnote-74) He has stated that “the right of indigenous peoples to lands, territories and natural resources originates in their own customary law, values, habits and customs and, therefore, is prior to and independent of State recognition in the form of an official property title.”[[75]](#footnote-75)
2. Article 16 of ILO 169 also generally prohibits governments from removing indigenous peoples “from the lands which they occupy.”[[76]](#footnote-76) If relocation of indigenous peoples is “considered necessary as an exceptional measure,” the relocation can only take place if the State obtains the free and informed consent of the people affected, or, if such consent cannot be obtained, only “following appropriate procedures established by national laws and regulations, including public inquiries where appropriate, which provide the opportunity for effective representation of the peoples concerned.”[[77]](#footnote-77)
3. Professor Anaya noted that the obligation to protect indigenous property rights often conflicts with a State’s desire to exploit natural resources in indigenous territory:

[I]n a number of cases States have asserted the power to expropriate indigenous property interests in land or surface resources in order to have or permit access to the subsurface resources to which the State claims ownership. Such an expropriation being a limitation of indigenous property rights, even if just compensation is provided, a threshold question in such cases is whether the limitation is pursuant to a valid public purpose…[[78]](#footnote-78)

1. In light of this conflict, Professor Anaya recommends that one path a State can follow to fulfil its obligations is to ensure that indigenous rights are recognized by the applicable legal authority. For example, Professor Anaya noted that the Committee on the Elimination of Racial Discrimination:

has urged the Government [of Suriname] to “[e]nsure 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; [and] strive to reach agreements with the peoples concerned, as far as possible, before awarding any[extractive] concessions.”[[79]](#footnote-79)

1. Similarly, Professor Anaya observed that the Namibian government has an obligation to move forward with proposed extractive projects “in accordance with the right of the San and other indigenous peoples to hold land collectively, a right that is affirmed in the United Nations Declaration on the Rights of Indigenous Peoples (art. 26, ff.)”[[80]](#footnote-80)
2. In some instances, governments simply fail to recognize or protect the rights of indigenous peoples to land and natural resources. Professor Anaya stated that this is an ongoing issue in Guatemala, for example.[[81]](#footnote-81) Similarly, at a consultation held with several indigenous groups from Asia, “[a] principal concern expressed by the participants … [was] the lack of adequate regulatory protections for indigenous peoples’ customary rights over land, territories and resources.”[[82]](#footnote-82)
3. In the absence of adequate protection for their rights, indigenous peoples can face losing their land altogether. For example, Professor Anaya observed that the construction of major hydroelectric projects has led to “massive displacement” of indigenous peoples in several Asian countries.[[83]](#footnote-83) In the Republic of the Congo, “indigenous peoples rarely hold any formal title or guaranteed rights to the lands and natural resources that they have traditionally used or occupied.”[[84]](#footnote-84) Under Congolese law, these lands may be considered “vacant” or “unproductive” and can thus be reallocated to private ownership.[[85]](#footnote-85)
4. In New Zealand, Professor Anaya noted that the insecurity of indigenous Maori land rights is exemplified by the passage of the Foreshore and Seabed Act in 2004, “which vested the ownership of the public foreshore and seabed in the Government, thereby extinguishing any Maori customary title over that area, while private fee simple title over the foreshore and seabed remained unaffected.”[[86]](#footnote-86)
5. In other instances, indigenous peoples are granted legal rights to land that fall short of ownership. In Professor Anaya’s view, this unstable situation fails to satisfy the right to property, and may prevent affected groups from exercising even the rights that they do possess. In Namibia, for example:

the tenure afforded the occupants of communal lands is one of mere usufruct and not full ownership, in contrast to the freehold titles by which private commercial farms typically are held. Additionally, communal lands of San and certain other indigenous groups, including the Himba, are under a continuous threat of encroachment by larger or more powerful groups who move into lands, raising fences to demarcate areas in which to graze their cattle, despite the fact that the erection of fences within communal land areas is prohibited….[[87]](#footnote-87)

1. In the Republic of the Congo, Professor Anaya referred to the state Forestry Code that provides certain use rights to indigenous communities to gather and use a limited number of non-marketable forest products from protected rainforests for some traditional applications, such as food, medicine, and the maintenance of their homes. However, these rights are subject to regulation by the Minister of Forests, and “are limited to personal use and the products cannot be sold. Any business based on forest products requires a special permit that indigenous people cannot readily obtain.”[[88]](#footnote-88) Similarly, in the Congo, conservation laws regulate the exploitation of wild fauna. According to the Special Rapporteur, “[t]hese laws fail to accommodate indigenous peoples’ traditional subsistence hunting patterns and needs, and prevent them from carrying out certain rituals involving species that are banned from being hunted.”[[89]](#footnote-89)
2. Government regulation (or lack thereof) can have a negative impact on traditional means of subsistence. For example, in Finland Professor Anaya observed that “[c]urrent Finnish legislation does not acknowledge or grant any special land rights to the Sami people or acknowledge any exclusive rights for the Sami people to pursue their traditional livelihoods, within or outside of the homeland areas.”[[90]](#footnote-90) Moreover, Professor Anaya noted that at the time of his visit the Swedish government had not demarcated specific reindeer grazing areas – an essential component of Sami subsistence activities.[[91]](#footnote-91) In addition, throughout the region, government regulations restrict the right of Sami to protect their herds from predators: “In many parts of the reindeer herding areas, predator animals, mainly wolf, wolverine, lynx, brown bear and eagle, are causing as great or even greater a threat to reindeer husbandry as extractive industries.”[[92]](#footnote-92)
3. On a small group of islands in the South Pacific, the Kanak of New Caledonia also find their traditional livelihood, and even their cultural identity, threatened by loss of tribal land:

Sea access is important to the Kanak people for subsistence fishing, shellfish harvesting as well as ceremonies. For some clans, the sea is an integral part of clan identity. However, the Special Rapporteur heard from several Kanak sources that their access to fishing areas in some places is blocked by owners of private property adjacent to coastal areas.[[93]](#footnote-93)

1. This situation may prove difficult to remedy through legal means. Professor Anaya noted a “potential incompatibility” between the French-imposed legal system of New Caledonia – under which “maritime and coastal areas are public domain” – and traditional Kanak land use of the coast.[[94]](#footnote-94) As another example, the history of the Sami people of Norway, Sweden, and Finland is “marked by the progressive loss of their lands and natural resources, especially lands that are essential to reindeer herding,” on the assumption that their nomadic land use “has not given rise to legal rights over lands and resources.”[[95]](#footnote-95) Because the Sami’s right to use and protect their land and resources is not recognized, they have faced threats to their livelihood by oil and gas development,[[96]](#footnote-96) mining,[[97]](#footnote-97) logging,[[98]](#footnote-98) and wind-power projects.[[99]](#footnote-99) In Sweden, natural resource development has even led to threats of relocation.[[100]](#footnote-100)
2. Professor Anaya’s 2009 report on Nepal calls attention to the negative effects which result when a State fails to recognize indigenous rights pertaining specifically to land and natural resources.[[101]](#footnote-101) In 1964, Nepal enacted the Land Reform Act, which “nationalized land and terminated traditional collective land tenure systems such as the *kipat*.”[[102]](#footnote-102) The Act led to the loss of Adivasi Janajati’s traditional land base because it allowed for allotment and distribution of indigenous ancestral lands.[[103]](#footnote-103) While the consequences from the Act varied throughout Nepal, Professor Anaya noted that those indigenous communities in the south Nepal were hit a heavy blow.[[104]](#footnote-104) During the 1950s and 1960s, the southern indigenous communities gradually lost most of their traditionally held lands to migrants, exacerbating the effects of the Land Reform Act.[[105]](#footnote-105) Over time, these indigenous lands were lost due to “the absence of or insecure titles, abuse and corruption, lack of access to the justice system, and indebtedness.”[[106]](#footnote-106) Professor Anaya referred to Nepal as a prime example of the importance of guaranteeing indigenous property rights.[[107]](#footnote-107)
3. The need to protect indigenous peoples lands, including from environmental harm, is also closely related to the protection of their culture and spiritual beliefs. Article 25 of UNDRIP confers the right of indigenous peoples to “maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.” This spiritual relationship with their environment speaks to their right to cultural integrity.
4. Article 3 of ILO 169 requires governments to recognize and protect the “social, cultural, religious and spiritual values and practices” of indigenous peoples.[[108]](#footnote-108) Article 17 extends this duty to require governments to “respect the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories.”[[109]](#footnote-109)
5. Professor Anaya discussed the importance of recognizing and respecting indigenous land due to the ties between their land and the preservation of indigenous cultural and their historical identity.[[110]](#footnote-110) Citing article 1 of the Declaration on the Right to Development,[[111]](#footnote-111) Professor Anaya supported its assertion that “development is an inalienable human right.”[[112]](#footnote-112) In the indigenous context, Professor Anaya stated that this proposition raises special concerns that must be taken into account by the State regarding development initiatives that affect indigenous communities, particularly concerns pertaining to social and economic issues.[[113]](#footnote-113) For instance, Professor Anaya noted that these issues underlie actions such as the dispossession of lands and natural resources and exclusion from State decision-making.[[114]](#footnote-114) Such actions can ultimately jeopardize indigenous peoples’ “aspirations to maintain and transmit to future generations their distinct identities and cultures.”[[115]](#footnote-115)

### Obligation to ensure the effective participation of indigenous peoples in decision-making, including the obligation to obtain free, prior and informed consent of indigenous peoples

1. Article 2 of ILO provides that “Governments shall have the responsibility for developing, with the participation of the peoples concerned, co-ordinated and systematic action to protect the rights of these peoples and to guarantee respect for their integrity.” Article 6(1)(b) provides that governments shall “establish means by which these peoples can freely participate, to at least the same extent as other sectors of the population, at all levels of decision-making in elective institutions and administrative and other bodies responsible for policies and programmes which concern them.” Article 7 further provides for indigenous participation in “the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly.”
2. Similarly, UNDRIP contains several articles addressing the right to participate and other rights related to decision-making. Article 5 provides that “[i]ndigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.” Article 18 provides indigenous peoples with “the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.” Article 23 provides that:

Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.

1. The UN Convention on Biodiversity, which has been ratified by over 150 countries, also places an obligation on States to give indigenous peoples a voice in the conservation and sustainable use of biodiversity.[[116]](#footnote-116)
2. Professor Anaya noted that the right to participate is based on other human rights principles such as self-determination, equality, cultural integrity, property and the rights to health and education, all of which inform its content.[[117]](#footnote-117)
3. Moreover, Professor Anaya has identified external and internal dimensions of the right to participation. The former relates “to decision-making by actors that are external to indigenous communities and related concerns” while the later concerns “indigenous peoples’ exercise of autonomy and self-government, and to maintaining their own legal and justice systems.”[[118]](#footnote-118)
4. The external dimension of the right includes “a collective element which requires States to enact special measures to ensure the effective participation of indigenous peoples within State political structures and institutions.” [[119]](#footnote-119)  The internal dimension includes “a corresponding duty of the State to allow indigenous peoples to make their own decisions concerning their internal matters, and to respect those decisions.”[[120]](#footnote-120)
5. Related to ensuring the effective participation of indigenous peoples in decision-making, articles 19 and 32 of UNDRIP establish a duty for States to consult and cooperate with indigenous communities. Article 19 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, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.” According to Professor Anaya, the external dimension of participation also includes a “corollary duty of States to consult with indigenous peoples in matters that affect their rights and interests in order to obtain their free, prior and informed consent.”[[121]](#footnote-121)
6. Article 32 further 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.

1. The Special Rapporteur stressed that article 32 of UNDRIP in particular can help avoid many problems arising from development projects affecting indigenous peoples.[[122]](#footnote-122) He explained that article 32 of the Declaration:

with its call for the free and informed consent of indigenous peoples 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, provides an important template for avoiding these problems in the development context.[[123]](#footnote-123)

1. Professor Anaya further stated:

Thus, the Declaration’s guarantees under article 32 are aimed not only at avoiding the harm to indigenous peoples that might result when development projects are carried out without their consent, but also at advancing indigenous peoples’ own development interests along with those of the larger society, with the objective that indigenous peoples genuinely influence decision-making regarding the development of the countries in which they live.[[124]](#footnote-124)

1. Article 6 of ILO 169 directs governments “to consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly.”[[125]](#footnote-125) It further provides that “[t]he consultations carried out in application of this Convention shall be undertaken, in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent to the proposed measures.”[[126]](#footnote-126)
2. The consult/consent structure of UNDRIP and ILO 169 also entails several related procedural duties. For example, Professor Anaya stated that the duty to obtain consent imposes a corollary duty to share information with affected peoples; indigenous peoples need “full, objective information” in order to give informed consent to natural resource extraction projects on their land.[[127]](#footnote-127) The Special Rapporteur also emphasised the important role States play in “the promotion, training and capacity-building necessary to allow indigenous peoples to adequately understand, design and implement development activities within or affecting their communities, including in relation to large-scale natural resource extraction and infrastructure projects.”[[128]](#footnote-128)
3. In the context of natural resource extraction, Professor Anaya recognised that consultation related to extractive and other projects taking place on their territories and lands is a “fundamental guarantee” of the rights of indigenous peoples.[[129]](#footnote-129) He supported this position by citing ILO 169 and UNDRIP, as well as the Inter-American Court of Human Rights decision in *Saramaka v. Suriname*, which held that States should ensure the participation of indigenous peoples affected by development or investment projects in their territory.[[130]](#footnote-130)
4. Professor Anaya stated that the duty imposed by UNDRIP to consult and seek consent from indigenous peoples extends to consultation with indigenous groups affected by natural resource extraction[[131]](#footnote-131) and the storage of hazardous materials on their land.[[132]](#footnote-132) While ILO 169 itself speaks only in terms of a “good faith attempt” to obtain consent, Professor Anaya has concluded that “[t]he Declaration and various other international sources of authority, along with practical considerations, lead to a general rule that extractive activities should not take place within the territories of indigenous peoples without their free, prior and informed consent.” [[133]](#footnote-133) Professor Anaya further noted that the obligation to consult indigenous peoples and obtain their informed consent to natural resource extraction projects applies to the initial exploration for resources as well as the actual extraction.[[134]](#footnote-134)
5. Professor Anaya explained that in order to fully implement UNDRIP, “states need to review their legislation to ensure that indigenous peoples’ rights are respected with regard to natural resource development.”[[135]](#footnote-135) Accordingly, in his reports, Professor Anaya cited several specific instances in which ILO 169 and UNDRIP place an affirmative procedural obligation on states to consult indigenous groups and obtain their consent with regard projects that impact their environment. Many of these obligations arise in the context of natural resource extraction. For example, with regard to the Marlin mine of Guatemala (a nation that has ratified ILO 169), Professor Anaya advised that “the State of Guatemala has a duty to consult the indigenous peoples concerning any legislative or administrative measure that may have a direct impact on them and, in particular, concerning any project involving investment in infrastructure or prospecting or exploitation of natural resources in indigenous territories.”[[136]](#footnote-136)
6. Professor Anaya acknowledged that the “general requirement” of consent to extractive projects within their territory may be “subject to certain exceptions” within “narrowly defined parameters.”[[137]](#footnote-137) When indigenous peoples withhold their consent to projects within their territories, including extractive projects, in order for the “project to be implemented the State has the burden of demonstrating either that no rights are being limited or that, if they are, the limitation is valid.”[[138]](#footnote-138) In order for a limitation to be valid, Professor Anaya explained that “first, the right involved must be one subject to limitation by the State and, second, as indicated by the Declaration, the limitation must be necessary and proportional in relation to a valid State objective motivated by concern for the human rights of others.”[[139]](#footnote-139)
7. However, he urged:

Whether or not indigenous consent is a strict requirement in particular cases, States should ensure good faith consultations with indigenous peoples about extractive activities that would affect them, and engage in efforts to reach agreement or consent, as required by the United Nations Declaration on the Rights of Indigenous Peoples (arts. 19 and 32, para. 2), ILO Convention No. 169 (art. 6, para. 2) and other sources.[[140]](#footnote-140)

1. The obligation to consult indigenous peoples and, if possible, to obtain their consent to measures that impact them directly, is frequently tested in the context of natural resource extraction.
2. The most common context where the State does not adequately consult with indigenous peoples is in relation to activities taking place on indigenous lands, including the extraction of natural resources and deforestation. According to Professor Anaya, an indigenous conception of property may include all natural resources pertaining to their traditional territory, as “[v]ery often indigenous peoples lay claim to all the resources, including subsurface resources, within their territories, under their own customs or laws, notwithstanding the laws of the State, and very often, those claims have not been adequately resolved.”[[141]](#footnote-141) In contrast, States often claim ownership of subsurface resources for themselves, and in several instances have asserted “the power to expropriate indigenous property interests in land or surface resources in order to have or permit access to the subsurface resources to which the State claims ownership.”[[142]](#footnote-142) Thus, property rights to natural resources comprise a matter of grave concern to many indigenous peoples; Professor Anaya reports receiving complaints from “indigenous groups on every continent” regarding, *inter alia*, the denial of their right to their natural resources and/or the right to consultation and consent with respect to natural resource extraction.[[143]](#footnote-143)
3. For example, several indigenous groups in Namibia claim that the government has failed to consult with them regarding extractive operations that directly affect their territory, including their subsistence and cultural survival:

Himba of the Kunene Region noted that neither their communities nor traditional leaders were informed about mining activities being carried out in their traditional territories and grazing lands. Further, there is also strong opposition by Himba, Ovazemba, Ovatue, and Ovatjimba peoples to the proposed construction of the Baynes hydroelectric power project. The proposed dam would be constructed on the Kunene River in an area that these various groups, and the Himba in particular, regard as their traditional territory and that is connected to their livelihoods and to cultural practices associated with ancestral graves.[[144]](#footnote-144)

1. In Guatemala, Professor Anaya found that the State failed in its duty to indigenous peoples affected by the Marlin gold mining operation in two ways. First, the State was not sufficiently involved in the dialogue between the mining company and the affected communities.[[145]](#footnote-145) Second, the State failed to directly consult those communities before granting licenses for prospecting and exploitation to the company.[[146]](#footnote-146)
2. Deforestation is another environmental threat with consequences for the human rights of indigenous peoples. Professor Anaya noted that the opinions of indigenous peoples are often not addressed in design of initiatives on the reduction of emissions from deforestation.[[147]](#footnote-147) He observed:

Indigenous peoples say that they were not adequately involved in the initial design of these initiatives and continue to call for greater participation in the development and implementation of such programming at all levels. Specifically, they have lobbied to ensure that indigenous peoples are consulted at all stages of the planning and implementation of projects aimed at reducing emissions from deforestation and forest degradation and that they are represented in the governance structures of such projects.[[148]](#footnote-148)

1. For example, many World Bank programs related to forest investment and rural development affect indigenous peoples’ human rights with regard to the environment. However, as Professor Anaya explained, many indigenous peoples are unhappy with the World Bank’s Operational Policy on indigenous peoples, which they claim sets a lower standard than the free, prior and informed consent standard contained in UNDRIP.[[149]](#footnote-149)
2. Many indigenous groups in the United States, such as the Rosebud Sioux and the Owe Aku Tribes, are also seriously concerned with lack of prior consultation before environmentally-degrading projects begin on or near their lands.[[150]](#footnote-150) Others, such as the Yamasi, advocate for more peaceful and productive communication between indigenous peoples and the government regarding environmental issues.[[151]](#footnote-151)
3. Failure to comply with the duty to consult in connection with development projects has resulted in negative consequences in Brazil and Colombia. In Brazil, Professor Anaya found a lack of “adequate mechanism of consultation with indigenous peoples affected by major development projects - such as the construction of highways and dams - and large-scale mining activities, including activities in areas outside demarcated indigenous lands but that nonetheless affect indigenous communities.”[[152]](#footnote-152) According to Anaya, Brazil’s framework for consultation suffers from an “absence of a well-defined procedure for consultations that conforms to the relevant international standards and that indigenous peoples consider will consistently provide them adequate opportunity to be heard.”[[153]](#footnote-153) In Colombia, despite assurances from the government, Professor Anaya received allegations that aerial fumigation of illicit crops continues to occur without adequate consultation with the indigenous communities affected and that it has given rise to health problems and food shortages.[[154]](#footnote-154)
4. In light of the grave threats posed to indigenous peoples by procedural failures, Professor Anaya’s preferred model of natural resource extraction within indigenous territories is that “indigenous peoples themselves initiate and engage in resource extraction.”[[155]](#footnote-155) Professor Anaya explains that this model is in accord with the substantive right of indigenous peoples to self-determination:

[I]ndigenous peoples have the right to determine priorities and strategies for the development or use of their lands and territories. This right necessarily implies a right of indigenous peoples to pursue their own initiatives for resource extraction within their territories if they so choose. In cases in which indigenous peoples retain ownership of all the resources, including mineral and other subsurface resources, within their lands, ownership of the resources naturally includes the right to extract and develop them.…[[156]](#footnote-156)

1. Professor Anaya acknowledged that some indigenous communities welcome the prospect of development from corporations but on their own terms.[[157]](#footnote-157) Indigenous peoples seek control and the opportunity to exercise their rights to autonomy and self-government, but the State must provide them with the opportunity by recognizing these rights.[[158]](#footnote-158) Professor Anaya emphasized this point stating that indigenous communities are opposed to “development which is carried out without respect for their basic rights, which brings with it only adverse impacts and which does not result in any visible benefits for their communities.”[[159]](#footnote-159) Beyond the realm of natural resource extraction, Professor Anaya noted that the duty to consent is also implicated by the international effort to halt climate change. In Professor Anaya’s view, indigenous peoples are among those “most affected” by climate change and thus demand greater participation in the international discussion on the subject.[[160]](#footnote-160) Specifically, indigenous peoples tend to advocate for a human-rights approach to climate change.[[161]](#footnote-161)

### Obligation to provide access to indigenous peoples to effective remedy

1. Article 12 of UNDRIP provides that:

The peoples concerned shall be safeguarded against the abuse of their rights and shall be able to take legal proceedings, either individually or through their representative bodies, for the effective protection of these rights. Measures shall be taken to ensure that members of these peoples can understand and be understood in legal proceedings, where necessary through the provision of interpretation or by other effective means.

1. Article 20(2) of UNDRIP states that “[i]ndigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress.”
2. Article 32 provides that “States shall provide effective mechanisms for just and fair redress” for any project affecting indigenous peoples’ lands or territories “and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.”
3. Article 15(2) of ILO 169 further provides that “[t]he peoples concerned … shall receive fair compensation for any damages which they may sustain as a result of” any programmes for the exploration or exploitation of natural resources pertaining to indigenous lands.
4. Moreover, the duty to consult established by UNDRIP and ILO 169 places responsibilities on States to mitigate the harms facing indigenous communities. According to Professor Anaya, “[m]easures to safeguard against or to mitigate environmental and other impacts that could adversely affect the rights of indigenous peoples in relation to their territories are an essential component of any agreement for extractive activities within the territories of indigenous peoples.”[[162]](#footnote-162)
5. The Special Rapporteur explained that where mitigation is impossible or ineffective, “indigenous peoples are entitled to ‘just and fair redress’ for any damage arising from corporate activities, as clearly set out in the relevant international instruments (Declaration, arts. 20.2, 32.3; ILO Convention No. 169, art. 15.2).”[[163]](#footnote-163) When corporations are responsible for causing damage from their operation to indigenous peoples, he explained that:

As may be clearly deduced from international standards, compensation must be aimed at repairing all possible adverse impacts of corporate activity on the daily life of indigenous peoples, including not only the impact on their environment or productive capacity, but also the impact on the social, cultural and spiritual aspects of their life.[[164]](#footnote-164)

1. Furthermore, according to the Special Rapporteur, the duty to protect indigenous ownership of land also includes the duty to investigate and punish abuses against indigenous communities.[[165]](#footnote-165)

### Obligations to guarantee that indigenous peoples derive reasonable benefit from development activities

1. Article 15 of ILO 169 provides that governments must take steps to ensure that indigenous peoples participate in, and reap the benefits of, the exploration and exploitation of those resources by outside parties. It provides that “[t]he peoples concerned shall wherever possible participate in the benefits of such activities.”[[166]](#footnote-166) Further, Professor Anaya has noted that the Nayoga Protocol to the U.N. Convention on Biodiversity requires States to share the benefits of any knowledge derived from indigenous peoples with those peoples themselves.[[167]](#footnote-167)
2. In connection with the right to benefit sharing, Professor Anaya has stated:

indigenous peoples have the right to share in the benefits arising from activities taking place on their traditional territories, especially in relation to natural resource exploitation. The duty to establish benefit sharing mechanisms for peoples affected by such activities is set out explicitly in article 15.2 of ILO Convention No. 169 and has been reiterated by, inter alia, the jurisprudence of the Inter-American Court of Human Rights and the Committee on the Elimination of Racial Discrimination (CERD).[[168]](#footnote-168)

1. According to the Special Rapporteur:

Indigenous peoples’ right to share in the benefits arising from activities affecting their traditional territories reflects the broad international recognition of the right to indigenous communal ownership, which includes recognition of rights relating to the use, administration and conservation of the natural resources existing in indigenous territories, independent of private or State ownership of those resources.”[[169]](#footnote-169)

Moreover, Professor Anaya stated that “mutually acceptable benefit sharing” is a means of guaranteeing the human rights of indigenous peoples in relation to major development projects.[[170]](#footnote-170)

1. Professor Anaya has also noted that the Inter-American Court of Human Rights has ruled that “benefit sharing is one of the guarantees required in any case involving limitations on the rights of indigenous communal ownership” and that “benefit sharing must be understood as equivalent to the right to fair compensation for limitation or deprivation of property, as recognized in various international instruments.”[[171]](#footnote-171)
2. Professor Anaya observed the challenges of implementing a system of benefit sharing in Nepal.[[172]](#footnote-172) When he interviewed both government officials and concerned indigenous communities, the Special Rapporteur found that both sides viewed that existing benefit-sharing mechanisms are ineffective and that they do not lead to increased community development.[[173]](#footnote-173) A major obstacle in this regard was the insufficient representation of indigenous groups in certain development committees.[[174]](#footnote-174)

### Obligation to conduct environmental and social impact assessments in connection with development activities on indigenous peoples’ land

1. Article 7(3) of ILO 169 requires governments to carry out studies “in co-operation with the peoples concerned, to assess the social, spiritual, cultural and environmental impact on them of planned development activities” and to take these studies into account in the implementation of those activities.[[175]](#footnote-175)
2. Professor Anaya explained that:

As is now generally understood, environmental and human rights impact assessments are important preconditions for the implementation of extractive operations. Indigenous peoples should have full access to the information gathered in impact assessments that are done by State agencies or extractive companies, and they should have the opportunity to participate in the impact assessments in the course of consultations or otherwise. States should ensure the objectivity of impact assessments, either by subjecting them to independent review or by requiring that the assessments are performed free from the control of the promoters of the extractive projects.[[176]](#footnote-176)

1. Professor Anaya further noted that the requirement to undertake environmental and social impact studies is firmly rooted in international law and practice:

In recognition of indigenous peoples’ reinforced right to the conservation and protection of the environment, international standards and practice now require that social and environmental impact studies be conducted as a specific guarantee for the protection of indigenous rights, and in particular with regard to projects involving investment in or the development, exploration or extraction of natural resources likely to affect those rights.[[177]](#footnote-177)

### Obligation to protect defenders of environmental rights

1. Many members of indigenous communities face threats to their life as a result of opposing extractive industries. Professor Anaya noted a general repression of human rights in indigenous communities that oppose extractive operations.[[178]](#footnote-178) He has received many allegations where “indigenous individuals and groups opposing extractive projects have been met with acts of intimidation or violence, including violence resulting in death.”[[179]](#footnote-179) In southeast Asia, for example, “military and security forces are alleged to use force and intimidation against indigenous peoples who opposed hydroelectric projects, and at times such opposition has led to an eruption of violence between protestors and security and military forces.”[[180]](#footnote-180) Government justification for such violence is sometimes framed in terms of counter-insurgency:

The Special Rapporteur also received information that security plans often tend to target insurgent groups located in the resource-rich territories of indigenous peoples. Thus, in many cases, indigenous peoples regard the military presence in their territories, which is purported to be for anti-insurgency purposes, to be aimed instead at suppressing resistance to natural resources extraction projects.[[181]](#footnote-181)

1. In Guatemala, the “business activities under way in the traditional territories of the indigenous peoples . . . have generated a highly unstable atmosphere of social conflict.”[[182]](#footnote-182) Indigenous peoples and human rights defenders who protest the Marlin mine and its negative impact have occasionally been met with violence by governmental security forces, including one instance in 2004 when security forces killed one person and wounded several others who were attempting to blockade the road to the mine.[[183]](#footnote-183) Indigenous people living in this atmosphere report that the extractive industry has led directly to “harassment of, attacks on and even killings of community leaders; enforced removals; damage to and demolition of houses; and horrendous cases of rape and sexual abuse of women.”[[184]](#footnote-184)
2. Professor Anaya has outlined various obligations to ensure that indigenous peoples can safely oppose projects and activities. For example, in his report on extractive industries, he noted that States must adopt measures to allow for the right of indigenous peoples to protest against extractive projects. He explained:

It is imperative that States adopt the measures necessary to secure the right of indigenous peoples and individuals to peacefully express opposition to extractive projects, as well as to express themselves on other matters, free from any acts of intimidation or violence, or from any form of reprisals. States should provide adequate training to security forces, hold responsible those who commit or threaten acts of violence, and take measures to prevent both State and private agents from engaging in the unjustifiable or excessive use of force. [[185]](#footnote-185)

1. Professor Anaya also discussed the need for States to refrain from using criminal laws to suppress the legitimate protest activities of indigenous peoples. He stated that:

criminal prosecution of indigenous individuals for acts of protest should not be employed as a method of suppressing indigenous expression and should proceed only in cases of clear evidence of genuine criminal acts. Instead, the focus should be on providing indigenous peoples with the means of having their concerns heard and addressed by relevant State authorities.[[186]](#footnote-186)

##  Substantive Obligations

1. The substantive obligations articulated by the Special Rapporteur, ILO 169 and UNDRIP include the obligations: (i) to take measures to protect and preserve the environment of indigenous territories; and (ii) to balance environmental conservation with the rights of indigenous peoples.

### Duty to take measures to protect and preserve the environment of indigenous territories

1. ILO 169 article 7, Section 4 states that: “Governments shall take measures, in co-operation with the peoples concerned, to protect and preserve the environment of the territories they inhabit.”
2. Article 29 of UNDRIP grants indigenous peoples the right to “the conservation and protection of the environment and the productive capacity of their lands or territories and resources,” and requires States to take proactive measures to prevent the disposal of hazardous waste on indigenous peoples’ lands. Article 29 specifically provides 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. States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented.

### Duty to balance environmental conservation with the rights of indigenous peoples

1. Professor Anaya has reported that many indigenous peoples around the world also suffer negative consequences from projects that are intended to *preserve* the traditional landscape, such as national parks, wildlife conservation areas, and even UNESCO world heritage sites.[[187]](#footnote-187) While such areas provide great benefits in terms of conservation and tourism, they are often carved out of land inhabited and used by indigenous peoples, which may result in the affected peoples being denied access to their traditional land as well as to the resources located there.[[188]](#footnote-188) As with natural resource extraction, the conversion of indigenous territory to national conservation projects is facilitated by a general failure to recognize indigenous claims to the land in question.
2. In Namibia, for example, the colonial German administration established Etosha National Park in the 1920s from land traditionally inhabited by indigenous San communities such as Hai//om.[[189]](#footnote-189) In the 1950s the Hai//om were evicted from the park and banned from hunting and gathering there. The Hai//om are now landless and still awaiting resettlement, or have been resettled on commercial farms.[[190]](#footnote-190)
3. With respect to Bwabata National Park created in 2007 in Namibia, Professor Anaya observed that “[t]he designations of both the game reserve and the national park were made without consultations with the some 1,000 to 2,000 Khwe San people living within the park’s boundaries, who were also excluded from participating in the design or management of the park.” [[191]](#footnote-191) He further noted that:

Khwe people living in the park have a still undefined legal status with respect to park lands (there is not even any written acknowledgment of the right of the Khwe to continue to occupy these lands). The Khwe likewise have no right to hunt game, traditionally or otherwise, within the park’s boundaries, and may only gather, in specific ungazetted areas, some essential subsistence items, including firewood.[[192]](#footnote-192)

1. In Argentina, indigenous peoples “face continuous challenges regarding access to land and natural resources within protected areas,” despite a recent agreement with the government that provides for increased indigenous control over the management of some national parks.[[193]](#footnote-193) For example, the Potae Napocna Navogoh community in Formosa “is forbidden from taking clean water from the lakes in the Pilcomayo National Park, which are located in what they consider to be their traditional lands,” which, Professor Anaya reported, “has contributed to severe dehydration among members of this community.”[[194]](#footnote-194)
2. Other threats to the property and resource rights of indigenous Argentinians have occurred around Quebrada de Humahuaca, a narrow mountainous valley which was designated as a UNESCO world heritage site in 2003.[[195]](#footnote-195) Historically, the area surrounding the valley has been home to several indigenous communities. After the site was listed by UNESCO:

there was a huge increase in tourism and in the economic value of the land used and occupied by indigenous peoples in the area. Because of this, the provincial government has issued land titles to foreign investors, and as a result, according to the information received, the surrounding indigenous communities have been dispossessed of their land and have fewer water resources.[[196]](#footnote-196)

In addition, according to Professor Anaya, “[t]he communities are not involved in the supervision or management of the site and derive no economic benefits therefrom. Moreover, the provincial government has reportedly still not surveyed the territories of the indigenous communities in the Quebrada de Humahuaca.”[[197]](#footnote-197)

1. Professor Anaya noted a similar pattern occurring among indigenous groups in various Asian countries, noting the “growing concern” in the manner “in which lands that are traditionally occupied by indigenous peoples are officially designated for conservation or tourism.”[[198]](#footnote-198) The result is that “indigenous peoples [are dispossessed] of their customary lands or [impeded in] their subsistence activities. Those people who remain in, or continue to access, conservation areas for subsistence purposes have been in many instances subjected to criminal prosecution.”[[199]](#footnote-199)

# Cross-cutting Issues

## Transboundary Harm

1. In many regions of the world, indigenous groups span State borders and may be known by different names and receive different legal status depending on which side of the border they live.[[200]](#footnote-200) Professor Anaya highlighted this issue with regard to Native Americans in the United States, where “[s]everal indigenous peoples live in border areas and face unique challenges, especially tribes living along the United States-Mexico border, where heightened border security measures implemented by the federal Government in recent years have increasingly made cross-border contact between members of the same tribes very difficult.”[[201]](#footnote-201)
2. ILO 169 specifically addresses the human rights of indigenous communities whose territory spans national boundaries. Article 32 requires governments to “take appropriate measures, including by means of international agreements, to facilitate contacts and co-operation between indigenous and tribal peoples across borders, including activities in the . . . environmental fields.”[[202]](#footnote-202)
3. Despite the fact that many indigenous groups span national borders, according to Professor Anaya, “few examples exist to date of specific, formal arrangements to advance the self-determination of one indigenous people across the borders of several States.”[[203]](#footnote-203) Professor Anaya uses Sami of northern Scandinavia as an example of a good practice to overcome this challenge. According to him, the Sami people “have made significant efforts to advance their collective self-determination through the development of cross-border institutions and initiatives, and have taken noteworthy steps in this regard; but ongoing barriers persist.”[[204]](#footnote-204)
4. Climate change is also one of the most challenging global environmental threats cutting across borders. While climate change obviously affects all people, Professor Anaya asserted that climate change “has particular adverse affects on people such as the Sami who depend upon the arctic climate for their livelihoods.”[[205]](#footnote-205) Professor Anaya explained that:

As winter temperatures rise due to global warming, snow thaws and melts into the lichen that reindeer eat, and when temperatures then drop below freezing, the lichen is encased in ice making it very difficult for the reindeer to eat and digest. Also, summer pastures may change from open to shrub vegetation land and herders are finding it necessary to move their herds to drier ground.[[206]](#footnote-206)

##  Harm Caused by Non-State Actors

1. Although the State has the ultimate responsibility to ensure respect for human rights of indigenous people, Professor Anaya recognised the “widespread understanding of the roles business enterprises may play in both the infringement and fulfilment of human rights in various contexts.”[[207]](#footnote-207) Professor Anaya, referencing the Guiding Principles on Business and Human Rights, explained that “business enterprises have a responsibility to respect internationally recognized human rights and that this responsibility is independent of State obligations.”[[208]](#footnote-208) Consistent with the Guiding Principles, Professor Anaya stated that companies, given their independent responsibility to respect human rights, must perform due diligence “to ensure that their actions will not violate or be complicit in violating indigenous peoples’ rights, identifying and assessing any actual or potential adverse human rights impacts of” proposed projects.[[209]](#footnote-209)
2. Professor Anaya stated that a large proportion of the abuses suffered by indigenous peoples can be attributed to the extractive industries.[[210]](#footnote-210) He explained that non-state actors engaged in “negligent projects in the extraction industry” can cause severe impacts on the enjoyment of the economic, social and cultural rights of indigenous peoples.[[211]](#footnote-211)
3. In the context of extractive projects, Professor Anaya has identified due diligence obligations on States:

Such due diligence entails identifying with particularity, at the very earliest stages of planning for an extractive project, the specific indigenous groups that may be affected by the project, their rights in and around the project area and the potential impacts on those rights. This due diligence should be performed preliminarily at the very earliest stages of determining the feasibility of the project, in advance of a more complete project impact assessment in later stages of planning or decision-making about the project. Additionally, extractive companies should employ due diligence to avoid acquiring tainted assets, such as permits previously acquired by other business enterprises in connection with prospecting for or extracting resources in violation of indigenous peoples’ rights.[[212]](#footnote-212)

1. According to Professor Anaya, “[d]ue diligence also entails ensuring that the company is not contributing to or benefiting from any failure on the part of the State to meet its international obligations towards indigenous peoples.”[[213]](#footnote-213) In this regard, “business enterprises, including extractive companies, should not assume that compliance with State law equals compliance with the international standards of indigenous rights.”[[214]](#footnote-214) This duty is often neglected, as “most corporate policies still fall short of adequately providing for compliance with international standards of indigenous rights.”[[215]](#footnote-215) In order for private companies to meaningfully

comply with relevant international human rights norms within their respective spheres of influence, Professor Anaya explained that “it is necessary for them to identify, fully incorporate and make operative the norms concerning the rights of indigenous peoples within every aspect of their work related to the projects they undertake.” [[216]](#footnote-216)

1. Professor Anaya noted that in some cases, States tend to delegate their duties to protect indigenous peoples with regard to natural resource extraction projects to business enterprises.[[217]](#footnote-217) In particular, the States often delegate companies, formally and informally, to carry out consultations with indigenous peoples.[[218]](#footnote-218) The Special Rapporteur explained that delegation, besides not absolving the State of its ultimate responsibility to consult, “may not be desirable, and can even be problematic, given that the interests of the private company, generally speaking, are principally lucrative and thus cannot be in complete alignment with the public interest or the best interests of the indigenous peoples concerned.”[[219]](#footnote-219) Professor Anaya further warned that companies, even if acting in good faith, “do not always have an adequate understanding of the relevant international standards and do not have internal codes of conduct reflecting them.”[[220]](#footnote-220)
2. Professor Anaya noted that this practice has caused problems among indigenous communities in Asia, where “consultation and consent-seeking processes are often conducted by multinational companies that implement projects.”[[221]](#footnote-221) Professor Anaya reported that several indigenous groups in the region have stressed the need for greater government oversight over implementing companies in this situation.[[222]](#footnote-222)
3. When it comes to the absence of State-led consultations, Professor Anaya explained that “companies must not accept any award or commence any activity if the State has failed to hold prior and adequate consultations with the indigenous communities concerned, and companies, in exercising due diligence, may not simply assume that such consultations have taken place prior to the award being granted.” [[223]](#footnote-223) Moreover, “companies must not hold consultations that endeavour to or actually replace the State’s obligation to consult with indigenous peoples in relation to activities affecting them.” [[224]](#footnote-224)
4. Professor Anaya also outlined various responsibilities corporations have in relation to consultation. First, States must consult indigenous communities before authorizing any development or measure that might have a direct impact on their rights, specifically in relation to activities that take place in their traditional territories.[[225]](#footnote-225) These consultations must conform to international standards and in some cases must receive the consent of the indigenous peoples concerned.[[226]](#footnote-226) Due to the nature of consultation involving dialogue and negotiation, the Special Rapporteur stated that consultation should not be viewed as a single event.[[227]](#footnote-227) Further, even if the consultations are successful, the corporations will still need to take steps to secure State approval, through such measures as licenses and impact statements from administrative agencies.[[228]](#footnote-228) In addition to these due diligence measures, the corporations must also respect indigenous rights and ensure that they “do not contribute to any act or omission on the part of the State that could lead to violations of those rights.”[[229]](#footnote-229)
5. Professor Anaya also advocated for direct negotiations between companies and indigenous peoples. This, he argued, “may be the most efficient and desirable way of arriving at agreed-upon arrangements for extraction of natural resources within indigenous territories that are fully respectful of indigenous peoples’ rights.”[[230]](#footnote-230) Also, in cases where national standards for indigenous human rights fall short of international norms, “company grievance procedures should be established that complement the remedies provided by the State.”[[231]](#footnote-231)
6. In summary, Professor Anaya concluded that:

The responsibility to consult indigenous peoples must be fully assumed by companies as part of their duty to respect human rights. This implies a change in perspective that goes beyond traditional approaches to local participation which are aimed at obtaining support for project operations. Companies must therefore make every possible effort to carry out responsible, transparent and effective consultations, which genuinely correspond to the goal of reaching agreement or consensus with indigenous peoples, in accordance with the relevant international instruments. In conducting such consultations, companies should endeavour to incorporate in them the minimum criteria laid down in those international instruments, especially in cases where domestic law provides either limited regulations or none at all. [[232]](#footnote-232)

1. Professor Anaya also highlighted that “one of the fundamental difficulties facing companies that operate in indigenous territories, or whose operations affect those territories, is the absence of formal recognition of indigenous peoples by the State in which they live, or recognition limited solely to certain groups.” [[233]](#footnote-233) According to the Special Rapporteur, the failure of the State to formally recognise an indigenous people in its territory, or the decision to only recognise limited groups, should not be used by companies that seek to do business with indigenous peoples or on their territory “as an excuse not to apply the minimum international standards applicable to indigenous rights, including in cases where States are opposed to the application of such standards.” [[234]](#footnote-234) In other words, non-state actors operating in indigenous territory have a duty of due diligence that precludes them from using the lack of recognition of indigenous peoples in a particular country as an excuse not to respect their human rights.[[235]](#footnote-235)
2. Where the State has not formally recognised indigenous groups, Professor Anaya explained that “due diligence therefore requires that companies identify in advance the existence of indigenous peoples potentially affected by their activities and how they might be affected by such activities.”[[236]](#footnote-236) In conducting their due diligence activities, companies should use World Bank or International Finance Corporation Policies, as well as ILO 169, to help to identify indigenous groups.[[237]](#footnote-237)
1. International Labour Organisation, Convention concerning Indigenous and Tribal Peoples in Independent Countries (No. 169), 27 June 1989. [↑](#footnote-ref-1)
2. United Nations Declaration on the Rights of Indigenous Peoples(UNDRIP), General Assembly Resolution 61/295, 13 September 2007, preamble. [↑](#footnote-ref-2)
3. International Labour Organisation (ILO), *History of ILO’s Work*, *available at* <http://www.ilo.org/indigenous/Aboutus/HistoryofILOswork/lang--en/index.htm>. [↑](#footnote-ref-3)
4. *Ibid*. [↑](#footnote-ref-4)
5. ILO 169, note 1 *supra*, art. 7(1). [↑](#footnote-ref-5)
6. *Ibid*. preamble. [↑](#footnote-ref-6)
7. ILO, *History of ILO’s Work*, note 3 *supra*. [↑](#footnote-ref-7)
8. UNDRIP, note 2 *supra*, preamble. [↑](#footnote-ref-8)
9. United Nations Permanent Forum on Indigenous Issues, *Frequently Asked Questions: Declaration on the Rights of Indigenous Peoples*, *available at* <http://www.un.org/esa/socdev/unpfii/documents/FAQsindigenousdeclaration.pdf>. [↑](#footnote-ref-9)
10. United Nations Permanent Forum on Indigenous Issues, *Frequently Asked Questions: Declaration on the Rights of Indigenous Peoples*, available at <http://www.un.org/esa/socdev/unpfii/documents/FAQsindigenousdeclaration.pdf>. [↑](#footnote-ref-10)
11. *Ibid*. preamble. [↑](#footnote-ref-11)
12. Human Rights Council Resolution 15/14, 6 October 2010, U.N. Doc. A/HRC/RES/15/14. [↑](#footnote-ref-12)
13. *Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya: Extractive industries operating within or near indigenous territories*, 11 July 2011, U.N. Doc. A/HRC/18/35, ¶ 30. [↑](#footnote-ref-13)
14. *Addendum to the Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya: The situation of Kanak people in New Caledonia, France*, 23 November 2011, U.N. Doc. A/HRC/18/35/Add.6, ¶ 35. [↑](#footnote-ref-14)
15. *Ibid*. ¶ 36. [↑](#footnote-ref-15)
16. *Report to the Human Rights Council on the Situation of Indigenous Peoples in the United States of America*, 30 August 2012, U.N. Doc. A/HRC/21/47/Add.1. [↑](#footnote-ref-16)
17. *Ibid*. ¶ 70. [↑](#footnote-ref-17)
18. *Report to the Human Rights Council on the Situation of Indigenous Peoples in Colombia: Follow-Up to the Recommendations Made by the Previous Special Rapporteur*, 25 May 2010, U.N. Doc. A/HRC/15/37/Add.3, ¶ 43. [↑](#footnote-ref-18)
19. *Consultation on the Situation of Indigenous Peoples in Asia*, 31 July 2013, U.N. Doc. A/HRC/24/41/Add.1, ¶ 28. [↑](#footnote-ref-19)
20. *Ibid*. [↑](#footnote-ref-20)
21. *Ibid*. ¶ 16. [↑](#footnote-ref-21)
22. *Ibid*. ¶¶ 16, 28. [↑](#footnote-ref-22)
23. *The situation of Kanak people in New Caledonia, France,* note 14 *supra*, ¶¶ 54-55. [↑](#footnote-ref-23)
24. *Report to the Human Rights Council on the Situation of Indigenous Peoples in Namibia*, 25 June 2013, U.N. Doc. A/HRC/24/41/Add.1, ¶ 73. [↑](#footnote-ref-24)
25. *Report to the Human Rights Council on the Situation of Indigenous Peoples in Argentina*, 4 July 2012, U.N. Doc. A/HRC/21/47/Add.2, ¶ 38. [↑](#footnote-ref-25)
26. *Observations on the Situation of the Rights of the Indigenous Peoples of Guatemala with relation to the Extraction Projects, and Other Types of Projects, in Their Traditional Territories*, 7 June 2011, U.N. Doc. A/HRC/18/35/Add. 3, app. 1, ¶ 45. [↑](#footnote-ref-26)
27. ILO 169, note 1 *supra*, art. 7(1). [↑](#footnote-ref-27)
28. *Report to the Human Rights Council on Extractive Industries and Indigenous Peoples*, 1 July 2013, A/HRC/24/41, ¶ 16. [↑](#footnote-ref-28)
29. *Report on the Situation of Kanak People in New Caledonia*, note 14 *supra*, ¶ 29. [↑](#footnote-ref-29)
30. *Report to the Human Rights Council on the Situation of Human Rights and Fundamental Freedoms of Indigenous People*, 19 July 2010, U.N. Doc. A/HRC/15/37, ¶ 40. [↑](#footnote-ref-30)
31. *Informe del Relator Especial sobre los derechos de los pueblos indígenas, James Anaya, La situación de los pueblos indígenas afectados por el proyecto hidroeléctrico El Diquís en Costa Rica*, 11 July 2011, U.N. Doc. A/HRC18/35/Add.8, ¶¶ 1-2. [↑](#footnote-ref-31)
32. *Ibid.* ¶ 2. [↑](#footnote-ref-32)
33. *2011 Report on Extractive Industries Operating Within or Near Indigenous Territories*, note 13 *supra*, ¶ 33. [↑](#footnote-ref-33)
34. *Ibid*. ¶ 31. [↑](#footnote-ref-34)
35. *Report on the Situation of Indigenous Peoples in the United States of America*, note 16 *supra*, ¶ 60. [↑](#footnote-ref-35)
36. *Report to the Human Rights Council on the Situation of the Sami People in the Sápmi Region of Norway, Sweden and Finland*, 6 June 2011, U.N. Doc. A/HRC/18/35/Add.2,¶ 53. [↑](#footnote-ref-36)
37. *Ibid*. ¶ 57. [↑](#footnote-ref-37)
38. *Report on the Situation of Indigenous Peoples in Argentina*, note 26 *supra*, ¶ 42. [↑](#footnote-ref-38)
39. *Report to the Human Rights Council on the Situation of Maori People in New Zealand*, 31 May 2011, U.N. Doc. A/HRC/18/35/Add.4, ¶ 5. [↑](#footnote-ref-39)
40. *Ibid*. ¶ 6. [↑](#footnote-ref-40)
41. *Consultation on the Situation of Indigenous Peoples in Asia*, note 19 *supra*, ¶ 13. [↑](#footnote-ref-41)
42. *Ibid*. ¶ 18. [↑](#footnote-ref-42)
43. *Report on the Situation of Indigenous Peoples in Argentina*, note 25 *supra*, ¶ 39. [↑](#footnote-ref-43)
44. *Report on the Situation of Indigenous Peoples in the United States of America*, note 16 *supra*, ¶ 44. [↑](#footnote-ref-44)
45. *2011* *Report on Extractive Industries Operating Within or Near Indigenous Territories*, note 13 *supra*, ¶ 34. [↑](#footnote-ref-45)
46. *Report on the Situation of Indigenous Peoples in the United States of America,* note 16 *supra,* ¶ 43. [↑](#footnote-ref-46)
47. *2013* *Report on Extractive Industries and Indigenous Peoples*, note 28 *supra*, ¶ 3. [↑](#footnote-ref-47)
48. *Ibid*. app. II, ¶ 15. [↑](#footnote-ref-48)
49. *Report on the Situation of Indigenous Peoples in the United States of America*, note 16 *supra*, ¶¶ 33-4, 37-8. [↑](#footnote-ref-49)
50. *Ibid*. ¶ 39. [↑](#footnote-ref-50)
51. *Report to the Human Rights Council on the Situation of the Sami People in the Sápmi Region of Norway, Sweden and Finland*, note 36 *supra*, ¶ 55. [↑](#footnote-ref-51)
52. *Ibid*. ¶ 5. [↑](#footnote-ref-52)
53. *2013 Report on Extractive Industries and Indigenous Peoples*, note 28 *supra*, ¶ 28. [↑](#footnote-ref-53)
54. *Report to the General Assembly on the Rights of Indigenous Peoples*, 13 August 2012, U.N. Doc. A/67/301, at ¶ 68. [↑](#footnote-ref-54)
55. *Ibid*. [↑](#footnote-ref-55)
56. ILO*, History of ILO’s Work, available at* <http://www.ilo.org/indigenous/Aboutus/HistoryofILOswork/lang--en/index.htm>. [↑](#footnote-ref-56)
57. *See* ILO, *The Basic Principles of ILO Convention 169*, *available at* <http://www.ilo.org/indigenous/Conventions/no169/lang--en/index.htm>. [↑](#footnote-ref-57)
58. ILO 169, note 1 *supra*, art. 2(1). [↑](#footnote-ref-58)
59. *Ibid*. art. 2(2). [↑](#footnote-ref-59)
60. UNDRIP, note 2 *supra*, arts. 3, 7(1), 11(1), 18, 19, 23, 27, 29(1). [↑](#footnote-ref-60)
61. *Ibid*. art. 19. [↑](#footnote-ref-61)
62. *Ibid*. art. 27. [↑](#footnote-ref-62)
63. *Ibid.* arts. 3-4. [↑](#footnote-ref-63)
64. *Ibid*. art. 4. [↑](#footnote-ref-64)
65. *Report to the General Assembly on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples*, 9 August 2010, U.N. Doc. A/65/264, ¶ 73. [↑](#footnote-ref-65)
66. *Ibid*. ¶ 30; *see also* UNDRIP, note 2 *supra*, art. 23. [↑](#footnote-ref-66)
67. *2010 Report to the General Assembly on the Situation of Human Rights and Fundamental Freedoms of Indigenous People*, note 65 *supra*, ¶ 39. [↑](#footnote-ref-67)
68. UNDRIP, note 2 *supra*, art. 10. [↑](#footnote-ref-68)
69. *Ibid*. art. 26. [↑](#footnote-ref-69)
70. *Ibid*. [↑](#footnote-ref-70)
71. *Ibid*. [↑](#footnote-ref-71)
72. ILO 169, note 1 *supra*, art. 14. [↑](#footnote-ref-72)
73. *2010 Report to the Human Rights Council on the Situation of Human Rights and Fundamental Freedoms of Indigenous People*, note 30 *supra*, ¶ 44. [↑](#footnote-ref-73)
74. *Ibid*. ¶ 54. [↑](#footnote-ref-74)
75. *Ibid*. [↑](#footnote-ref-75)
76. ILO 169, note 1 *supra*, art. 16(1). [↑](#footnote-ref-76)
77. *Ibid*. art. 16(2). [↑](#footnote-ref-77)
78. *2013 Report on Extractive Industries and Indigenous Peoples*, note 28 *supra,* ¶ 35. [↑](#footnote-ref-78)
79. *Report to the Humans Rights Council on the Measures Needed to Secure Indigenous and Tribal Peoples’ Land and Related Rights in Suriname*, 18 August 2011, U.N. Doc. A/HRC/18/35/Add/7, ¶ 14. [↑](#footnote-ref-79)
80. *Report on the Situation of Indigenous Peoples in Namibia*, note 24 *supra,* ¶ 38. [↑](#footnote-ref-80)
81. *Preliminary Note on the Application of the Principle of Consultation with Indigenous Peoples in Guatemala and the Case of the Marlin Mine*, 8 July 2010, U.N. Doc. A/HRC/15/37/Add.8, ¶ 8. [↑](#footnote-ref-81)
82. *Consultation on the Situation of Indigenous Peoples in Asia*, note 19 *supra*, ¶ 11. [↑](#footnote-ref-82)
83. *Ibid*. ¶ 17. [↑](#footnote-ref-83)
84. *Report to the Human Rights Council on the Situation of Indigenous Peoples in the Republic of the Congo*,11 July 2011, U.N. Doc. A/HRC/18/35/Add.5, ¶ 33. [↑](#footnote-ref-84)
85. *Ibid*. [↑](#footnote-ref-85)
86. *Report to the Human Rights Council on the Situation of Maori People in New Zealand*, note 39 *supra*, ¶ 52. [↑](#footnote-ref-86)
87. *Report on the Situation of Indigenous Peoples in Namibia*, note 25 *supra*, ¶ 23. [↑](#footnote-ref-87)
88. *Report on the Situation of Indigenous Peoples in the Republic of the Congo,* note 84 *supra,* ¶ 37. [↑](#footnote-ref-88)
89. *Ibid*. ¶ 38. [↑](#footnote-ref-89)
90. *Report to the Human Rights Council on the Situation of the Sami People in the Sápmi Region of Norway, Sweden and Finland*, note 36 *supra*, ¶ 29. [↑](#footnote-ref-90)
91. *Ibid*. ¶ 50. [↑](#footnote-ref-91)
92. *Ibid*. ¶ 62. [↑](#footnote-ref-92)
93. *Report on the Situation of Kanak People in New Caledonia, France*, note 14 *supra*, ¶ 32. [↑](#footnote-ref-93)
94. *Ibid*. ¶ 33. [↑](#footnote-ref-94)
95. *Report on the Situation of the Sami People in the Sámi Region of Norway, Sweden and Finland*, note 36 *supra*, ¶ 46. [↑](#footnote-ref-95)
96. *Ibid.* ¶ 57. [↑](#footnote-ref-96)
97. *Ibid*. ¶ 58. [↑](#footnote-ref-97)
98. *Ibid*. ¶ 59. [↑](#footnote-ref-98)
99. *Ibid*. ¶ 58. [↑](#footnote-ref-99)
100. *Ibid*. [↑](#footnote-ref-100)
101. *Report to the Human Rights Council on the Situation of Indigenous Peoples in Nepal,* 20 July 2009, U.N. Doc. A/HRC/12/34/Add.3. [↑](#footnote-ref-101)
102. *Ibid*. ¶ 30. [↑](#footnote-ref-102)
103. *Ibid*. [↑](#footnote-ref-103)
104. *Ibid*. ¶ 31. [↑](#footnote-ref-104)
105. *Ibid*. ¶ 30. [↑](#footnote-ref-105)
106. *Ibid*. ¶ 31. [↑](#footnote-ref-106)
107. See generally *ibid*. [↑](#footnote-ref-107)
108. ILO 169, note 1 *supra*, art. 3. [↑](#footnote-ref-108)
109. *Ibid*. art. 17. [↑](#footnote-ref-109)
110. *2010 Report to the General Assembly on the Situation of Human Rights and Fundamental Freedoms of Indigenous People*, note 65 *supra,* ¶ 25. [↑](#footnote-ref-110)
111. Declaration on the Right to Development, 4 December 1986, U.N. Doc. A/RES/41/128. [↑](#footnote-ref-111)
112. *2010 Report to the General Assembly on the Situation of Human Rights and Fundamental Freedoms of Indigenous People*, note 65 *supra,* ¶ 25. [↑](#footnote-ref-112)
113. *Ibid.* [↑](#footnote-ref-113)
114. *Ibid.* [↑](#footnote-ref-114)
115. *Ibid.* [↑](#footnote-ref-115)
116. *2012 Report to the General Assembly on the Rights of Indigenous Peoples*, note 54 *supra*, ¶¶ 55-56; Convention on Biodiversity, art. 8(j). [↑](#footnote-ref-116)
117. 2010 *Report to the General Assembly on the Situation of Human Rights and Fundamental Freedoms of Indigenous People,* note 65 *supra*, ¶ 39. [↑](#footnote-ref-117)
118. *Ibid.* ¶¶ 42, 46. [↑](#footnote-ref-118)
119. *Ibid.* ¶ 43. [↑](#footnote-ref-119)
120. *Ibid.* ¶ 46. [↑](#footnote-ref-120)
121. *Ibid.* ¶ 44. [↑](#footnote-ref-121)
122. *Ibid*. ¶ 27. [↑](#footnote-ref-122)
123. *Ibid*. [↑](#footnote-ref-123)
124. *Ibid*. ¶ 28. [↑](#footnote-ref-124)
125. ILO 169, note 1 *supra,* art. 6 (1) (a) [↑](#footnote-ref-125)
126. *Ibid.* art. 6 (2). [↑](#footnote-ref-126)
127. *Report to the General Assembly on the Rights of Indigenous Peoples*, 10 August 2011, U.N. Doc. A/66/288, at ¶ 90. [↑](#footnote-ref-127)
128. *2010 Report to the General Assembly on the Situation of Human Rights and Fundamental Freedoms of Indigenous People*, note 65 *supra*, ¶ 33. [↑](#footnote-ref-128)
129. *Observations on the Situation of the Rights of the Indigenous Peoples of Guatemala*, note 26 *supra*, ¶ 51. [↑](#footnote-ref-129)
130. *Ibid*. ¶ 52, *citing* *Case of the Saramaka People v. Suriname,* 28 November 2007, Preliminary Objections, Merits, Reparations, and Costs Judgment (Ser. C No. 172),¶ 134. [↑](#footnote-ref-130)
131. *2011 Report to the General Assembly on the Rights of Indigenous Peoples,* note 127 *supra*, ¶ 82. [↑](#footnote-ref-131)
132. *Ibid*. ¶ 84. [↑](#footnote-ref-132)
133. *2013Report on Extractive Industries and Indigenous Peoples*, note 28 *supra,* ¶ 27, citing UNDRIP, art. 32(2); *Saramaka People* v. *Suriname*, note 130 *supra*, ¶¶ 129-137; Human Rights Committee, Communication No. 1457/2006, *Ángela Poma Poma v. Peru*, views adopted on 27 March 2009, U.N. Doc. CCPR/C/95/D/1457/2006, ¶¶ 7.5, 7.7; Committee on the Elimination of Racial Discrimination, *General Recommendation XXIII, Rights of Indigenous Peoples,* 18 August 1997, U.N. Doc. A/52/18, Annex X; Committee on Economic, Social and Cultural Rights, *Consideration of reports submitted by States parties under articles 16 and 17 of the Covenant, Concluding observations of the Committee on Economic, Social and Cultural Rights: Colombia,* 30 November 2001, U.N. Doc. E/C.12/1/Add.74, ¶ 12. [↑](#footnote-ref-133)
134. *2013 Report on Extractive Industries and Indigenous Peoples*, note 28 *supra,* ¶ 68. [↑](#footnote-ref-134)
135. *Ibid*. ¶ 73. [↑](#footnote-ref-135)
136. *Preliminary Note on the Application of the Principle of Consultation with Indigenous Peoples in Guatemala and the Case of the Marlin Mine*, note 81 *supra*, ¶15. [↑](#footnote-ref-136)
137. *2013 Report on Extractive Industries and Indigenous Peoples*, note 28 *supra*, ¶ 31. [↑](#footnote-ref-137)
138. *Ibid*. ¶ 33. [↑](#footnote-ref-138)
139. *Ibid*. ¶ 34. [↑](#footnote-ref-139)
140. *Ibid*. ¶ 37. [↑](#footnote-ref-140)
141. *Ibid*. ¶ 16. [↑](#footnote-ref-141)
142. *Ibid*. ¶ 35. [↑](#footnote-ref-142)
143. *2011 Report to the General Assembly on the Rights of Indigenous Peoples*, note 127 *supra*, ¶ 50. [↑](#footnote-ref-143)
144. *Report on the Situation of Indigenous Peoples in Namibia*, note 24 *supra,* ¶ 56. [↑](#footnote-ref-144)
145. *Preliminary Note on the Application of the Principle of Consultation with Indigenous Peoples in Guatemala and the Case of the Marlin Mine*, note 81 *supra*, ¶ 30. [↑](#footnote-ref-145)
146. *Ibid*. [↑](#footnote-ref-146)
147. *2012 Report to the General Assembly on the Rights of Indigenous Peoples*, note 54 *supra*, ¶¶ 70, 72-73. [↑](#footnote-ref-147)
148. *Ibid*. ¶ 72. [↑](#footnote-ref-148)
149. *Ibid*. ¶ 75. [↑](#footnote-ref-149)
150. *Report on the Situation of Indigenous Peoples in the United States of America*, note 16 *supra*, Appendix II, ¶¶ 39, 41. The Rosebud Sioux are particularly concerned about non-consultation regarding the development of Keystone XL Pipeline Project. [↑](#footnote-ref-150)
151. *Ibid*. Appendix II, ¶ 14. [↑](#footnote-ref-151)
152. *Report on the Situation of Human Rights of Indigenous Peoples in Brazil*, 26 August 2009, U.N. Doc. A/HRC/12/34/Add.2, ¶ 55. [↑](#footnote-ref-152)
153. *Ibid*. ¶ 56. [↑](#footnote-ref-153)
154. *Report on the Situation of Indigenous Peoples in Colombia: Follow-Up to the Recommendations Made by the Previous Special Rapporteur*, note 18 *supra*, ¶ 43. [↑](#footnote-ref-154)
155. *2013 Report on Extractive Industries and Indigenous Peoples*, note 28 *supra,* ¶ 75. [↑](#footnote-ref-155)
156. *Ibid.* ¶ 9. [↑](#footnote-ref-156)
157. *2010 Report to the Human Rights Council on the Situation of Human Rights and Fundamental Freedoms of Indigenous People*, note 30 *supra*, ¶ 31. [↑](#footnote-ref-157)
158. *Ibid*. [↑](#footnote-ref-158)
159. *Ibid*. [↑](#footnote-ref-159)
160. *2013 Report to the General Assembly on the Rights of Indigenous Peoples*, 14 August 2013, U.N. Doc. A/68/317, ¶ 62. [↑](#footnote-ref-160)
161. *Ibid*. ¶ 64. [↑](#footnote-ref-161)
162. *2013 Report on Extractive Industries and Indigenous Peoples*, note 28 *supra*, ¶ 73. [↑](#footnote-ref-162)
163. *2011 Report to the General Assembly on the Rights of Indigenous Peoples*, note 127 *supra*, ¶ 91. [↑](#footnote-ref-163)
164. *2010 Report to the Human Rights Council on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples*, note 30 *supra*, ¶ 75. [↑](#footnote-ref-164)
165. *2010 Report to the Human Rights Council on the Situation of Human Rights and Fundamental Freedoms of Indigenous People*, note 30 *supra,* ¶ 35. [↑](#footnote-ref-165)
166. ILO 169, note 1 *supra*, art. 15(2). [↑](#footnote-ref-166)
167. *2012 Report to the General Assembly on the Rights of Indigenous Peoples*, note 53 *supra,* ¶¶ 59-61. [↑](#footnote-ref-167)
168. *2010 Report to the Human Rights Council on the Situation of Human Rights and Fundamental Freedoms of Indigenous People*, note 30 *supra,* ¶ 76 (citing *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Ecuador*, 15 August 2008, U.N. Doc. CERD/C/ECU/CO/19, ¶ 16; *Case of the Saramaka People v. Suriname*, note 130 *supra*, ¶ 129). [↑](#footnote-ref-168)
169. *Ibid*. ¶ 77. [↑](#footnote-ref-169)
170. *Ibid*. [↑](#footnote-ref-170)
171. *Ibid*. [↑](#footnote-ref-171)
172. *Report to the Human Rights Council on the Situation of Indigenous Peoples in Nepal*, note 101 *supra*. [↑](#footnote-ref-172)
173. *Ibid*. ¶ 36. [↑](#footnote-ref-173)
174. *Ibid*. [↑](#footnote-ref-174)
175. ILO 169, note 1 *supra*, art. 7(3). [↑](#footnote-ref-175)
176. *2013 Report on Extractive Industries and Indigenous Peoples*, note 28 *supra*, ¶ 65. [↑](#footnote-ref-176)
177. *2010 Report to the Human Rights Council on the Situation of Human Rights and Fundamental Freedoms of Indigenous People*, note 30 *supra,* ¶ 72. [↑](#footnote-ref-177)
178. *2011 Report on Extractive Industries Operating Within or Near Indigenous Territories*, note 13 *supra*, ¶ 38. [↑](#footnote-ref-178)
179. *2013 Report on Extractive Industries and Indigenous Peoples,* note 28 *supra,* ¶ 20. [↑](#footnote-ref-179)
180. *Consultation on the Situation of Indigenous Peoples in Asia*, note 19 *supra,* ¶ 17. [↑](#footnote-ref-180)
181. *Ibid*. ¶ 23. [↑](#footnote-ref-181)
182. *Preliminary Note on the Application of the Principle of Consultation with Indigenous Peoples in Guatemala and the Case of the Marlin Mine*, note 81 *supra*, ¶ 5. [↑](#footnote-ref-182)
183. *Observations on the Situation of the Rights of the Indigenous Peoples of Guatemala*, note 26 *supra*, app. 1, ¶ 52. [↑](#footnote-ref-183)
184. *Preliminary Note on the Application of the Principle of Consultation with Indigenous Peoples in Guatemala and the Case of the Marlin Mine*, note 81 *supra*, ¶ 9. [↑](#footnote-ref-184)
185. *2013 Report on Extractive Industries and Indigenous Peoples*, note 27 *supra*, ¶ 21. [↑](#footnote-ref-185)
186. *Ibid*. ¶ 83. [↑](#footnote-ref-186)
187. *See, e.g., 2012 Report to the General Assembly on the Rights of Indigenous Peoples*, note 55 *supra,* ¶ 33 (“Indigenous peoples have expressed concerns over their lack of participation in the nomination, declaration and management of World Heritage sites, as well as concerns about the negative impact these sites have had on their substantive rights, especially their rights to lands and resources”). [↑](#footnote-ref-187)
188. *See, e.g.,* *Report on the Situation of Indigenous Peoples in Argentina*, note 26 *supra,* ¶¶ 49-50 [↑](#footnote-ref-188)
189. *Report on the Situation of Indigenous Peoples in Namibia*, note 24 *supra*, ¶ 41. [↑](#footnote-ref-189)
190. *Ibid*. [↑](#footnote-ref-190)
191. *Ibid*. ¶ 47. [↑](#footnote-ref-191)
192. *Ibid*. [↑](#footnote-ref-192)
193. *Report on the Situation of Indigenous Peoples in Argentina*, note 25 *supra*, ¶ 49. [↑](#footnote-ref-193)
194. *Ibid*. ¶ 71. [↑](#footnote-ref-194)
195. *Ibid.* ¶ 50. [↑](#footnote-ref-195)
196. *Ibid*. ¶ 50. [↑](#footnote-ref-196)
197. *Ibid*. [↑](#footnote-ref-197)
198. *Consultation on the Situation of Indigenous Peoples in Asia*, note 19 *supra*, ¶ 14. [↑](#footnote-ref-198)
199. *Ibid*. ¶ 14. [↑](#footnote-ref-199)
200. *See e.g.* *ibid.* ¶ 5. [↑](#footnote-ref-200)
201. *Report on the Situation of Indigenous Peoples in the United States of America*, note 16 *supra,* ¶ 8. [↑](#footnote-ref-201)
202. ILO 169, note 1 *supra*, art. 32. [↑](#footnote-ref-202)
203. *Report on the Situation of the Sami People in the Sápmi Region of Norway, Sweden and Finland*, note 36 *supra*, ¶ 34. [↑](#footnote-ref-203)
204. *Ibid*. [↑](#footnote-ref-204)
205. *Ibid*. ¶ 60. [↑](#footnote-ref-205)
206. *Ibid*. [↑](#footnote-ref-206)
207. *2013 Report on Extractive Industries and Indigenous Peoples*, note 28 *supra*, ¶ 52. [↑](#footnote-ref-207)
208. *Ibid*. [↑](#footnote-ref-208)
209. *Ibid*. ¶ 53. [↑](#footnote-ref-209)
210. See e.g. *ibid*. [↑](#footnote-ref-210)
211. *2011 Report to the General Assembly on the Rights of Indigenous Peoples*, note 127 *supra*, ¶ 104. [↑](#footnote-ref-211)
212. *2013 Report on Extractive Industries and Indigenous Peoples*, note 28 *supra*, ¶ 54. [↑](#footnote-ref-212)
213. *Ibid*. ¶ 55. [↑](#footnote-ref-213)
214. *Ibid.* ¶ 53. [↑](#footnote-ref-214)
215. *Ibid*. ¶ 57. [↑](#footnote-ref-215)
216. *2009 Report to the Human Rights Council on the Rights of Indigenous Peoples*, 15 July 2009, U.N. Doc. A/HRC/12/34, ¶ 57. [↑](#footnote-ref-216)
217. *2011 Report to the General Assembly on the Rights of Indigenous Peoples*, note 127 *supra*, ¶ 105. [↑](#footnote-ref-217)
218. *2010 Report to the Human Rights Council on the Situation of Human Rights and Fundamental Freedoms of Indigenous People*, note 30 *supra*, ¶ 61. [↑](#footnote-ref-218)
219. *Ibid*. (internal citations omitted). [↑](#footnote-ref-219)
220. *Ibid*. [↑](#footnote-ref-220)
221. *Consultation on the Situation of Indigenous Peoples in Asia*, note 19 *supra,* ¶ 20. [↑](#footnote-ref-221)
222. *Ibid*. [↑](#footnote-ref-222)
223. *2010 Report to the Human Rights Council on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples*, note 30 *supra*, ¶ 66. [↑](#footnote-ref-223)
224. *Ibid*. [↑](#footnote-ref-224)
225. *Ibid*. ¶ 62. [↑](#footnote-ref-225)
226. *Ibid*. [↑](#footnote-ref-226)
227. *Ibid*. ¶ 64. [↑](#footnote-ref-227)
228. *Ibid*. [↑](#footnote-ref-228)
229. *Ibid*. ¶ 65. [↑](#footnote-ref-229)
230. *Ibid*. ¶ 61. [↑](#footnote-ref-230)
231. *2013 Report on Extractive Industries and Indigenous Peoples*, note 28 *supra,* ¶ 78. [↑](#footnote-ref-231)
232. *2010 Report to the Human Rights Council on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples,* note30 *supra,* ¶ 70. [↑](#footnote-ref-232)
233. *Ibid.* ¶ 49. [↑](#footnote-ref-233)
234. *Ibid*. ¶¶ 49-52. [↑](#footnote-ref-234)
235. *2011 Report to the General Assembly on the Rights of Indigenous Peoples*, note 127 *supra.* [↑](#footnote-ref-235)
236. *2010 Report to the Human Rights Council on the Situation of Human Rights and Fundamental Freedoms of Indigenous People,* note 30 *supra*, ¶ 50. [↑](#footnote-ref-236)
237. *Ibid*. ¶¶ 51-52. [↑](#footnote-ref-237)