



# Thematic Advice of the Expert Mechanism on the Rights of Indigenous Peoples A Compilation (2009-2013)



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# **Thematic Advice of the Expert Mechanism on the Rights of Indigenous Peoples**

## A Compilation (2009-2013)



## Introduction

### WHAT IS THE EXPERT MECHANISM ON THE RIGHTS OF INDIGENOUS PEOPLES?

The United Nations Expert Mechanism on the Rights of Indigenous Peoples was established in 2007 by the Human Rights Council under resolution 6/36 as a subsidiary body. It comprises five experts on the rights of indigenous peoples, usually one from each of the world's five geopolitical regions, with indigenous origin a relevant factor in their appointment. The mandate of the Expert Mechanism is to provide the Human Rights Council with thematic expertise, mainly in the form of studies and research, on the rights of indigenous peoples as directed by the Council. The Expert Mechanism may also make proposals to the Council for its consideration and approval. The Office of the United Nations High Commissioner for Human Rights (OHCHR) services the Expert Mechanism and also provides technical and financial support.

### HOW DOES THE EXPERT MECHANISM WORK?

#### Annual sessions

Each year, the Mechanism has a five-day session—which brings together hundreds of representatives of States, indigenous peoples, non-governmental organizations and academia—to prepare responses to the Human Rights Council's requests for expert advice and to discuss how the United Nations Declaration on the Rights of Indigenous Peoples can improve indigenous peoples' lives.

#### Thematic studies

The Mechanism provides its expertise mainly in the form of studies and advice on specific issues pertaining to indigenous peoples' rights. It has so far issued four studies, which address the right of indigenous peoples to education, the right to participate in decision-making, the role of languages and culture, and access to justice, as well as a follow-up report on the right to participate in decision-making with a focus on extractive industries.

The Mechanism works closely with the Special Rapporteur on the situation of the human rights and fundamental freedoms of indigenous peoples, the Permanent Forum on Indigenous Issues, as well as other United Nations mechanisms and institutions dealing with human rights.

### HOW CAN THE STUDIES AND ADVICE OF THE EXPERT MECHANISM BE USED TO ADVANCE THE PROMOTION AND PROTECTION OF THE RIGHTS OF INDIGENOUS PEOPLES?

The studies and advice of the Expert Mechanism are meant to provide a better understanding of the provisions of the United Nations Declaration on the Rights of Indigenous Peoples and to propose concrete actions that States, indigenous peoples, civil society, international organizations, national human rights institutions and others can take in order to further its implementation. The Expert Mechanism's studies and advice place special emphasis on the participation of indigenous peoples themselves in decisions that affect them. The studies of the Expert Mechanism and its advice seek to advance the promotion and protection of the rights of indigenous peoples by clarifying the implications of key principles, such as self-determination and free, prior and informed consent, examining good practices and challenges in a broad array of areas pertaining to indigenous peoples' rights, and suggesting measures that States and others can adopt at the level of laws, policies and programmes.





# Summaries of the Advice of the Expert Mechanism on the Rights of Indigenous Peoples

## ADVICE NO. 1: THE RIGHTS OF INDIGENOUS PEOPLES TO EDUCATION

The Expert Mechanism's advice No. 1 (2009) addresses the rights of indigenous peoples to education, reaffirming education as a universal human right, as well as an empowerment right with implications for individual and collective development, the realization of the right to self-determination, and the use of lands, territories and natural resources. Drawing upon the United Nations Declaration on the Rights of Indigenous Peoples, advice No. 1 underlines that indigenous peoples have the right to provide and receive education through their traditional methods, as well as the right to integrate their own perspectives, values and languages.

The Expert Mechanism urges States to build understanding and respect for traditional methods of teaching and learning, to make quality education available to all indigenous peoples, to promote intercultural education and human rights education, and to develop and implement provisions aimed at eliminating discrimination against indigenous peoples in the educational system. Furthermore, the Expert Mechanism stresses that educational programmes and services for indigenous peoples must be developed and implemented in consultation and cooperation with them. Advice No. 1 addresses the issue of educational autonomy, pointing out that States should support the efforts of indigenous peoples to maintain and develop their own education systems and institutions. To this end, adequate policy and legal frameworks should be put in place, and budgets allocated, to support traditional as well as formal education institutions that aim to develop and implement appropriate programmes for and by indigenous peoples.

Advice No. 1 recommends that States should promote indigenous languages by supporting the development of teaching methods and literacy materials in indigenous languages. It also stresses the need for disaggregated educational data in order to

better identify the barriers that prevent indigenous peoples from enjoying the right to education, as well as for measures to ensure the provision of education at all levels for indigenous girls and women.

## ADVICE NO. 2: INDIGENOUS PEOPLES AND THE RIGHT TO PARTICIPATE IN DECISION-MAKING

Advice No. 2 (2011) addresses indigenous peoples' right to participate in decision-making. It emphasizes that decision-making rights and participation by indigenous peoples in decisions are fundamental to their enjoyment of other rights. It examines the legal framework that supports the right to participate in decision-making, giving particular attention to the United Nations Declaration on the Rights of Indigenous Peoples and its provisions on self-determination and free, prior and informed consent. The Expert Mechanism underlines that for indigenous peoples the right to participation takes on a collective aspect.

Advice No. 2 devotes a great deal of attention to the duty of States to consult indigenous peoples and to the principle of free, prior and informed consent. The duty of the State to obtain indigenous peoples' free, prior and informed consent should entitle indigenous peoples to effectively determine the outcome of decision-making processes that affect them, and not merely to be involved in such processes. The duty to consult applies whenever a measure or decision specifically affecting indigenous peoples is being considered. The duty also applies in situations where the State considers decisions or measures that potentially affect the wider society, but definitely and even disproportionately affect indigenous peoples.

Advice No. 2 proposes measures to promote the implementation of the right to participate in decision-making. These include reforming international and regional processes in order to ensure indigenous peoples' full participation; respecting indigenous peoples' traditional governance structures; enacting and implementing constitutional and legal provisions to ensure that indigenous peoples' participation in decision-making processes is consistent with the Declaration; and ensuring that indigenous peoples have the financial and technical capacity to engage in these processes. The Expert Mechanism also recommends that States, international organizations

and indigenous peoples' organizations should facilitate the full participation of indigenous women and indigenous youth in their activities. Finally, the advice highlights the role that national human rights institutions (NHRIs) can play in promoting indigenous peoples' participation in decisions that concern them.

### ADVICE NO. 3: INDIGENOUS PEOPLES' LANGUAGES AND CULTURES

The Expert Mechanism's advice No. 3 (2012) addresses indigenous peoples' languages and cultures, emphasizing their central role in indigenous peoples' identities as peoples and individuals. Indigenous cultures include such aspects as indigenous peoples' ways of life, their relationships with their lands and territories, traditional knowledge, spirituality, philosophies, and arts. The United Nations Declaration on the Rights of Indigenous Peoples is put forward as the basis for action on the promotion and protection of indigenous peoples' rights to their languages and culture. The advice stresses the harmful impact of assimilationist policies,

which in some cases have led to the near extinction of indigenous languages and cultures, and calls for strong action to address the effects of historical and ongoing discrimination against indigenous peoples and individuals based on their cultures and use of their languages.

Some of the measures suggested for States are recognizing indigenous cultures and languages in constitutions, laws and policies; respecting the right to cultural self-determination and complying with the duty to obtain free, prior and informed consent when developing and implementing laws and policies related to indigenous languages and cultures; advancing the protection, promotion and respect for indigenous culture and languages, including through support for the learning and teaching of indigenous languages; and providing redress for the negative impact of State laws and policies.

Advice No. 3 stresses that indigenous peoples themselves have the primary responsibility to take control of the promotion and protection of their languages, and to work together to pass on their languages and cultures to younger generations.



They also have the responsibility to ensure that their cultures are enjoyed equally by all indigenous individuals, particularly those that may be vulnerable to exclusion.

Advice No. 3 ends with measures that international institutions, NHRIs, international donors, the media and museums can play to protect and promote indigenous languages and cultures. These include dedicating resources and expertise to the promotion and protection of languages and cultures and contributing to their revitalization.

#### **ADVICE NO. 4: INDIGENOUS PEOPLES AND THE RIGHT TO PARTICIPATE IN DECISION-MAKING, WITH A FOCUS ON EXTRACTIVE INDUSTRIES**

The Expert Mechanism's advice No. 4 (2012) is a follow-up to advice No. 2, addressing indigenous peoples' right to participate in decision-making with a focus on extractive industries. It draws on the United Nations Declaration on the Rights of Indigenous Peoples, jurisprudence from several sources, and the Guiding Principles on Business and Human Rights, and emphasizes indigenous peoples' permanent sovereignty over their natural resources.

The Expert Mechanism stresses that it is the State's responsibility to ensure that adequate consultation is undertaken in order to obtain consent, but that business enterprises also have a responsibility to respect human rights. Consultation with indigenous peoples should begin at the earliest stages of extractive activity and indigenous peoples should be engaged in the design of the consultation mechanisms. Advice No. 4 devotes much attention to free, prior and informed consent in the context of extractive industry, outlining situations in which it is mandatory (forcible removal, for example) and others where the requirement depends on the context.

Advice No. 4 underlines that information about the potential impact of extractive industry needs to be presented in a way that is understandable to indigenous peoples and should address all possible risks. Furthermore, consultation procedures should be culturally appropriate and undertaken in good faith. The Expert Mechanism advises States to establish, together with indigenous peoples, permanent mechanisms to enable consultation and provide guidance on issues including: determining

when consultations are required, identifying the representatives with whom consultation should take place, undertaking environmental and social impact studies, ensuring that indigenous peoples' perspectives are taken into account, and providing translation and interpretation as required.

The Expert Mechanism advises extractive industries to assess their activities' risks and impact on indigenous peoples and to ensure compliance with the right of indigenous peoples to participate in decision-making. These commitments should be reflected in their policies and processes. Extractive industries should also support, including financially, mechanisms to ensure that the right of indigenous peoples to participate in decision-making is respected. Finally, the Expert Mechanism highlights that the right of indigenous peoples to participate in decision-making includes the right not to consent to extracting resources as an exercise of their sovereignty.

#### **ADVICE NO. 5: ACCESS TO JUSTICE IN THE PROMOTION AND PROTECTION OF THE RIGHTS OF INDIGENOUS PEOPLES**

The Expert Mechanism's advice No. 5 (2013) addresses access to justice in the promotion and protection of the rights of indigenous peoples. It states that the Declaration on the Rights of Indigenous Peoples should be the basis for all action in this area, and that its implementation should serve as a framework for reconciliation and for implementing indigenous peoples' access to justice. There is much emphasis on the concept of self-determination, which requires recognition of indigenous peoples' traditional justice systems. The Expert Mechanism also stresses that a common understanding between indigenous peoples and States of the meaning of justice and the means to attain access to justice should be sought. The advice notes that the current relationship of indigenous peoples with domestic criminal justice systems cannot be considered in isolation from historical factors or current economic, social and cultural status.

Advice No. 5 lays out a series of recommendations for States, centred around the recognition of and support for traditional justice systems and the need to address underlying issues that prevent indigenous peoples from enjoying access to justice on an equal basis with others. Specific measures include working in partnership with indigenous peoples, particularly

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indigenous women, to determine effective strategies to overcome barriers to access to justice, supporting capacity development of indigenous communities for the use of legal systems, and training law enforcement and judicial officers and making them more aware. Advice No. 5 also offers specific recommendations to States in the areas of criminal justice and transitional justice.

It suggests that indigenous peoples should strengthen advocacy for the recognition of traditional justice systems and the explicit inclusion of their interests in transitional justice initiatives. Furthermore, traditional justice systems should ensure that women and children are free from discrimination and ensure accessibility to indigenous persons with disabilities.

International institutions are advised to support indigenous peoples' strategic litigation efforts, to dedicate resources to training law enforcement and judiciary officials on the rights of indigenous peoples, and to work with indigenous peoples to contribute to reflection and capacity-building regarding truth and reconciliation processes. The role of NHRIs is also addressed, particularly in ensuring improved access to justice and promoting the implementation of the Declaration at the national level.



# The Rights of Indigenous Peoples to Education





## Expert Mechanism Advice No.1 (2009) on the Rights of Indigenous Peoples to Education

### A/HRC/12/33

1. Education is a universal human right fundamental to the exercise of other human rights; everyone has the right to education pursuant to international human rights law. Education is also an empowerment right, through which economically and socially marginalized individuals can obtain means to participate fully in their communities and economies, and in the society at large.

2. Education is the primary means ensuring indigenous peoples' individual and collective development; it is a precondition for indigenous peoples' ability to realize their right to self-determination, including their right to pursue their own economic, social and cultural development.

3. The right of indigenous peoples to education includes the right to provide and receive education through their traditional methods of teaching and learning, and the right to integrate their own perspectives, cultures, beliefs, values and languages in mainstream education systems and institutions. The right to education for indigenous peoples is a holistic concept incorporating mental, physical, spiritual, cultural and environmental dimensions.

4. The full enjoyment of the right to education as recognized in international human rights law is far from reality for most indigenous peoples. Deprivation of access to quality education is a major factor contributing to social marginalization, poverty and dispossession of indigenous peoples. The content and objective of education to indigenous peoples in some instances contributes to the assimilation of indigenous peoples into mainstream society and the eradication of their cultures, languages and ways of life.

5. The right of everyone to education is enshrined in numerous international human rights instruments, including the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil

and Political Rights, the Convention on the Rights of the Child, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, ILO Convention No. 117 on Social Policy, the UNESCO Convention against Discrimination in Education. It is also reaffirmed in various regional human rights instruments.

6. The United Nations Declaration on the Rights of Indigenous Peoples, and ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries contain specific provisions on indigenous peoples' right to education. Several treaties between indigenous peoples and States acknowledge the right of indigenous peoples to education and educational services as a treaty right.

7. The Declaration is coherent with and expands upon legally binding human rights instruments and international jurisprudence developed by international supervisory bodies and mechanisms. The Declaration, interpreted in conjunction with other international instruments, provides an authoritative normative framework for the full and effective protection and implementation of the rights of indigenous peoples. In the context of education, the Declaration reaffirms and applies the right to education to the specific historical, cultural, economic and social circumstances of indigenous peoples.

8. Article 14 of the Declaration acknowledges that indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning. This reaffirms existing international human rights law, including article 29 (2) of the Convention on the Rights of the Child and article 27 (3) of ILO Convention No. 169. The right of indigenous peoples to establish and control their education systems and institutions applies to traditional as well as formal education systems and institutions.

9. Numerous other provisions of the Declaration (arts. 1, 2, 3, 4, 8 (1), 8 (2), 12, 13, 14 (2) (3), 17 (2), 31, 44) either reaffirm and apply the essence of already existing human rights treaty obligations on the right to education, or are inseparably linked to provision on the right to education of the Declaration, applicable to both traditional and formal education.



10. In view of the prevailing lack of understanding of and respect for the concepts and principles of traditional education, Governments are urged to attach importance to building understanding and respect for traditional methods of teaching and learning, including by providing adequate funding for initiatives by indigenous peoples and communities to strengthen or establish traditional educational initiatives.

11. The right of indigenous peoples to traditional education may be closely, and in some instances inseparably, associated with the use of their traditional lands, territories and natural resources. States must give legal recognition and protection to such lands, territories and resources with due respect for indigenous peoples' customs, customary law and traditions.

12. States are obliged, collectively and individually, to make quality education available to all indigenous peoples, accessible without any prohibited form of discrimination, acceptable in the light of international human rights standards, and adaptable to the circumstances and in the best interest of indigenous peoples. States should address past wrongs, including by removing stereotypes, inappropriate terminologies and other negative elements referring to indigenous peoples in textbooks and educational materials. States should promote intercultural education, as well as develop and strictly implement provisions aimed at eliminating discrimination against indigenous peoples in the educational system.

13. Educational programmes and services for indigenous peoples must be developed and implemented in consultation and cooperation with the indigenous peoples concerned in order to address and incorporate their special needs, histories, identities, integrity, values, beliefs, cultures, languages and knowledge, as well as their social, economic and cultural priorities and aspirations. Educational programmes and services for indigenous peoples should be of high quality, culturally safe and appropriate, and must not aim at or result in unwanted assimilation of indigenous peoples.

14. Indigenous peoples, in exercising their right to self-determination, have the right to educational autonomy. States, in consultation and cooperation with the peoples concerned, must ensure the realization of educational autonomy, including the financing of

such autonomous arrangements. Indigenous peoples should be regarded as having prepaid present and future financial allocations from the State, including allocations to education, by sharing their lands, territories and resources with others.

15. The right of indigenous peoples to educational autonomy includes the right to decide their own educational priorities and to participate effectively in the formulation, implementation and evaluation of education plans, programmes and services that may affect them, as well as the right to establish and control their own education systems and institutions, if they so choose.

16. States should support the efforts of indigenous peoples to maintain and develop their own political, economic, social, cultural and education systems and institutions. National law and policy frameworks should be enacted or reformed, and budgets allocated to support traditional as well as formal education institutions that are established with the aim of developing and implementing appropriate programmes and activities for and by indigenous peoples.

17. The adoption of national legislation and policies that specifically address and acknowledge indigenous peoples' right to education, pursuant to international human rights law, should be regarded as a matter of priority by States. Constitutional recognition of the existence of indigenous peoples and their rights provides a solid legal basis for the adoption and implementation of legislation on indigenous peoples' rights, including the right to education.

18. The Expert Mechanism recommends that States follow a step-wise policy that could help promote all indigenous languages. Sufficient funding is needed to support the development of teaching methods, literacy materials and orthographies in the pupil's own language.

19. The Expert Mechanism highlights the need for disaggregated educational data, and recommends that States establish methods and systems for the collection of disaggregated data and develop indicators conforming with international human rights standards in the field of education, for the purpose of identifying barriers preventing indigenous peoples from enjoying fully the right to education and to reform education laws and policies to be more inclusive and sensitive to indigenous values and perspectives.

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20. Measures to ensure the provision of education at all levels for indigenous girls and women should be seen as a matter of urgency. The Expert Mechanism is of the view that instruments of dialogue would help to mediate conflicting issues and norms within indigenous societies and to ensure equal access to education for indigenous girls and women.

21. Education for indigenous peoples should be holistic; mainstream education curricula should include human rights, environmental protection, importance of lands and resources for indigenous peoples and physical education.

22. Human rights education is an integral aspect for the promotion and achievement of stable and harmonious relations among communities and for fostering mutual understanding, tolerance and peace. Learning about human rights is the first step towards respecting, promoting and defending the rights of all individuals and peoples.

23. The Expert Mechanism recommends that States identify specific challenges and possible measures to achieve the implementation of the right of indigenous peoples to education in their respective countries, in consultation and cooperation with indigenous peoples.

24. The Expert Mechanism recommends that States Members of the United Nations pay particular attention to the right to education of indigenous peoples in the universal periodic review process of the Human Rights Council as well as under its special procedures. Similarly, it recommends that all relevant United Nations human rights treaty bodies pay attention to indigenous peoples' right to education in their communication with States parties, in particular in their periodic examination of State party reports.



# The Right of Indigenous Peoples to Participate in Decision-making





## Expert Mechanism Advice No. 2 (2011): Indigenous peoples and the right to participate in decision-making

### A/HRC/18/42

1. Indigenous peoples are among the most excluded, marginalized and disadvantaged sectors of society. This has had a negative impact on their ability to determine the direction of their own societies, including in decision-making on matters that affect their rights and interests. This can still be a major factor contributing to their disadvantaged position. Decision-making rights and participation by indigenous peoples in decisions that affect them is necessary to enable them to protect, *inter alia*, their cultures, including their languages and their lands, territories and resources. In many cases, however, indigenous peoples practised or continue to practise their own forms of governance.

2. The right of indigenous peoples to participation is well established in international law. More recently, the indigenous-rights discourse has seen increased focus on rights not only allowing indigenous peoples to participate in decision-making processes affecting them, but to actually control the outcome of such processes.

3. This spectrum of rights is well illustrated by the Declaration on the Rights of Indigenous Peoples, which contains more than 20 general provisions pertaining to indigenous peoples and decision-making. These rights range from the right to self-determination encompassing a right to autonomy or self-government to rights to participate and be actively involved in external decision-making processes. Other provisions establish specific duties for States to ensure the participation of indigenous peoples in decision-making, *inter alia*, to obtain their free, prior and informed consent; to consult and cooperate with indigenous peoples; and to take measures in conjunction with them.<sup>1</sup>

4. As a normative expression of the existing international consensus regarding the individual and collective human rights of indigenous peoples in a way which is coherent with already existing international human rights standards, the Declaration on the Rights of Indigenous Peoples provides a framework for action aiming at the full protection and implementation of the rights of indigenous peoples, including their right to participate in decision-making.

5. With regard to participatory rights, international human rights law refers to the right to participate in public affairs in both general and specific forms, including as set out in various human rights treaties, such as in article 25 of the International Covenant on Civil and Political Rights and in the Indigenous and Tribal Peoples Convention, 1989 (No. 169) of the International Labour Organization (ILO).<sup>2</sup> Participation in public affairs in its general form includes involvement in the conduct of public affairs. Electoral participation is only one specific expression of the right to participation. Moreover, the right to take part in public affairs is not limited to participation in formal political institutions, as it also includes participation in civil, cultural and social activities of a public nature. The right to participate in public affairs has conventionally been understood as a civil and political right of the individual. In the context of indigenous peoples, however, the right also takes on a collective aspect, implying a right of the group as a people to exercise decision-making authority.

6. The right of indigenous peoples to participate in decision-making is also affirmed in international jurisprudence more generally, such as in the decision of the Inter-American Court of Human Rights in which the Court recognized indigenous peoples' right to organize themselves in ways that are consistent with their customs and traditions under State electoral laws.<sup>3</sup> The African Commission on Human and Peoples' Rights has expressed concern about the exclusion of indigenous peoples from decision-making about the treatment of their lands.<sup>4</sup>

<sup>1</sup> Arts. 3-5, 10-12, 14, 15, 17-19, 22, 23, 26-28, 30-32, 36, 37, 38, and 40-41.

<sup>2</sup> Arts. 2, 5-7, 15-17, 20, 22, 23, 25, 27, 28, 33 and 35.

<sup>3</sup> *Inter-American Court of Human Rights, Yatama v. Nicaragua*, judgement of 23 June 2005.

<sup>4</sup> *African Commission on Human and Peoples' Rights, Endorois Welfare Council v. Kenya*, 4 February 2010.

7. Article 6 of ILO Convention No. 169 requires that consultations with indigenous peoples be carried out through institutions that are representative of indigenous peoples. Indigenous peoples should control the process by which representativeness is determined, in accordance with human rights standards as set out in, inter alia, the Declaration on the Rights of Indigenous Peoples.<sup>5</sup>

8. The requirement that consultations be carried out through appropriate procedures implies that general public hearing processes are not normally regarded as sufficient to meet this procedural standard. Consultation procedures need to allow for the full expression of indigenous peoples' views, in a timely manner and based on their full understanding of the issues involved, so that they may be able to affect the outcome and consensus may be achieved.

9. Moreover, consultations should be undertaken in good faith and in a form appropriate to the relevant context. This requires that consultations be carried out in a climate of mutual trust and transparency. Indigenous peoples must be given sufficient time to engage in their own decision-making process, and participate in decisions taken in a manner consistent with their cultural and social practices. Finally, the objective of consultations should be to achieve agreement or consensus.

10. As indicated above, the duty to consult indigenous peoples is further reflected in a number of provisions of the Declaration on the Rights of Indigenous Peoples.<sup>6</sup> Like ILO Convention No. 169, Declaration articles 19 and 32(2) require States to consult indigenous peoples in good faith, through appropriate procedures, with the objective of obtaining their agreement or consent when measures that may affect indigenous peoples are considered.

11. Moreover, a number of United Nations human rights treaty bodies have established that States have a duty, within the framework of their treaty obligations, to effectively consult indigenous peoples on matters affecting their interests and

rights and, in some cases, to seek to obtain the consent of indigenous peoples.<sup>7</sup>

12. The duty of States to consult with indigenous peoples and to obtain their consent are also expressed in the jurisprudence of, inter alia, the universal periodic review of the Human Rights Council,<sup>8</sup> the Inter-American Court of Human Rights and the Inter-American Commission on Human Rights,<sup>9</sup> the African Commission on Human and Peoples' Rights,<sup>10</sup> the Special Rapporteur on the rights of indigenous peoples,<sup>11</sup> and in international policy,<sup>12</sup> some of which is described in the Expert Mechanism's progress report on indigenous peoples and the right to participate in decision-making.<sup>13</sup> In the progress report, the Expert Mechanism noted that several treaties between States and indigenous peoples affirmed the principles of indigenous peoples' consent as an underpinning of the treaty relationship between States and indigenous peoples.<sup>14</sup>

7 See A/HRC/EMRIP/2010/2. See also CCPR/C/79/Add.109 and Add.112, CCPR/CO/69/AUS and CCPR/CO/74/SWE; Official Records of the General Assembly, Fiftieth Session, Supplement No. 40(A/50/40), vol. II, annex X, section I, para. 9.6; CERD/C/CAN/CO/18, paras. 15 and 25; CERD/C/NZL/CO/17, para. 20; CERD/C/IDN/CO/3, para. 17; CERD/C/COD/CO/15, para. 18; CERD/C/ECU/CO/19, para. 16; CERD/C/USA/CO/6, para. 29; CERD/C/NAM/CO/12, para. 18; CERD/C/SWE/CO/18, para. 19; CCPR/C/NIC/CO/3, para. 21; CCPR/C/BWA/CO/1, para. 24; CCPR/C/CRI/CO/5, para. 5; CCPR/C/CHL/CO/5, para. 19; Official Records of the General Assembly, Fifty-second Session, Supplement No. 18 (A/52/18), annex V; and E/C.12/GC/21.

8 See, for example, Human Rights Council decision 12/106

9 For example, *Yatama v. Nicaragua and Saramaka People v. Suriname*, judgement of 28 November 2007.

10 *Endorois Welfare Council v. Kenya*.

11 A/HRC/12/34.

12 For example, see the Akwe: Kon Voluntary Guidelines for the implementation of article 8(j) of the Convention of Biodiversity, and the European Bank for Reconstruction and Development, *Environmental and Social Policy* (May 2008).

13 A/HRC/EMRIP/2010/2.

14 *Ibid.* In *Canada*, treaties 6, 7 and 8 contain provisions on indigenous peoples' consent. For instance, Treaty No. 6, concluded in 1876, provides that "and whereas the said Indians have been notified and informed by Her Majesty's said Commissioners that it is the desire of Her Majesty to open up for settlement, immigration and such other purposes ... and to obtain the consent thereto of Her Indian subjects inhabiting the said tract" (para. 3).

5 A/HRC/EMRIP/2010/2.

6 Arts. 10, 11, 15, 17, 19, 28, 29, 30, 32, 36, 37 and 38.



13. The right to full and effective participation in external decision-making is of fundamental importance to indigenous peoples' enjoyment of other human rights. For instance, the right of indigenous peoples to identify their own educational priorities and to participate effectively in the formulation, implementation and evaluation of education plans, programmes and services is crucial for their enjoyment of the right to education.<sup>15</sup> When implemented as a treaty right, the right to education can offer a framework for reconciliation. Truth and reconciliation commissions offer a model for improved relations between States and indigenous peoples as well.<sup>16</sup>

<sup>15</sup> A/HRC/12/33.

<sup>16</sup> A/HRC/15/36, para. 11.

14. The participation of indigenous peoples in external decision-making is of crucial importance to good governance. One of the objectives of international standards on indigenous peoples' rights is to fill the gap between their rights on the one hand and their implementation on the other hand.

15. Many indigenous peoples remain vulnerable to top-down State interventions that take little or no account of their rights and circumstances. In many instances, this is an underlying cause for land dispossession, conflict, human rights violations, displacement and the loss of sustainable livelihoods.

16. The duty to consult indigenous peoples applies whenever a measure or decision specifically affecting indigenous peoples is being considered (for example, affecting their lands or livelihood). This duty also applies in situations where the State considers decisions or measures that potentially affect the wider

society, but which affect indigenous peoples, and in particular in instances where decisions may have a disproportionately significant effect on indigenous peoples.<sup>17</sup>

17. With regard to the right to self-determination, the Declaration on the Rights of Indigenous Peoples affirms that indigenous peoples, in exercising their right to self-determination, have the right to develop and maintain their own decision-making institutions and authority parallel to their right to participate in external decision-making processes that affect them. This is crucial to their ability to maintain and develop their identities, languages, cultures and religions within the framework of the State in which they live.

18. Article 3 of the Declaration on the Rights of Indigenous Peoples mirrors common article 1, paragraph 1, of the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights. Consequently, indigenous peoples have the right to determine their own economic, social and cultural development and to manage, for their own benefit, their own natural resources. The duties to consult with indigenous peoples and to obtain their free, prior and informed consent are crucial elements of the right to self-determination.

19. As affirmed in articles 5, 18, 36 and 37 of the Declaration on the Rights of Indigenous Peoples, and within the ambit of the right to self-determination, indigenous peoples have the right to make independent decisions in all matters relating to their internal and local affairs, and to effectively influence external decision-making affecting them if they choose to participate in such processes.

20. As mentioned above, the right to free, prior and informed consent is embedded in the right to self-determination. The procedural requirements for consultations and free, prior and informed consent respectively are similar. Nevertheless, the right of free, prior and informed consent needs to be understood in the context of indigenous peoples' right to self-determination because it is an integral element of that right.

21. The duty of the State to obtain indigenous peoples' free, prior and informed consent entitles indigenous peoples to effectively determine the outcome of decision-making that affects them, not merely a right to be involved in such processes. Consent is a significant element of the decision-making process obtained through genuine consultation and participation. Hence, the duty to obtain the free, prior and informed consent of indigenous peoples is not only a procedural process but a substantive mechanism to ensure the respect of indigenous peoples' rights.

22. The Declaration on the Rights of Indigenous Peoples requires that the free, prior and informed consent of indigenous peoples be obtained in matters of fundamental importance for their rights, survival, dignity and well-being. In assessing whether a matter is of importance to the indigenous peoples concerned, relevant factors include the perspective and priorities of the indigenous peoples concerned, the nature of the matter or proposed activity and its potential impact on the indigenous peoples concerned, taking into account, *inter alia*, the cumulative effects of previous encroachments or activities and historical inequities faced by the indigenous peoples concerned. Premised on the right to self-determination, article 10 of the Declaration prohibits the forcible removal of indigenous peoples from their lands and territories. In contrast, ILO Convention No. 169, article 16(2), includes procedural elements that permit forced relocation as an exceptional measure, without the consent of the indigenous peoples concerned. The Declaration moreover requires States to obtain the free, prior and informed consent of indigenous peoples in certain other situations, as reflected in its articles 11(2), 19, 28(1), 29(2), 32(2) and 37.

23. The duty to obtain the free, prior and informed consent of indigenous peoples presupposes a mechanism and process whereby indigenous peoples make their own independent and collective decisions on matters that affect them. The process is to be undertaken in good faith to ensure mutual respect. The State's duty to obtain free, prior and informed consent affirms the prerogative of indigenous peoples to withhold consent and to establish terms and conditions for their consent.

<sup>17</sup> See A/HRC/12/34, paras. 42-43.

24. The elements of free, prior and informed consent are interrelated; the elements of “free”, “prior” and “informed” qualify and set the conditions for indigenous peoples’ consent; violation of any of these three elements may invalidate any purported agreement by indigenous peoples.

25. The element of “free” implies no coercion, intimidation or manipulation; “prior” implies that consent is obtained in advance of the activity associated with the decision being made, and includes the time necessary to allow indigenous peoples to undertake their own decision-making processes; “informed” implies that indigenous peoples have been provided all information relating to the activity and that that information is objective, accurate and presented in a manner and form understandable to indigenous peoples; “consent” implies that indigenous peoples have agreed to the activity that is the subject of the relevant decision, which may also be subject to conditions.<sup>18</sup>

## MEASURES

26. Reform of international and regional processes involving indigenous peoples should be a major priority and concern. In particular, multilateral environmental processes and forums should ensure full respect for the rights of indigenous peoples and their effective participation including, for example, in relation to the negotiation of the Nagoya Protocol.

27. Respect for indigenous peoples’ right to participate in decision making is essential for achieving international solidarity and harmonious and cooperative relations. Consensus is not a legitimate approach if its intention or effect is to undermine the human rights of indigenous peoples. Where beneficial or necessary, alternative negotiation frameworks should be considered, consistent with States’ obligations in the Charter of the United Nations and other international human rights law.

28. Free, prior and informed consent implies that States have a duty to obtain indigenous peoples’ consent in relation to decisions that are of fundamental

importance for their rights, survival, dignity and well-being. States should ensure that consultations and negotiations with indigenous peoples as required by article 18 of the Declaration on the Rights of Indigenous Peoples and consistent with other human rights standards.

29. States have a duty to respect indigenous peoples’ right to participate in all levels of decision-making, including in external decision-making, if the indigenous peoples concerned so choose and in the forms of their choosing, including, where appropriate, in co-governance arrangements.

30. States should respect and assist both traditional and contemporary forms of indigenous peoples’ governance structures, including their collective decision-making practices.

31. States should enact and implement constitutional and other legal provisions that ensure indigenous peoples’ participation in decision-making consistent with the Declaration on the Rights of Indigenous Peoples, in particular where that is sought by affected indigenous peoples.

32. Indigenous women often face exceptional impediments to participation in decision-making. States, international organizations, indigenous peoples and other decision-making entities should therefore conduct more intensive studies and design appropriate mechanisms to facilitate the participation of indigenous women in their activities and increase their access to address difficulties facing indigenous women seeking to fully participate in decision-making. Likewise, the inclusion of indigenous youth in decision-making is essential in both internal and external, including legislative, decision-making.

33. States and relevant international and domestic organizations should ensure that indigenous peoples have the financial and technical capacity to engage in consultation and consent-seeking exercises and to participate in regional and international decision-making processes.

34. States should also recognize that the right to self-determination of indigenous peoples constitutes a duty for States to obtain indigenous peoples’ free, prior and informed consent, not merely to be involved in decision-making processes, but a right to determine their outcomes. Treaties, as evidence of the right to self-determination, and the relationship they represent are the basis for a strengthened

<sup>18</sup> For an interpretation of free, prior and informed consent, see E/C.19/2005/3.

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partnership, consistent with the Declaration on the Rights of Indigenous Peoples.

35. States shall respect indigenous peoples' right to self-determination consistent with the Declaration on the Rights of Indigenous Peoples and other international standards. States shall ensure that indigenous peoples have the means to finance their autonomous functions.

36. The United Nations should, in accordance with the Declaration on the Rights of Indigenous Peoples, establish a permanent mechanism or system for consultations with indigenous peoples' governance bodies, including indigenous parliaments, assemblies, councils or other bodies representing the indigenous peoples concerned, to ensure effective participation at all levels of the United Nations.

37. ILO should enable effective representation by indigenous peoples in its decision-making, and especially with regard to the implementation and supervision of ILO Conventions and policies relevant to indigenous peoples.

38. UNESCO should enable and ensure effective representation and participation of indigenous

peoples in its decision-making, especially with regard to the implementation and supervision of UNESCO Conventions and policies relevant to indigenous peoples, such as the 1972 World Heritage Convention. Robust procedures and mechanisms should be established to ensure indigenous peoples are adequately consulted and involved in the management and protection of World Heritage sites, and that their free, prior and informed consent is obtained when their territories are being nominated and inscribed as World Heritage sites.

39. National human rights institutions, as independent bodies, should play an important role in bringing together representatives of Government and indigenous peoples, thus promoting indigenous peoples' participation in discussions and decisions on issues that concern them. National human rights institutions can also stress the need for all stakeholders to ensure indigenous representatives are involved in decision-making. Such institutions, through their own programmes, could also actively involve indigenous peoples in decision-making on related issues.

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# Indigenous Peoples' Languages and Cultures



## Expert Mechanism Advice No. 3 (2012): Indigenous peoples' languages and cultures

A/HRC/21/53

### A. General

1. Distinct cultures and languages are often a central and principal feature of indigenous peoples' identities as collectives and as individuals, providing unity. Indeed, the distinctiveness of indigenous peoples' languages and cultures is a common feature of many indigenous peoples and the global indigenous peoples' movement. Indigenous cultures cannot be divorced from indigenous peoples' histories, often including colonization and dispossession, which have had a powerful impact on their languages and cultures.

2. Healthy indigenous peoples' languages and cultures, while rooted in history, must not be understood as static. It is essential that States, indigenous peoples, international institutions, national human rights institutions, non-governmental institutions and the private sector take a perspective on cultures that enhances their vitality, allowing them to live and breathe and take on new forms and shapes as voluntarily and customarily determined by indigenous peoples themselves. Contemporary expressions and forms of indigenous languages and cultures are important modern extensions of their age-old traditions and an indicator of the good health of their cultures.

3. Indigenous cultures include their ways of life, protected by the right to self-determination, and indigenous peoples' relationships, including spiritual connections, with their lands, territories and resources. They include manifestations of cultural practices, including economically driven activity, traditional knowledge, cultural expressions, jurisprudence, cosmologies, spirituality, philosophies, membership

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codes, dispute resolution techniques, social values, arts, dress, song and dance.

4. Cultural diversity is a value in its own right, supported by the international legal framework, particularly as established by UNESCO.

5. The Declaration on the Rights of Indigenous Peoples should be the basis of all action, including at the legislative and policy level, on the protection and promotion of indigenous peoples' rights to their languages and cultures. Many of the rights in the Declaration relate to indigenous cultures and languages, especially indigenous peoples' rights to self-determination and to lands, territories and resources.

6. The impact of assimilationist policies on indigenous peoples' languages and cultures has been in many cases extremely harmful, leading to the near extinction of indigenous languages and cultures. The deliberate use of boarding, residential schools and orphanages for indigenous children, with a focus on integrating them into non-indigenous mainstream societies, has been tragically harmful for indigenous peoples and their cultures and languages and the health of indigenous individuals, including the inter-generational trauma suffered by the children and grandchildren of attendees of such schools.

7. Strong action is required to address the effects of historical and on-going discrimination against indigenous peoples and individuals based on their cultures and use of their languages. Their languages and cultures will only flourish in environments when they are more broadly respected in their own right and for their contribution to an understanding of humanity.

8. Significant attention should be focused on understanding the historical and ongoing impact of the denigration of, and discrimination against, indigenous cultures and languages, which can lead to social, mental and physical ill health. Policies to address the social, mental and physical ill health of indigenous peoples cannot be divorced from an understanding of indigenous peoples' histories of marginalization and dispossession. In many cases, the revitalization of indigenous cultures and languages, instilling pride in indigenous peoples on account of their distinctiveness, can be beneficial in addressing social problems associated with indigenous peoples' loss of their cultures and languages.

9. Where indigenous peoples' cultures are alleged to discriminate against individual members, the circumstances should be examined from the perspective of all the indigenous individuals involved, taking into account indigenous philosophies and the alleged victims' positions. In general, indigenous peoples should be supported in their efforts to address the issues in the way that they choose. Unapproved non-indigenous interference in indigenous cultures alleged to discriminate is not to be recommended unless sought by those who are the alleged victims of the discrimination.

10. Many of the ongoing threats to indigenous cultures and languages can be traced to the impact of the private sector on indigenous peoples, as is too often the case when indigenous peoples' lands, territories and resources are exploited for business purposes. As the Guiding Principles on Business and Human Rights clarify, business enterprises have the responsibility to respect human rights, including indigenous peoples' rights to languages and cultures and traditional knowledge.

## **B. States**

11. The protection and promotion of indigenous peoples' languages and cultures requires States to recognize them in their constitutions, laws and policies.

12. Indigenous peoples have the right to cultural self-determination, including the right to cultural autonomy, together with the right to advance their cultures within mainstream societies. This right includes duties to obtain indigenous peoples' free, prior and informed consent when developing and implementing laws and policies related to indigenous languages and cultures, including to promote indigenous peoples' control over the development of their languages and cultures and their traditional knowledge.

13. States must take measures to protect indigenous peoples from discrimination and violence, and from measures that would result in their forced assimilation.

14. States, in partnership with indigenous peoples, must advance the protection, promotion and respect for indigenous cultures, languages, traditions and customs. State laws and policies addressing indigenous peoples' languages and cultures must go beyond symbolism and be effective in practice, setting out clear and practical methods to support indigenous peoples in their own promotion and protection of



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their languages and cultures, in accordance with their right to self-determination. This must include the allocation of sufficient financial, legal and policy support for the learning of indigenous languages, the teaching of indigenous cultural values and the training of indigenous educators. Also, States must provide incentives for indigenous peoples to transmit their languages and cultures to younger generations, recognition of place names in indigenous languages, strategic plans for implementing public awareness campaigns about indigenous cultures and languages, incorporating indigenous language and cultures in relevant media, publishing books (for example, textbooks) and establishing immersion and bilingual schooling.

15. States are encouraged to create an environment of tolerance and understanding where indigenous peoples' languages and cultures are celebrated within the State, promoting an understanding of the value of cultural difference within the society at large.

16. States should provide incentives for museums and other places where indigenous remains, artefacts and other cultural heritage are stored to inform the relevant indigenous peoples when they hold such treasures and to establish mechanisms to have them restored to indigenous peoples when they so desire.

17. There is a need for the recognition of the continuing value to communities and society of indigenous peoples' traditional knowledge, including spiritual, cultural and linguistic knowledge. This will require long-term financial investments in measures for the reclaiming and relearning and sharing of this knowledge. The resources spent on this should be, at a minimum, commensurate with the monies and efforts previously spent to destroy such knowledge.

18. Indigenous peoples should have the necessary support to speak their languages in both the public and private domains, including in schools, legal proceedings, and in places providing health services. In addition, it may be appropriate to establish mechanisms to monitor States' compliance with indigenous peoples' rights to speak their languages and practise their cultures, such as an ombudsman to address complaints about failures to respect, protect and promote indigenous cultures and languages.

19. In protecting, promoting and respecting indigenous peoples' rights to their cultures, States should treat all indigenous languages equally and take precautions not to favour supporting indigenous languages spoken by larger numbers of individuals. It is especially important that numerically small indigenous groups receive the support necessary to assist them in retaining their languages.

20. States should establish mechanisms, including monitoring, to ensure that indigenous peoples' traditional knowledge is not expropriated without the free, prior and informed consent of indigenous peoples and provision is made for appropriate access and benefit-sharing arrangements.

21. States should ensure that non-indigenous third parties, especially the private sector, do not

infringe indigenous peoples' rights to languages and culture and understand the flow-on effects that their activity on indigenous peoples' lands, territories and resources can have on their languages and cultures.

22. When developing and implementing laws and policies to address social problems facing indigenous peoples, it is imperative that States take an approach that is sensitive to the impact of historical marginalization and dispossession on indigenous peoples and their cultures and languages.

23. In providing redress to indigenous peoples for the negative impacts of State laws and policies on indigenous peoples, States should prioritize the views of indigenous peoples on the appropriate forms of redress, which can include the return of lands, territories and resources, recognition of indigenous peoples' governance structures, including their laws and dispute resolution processes and the finances necessary to enable indigenous peoples to implement their own techniques to revitalize and protect their languages and cultures. Customs, values and arbitration procedures of indigenous peoples should be recognized and appropriately respected by the courts and legal procedures.

### C. Indigenous peoples

24. Indigenous peoples have the primary responsibility to take control of the promotion and protection of their languages and cultures, with the support of the State as outlined above. Thus, for example, indigenous peoples have a responsibility to work together to pass on their languages and cultures to younger generations and indigenous youth have a responsibility to learn their cultures and languages.

25. When indigenous peoples' consent is necessary for the State to enact or implement laws and policies that relate to their cultures and languages, indigenous peoples are encouraged to establish their own methods to facilitate the consent-seeking process, which should include all members of the indigenous peoples concerned.

26. Indigenous peoples have the responsibility to ensure that their cultures are enjoyed equally by all indigenous individuals and especially those who may be vulnerable to exclusion. This includes the responsibility to establish mechanisms to effectively address allegations of human rights violations.

### D. International institutions

27. The United Nations should dedicate resources and expertise to the promotion and protection of indigenous peoples' languages and culture.

28. It is imperative that United Nations institutions and related entities take a human rights-based approach to the development of international legal standards and policies on traditional knowledge, traditional cultural expressions and genetic resources, including in relation to access and benefit sharing, to ensure that they conform to the Declaration. In addition, it is essential that such processes include the direct, full and equal participation of indigenous peoples to protect indigenous peoples' traditional knowledge.

29. Indigenous peoples should be included in the development of all local, national, regional and international endeavours to address climate change and a human rights approach to climate change mitigation and adaptation should be adopted at all levels.

### E. National human rights institutions

30. National human rights institutions have an important role to play in the revitalization and protection of indigenous languages and cultures, including promoting and monitoring States' laws and policies to protect and revitalize their cultures and languages and providing technical support for the implementation of indigenous peoples' rights to their cultures and languages. National human rights institutions are also well placed to create public awareness of cultures and languages, especially when dealing with indigenous peoples' issues.

### F. International donors

31. While States have the primary obligation to respect, protect and promote indigenous peoples' rights, it is essential that other entities, including the private sector and development agencies, respect indigenous peoples' rights to control development as it affects them. For example, international donors who fund educational projects in States with indigenous peoples should pay special attention to the ways in which their policies might impact on their languages and cultures.



32. The international donor community should make resources available to communities for the revitalization of indigenous peoples' languages and cultures. This could be done through the creation of an international fund for the revitalization of indigenous languages and cultures. It is essential that beneficiaries are indigenous peoples and that the establishment, management and disbursement of funds is carried out with the full and effective participation of indigenous peoples. Such an international fund must ensure the protection of indigenous peoples' intellectual property rights, based upon the principles of indigenous ownership, access, control, and possession of any research on indigenous peoples' languages and cultures.

### **G. Media**

33. The media are encouraged to promote and protect indigenous languages and cultures. Further, the media should not demonize indigenous cultures or in any other way promote discrimination against them.

### **H. Keepers of indigenous peoples' cultural heritage**

34. Museums and other places in which indigenous peoples' cultural heritage is stored should inform the relevant indigenous peoples and develop mechanisms to facilitate the return of such cultural heritage where sought by the indigenous peoples concerned.

# The Right of Indigenous Peoples to Participate in Decision-making, with a Focus on Extractive Industries





## Expert Mechanism Advice No. 4 (2012): Indigenous peoples and the right to participate in decision- making, with a focus on extractive industries

A/HRC/21/55

### A. Background

1. The present advice is in follow-up to advice No. 2,<sup>1</sup> and is based on relevant law and policy relating to, inter alia, the permanent sovereignty of indigenous peoples over natural resources, sustainable development and environmental responsibilities and rights; an analysis of the Guiding Principles on Business and Human Rights (A/HRC/17/31, annex); and the United Nations Declaration on the Rights of Indigenous Peoples and other key international laws, norms and standards.

2. One emerging trend in the context of resource extraction on indigenous lands and territories is the application for licences and permits by small-scale enterprises that are then sold to large-scale enterprises prior to or during development. In some cases, the larger the corporation, the greater the likelihood for adverse human rights impacts, given the imbalance of power. This can be somewhat guarded against by ensuring that agreements regarding human rights protections adopted by the small-scale corporations are incorporated into the terms of the sale to, or takeover by, the large-scale corporations. The responsibility to respect human rights applies fully and equally to all business enterprises, including those owned and operated by indigenous peoples or corporations.

3. The advice is necessarily expressed at a general level; it should be interpreted flexibly in the light of the specific context within which an extractive activity is taking place or is being planned, and purposively.<sup>2</sup>

### B. Law

#### 1. Scope of the right of indigenous peoples to participate in decision-making

4. The right of indigenous peoples to participate in decision-making in relation to extractive industries is interrelated with the right to self-determination, the right to autonomy, the right to be consulted and the duty of States to seek to obtain the free, prior and informed consent of indigenous peoples, as set out by the Expert Mechanism on the Rights of Indigenous Peoples (see A/HRC/18/42).

#### 2. States should provide clarity on consultation and consent seeking

5. States are under an obligation to provide businesses and indigenous peoples with clarity on how the right of indigenous peoples to participate in decision-making can be realized.<sup>3</sup> Such clarity must be provided with a view to ensuring business respect for the international human rights framework applicable to indigenous peoples.

#### 3. Right to participate is not confined to recognized legal entitlements to lands, territories and resources

6. The right of indigenous peoples to participate in decision-making in relation to extractive activities is not confined to situations where indigenous peoples have a State recognized title to the lands, territories and resources on or near which the extractive activity is to take place.<sup>4</sup> It extends to situations

<sup>1</sup> Final report of the study on indigenous peoples and the right to participate in decision-making (A/HRC/18/42, annex).

<sup>2</sup> Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people (A/HRC/12/34), paras. 37 and 43.

<sup>3</sup> See Guiding Principles on Business and Human Rights, principle 3.

<sup>4</sup> A/HRC/12/34, para. 44. Note also the comment by the tripartite committee of the International Labour Organization (ILO) Governing Body, cited by the Special Rapporteur, that under ILO Convention No. 169 (1989) concerning Indigenous and Tribal Peoples in Independent Countries "consultations... are required in respect of resources owned by the State pertaining to the lands that the peoples concerned occupy or otherwise use, whether or not they hold ownership title to those lands" (ibid.).

where indigenous peoples have traditionally owned or otherwise occupied and used land, territories and resources under their own indigenous laws. This applies to areas near or on which extractive activities take place or are proposed to take place.<sup>5</sup>

7. Indigenous peoples have a right to participate in decision-making in relation to extractive enterprises on or near territories which are of importance to them, including where they have not possessed or do not permanently possess, traditionally and/or currently, those lands, territories and resources.

#### 4. Range of duties, from consultation to consent

##### (a) Consultation

(i) Duties of the State and/or extractive enterprise

8. States must take full responsibility in ensuring that adequate consultation is undertaken to obtain consent. A State cannot delegate its responsibility, even where it engages third parties to assist in consultation mechanisms (A/HRC/18/35, para. 63). Consultation is often the starting point for seeking the free, prior and informed consent of indigenous peoples. If the potential impact or impact is minor, the requirement to seek the free, prior and informed consent of indigenous peoples may not necessarily be required. Nonetheless, as stated in advice No. 2, “the objective of consultations should be to achieve agreement or consensus” (A/HRC/18/42, annex, para. 9).

9. While the State is the primary bearer of duties under international human rights law, business enterprises also have a responsibility to respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.<sup>6</sup>

10. Accordingly, business enterprises, including those in extractive industries, should take steps to avoid causing or contributing to adverse human rights impacts through their own activities, and



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address such impacts when they occur, and seek to prevent or mitigate adverse human rights impacts with which they are involved through their business relationships, including with State entities. When operating in relation to the lands, territories and resources of indigenous peoples, they should pay special attention to risks of adverse impacts on the rights of indigenous peoples, with a view to prevent or mitigate such risks and effectively address adverse impacts that do occur. In particular, if enterprises in extractive industries are not able to prevent or mitigate such risks or address impacts, including infringements on the right of indigenous peoples to participate in decision-making, when operating in the context of their lands, territories or resources, the activities should not proceed. Thus, there is an onus on business enterprises in their assessments and own stakeholder engagement processes to ensure that indigenous peoples have participated in decision-making in relation to the proposed or on-going extractive activities consistently with their rights, outlined below.

<sup>5</sup> Report of the Special Rapporteur on the rights of indigenous peoples on extractive industries operating within or near indigenous territories (A/HRC/18/35).

<sup>6</sup> Guiding Principles on Business and Human Rights, principle 11.



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(ii) Jurisprudential basis for the right of indigenous peoples to consultation

11. The human rights treaty bodies have reiterated on numerous occasions the right of indigenous peoples to consultation in the context of extractive enterprises.<sup>7</sup>

(iii) When the duty to consult with indigenous peoples arises

12. As the Special Rapporteur on the rights of indigenous peoples has noted, special processes to consult with indigenous peoples may not be strictly necessary in relation to all State decisions that may affect them, but instead “whenever a State decision may affect indigenous peoples in ways not felt by others in society ... even when the decision may have a broader impact” (A/HRC/12/34, para. 43). The appropriate starting point from which to make this assessment is the perspective of indigenous peoples on the potential broader impact, as noted in advice No. 2.

13. To meet this duty, States would be well advised to establish permanent mechanisms to assess when and how indigenous peoples should be consulted consistent with international standards.

(iv) Design of the procedures to consult with indigenous peoples

14. Indigenous peoples should be engaged at all stages in the design of appropriate consultation mechanisms.<sup>8</sup> Consultation with indigenous peoples

<sup>7</sup> See, *inter alia*, concluding observations of the Committee on the Elimination of Racial Discrimination: CERD/C/304/Add.76, para. 16; CERD/C/EQU/CO/19, para. 16; CERD/C/COD/CO/15, para. 18; CERD/C/USA/CO/6, paras. 19 and 29; CERD/C/NIC/CO/14, para. 21; CERD/C/NGA/CO/18, para. 19; CERD/C/GTM/CO/12-13, para. 11; and decision 1 (68) (United States of America). Human Rights Committee concluding observations CCPR/CO/80/COL, para. 20; communication No. 1457/2006, *Poma Poma v. Peru*, Views adopted on 24 April 2009. Committee on Economic, Social and Cultural Rights concluding observations E/C.12/1/Add.74, para. 33; E/C.12/CO/MEX/4, para. 28; and E/C.12/IND/CO/5, para. 31. The issue of consultation with indigenous peoples has also been addressed during the Human Rights Council’s universal periodic review (A/HRC/16/6, para. 69.32).

<sup>8</sup> *Guiding Principles on Business and Human Rights*, principle 18.

in relation to proposed extractive activities should begin at the earliest stages of the planning process, including its proposal and design.<sup>9</sup>

(v) With whom to consult: representation of indigenous peoples

15. States, extractive enterprises and others must bear in mind that indigenous peoples have the right to determine their own representatives themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions. Furthermore, account should be taken of potential changes in the traditional authority structures of indigenous peoples as a result of outside influences.

16. Indigenous peoples should make clear to governments and extractive enterprises who should be consulted and from whom to seek consent.<sup>10</sup> Where there are conflicting views on the legitimate representatives and/or representative structures of an indigenous people, the group should establish its own appropriate procedures to determine with whom governments and extractive enterprises should consult and/or seek consent. If necessary and desired, indigenous peoples can seek outside, independent assistance, including financial, to determine disputes.

17. Where indigenous peoples have conflicting views on proposed or ongoing extractive activities, they should seek to work together to determine their joint response.

## (b) Free, prior and informed consent

18. Depending on the indigenous peoples' decision-making processes concerned and the nature of the activity concerned, consent may not always require indigenous peoples to reach a unanimous consensus

agreement to the extractive activity for it to proceed.<sup>11</sup> On the other hand, and again dependent on the particular decision-making processes of the indigenous peoples concerned, majority support may also not be adequate. There may be traditional mechanisms that set out other requirements.

19. At the start of a consultation process indigenous peoples should make clear, and agree on, how they will make a collective decision on the extractive activity, including the threshold to indicate there is consent.

(i) Mandatory requirement to obtain indigenous peoples' consent

20. In some cases, the duty to obtain the free, prior and informed consent of indigenous peoples is mandatory. Article 10 of the United Nations Declaration on the Rights of Indigenous Peoples prohibits the forcible removal of indigenous peoples from their lands or territories, which includes forcible removal in relation to proposed or ongoing extractive activities. It states: "No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return." Equally, article 29, paragraph 2, states that "States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent".

(ii) Contextual requirement to obtain indigenous peoples' consent

21. In other cases, such as where the approval of projects will affect indigenous peoples' lands, territories and resources although they are not situated on such lands, territories and resources, the requirement to obtain indigenous peoples' consent will depend on context. Article 32 states that "States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly

<sup>9</sup> *International Finance Corporation (IFC) Performance Standard 7: Indigenous Peoples (effective 1 January 2012)*, para. 11. *The Inter-American Court of Human Rights clarifies that consultation is not only necessary "when the need arises to obtain approval from the community". Inter-American Court of Human Rights, Saramaka People v. Suriname, Judgement of 28 November 2007, para. 133.*

<sup>10</sup> *The Special Rapporteur on the rights of indigenous peoples states, "indigenous peoples may also need to develop or revise their own institutions, through their own decision-making procedures, in order to set up representative structures to facilitate the consultation processes" (A/HRC/18/35, para. 52).*

<sup>11</sup> *IFC Performance Standard 7 states that "free, prior and informed consent does not necessarily require unanimity and may be achieved even when individuals and groups within the community explicitly disagree" (para. 12).*

in connection with the development, utilization or exploitation of mineral, water or other resources”.

22. In the final report on its study on indigenous peoples and the right to participate in decision-making, the Expert Mechanism provides further clarification:

The Declaration on the Rights of Indigenous Peoples requires that the free, prior and informed consent of indigenous peoples be obtained in matters of fundamental importance to their rights, survival, dignity and well-being. In assessing whether a matter is of importance to the indigenous peoples concerned, relevant factors include the perspective and priorities of the indigenous peoples concerned, the nature of the matter or proposed activity and its potential impact on the indigenous peoples concerned, taking into account, inter alia, the cumulative effects of previous encroachments or activities and historical inequities faced by the indigenous peoples concerned.<sup>12</sup>

23. The potential impact of the proposed activities is also relevant in an assessment as to when indigenous peoples’ consent is necessary. The Special Rapporteur on the rights of indigenous peoples has stressed that “a significant, direct impact on indigenous peoples’ lives or territories establishes a strong presumption that the proposed measure should not go forward without indigenous peoples’ consent” (A/HRC/12/34, para. 47).

24. Similarly, the Inter-American Court of Human Rights has also determined that the impact on the indigenous peoples’ territory is relevant when assessing when indigenous peoples’ consent is necessary. It stated in one case that “regarding large-scale development or investment projects that would have a major impact within Saramaka territory, the State has a duty, not only to consult with the Saramakas, but also to obtain their free, prior and informed consent, according to their customs and traditions”.<sup>13</sup>

25. The Committee on the Elimination of Racial Discrimination has repeatedly noted the obligation

on States to ensure adequate consultation and the acquisition of indigenous peoples’ free, prior and informed consent in relation to development activities and especially resource extraction.<sup>14</sup> Its jurisprudence is highly instructive, as it has set out the factual circumstances in which it has found that indigenous peoples’ consent is required.

26. In its Performance Standard 7 (paras. 13-17), the International Financial Corporation describes a number of situations in which indigenous peoples’ free, prior and informed consent is required, including those involving:

- (a) Impacts on lands and natural resources subject to traditional ownership or under customary use (including where the indigenous peoples do not hold legal title to those lands and resources);
- (b) Relocation of indigenous peoples from lands and natural resources subject to traditional ownership or under customary use;
- (c) Impacts on certain cultural heritage, such as sacred sites.

27. In summary, the factors relevant to assessing whether the duty to obtain indigenous peoples’ consent arises in the context of proposed and ongoing extractive activities include:

- (a) Matters of fundamental importance to rights, survival, dignity and wellbeing, assessed from the perspective and priorities of the indigenous peoples concerned, taking into account, inter alia, the cumulative effects of previous encroachments or activities and historical inequities faced by the indigenous peoples concerned;

<sup>12</sup> A/HRC/18/42, para. 22.

<sup>13</sup> *Saramaka People v. Suriname* (note 9 above), para. 134. This approach was endorsed by the African Commission on Human and Peoples Rights in *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of the Endorois Welfare Council v. Kenya* (Case 276/2003), para. 227.

<sup>14</sup> See, for example, the Committee’s concluding observations CERD/C/IND/CO/19, para. 19; CERD/C/ARG/CO/19-20, para. 26; CERD/C/PHL/CO/20, paras. 22 and 26; CERD/C/CHL/CO/15-18, para. 22; CERD/C/PER/CO/14-17, para. 14; CERD/C/CMR/CO/15-18, para. 18; CERD/C/GTM/CO/11, para. 19. See also the Committee’s Urgent Action-related activity (<http://www2.ohchr.org/english/bodies/cerd/early-warning.htm>) in relation to India (communications dated 15 August 2008 and 12 March 2010); Peru (communications dated 3 September 2007 and 7 March 2008); Canada (communication dated 13 March 2009); Suriname (Decision 1 (69), adopted on 18 August 2006). See also jurisprudence from other United Nations human rights treaty bodies, including the Committee on Economic, Social and Cultural Rights, concluding observations E/C.12/NIC/CO/4, para. 11 and E/C.12/COL/CO/5, para. 9; and the Human Rights Committee, concluding observations CCPR/C/PAN/CO/3, para. 21.



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(b) The impact on indigenous peoples' lives or territories. If it is likely to be major, significant or direct, indigenous peoples' consent is necessary;

(c) The nature of the measure.

(iii) Mutual consent, as set out in treaties

28. The fundamental requirement for mutual consent to be obtained is foundational to treaties between indigenous peoples and States, as recognized by numerous United Nations studies. This has been affirmed by article 37 of the United Nations Declaration on the Rights of Indigenous Peoples and preambular paragraphs 14 and 24, which underscore the importance of forming partnerships between indigenous peoples and States.

29. In advice No. 2, the Expert Mechanism noted that "several treaties between States and indigenous peoples affirmed the principles of indigenous peoples' consent as an underpinning of the treaty relationship between States and indigenous peoples" (para. 12).

## C. Policy

*1. States should provide clarity on consultation and consent seeking based on the legal framework identified above*

### (a) Objective of consultations

30. Consent should always be the objective of consultations, as noted in advice No. 2 (para. 9).

### (b) How to consult, collaborate and build partnerships

(i) Clarity of information

31. Information about the potential impact of extractive activities should be presented in a way that is understandable to indigenous peoples (A/HRC/12/34). Depending on the circumstances, this may require that the information be presented orally to indigenous peoples with interpretation into indigenous languages.

(ii) Provision of information

32. As stated by the Inter-American Court of Human Rights:<sup>15</sup>

- (a) Information must be provided and accepted also;
- (b) Indigenous peoples must be informed of the possible risks, “including environmental and health risks, in order that the proposed development or investment plan is accepted knowingly and voluntarily”.

(iii) Ongoing communication

33. The duty to consult with indigenous peoples “entails constant communication between the parties”.<sup>16</sup>

(iv) Culturally appropriate procedures

34. Consultation procedures should be culturally appropriate for the indigenous peoples concerned;<sup>17</sup> information sharing is required during the planning stages of the consultation process. In addition, consultation should take into account the indigenous peoples’ traditional methods of decision-making.<sup>18</sup>

(v) Good faith

35. Consultations must be undertaken in good faith.<sup>19</sup>

## **2. The need for independence in the assessment of the potential scope and impact of extractive activities on indigenous peoples, their lives and territories**

36. The interests of indigenous peoples and those of the State and business in extractive activities may not align, complicating the capacity of the State and business to assess and evaluate the impact of extractive activities on indigenous peoples. Thus, it is advisable to ensure independent assessments of the potential scope and impact of extractive activities on indigenous peoples, their lives and their lands, territories and resources.<sup>20</sup>

15 *Saramaka People v. Suriname* (note 9 above), para. 133.

16 *Ibid.*

17 *Ibid.*

18 *Ibid.*

19 *Ibid.* See also A/HRC/12/34.

20 IFC similarly holds that where free, prior and informed consent is necessary, “the client will engage external experts to assist in the identification of the project risks and impacts” (Performance Standard 7, para. 11).

## **3. Limitations on indigenous peoples’ rights relating to their lands, territories and resources**

37. Participation is relevant to an assessment of the degree to which States may limit indigenous peoples’ rights in relation to their lands, territories and resources.

38. In accordance with the decision of the Inter-American Court of Human Rights in *Saramaka People v. Suriname*,<sup>21</sup> limitations on indigenous peoples’ rights to their resources are permissible only where the State:

- (a) Ensures the effective participation of members of the indigenous peoples, in conformity with their customs and traditions, regarding any development, investment, exploration or extractive plan;<sup>22</sup>
- (b) Guarantees that the indigenous peoples will receive reasonable benefit from any such plan within their territory;
- (c) Ensures that no concession will be issued within indigenous peoples’ territory unless and until independent and technically capable entities, with the State’s supervision, perform a prior environmental and social impact assessment.

21 *International Finance Corporation (IFC) Performance Standard 7: Indigenous Peoples* (effective 1 January 2012), para. 11. The Inter-American Court of Human Rights clarifies that consultation is not only necessary “when the need arises to obtain approval from the community”. *Inter-American Court of Human Rights, Saramaka People v. Suriname, Judgement of 28 November 2007*, p. para. 129.

22 This is consistent with the decision of the Human Rights Committee in communication No. 547/1993, *Mahuika et al. v. New Zealand*, Views adopted on 27 October 2000, where the Committee stated that “the acceptability of measures that affect or interfere with the culturally significant economic activities of a minority depends on whether the members of the minority in question have had the opportunity to participate in the decision-making process in relation to these measures and whether they will continue to benefit from their traditional economy” (para. 9.5).

## D. Conclusion

### 1. Practical advice for States on how to meet their obligations to consult and seek the consent of in the context of extractive industry

39. The Expert Mechanism advises States to establish, together with indigenous peoples, (permanent) mechanisms<sup>23</sup> to enable consultation with indigenous peoples which can provide guidance on:

- (a) When the context requires consultations with indigenous peoples in line with the present advice;
- (b) How to reach indigenous peoples;
- (c) Identifying the representatives with which consultation should take place;
- (d) How to ensure an independent assessment of consultation practices;
- (e) How to undertake the requisite environmental and social impact studies associated with proposed and ongoing extractive activities;
- (f) Providing translation and interpretation services so that information relevant to indigenous peoples' decisions and interests can be provided for indigenous peoples in an understandable way;
- (g) Enabling indigenous peoples to obtain expert independent and technical assessments of the potential impact of extractive activities on them, including on their lives, lands and territories;
- (h) How to ensure that indigenous peoples' perspectives on the extractive activity are taken into account, including their ideal benefit-sharing arrangements if they so choose;
- (i) How to ensure that the permitting and monitoring boards of State corporations and extractive enterprise include indigenous peoples' representation and effective participation, which will also ensure human rights accountability at the corporate level.

### 2. Practical advice for extractive industries on how to meet the requirement to respect the right of indigenous peoples to participate in decision-making in the context of extractive industry

40. States retain the primary obligation to ensure indigenous peoples' right to participate is respected; nevertheless, to meet their own responsibility to respect human rights, extractive businesses should ensure, and make their own assessment as to, compliance with the right of indigenous peoples to participate in decision-making. Indeed, positive experience illustrates that extractive industries should work in partnership with States and indigenous peoples at all planning and implementation stages of extractive activities that might impact on indigenous peoples' interests.

41. Enterprises in extractive industries should, together with indigenous peoples, assess the risks and actual impacts on the rights of indigenous peoples arising from their activities and business relationships. Commitment to respecting the rights of indigenous peoples should be reflected in the business enterprise's policies and processes; such policies and processes should be put in place by the enterprise in order to meet its responsibility to respect human rights. Enterprises are advised to assess company compliance with indigenous peoples' rights and establish a company policy on how best to meet their responsibility to respect such rights, where possible by including indigenous peoples affected by their operations. When activities may affect indigenous peoples, the business enterprise must take adequate steps to ensure meaningful and effective engagement with indigenous peoples. As part of implementing their responsibility, business enterprises engaged in extractive activities must ensure that employees have an understanding of the content of indigenous peoples' rights, including their right to participate in decision-making.

42. The Special Rapporteur on the rights of indigenous peoples notes that companies must exercise due diligence by identifying, prior to commencing their activities, various matters relating to the basic rights of indigenous peoples, and by paying adequate attention to those matters as the activities are being carried out. Such matters include recognition of the existence of indigenous peoples and of their own social and political structures; indigenous possession

23 *The Special Rapporteur on the rights of indigenous peoples has stated that "One excellent way to ensure that companies respect indigenous peoples' right to participate in decisions concerning the measures affecting them is to establish permanent institutional fora for consultation and dialogue, in which the peoples and communities concerned, companies and local authorities are appropriately represented" (A/HRC/15/37, para. 69).*

and use of land, territory and natural resources; exercise by the State of its duty to consult indigenous peoples in relation to activities that might affect them, and the related responsibility of business; impact studies and mitigation measures; and benefit sharing with indigenous peoples.<sup>24</sup>

43. Extractive industries are encouraged to support, including financially, mechanisms to ensure that the right of indigenous peoples to participate in decision-making is respected. This can include:

- (a) Devoting human and financial resources to appropriate consultation mechanisms;
- (b) Establishing partnerships with indigenous peoples;
- (c) Ensuring that corporate boards or board advisory panels include indigenous peoples' representation and effective participation in order to promote human rights accountability at the corporate level.

### ***3. Practical advice for indigenous peoples on how to meet their responsibilities and protect their human rights in relation to extractive industries***

44. Indigenous peoples who choose to extract resources can continue to play a positive role in sustainable development by asserting their international human rights relating to extractive industries, with an emphasis on forming equal partnerships with States and business enterprises to engage in sustainable development where adequate environmental protections are in place.

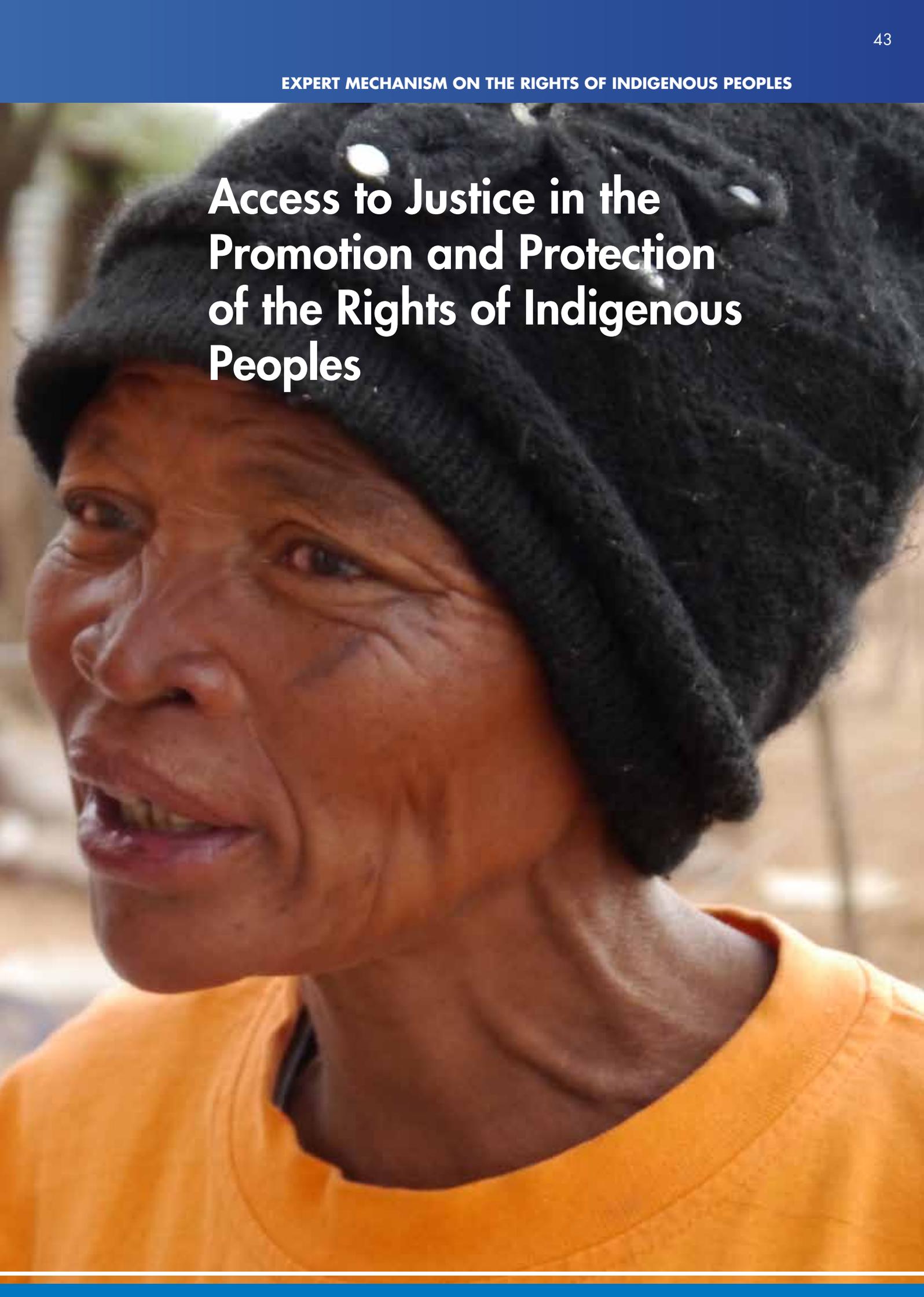
45. Given indigenous peoples' permanent sovereignty over natural resources and the United Nations Declaration on the Rights of Indigenous Peoples, as set out in the international legal and policy framework of the present report, the right of indigenous peoples to participate in decision-making also includes the right not to consent to extracting resources as an exercise of their sovereignty.

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24 A/HRC/15/37, para. 46.







# Access to Justice in the Promotion and Protection of the Rights of Indigenous Peoples

## Expert Mechanism Advice No. 5 (2013): Access to justice in the promotion and protection of the rights of indigenous peoples

[A/HRC/24/50](#)

### A. General

1. The United Nations Declaration on the Rights of Indigenous Peoples should be the basis of all action, including at the legislative and policy levels, on the protection and promotion of indigenous peoples' right to access to justice. The implementation of the Declaration should be seen as a framework for reconciliation and as a means of implementing indigenous peoples' access to justice.

2. Access to justice concerns arise especially in the context of lands, territories and resources. In the promotion of peace, justice and harmonious and cooperative relations between States and indigenous peoples, the Declaration affirms the right to the

integrity of their lands and territories (arts. 25–32). Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples (art. 7(2)). Such security includes, inter alia, cultural, environmental and territorial aspects.

3. Respect for the right to self-determination requires both recognition of indigenous peoples' systems and the need to overcome historic factors and related contemporary factors that negatively affect indigenous peoples in the operation of State systems. At the national and regional levels, strategic litigation, complemented by outreach and advocacy, can help to expand access to justice and protections for other rights of indigenous peoples.

4. Indigenous peoples' understanding of access to justice often differs from that of States and of businesses, in some cases informed by their own understandings of, and practices associated with, justice. This means that, at the outset, before undertaking activities to respect, promote and protect indigenous peoples' access to justice, common understandings of the meaning of justice and the best means to attain access to justice should be sought, in line with indigenous peoples' self-determination and related rights to participate in decision-making affecting them.



5. Historical injustices contribute to multiple contemporary disadvantages for indigenous peoples, which in turn increase the likelihood of indigenous peoples coming into contact with the justice system. The relationship of indigenous peoples with domestic criminal justice systems cannot, therefore, be considered in isolation from historical factors or the current economic, social and cultural status of indigenous peoples. Moreover, there are other areas of law, including family law, child protection law and civil law that have an impact on this relationship. Solutions include not only reforms to criminal justice systems themselves but also measures addressing the socioeconomic situation of indigenous peoples and all human rights of indigenous peoples which are interrelated, interdependent and indivisible.

## B. States

6. Consistent with indigenous peoples' right to self-determination and self-government, States should recognize and provide support for indigenous peoples' own justice systems and should consult with indigenous peoples on the best means for dialogue and cooperation between indigenous and State systems.

7. States should accord recognition and assign legal validity to customary practices that are already carried out by indigenous authorities de facto. States should take a flexible approach to the establishment of jurisdictional boundaries and avoid overly restrictive limits to indigenous jurisdictional competencies over justice.

8. States should work with indigenous peoples to address the underlying issues that prevent indigenous peoples from having access to justice on an equal basis with others.

9. States should work in partnership with indigenous peoples, particularly indigenous women, to determine the most effective strategies for overcoming barriers to access to justice. This includes helping to revitalize traditional justice norms and institutions.

10. Moreover, States should facilitate and provide access to legal remedies for indigenous peoples and should support capacity development of indigenous communities to help them to understand and make use of legal systems.

11. States should consider the impact of law and policy on indigenous peoples' access to human rights

processes and institute reform where such law and policy interferes with indigenous peoples' enjoyment of substantive equality in this regard.

12. States should recognize the rights of indigenous peoples to their lands, territories and resources in laws and should harmonize laws in accordance with indigenous peoples' customs on possession and use of lands (including laws and policies that affect the conduct of business on indigenous territories) and forms of justice. Where indigenous peoples have won land rights and other cases in courts, States must implement these decisions. The private sector and the Government must not collude to deprive indigenous peoples of access to justice.

13. Training and sensitization for law enforcement officials, judicial officials and other state agencies on the rights of indigenous peoples is recommended.

14. In relation to criminal justice, State authorities should consult and cooperate with indigenous peoples and their representative institutions to:

- Ensure that the criminal justice system does not become a self-promoting industry benefiting from the overrepresentation of indigenous peoples.
- Formulate plans of action to address both the high levels of indigenous victimization and the treatment of indigenous peoples in domestic criminal justice systems.
- Develop appropriate methodologies to obtain comprehensive data on (a) victimization of indigenous peoples, including information on the number of cases prosecuted, and (b) the situation of indigenous peoples in detention, disaggregated by age, gender and disability.
- Reduce the number of indigenous individuals in prison, including through the pursuit of non-custodial options, such as, inter alia, use of traditional restorative and rehabilitative approaches.

15. In relation to transitional justice mechanisms:

- Indigenous peoples and indigenous peoples' representative institutions should be consulted and involved in all stages of the establishment and implementation of transitional justice mechanisms.
- Truth commissions should be guided by and should make explicit reference to the United Nations Declaration on the Rights of Indigenous Peoples.

- Truth commissions should recognize and address the historical injustices experienced by indigenous peoples, as well as how failures to recognize indigenous peoples' self-determination historically and today have created conditions for human rights violations.
- Truth processes should be linked to larger outreach and education efforts. These efforts should include explaining important justice issues, such as self-determination, to the broader public.
- Truth processes and reparations programmes should be designed in a way that respects the cultures and values of indigenous peoples.

### **C. Indigenous peoples**

16. Indigenous peoples should strengthen advocacy for the recognition of their justice systems. Indigenous peoples should strengthen their own organizations and local governance capacity to meet the challenges faced by their communities.

17. Indigenous peoples' justice systems should ensure that indigenous women and children are free from all forms of discrimination and should ensure accessibility to indigenous persons with disabilities.

18. Indigenous peoples should explore the organization and running of their own truth-seeking processes.

19. Indigenous peoples should strive for explicit inclusion of their particular interests in transitional justice initiatives in those cases where indigenous peoples are one among many groups that suffered human rights abuse.

20. Indigenous peoples should ensure that all persons are effectively represented in transitional justice processes, especially women.

### **D. International institutions**

21. The Declaration should guide the efforts of United Nations system entities and mandates, including the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence.

22. The United Nations should dedicate resources to the development and carrying out, in cooperation with indigenous peoples, of training on the rights of indigenous peoples in relation to access to justice for law enforcement officials and members and staff of the judiciary.

23. The United Nations system should seek to expand programmes designed to support indigenous peoples to carry out strategic litigation to advance their rights and expand their access to justice.

24. The United Nations should work with indigenous peoples to contribute to further reflection on and capacity-building regarding truth and reconciliation procedures for indigenous peoples.

25. Relevant United Nations special procedures should monitor implementation of transitional justice processes to ensure that they respect the principles of the Declaration, and that States act in a timely way on truth commission recommendations and the implementation of reparations programmes for indigenous peoples.

### **E. National human rights institutions**

26. National human rights institutions, in partnership with indigenous peoples, can play an important role in ensuring improved access to justice for indigenous peoples, including by encouraging recognition of and providing support for indigenous justice systems and promoting the implementation of the Declaration at the national level. National human rights institutions, in partnership with indigenous peoples, have the opportunity to provide training on the rights of indigenous peoples in relation to access to justice for judiciaries.

# Annexes



# United Nations Declaration on the Rights of Indigenous Peoples

**ADOPTED BY THE GENERAL ASSEMBLY ON  
13 SEPTEMBER 2007**

*The General Assembly,*

*Guided* by the purposes and principles of the Charter of the United Nations, and good faith in the fulfilment of the obligations assumed by States in accordance with the Charter,

*Affirming* that indigenous peoples are equal to all other peoples, while recognizing the right of all peoples to be different, to consider themselves different, and to be respected as such,

*Affirming also* that all peoples contribute to the diversity and richness of civilizations and cultures, which constitute the common heritage of humankind,

*Affirming further* that all doctrines, policies and practices based on or advocating superiority of peoples or individuals on the basis of national origin or racial, religious, ethnic or cultural differences are racist, scientifically false, legally invalid, morally condemnable and socially unjust,

*Reaffirming* that indigenous peoples, in the exercise of their rights, should be free from discrimination of any kind,

*Concerned* that indigenous peoples have suffered from historic injustices 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,

*Recognizing* the urgent need to respect and promote the inherent rights of indigenous peoples which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies, especially their rights to their lands, territories and resources,

*Recognizing also* the urgent need to respect and promote the rights of indigenous peoples affirmed

in treaties, agreements and other constructive arrangements with States,

*Welcoming* the fact that indigenous peoples are organizing themselves for political, economic, social and cultural enhancement and in order to bring to an end all forms of discrimination and oppression wherever they occur,

*Convinced* that control by indigenous peoples over developments affecting them and their lands, territories and resources will enable them to maintain and strengthen their institutions, cultures and traditions, and to promote their development in accordance with their aspirations and needs,

*Recognizing* that respect for indigenous knowledge, cultures and traditional practices contributes to sustainable and equitable development and proper management of the environment,

*Emphasizing* the contribution of the demilitarization of the lands and territories of indigenous peoples to peace, economic and social progress and development, understanding and friendly relations among nations and peoples of the world,

*Recognizing in particular* the right of indigenous families and communities to retain shared responsibility for the upbringing, training, education and well-being of their children, consistent with the rights of the child,

*Considering* that the rights affirmed in treaties, agreements and other constructive arrangements between States and indigenous peoples are, in some situations, matters of international concern, interest, responsibility and character,

*Considering also* that treaties, agreements and other constructive arrangements, and the relationship they represent, are the basis for a strengthened partnership between indigenous peoples and States,

*Acknowledging* that the Charter of the United Nations, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, as well as the Vienna Declaration and Programme of Action, affirm the fundamental importance of the right to self-determination of all peoples, by virtue of which they freely determine their political status

and freely pursue their economic, social and cultural development,

*Bearing in mind* that nothing in this Declaration may be used to deny any peoples their right to self-determination, exercised in conformity with international law,

*Convinced* that the recognition of the rights of indigenous peoples in this Declaration will enhance harmonious and cooperative relations between the State and indigenous peoples, based on principles of justice, democracy, respect for human rights, non-discrimination and good faith,

*Encouraging* States to comply with and effectively implement all their obligations as they apply to indigenous peoples under international instruments, in particular those related to human rights, in consultation and cooperation with the peoples concerned,

*Emphasizing* that the United Nations has an important and continuing role to play in promoting and protecting the rights of indigenous peoples,

*Believing* that this Declaration is a further important step forward for the recognition, promotion and protection of the rights and freedoms of indigenous peoples and in the development of relevant activities of the United Nations system in this field,

*Recognizing and reaffirming* that indigenous individuals are entitled without discrimination to all human rights recognized in international law, and that indigenous peoples possess collective rights which are indispensable for their existence, well-being and integral development as peoples,

*Recognizing* that the situation of indigenous peoples varies from region to region and from country to country and that the significance of national and regional particularities and various historical and cultural backgrounds should be taken into consideration,

*Solemnly proclaims* the following United Nations Declaration on the Rights of Indigenous Peoples as a standard of achievement to be pursued in a spirit of partnership and mutual respect:

#### **Article 1**

Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of

all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law.

#### **Article 2**

Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.

#### **Article 3**

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

#### **Article 4**

Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

#### **Article 5**

Indigenous 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 6**

Every indigenous individual has the right to a nationality.

#### **Article 7**

1. Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person.
2. Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.

**Article 8**

1. Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.
2. States shall provide effective mechanisms for prevention of, and redress for:
  - (a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;
  - (b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;
  - (c) Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights;
  - (d) Any form of forced assimilation or integration;
  - (e) Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them.

**Article 9**

Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No discrimination of any kind may arise from the exercise of such a right.

**Article 10**

Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

**Article 11**

1. Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.

2. States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.

**Article 12**

1. Indigenous peoples have the right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.
2. States shall seek to enable the access and/or repatriation of ceremonial objects and human remains in their possession through fair, transparent and effective mechanisms developed in conjunction with indigenous peoples concerned.

**Article 13**

1. Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons.
2. States shall take effective measures to ensure that this right is protected and also to ensure that indigenous peoples can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means.

**Article 14**

1. Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.
2. Indigenous individuals, particularly children, have the right to all levels and forms of education of the State without discrimination.

3. States shall, in conjunction with indigenous peoples, take effective measures, in order for indigenous individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language.

#### Article 15

1. Indigenous peoples have the right to the dignity and diversity of their cultures, traditions, histories and aspirations which shall be appropriately reflected in education and public information.
2. States shall take effective measures, in consultation and cooperation with the indigenous peoples concerned, to combat prejudice and eliminate discrimination and to promote tolerance, understanding and good relations among indigenous peoples and all other segments of society.

#### Article 16

1. Indigenous peoples have the right to establish their own media in their own languages and to have access to all forms of non-indigenous media without discrimination.
2. States shall take effective measures to ensure that State-owned media duly reflect indigenous cultural diversity. States, without prejudice to ensuring full freedom of expression, should encourage privately owned media to adequately reflect indigenous cultural diversity.

#### Article 17

1. Indigenous individuals and peoples have the right to enjoy fully all rights established under applicable international and domestic labour law.
2. States shall in consultation and cooperation with indigenous peoples take specific measures to protect indigenous children from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development, taking into account their special vulnerability and the importance of education for their empowerment.

3. Indigenous individuals have the right not to be subjected to any discriminatory conditions of labour and, *inter alia*, employment or salary.

#### Article 18

Indigenous peoples have 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 19

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.

#### Article 20

1. Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.
2. Indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress.

#### Article 21

1. Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, *inter alia*, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security.
2. States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities.

**Article 22**

1. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities in the implementation of this Declaration.
2. States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.

**Article 23**

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.

**Article 24**

1. Indigenous peoples have the right to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, animals and minerals. Indigenous individuals also have the right to access, without any discrimination, to all social and health services.
2. Indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health. States shall take the necessary steps with a view to achieving progressively the full realization of this right.

**Article 25**

Indigenous peoples have the right 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.

**Article 26**

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.

2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.
3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

**Article 27**

States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.

**Article 28**

1. Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.
2. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.

**Article 29**

1. Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.

2. 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.
3. 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.

### Article 30

1. Military activities shall not take place in the lands or territories of indigenous peoples, unless justified by a relevant public interest or otherwise freely agreed with or requested by the indigenous peoples concerned.
2. States shall undertake effective consultations with the indigenous peoples concerned, through appropriate procedures and in particular through their representative institutions, prior to using their lands or territories for military activities.

### Article 31

1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.
2. In conjunction with indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.

### Article 32

1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.

2. 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.
3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

### Article 33

1. Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of indigenous individuals to obtain citizenship of the States in which they live.
2. Indigenous peoples have the right to determine the structures and to select the membership of their institutions in accordance with their own procedures.

### Article 34

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

### Article 35

Indigenous peoples have the right to determine the responsibilities of individuals to their communities.

### Article 36

1. Indigenous peoples, in particular those divided by international borders, have the right to maintain and develop contacts, relations and cooperation, including activities for spiritual, cultural, political, economic and social purposes, with their own members as well as other peoples across borders.
2. States, in consultation and cooperation with indigenous peoples, shall take effective measures to facilitate the exercise and ensure the implementation of this right.

**Article 37**

1. Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors and to have States honour and respect such treaties, agreements and other constructive arrangements.
2. Nothing in this Declaration may be interpreted as diminishing or eliminating the rights of indigenous peoples contained in treaties, agreements and other constructive arrangements.

**Article 38**

States in consultation and cooperation with indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration.

**Article 39**

Indigenous peoples have the right to have access to financial and technical assistance from States and through international cooperation, for the enjoyment of the rights contained in this Declaration.

**Article 40**

Indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.

**Article 41**

The organs and specialized agencies of the United Nations system and other intergovernmental organizations shall contribute to the full realization of the provisions of this Declaration through the mobilization, inter alia, of financial cooperation and technical assistance. Ways and means of ensuring participation of indigenous peoples on issues affecting them shall be established.

**Article 42**

The United Nations, its bodies, including the Permanent Forum on Indigenous Issues, and

specialized agencies, including at the country level, and States shall promote respect for and full application of the provisions of this Declaration and follow up the effectiveness of this Declaration.

**Article 43**

The rights recognized herein constitute the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world.

**Article 44**

All the rights and freedoms recognized herein are equally guaranteed to male and female indigenous individuals.

**Article 45**

Nothing in this Declaration may be construed as diminishing or extinguishing the rights indigenous peoples have now or may acquire in the future.

**Article 46**

1. Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States.
2. In the exercise of the rights enunciated in the present Declaration, human rights and fundamental freedoms of all shall be respected. The exercise of the rights set forth in this Declaration shall be subject only to such limitations as are determined by law and in accordance with international human rights obligations. Any such limitations shall be non-discriminatory and strictly necessary solely for the purpose of securing due recognition and respect for the rights and freedoms of others and for meeting the just and most compelling requirements of a democratic society.
3. The provisions set forth in this Declaration shall be interpreted in accordance with the principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance and good faith.

## Brief summaries of studies undertaken by the Expert Mechanism on the Rights of Indigenous Peoples\*

### STUDY ON LESSONS LEARNED AND CHALLENGES TO ACHIEVE THE RIGHT OF INDIGENOUS PEOPLES TO EDUCATION (A/HRC/12/33)

The Expert Mechanism's study on the right of indigenous peoples to education analyses the international human rights framework around this issue, drawing in particular upon the United Nations Declaration on the Rights of Indigenous Peoples and international and regional human rights treaties. The study addresses indigenous education systems and institutions, including traditional education and institutions, and the integration of indigenous perspectives into mainstream education systems, and offers lessons learned in areas including national laws and policies, financial and infrastructure support, the establishment of traditional education institutions, the teaching of indigenous languages, and the training and certification of teachers. Finally, the study addresses some of the main challenges in achieving the right of indigenous peoples to education, including discrimination and poor access to education, challenges affecting indigenous women, and low public spending on education for indigenous peoples.

### STUDY ON INDIGENOUS PEOPLES AND THE RIGHT TO PARTICIPATE IN DECISION-MAKING (A/HRC/18/42)

The Expert Mechanism's study on the right of indigenous peoples and the right to participate in decision-making focuses on good practices in this area, drawn from the Expert Mechanism's own research and submissions received from States and indigenous peoples. The Expert Mechanism

provides examples of good practices in indigenous peoples' internal decision-making processes and institutions. These include indigenous parliaments and organizations and indigenous legal systems. The Expert Mechanism also addresses the role of indigenous women in these internal processes and institutions. The study goes on to address indigenous peoples' participation in decision-making mechanisms linked to State and non-State institutions and processes that affect them. Some of the areas examined are participation in parliamentary processes, participation in governance, free, prior and informed consent, and participation in international forums and processes.

### STUDY ON THE ROLE OF LANGUAGES AND CULTURE IN THE PROMOTION AND PROTECTION OF THE RIGHTS AND IDENTITY OF INDIGENOUS PEOPLES (A/HRC/21/53)

This study outlines international and regional standards on indigenous peoples' rights to language and culture, with particular emphasis on the Declaration on the Rights of Indigenous Peoples. It describes the relationship of indigenous cultures and languages to self-determination and indigenous peoples' rights to their lands, territories and resources, as well as the central importance of indigenous peoples' languages to their identity. This is followed by a discussion of indigenous peoples' cultural identity, including indigenous spirituality, cultural diversity and traditional knowledge. The study ends with an overview of some of the main challenges faced in promoting and protecting indigenous language and culture rights. The Expert Mechanism identifies the adaptation of culture, the revitalization of cultures, non-indigenous development of indigenous peoples' lands and territories, lack of recognition of indigenous peoples' cultures, climate change, and assimilation as some of the challenges faced by indigenous peoples in this regard.

\* Each study is available in full from the OHCHR website: [www.ohchr.org/EN/Issues/IPeoples/EMRIP/Pages/EMRIPIndex.aspx](http://www.ohchr.org/EN/Issues/IPeoples/EMRIP/Pages/EMRIPIndex.aspx).

### **FOLLOW-UP REPORT ON INDIGENOUS PEOPLES AND THE RIGHT TO PARTICIPATE IN DECISION-MAKING, WITH A FOCUS ON EXTRACTIVE INDUSTRIES (A/HRC/21/55)**

In this follow-up report, the Expert Mechanism examines the right to participate in decision-making, with a focus on extractive industries. The Expert Mechanism outlines the international legal and policy framework around the issue, drawing in particular from the Declaration on the Rights of Indigenous Peoples and the Guiding Principles on Business and Human Rights endorsed by the Human Rights Council. The study addresses the concept of permanent sovereignty of indigenous peoples over natural resources, as derived from the right to self-determination. The study then outlines some policy considerations for participation in decision-making in the context of extractive industries, such as the need for clarity over ownership of natural resources, the distinction between procedural and substantive rights, and considerations relating to indigenous women and girls in this context.

### **STUDY ON ACCESS TO JUSTICE IN THE PROMOTION AND PROTECTION OF THE RIGHTS OF INDIGENOUS PEOPLES (A/HRC/24/50)**

This study outlines the right to access to justice as it applies to indigenous peoples. It examines the international and regional legal frameworks, with special emphasis on the United Nations Declaration on the Rights of Indigenous Peoples. The study analyses the relationship between access to justice and the rights of indigenous peoples to self-determination, non-discrimination and culture, and proposes key areas for advancing the right to access to justice, including the role of national courts and criminal justice systems and the recognition of indigenous peoples' justice systems. Finally, the study examines access to justice issues relevant to indigenous women, children and youth and persons with disabilities, as well as the potential of truth and reconciliation processes to promote access to justice for indigenous peoples.



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UNITED NATIONS  
**HUMAN RIGHTS**  
OFFICE OF THE HIGH COMMISSIONER

The Office of the United Nations High Commissioner for Human Rights (OHCHR) is mandated to promote and protect the enjoyment and full realization, by all people, of all rights established in the Charter of the United Nations and in international human rights law. It is guided in its work by the mandate provided by the General Assembly in resolution 48/141, the Charter of the United Nations, the Universal Declaration of Human Rights and subsequent human rights instruments, the Vienna Declaration and Programme of Action of the 1993 World Conference on Human Rights, and the 2005 World Summit Outcome Document.

The mandate includes preventing human rights violations, securing respect for all human rights, promoting international cooperation to protect human rights, coordinating related activities throughout the United Nations, and strengthening and streamlining United Nations human rights work. In addition to its mandated responsibilities, it leads efforts to integrate a human rights approach within all work carried out by the United Nations system.

Office of the High Commissioner for Human Rights

Palais des Nations  
CH 1211 Geneva 10 – Switzerland  
Telephone: +41 22 917 90 00  
Fax: +41 22 917 90 08  
[www.ohchr.org](http://www.ohchr.org)