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Good Practices and challenges, including discrimination, in business and in access to financial services by indigenous peoples, in particular indigenous women and indigenous persons with disabilities.

Draft study of the Expert Mechanism on the Rights of Indigenous Peoples

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I. Introduction

1. In its resolution 33/13, the Human Rights Council requested the Expert Mechanism on the Rights of Indigenous Peoples to undertake a study on good practices and challenges, including discrimination, in business and in access to financial services by indigenous peoples, in particular indigenous women and indigenous persons with disabilities and to present it to the Council at its thirty-sixth. This draft is intended for discussion and finalization at the 10th session of the Expert Mechanism (10-14 July) before presentation to the Council.

2. The Expert Mechanism called for States, indigenous peoples, national human rights institutions and other stakeholders to provide information for the study. The submissions received have been made available on the Expert Mechanism website whenever permission to do so has been granted. The study also benefited from presentations made at the Expert Seminar on Good Practices and Challenges for Indigenous Peoples' Entrepreneurship (Boulder, United States, 6-7 March 2017) organized by the Office of the United Nations High Commissioner for Human Rights and the University of Colorado Law School.

II. A Human Rights-based understanding of indigenous peoples' businesses

A. Grounding indigenous peoples' business and access to financial services within a human rights framework

3. Prior to colonization and occupation, indigenous peoples had their own economies, including traditional livelihoods and ways of producing, selling and distributing goods or services, as well as concepts of profit, saving and sustainable use of resources. Over the centuries, historical injustices, most notably dispossession of lands, territories and resources, compounded by underlying prejudiced views of indigenous peoples' ways of life, livelihoods, and knowledge systems, have undermined their business potential.

4. The systematic economic marginalisation of indigenous peoples continues to this day, including through discrimination that they frequently face in accessing financial services or in establishing and operating their own businesses. Indigenous women, persons with disabilities and young indigenous persons are particularly affected by discrimination due to the multiple barriers that they face.

5. As restorative frameworks, the United Nations Declaration on the Rights of Indigenous Peoples (the Declaration) and several other international human rights instruments guarantee rights that seek to redress the historical injustices suffered by indigenous peoples. Article 3 of the Declaration enshrines indigenous peoples' right to "freely pursue their economic, social and cultural development as an integral part of their right to self-determination. More specifically, Article 23 of the Declaration provides for indigenous peoples' right to development, including the right to determine and develop economic priorities, strategies and programmes. These provisions underlie indigenous peoples' right to unlock their business potentials and do business as an integral part of their right to self-determination.

6. The Declaration underlines the particular relevance of indigenous peoples' access to financial services as a way to redress historical injustices and discrimination. Firstly, in its Article 4 on the right to self-determination, it clarifies that indigenous peoples require

resources to achieve self-determined development. Then in Article 39 it enshrines the right of indigenous peoples to financial and technical assistance, which should be culturally sensitive and not contribute to dependency relationships with the State, markets, or financial institutions.

7. In addressing indigenous peoples economic marginalisation, Articles 21 and 22 of the Declaration provide specifically for attention to the rights and needs of indigenous women, youth and persons with disabilities. Many indigenous peoples suffer from State policies of economic forced assimilation that has put a particular pressure on indigenous youth, who often have to leave their communities to search for work in cities.¹ Indigenous women face similar particular challenges when combining their unpaid domestic work and paid work in the labor market.

8. The International Labour Organization Convention 111 on discrimination in employment and occupation (ILO Convention 111) is a widely ratified international instrument, grounded in the human rights principle of equal economic opportunities. In interpreting the Convention, the ILO Committee of Experts on Application of Conventions and Recommendations has reaffirmed indigenous peoples' traditional occupations' key contribution to addressing their economic marginalization, underlining the importance of access to lands and resources for them to engage in their traditional occupations.² The ILO has argued that "discrimination in the labour market, by excluding members of indigenous communities from work or by impairing their chances of developing market-relevant capabilities, lowers the quality of jobs they can aspire to."³

9. The international obligation to respect, protect and promote indigenous peoples' traditional economies is similarly provided by Article 23 of the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention (No. 169), which states that "... rural and community-based industries, and subsistence economy and traditional activities of the peoples concerned, such as hunting, fishing, trapping and gathering, shall be recognized as important factors in the maintenance of their cultures and in their economic self-reliance and development."

10. The right to economic self-determination, including through control over natural resources, is also enshrined in the 1986 United Nations Declaration on the Right to Development, which states that "the human right to development also implies the full realization of the right of peoples to self-determination, which includes (...) the exercise of their inalienable right to full sovereignty over all their natural wealth and resources" (Article 1)

11. Indigenous peoples' right to their economic systems is an enabling right that facilitates the enjoyment and exercise of other fundamental rights.. The former Special Rapporteur on the rights of indigenous peoples, James Anaya concluded in his 2013 report on extractive industries and indigenous peoples that "the enjoyment of self-determination and related rights [is] enhanced when indigenous peoples freely choose to develop their own resource extraction enterprises backed by adequate capacity and internal governance institutions" (A/HRC/24/41, para. 11).

¹ See for example Plano de Gestão do Território Indígena do Xingu (2016), pag 32.

² See Committee of Experts on the Application of Conventions and Recommendations, direct request to Cambodia (available at http://www.ilo.ch/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO::P13100_COMMENT_ID:3254923)

³ ILO Leaflet No.5, *Discrimination in employment and occupation*, pag. 1.

12. The United Nations “Protect, Respect and Remedy” framework on business and human rights (Ruggie framework), reaffirms also that businesses can contribute to the realization of human rights, including those of the most discriminated against: “Businesses ...constitute [a] powerful force capable of generating economic growth, reducing poverty, and increasing demand for the rule of law, thereby contributing to the realization of a broad spectrum of human rights”. (A/HRC/8/5, para. 2)

13. However the Ruggie Framework fails firstly to pay particular attention to the negative impact that land dispossessions and loss of control over resources has had on indigenous peoples’ capacity to do business and become actors of inclusive growth. Secondly, the UN Framework failed to look into potential lessons that could be learned from indigenous peoples’ traditional economic models that over centuries had enabled them to balance successfully economic, social, cultural and environmental objectives.

14. The Sustainable Development Goals (SDGs) also establish a linkage between business, human rights and discrimination-free living conditions for those left furthest behind, including indigenous peoples. Goal 10 on reduced inequalities in income should be broadly understood as including income generated by indigenous peoples from their traditional economies, which deserve equal protection, respect and promotion as sources of income. Goal 8 on sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all, is also of key relevance. Indigenous businesses have much to contribute to goal of generating employment and ensuring sustainable livelihoods.⁴

15. The Convention on Biological Diversity also provides recognition of the links between indigenous traditional knowledge, sustainable customary use of biological resources as well as its wider potential benefits. According to Article 8j states shall respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities and promote their wider application with the approval and involvement of the holders of such knowledge and encourage the equitable sharing of the benefits arising from the utilization of such knowledge innovations and practices. Traditional knowledge issues cut across many domains in relation to global environmental issues, including biodiversity conservation, natural resource management, business development, use of genetic resources and climate change.

16. The Paris Agreement acknowledges the role of indigenous peoples’ traditional knowledge in addressing climate change (Paris Agreement, para. 5), and also reminds States to respect, promote and consider their human rights obligations when taking action to address climate change (Paris Agreement, preamble). Indigenous peoples should therefore have a legitimate stake in climate change-related businesses, funding and financial services.

B. Indigenous peoples’ rights-based approaches to business

17. Indigenous peoples’ economic systems consist of a diversity of activities for self-determined development. These activities have traditionally been mostly for subsistence and include small-scale agriculture, hunting, gathering, animal husbandry and artisanal activities such as weaving, carpentry, carving, and blacksmithing.⁵ This section

⁴ See submission from the New Zealand Human Rights Commission.

⁵ Jannie Lasimbang, “Indigenous peoples and local economic development” AIPP (2008). Available from:

<http://pro169.org/res/materials/en/development/IPs%20and%20Local%20Economic%20Development.pdf>

deconstructs indigenous peoples economies and businesses, with a view to understanding the human rights features that make them unique and contribute to their resilience.

Indigenous peoples' business as a safeguard for their right to live in dignity

18. Economic redress and empowerment of indigenous peoples and the corresponding right to undertake economic activities is not a goal or an end in itself, but a means for indigenous peoples to attain their “right to the dignity and diversity of their cultures, traditions, histories and aspirations”, guaranteed by the Declaration (Article 15).

19. The right of indigenous peoples to maintain and develop their economic systems and institutions, including the right “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” is enshrined in the Declaration (Article 21), which provides further that indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress” (Article 20).

20. The Declaration also requires States to combat “...prejudice and eliminate discrimination and to promote tolerance, understanding and good relations among indigenous peoples and all other segments of society” (Article 15). This would apply to prejudiced views that consider indigenous peoples’ use, ownership and occupation of lands and resources as wasteful and economically unworthy.

21. Article 2 of ILO Convention 169 provides for indigenous peoples’ economic empowerment as a means for restoring respect for their cultures, customs, traditions and institutions. To that end, States are required to ensure “full realization of the social, economic and cultural rights of these peoples with respect for their social and cultural identity, their customs and traditions and their institutions...[and eliminate] socio-economic gaps that may exist between indigenous and other members of the national community, in a manner compatible with their aspirations and ways of life”.

22. Indigenous peoples’ economic activities aim at not only generating resources but also at strengthening indigenous cultures, rebuilding communities’ self-esteem, breaking systemic barriers of discrimination, protecting their lands and natural resources, reclaiming their place in economic affairs, and becoming key actors of their self-determined development.

23. Notwithstanding their considerable diversity, indigenous peoples’ economies place a strong emphasis on both social and economic returns to communities. Indigenous peoples’ understandings of business do not necessarily define success by the amount of profit made, but rather by the benefits that a business can provide to their families and communities. Even for an individual indigenous entrepreneur, family and community considerations are often taken into account when beginning a business.

24. This indigenous notion of social corporate responsibility appears to be grounded in human rights and seems different from the dominant CSR model, which is charity-guided, binding norms-free and corporate public image-focused. Indigenous businesses or economic activities are commonly discussed as part of a broader governing strategy for the management of their lands and natural resources and include the definition of internal agreements regarding the manner and the extent of development of economic activities to avoid severe impacts on the communal way of life.⁶ As noted by former EMRIP member Jannie Lasimbang, “any indigenous economic system is part of an economic and social

⁶ See initiatives from Brazil: Plano de Gestão do território Indígena do Xingu (2016) and Governança e Bem Viver Indígena - Planos de Gestão Territorial e Ambiental das Terras Indígenas do Alto e Médio Rio Negro; and Plano de Gestão da Terra Indígena Mamoadate.

totality that connects and governs the lives of its peoples. Social responsibility and reciprocity are embedded into behavioral norms within indigenous social systems.”⁷ The mainstream globalization-guided business model, which is often criticized for lacking social dimensions⁸, could learn from indigenous peoples’ understanding of businesses grounded in community values and human rights principles.

Indigenous peoples’ business as a safeguard for their right to lands, territories and resources

25. Indigenous peoples’ activities, including those of an economic nature, constitute the core basis for their rights over lands and resources, which they hold not only for themselves but also for their future generations. Immemorial use and occupation of lands, territories and resources constitute the primary means of proof of indigenous peoples’ rights and claims over a given territory, as substantiated by several court decisions. Article 26 of the Declaration states that rights over lands derive from traditional use and occupation, including for economic purposes.

26. Regional human rights mechanisms have reaffirmed that indigenous peoples’ economic activities on their lands and territories, including exploitation of resources thereon, are constitutive elements of their right to lands. For instance, the Inter-American Court for Human Rights concluded in the Saramaka case that:

“... The right to use and enjoy their territory would be meaningless in the context of indigenous and tribal communities if said right were not connected to the natural resources that lie on and within the land... This connectedness between the territory and the natural resources necessary for their physical and cultural survival is precisely what needs to be protected..” (Saramaka People v. Suriname, para.122).

27. The African Commission on Human and Peoples Rights reached a similar conclusion, indicating that the Endorois indigenous peoples’ right over their ancestral lands and resources included their right to undertake economic activities with a view to generating revenues.

“The African Commission is of the view that Endorois culture, religion, and traditional way of life are intimately intertwined with their ancestral lands - Lake Bogoria and the surrounding area. It agrees that Lake Bogoria and the Monchongoi Forest are central to the Endorois’ way of life and without access to their ancestral land, the Endorois are unable to fully exercise their cultural and religious rights, and feel disconnected from their land and ancestors.” (Endorois Welfare Council v. Kenya, para.156).

28. The subsistence-focused economic model is still prevalent among many indigenous peoples’ communities in Asia, Africa and parts of Latin America and even in developed countries.

29. In parts of Europe, North America, Australia and New Zealand indigenous peoples’ economic activities are expanding, as put by the former UN Special Rapporteur on the rights of indigenous peoples, with “indigenous nations or tribes [owning and

⁷ Jannie Lasimbang, “Indigenous peoples and local economic development” AIPP (2008). page 43.

⁸ See John Ruggie, “Keynote address: United Nations Forum on Business and Human Rights”, Palais des Nations Geneva, Switzerland (14 November 2016). Available from: <http://www.ohchr.org/Documents/Issues/Business/ForumSession5/Statements/JohnRuggie.pdf>

operating] companies that engage in oil and gas production, manage electric power assets, or invest in alternative energy” (A/HRC/24/41, para. 10).

30. These examples point towards a correlation between the level of legal protection for indigenous peoples’ rights over lands or resources and their respective choices of economic models. On the one hand, in countries where their rights over lands and resources are better protected, indigenous peoples tend to be able to develop their economic activities and business in a more autonomous manner and also to be more open to innovative business models or partnerships with the private sector, including for large-scale exploitation of resources on their lands. In such cases, indigenous communities feel better protected, including through domestic remedial mechanisms in cases of violations or abuses of their rights.

31. On the other hand, indigenous communities living in countries where their rights over lands or resources are not protected appear more resistant to innovative business models, which they fear might lead to further alienation of their lands and resources. Lack of legal protection for their lands and resources thus limits their business options.

Indigenous peoples’ businesses as a means to achieve enhanced enjoyment of their rights to culture, languages and traditional knowledge

32. Article 27 of the International Covenant on Civil and Political Rights protects the right of persons belonging to ethnic, religious, or linguistic minorities to enjoy their own culture. In General Comment 23, the Human Rights Committee further indicates that for indigenous peoples the right to enjoy a particular culture “may consist in a way of life which is closely associated with territory and use of its resources” (para. 3.2).

33. Article 31 of the Declaration explicitly protects culture and traditional knowledge-related activities with economic potential, 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.”

34. The Expert Mechanism’s study on the role of languages and culture in the promotion and protection of the rights and identity of indigenous peoples reaffirms also that “the close connection between indigenous peoples’ cultural and language rights and their rights related to their lands, territories and resources is necessary to ensure respect for indigenous peoples’ right to self-determination”, including for economic purposes. The study underlines also the key role of languages for indigenous peoples’ economic activities grounded in traditional knowledge that has to be passed on from one generation to another: “Languages can contain information about practices associated with indigenous peoples’ lands, territories and resources such as knowledge about hunting, fishing, trapping and gathering” (A/HRC/21/53, paras. 23 and 25).

35. Indigenous businesses can build bridges and remove barriers between traditional cultural practices and mainstream business practices. An indigenous paradigm of entrepreneurship must come from indigenous peoples themselves and not be thrust upon them by the dominant culture.⁹ Increasing recognition of the importance of indigenous-led entrepreneurship has seen a growing number of indigenous businesses established to enable indigenous peoples to reclaim their place and space in the business world and to promote indigenous modes of production. For example, Symbiosis, a fashion company in

⁹ Keven Hindle and Michele Lansdowne, “Brave spirits on new paths: toward a globally relevant paradigm of indigenous entrepreneurship research”, in Proceedings of the 22nd Frontiers of Entrepreneurship Research conference, (Babson College, Babson Park, Mass, 2002). pp. 1-29.

Costa Rica melds traditional art forms with modern techniques and marketing to appeal to a global market.¹⁰

36. Culture underpins the social infrastructure of indigenous communities and it can help provide a foundation to support business growth if that is a collective decision. Culture can also provide a number of different business opportunities, particularly in the arts and tourism fields, such as music and dance, arts and craft and the traditional food industry, which can be leveraged to meet indigenous peoples' needs. In recent years, there has been increasing interest in traditional food, with a rise in the growing and export of traditional foods and numbers of restaurants serving these foods.¹¹ In Brazil, for example, indigenous peoples from the Parque Indígena sell honey, handicrafts and forest seeds to Rede de Sementes do Xingu, a network of indigenous and non-indigenous organizations working for the production and commercialization of forest products to protect the Xingu river basin. The project is funded by the National Sustainable Development Bank.

37. Indigenous traditional knowledge systems are susceptible to being commodified and owned and traded by inventors or corporations as private intellectual property rights. Examples include the misappropriation of traditional knowledge-based genetic resources and products derived from biodiversity-rich eco-systems for which indigenous people often receive little direct benefit. Another example, is misappropriation of Sámi culture by the tourism industry in Finland, with imitations of traditional Sámi costumes often used as tourism employee's uniforms.¹² Similarly, San peoples of Southern Africa contested the use of their traditional knowledge about the plant known as Hoodia that locks hunger by pharmaceutical companies for medicine including against obesity.¹³

38. While western systems emphasize individual intellectual property, indigenous peoples' traditional knowledge is often created and owned collectively, passed down orally, and regulated by customary laws requiring stewardship for the benefit of the community and future generations. According to a recent study on indigenous peoples and cultural heritage by the Expert Mechanism, existing international mechanisms do little to protect traditional indigenous intellectual property, because they focus on protecting the rights of individuals not collectives.¹⁴ The Nagoya Protocol to the Convention on Biological Diversity addresses traditional knowledge associated with genetic resources and provides provisions for fair-and equitable benefit-sharing. However, further strengthening protections around indigenous knowledge systems could help reduce the risk of cultural appropriation, and ensure any culturally-based business opportunities benefit indigenous peoples.

Free, prior and informed consent as a catalyst of safe, viable and inclusive indigenous peoples' businesses

39. The Declaration guarantees a set of rights that should allow indigenous peoples to do business on their lands safely and viably. To that end, Article 29 provides for the protection of the environment and productive capacity of indigenous peoples' lands, territories and resources. This Article specifically prohibits the storage or disposal of

¹⁰ Alancay Morales, presentation to the Expert Seminar on Indigenous Peoples' Entrepreneurship

¹¹ See for example https://www.thestar.com/life/food_wine/2017/04/19/despite-new-offerings-indigenous-food-still-hard-to-come-by-in-toronto.html and <http://www.abc.net.au/news/rural/2016-05-25/bush-tucker-pioneer-excited-about-nt-government-investment/7444796>

¹² A/HRC/30/53

¹³ More information on this case can be found at:

http://www.wipo.int/export/sites/www/academy/en/about/global_network/education_al_materials/cs1_hoodia.pdf

¹⁴ See A/HRC/30/53

hazardous materials on indigenous peoples' lands without their free, prior and informed consent. Article 32 underlines the particular role of free, prior and informed consent with regard to utilisation or exploitation of mineral, water and other resources on indigenous peoples lands and territories.

40. The principle of free, prior and informed consent has been elaborated upon by numerous human rights experts and mechanisms, including the Expert Mechanism and Special Rapporteurs.¹⁵ Even in cases where indigenous peoples themselves exploit the resources on their lands, free, prior and informed consent would still be of critical importance to ensure all sections of communities, including indigenous women, youth, and persons with disabilities participate effectively. Free, prior and informed consent reinforces thus the inclusiveness of indigenous peoples' business models.

41. The human rights-based approach to business by indigenous peoples plays a double role. Upstream, indigenous peoples' businesses help to reclaim their rights and downstream businesses serve as tool for enhanced enjoyment of rights by indigenous peoples, including within their own communities by specific social groups notably indigenous women, youth and person with disabilities.

C. Discrimination-free appreciation of indigenous peoples' businesses and economies' contribution to national development

42. The Declaration is grounded in equality and seeks to address structural discrimination that affects indigenous peoples, including the non-recognition of their contribution to national economies or societies as a whole. To that end, the Declaration's preamble reaffirms that "all peoples contribute to the diversity and richness of civilizations and cultures" and recognizes that "the respect for indigenous knowledge, cultures and traditional practices contributes to sustainable and equitable development."

43. One key facet of the discrimination experienced by indigenous peoples is the stereotyped view that they represent an obstacle to development or that their economic activities do not contribute to the national economies of the countries they live in. Indigenous peoples' economic models are often considered as wasteful of resources, bound to disappear and "anti-development."

44. These prejudiced views against indigenous peoples' economies are grounded in conceptual frameworks that were and continue to be used to justify land dispossession and economic marginalization. They negate the human rights principles of equality and human dignity, which the Declaration upholds by declaring "racist, scientifically false, legally invalid, morally condemnable and socially unjust...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" (Preamble).

45. Despite the significant variability in the type of businesses or economic activities practiced by indigenous peoples throughout the world, indigenous businesses and traditional livelihoods play an increasingly important role in national economies. Quite often, the emphasis is put on what national economies would lose when indigenous peoples' livelihoods and economic activities are given preference. But few countries have quantified or assessed how much the economies and cultures of indigenous peoples contribute to national economies. For instance, how much the pictures of Maasai culture contribute to the Kenyan national economy as a whole, considering the wide use of these

¹⁵ See for example A/HRC/18/42, A/HRC/21/55, and A/HRC24/41.

images as national symbols, including for the Kenyan national airline and tourist industry? The lack of such data makes invisible the contribution of indigenous peoples to their national economies and contributes to continuing prejudiced views against indigenous peoples' traditional industries, economies and cultures. In Canada, indigenous businesses contribute approximately \$12 billion to the economy annually.¹⁶ In the United States, over a period of five years, indigenous businesses contributed over \$34.4 billion to the national economy.¹⁷ In New Zealand, the Maori economy is worth an estimated 40 billion New Zealand dollars, representing 5.6 per cent of the country's gross domestic product.¹⁸ Lack of data in many countries also perpetuates the invisibility of indigenous contributions to the national economy.

46. There is a growing number of examples where indigenous businesses play a significant role in national economies. Globally, it has been estimated that pastoralism, provides 10 per cent of the world's meat production.¹⁹ In sub-Saharan Africa, pastoralism, which is often practiced by indigenous peoples, accounts for a significant proportion of national GDP. For example, pastoralism accounts for 84 per cent of the agricultural GDP in Niger, 80 per cent of the GDP in Sudan and 50 per cent in Kenya. In Ethiopia the pastoralist leather industry is the second highest performing industry in terms of foreign trade.²⁰ The 2010 African Union Policy Framework for Pastoralism in Africa: Securing, Protecting and Improving the Lives, Livelihoods and Rights of Pastoralist Communities, sets itself the objective to reinforce the contribution of pastoral livestock to national, regional and continent-wide economies.

47. Indigenous economic models are becoming increasingly valued as they represent some of the most sustained and proven examples of sustainable development. Indigenous peoples' strong affiliation to the natural environment is one of the reasons for their survival and many indigenous peoples are adept at reading early warning signals of global warming and other indicators of environmental change. For the future of the planet, State policies and actions should recognize the important role that indigenous economies and business models play in promoting sustainable development practices.

III. Practices

48. There are emerging encouraging practices by various actors seeking to address discrimination against indigenous peoples' economic activities or businesses, including by indigenous peoples themselves.

A. States

49. States hold primary accountability for providing support to indigenous peoples' economic activities, as provided for by Article 21 of the Declaration.

¹⁶ Bert Archer, "The first Indigenous business incubator is coming to Toronto" *Novae* (2 February 2017). Available from: <https://novae.ca/en/2017/02/the-first-indigenous-business-incubator-is-coming-to-toronto/>

¹⁷ US Census Bureau Public Information Office, "Facts for Features: American Indian and Alaska Native Heritage Month: November 2012" (November, 2012).

¹⁸ Te Puni Kōkiri, *Māori Economy Report 2013* (2015).

¹⁹ United Nations, *State of the World's Indigenous Peoples* (New York, 2009).

²⁰ *Ibid.*

50. States are addressing the issue of discrimination against indigenous peoples' businesses or economic activities in different ways, some of which will be outlined below.

Addressing discrimination against indigenous peoples' businesses through recognition and protection of rights over lands and resources

51. Specific land rights legislation that has supported indigenous peoples' economic development include: the First Nations Land Management Act of 1999 in Canada; the Maori Fisheries Act of 2004 in New Zealand; the Alaska Native Claims Settlement Act (ANCSA) in 1971; and the Corporations (Aboriginal and Torres Strait Islander) Act 2006 and the Native Title Act 1993 in Australia. The passage of the Alaska Native Claims Settlement Act resulted in Alaska native corporations receiving recognized title to 44 million acres of land and substantial funding in exchange for the release of the remaining territories in Alaska.²¹ NANA, a Regional Alaska Native corporation formed as a result of the Alaska Native Land Claims Settlement Act, has a business arm and subsidiaries that employ more than 15,000 people from around the world and in 2015 had an annual revenue of \$1.6 billion.²² Another notable business initiative resulting from legislative reform is Moana New Zealand, which was established following the Treaty of Waitangi settlements. By 2007, Maori owned an estimated 40 per cent of the New Zealand seafood industry.²³ The market-leading success of indigenous businesses such as Moana New Zealand, and NANA in Alaska, demonstrates the possibilities that could flow from recognizing indigenous peoples' rights to their lands and resources and supporting indigenous business ventures.²⁴

52. The African Union's Policy Framework for Pastoralism in Africa highlights that "Pastoral development efforts must go beyond single-sector technical approaches, and embrace indigenous knowledge, innovations for sustainable natural resources management, effective governance, and further integration of pastoral livelihoods with expanding market opportunities."²⁵ This Policy document highlights also a number of good practices in Africa including the recognition by the Government of the Central African Republic of the importance of pastoralists for the national economy "with subsequent allocation to pastoralist communities of land and appropriate veterinary services."²⁶

53. In Latin America the recognition and demarcation of lands has advanced significantly and finds further protection in the implementation of territorial governing plans and in the duty of States to consult and seek consent over measures that impact indigenous peoples' lands and rights. In Brazil, after a national consultation process, a National Policy on Land and Environment Management (PNGATI) was established in 2012 to provide practical measures to guarantee indigenous peoples full possession of

²¹ Elizabeth Hensley, presentation to the Expert Seminar on Indigenous Peoples' Entrepreneurship

²² NANA Regional Corporation. "Frequently Asked Questions (FAQ) regarding NANA Regional Corporation and NANA Development Corporation" (2017). Available from: <http://www.nana.com/regional/about-us/nana-faq/>

²³ Melanie Durette, *Indigenous Property Rights in Commercial Fisheries: Canada, New Zealand and Australia Compared* (Canberra, Centre for Aboriginal Economic Policy Research, 2007); Erin Mackenzie, "Aotearoa Fisheries rebrands to Moana New Zealand to deliver premium Kiwi seafood to the world" *Idealog* (15 July 2016).

²⁴ Urbis, *Enabling Prosperity: success factors in Indigenous economic development* (Sydney, Westpac, 2014).

²⁵ African Union African Union Policy Framework for Pastoralism in Africa, page 3

²⁶ *Ibid.*, page 15.

their lands after demarcation.²⁷ So far the main implementation of the Policy is taking place with the support of the State and civil society partners to allow for the indigenous construction of their Management Plans for lands. Those plans identify and reaffirm indigenous governing capacity, economic activities and traditional knowledge and cultural concerns to plan the use of their territories and natural resources in a sustainable manner. However, cuts in the budget of such activities may be an impediment to the conclusion of the work.

Promoting indigenous peoples' businesses through positive discrimination measures

54. Some States are using a variety of tax incentives to encourage business development by or with indigenous peoples. For example, individuals and businesses on many Native American lands are exempt from United States taxation. In many cases, the exemption arises from the recognition of indigenous nationhood or early treaty settlements. In this situation, indigenous groups are able to implement their own tax regime, which can be applied to indigenous and non-indigenous businesses on their land. This has allowed the development of a range of businesses that would not have otherwise taken place.²⁸ Similar taxation policies also exist in Canada. For example, the Canadian First Nations Fiscal and Statistical Management Act (FNFMA) is an optional piece of legislation that provides authority for First Nations to collect tax. By opting into the tax system under FNFMA, First Nations are in a better position to promote economic growth and capitalise on business relationships.²⁹ The Whitecap Dakota First Nation is a small community with limited access to capital to finance its infrastructure and other needs. Under the FNFMA, the community was able to start charging a goods and services tax on fuels, cigarettes and alcohol in order to finance its activities.³⁰

55. Exceptions from trade agreements to provide more favourable conditions to indigenous peoples is another way that states are supporting indigenous peoples' businesses. A particular example is the Treaty of Waitangi exception which ensures that the New Zealand government has the "flexibility to implement domestic policies that favour Māori without being obliged to offer equivalent treatment to overseas entities."³¹ However, trade agreements in general continue to raise concerns about indigenous peoples' rights, as recently documented by the UN Special Rapporteur on the rights of indigenous peoples.³²

56. States are also taking measures to facilitate access to credit and other financial services for indigenous peoples, who often face challenges in this regard due to discrimination, geographic isolation, or other factors. For example, Australia has a

²⁷ Carolina Comandulli, *Territorial and environmental management of indigenous lands – the Brazilian case*. Available from: http://www.brasa.org/wordpress/Documents/BRASA_XII/Proceedings/Carolina%20Comandulli%20-%20Territorial%20and%20environmental%20management%20of%20indigenous%20lands.pdf; GIZ, *Protection and Sustainable Management of Indigenous Areas in the Amazon* (2014). Available from: <https://www.giz.de/en/worldwide/12525.html/>

²⁸ Owen Stanley, *The potential use of tax incentives for Indigenous businesses on Indigenous land*. (Canberra, Centre for Aboriginal Economic Policy Research, 2002).

²⁹ Indigenous and Northern Affairs Canada, "First Nations Fiscal Management Act" (2017). Available from: <https://www.aadnc-aandc.gc.ca/eng/1393512745390/1393512934976>

³⁰ Stelios Loizides and Wanda Wuttunee, *Creating Wealth and Employment in Aboriginal Communities* (Ottawa, Conference Board of Canada, 2005)

³¹ New Zealand Government, *Trans-Pacific Partnership (TPP) and Māori Development* (2016).

Available from: <https://www.beehive.govt.nz/sites/all/files/TPP%20Factsheet%20-%20TPP%20and%20Maori%2021%20Jan%202016.pdf>

³² See A/HRC/33/42

statutory agency, Indigenous Business Australia, that provides grants and loans for indigenous business people who cannot access funding from mainstream banking services. Among other initiatives, this agency supported the development of a set of Indigenous Investment Principles, which provide guidance to Indigenous Australians, organisations and communities to develop greater economic resilience and to be strong, active participants in the Australian economy.³³

57. In Mexico, the Commission for the Development of Indigenous Peoples (CDI) supports the development and improvement of productive processes through the Programme for the Improvement of Indigenous Production and Productivity. The goal is to contribute to the consolidation of productive and tourism projects for indigenous peoples, through their communities or businesses in order to increase monetary and non-monetary income and promote equality between men and women.³⁴

58. Other initiatives to support indigenous business include cash transfers and economic incentives for indigenous activities. Some States are also creating a market for indigenous products through their purchasing power. A number of these types of initiatives to support indigenous peoples' entrepreneurship have been introduced in the Russian Federation. At the regional level, these initiatives include the 2001 law "On traditional livelihoods of indigenous small-numbered peoples in Khanty-Mansi Autonomous Okrug" which established state support mechanisms to pay subsidies to indigenous people engaged in traditional indigenous activities, such as reindeer husbandry, horse-breeding, hunting, fishing, etc. Another law in Khanty-Mansi Autonomous Okrug provides support to organizations that are engaged in the preservation of traditional livelihoods and crafts. In order to be eligible for such support, the organization needs to employ indigenous peoples in its governing bodies, and half of its employees must be of indigenous origin. The organization also needs to derive 70% of its income from traditional forms of economic activities.³⁵

59. Also in the Russian Federation, the Development Plan of Indigenous Peoples of Sakhalin has been jointly implemented by the Sakhalin Oblast Administration, the company "Sakhalin Energy," and the Regional Council of Authorized Representatives of Indigenous Peoples of Sakhalin region. The programme introduced a mechanism of microloans to indigenous peoples so they could develop traditional economic activities. In order to qualify, programme participants are required to submit a business plan for a project that aims to address unemployment among indigenous peoples and suggest traditional economic activities that would be pursued as part of the project (e.g., reindeer herding, traditional fishing, hunting, gathering wild plants, dog breeding, crafts, ethnic and eco-tourism). The microloans have been utilized to purchase autonomous energy facilities, information and communications technologies, vehicles, fishing nets and tackle, and certain types of electrical appliances, applicable to commercial economic activity.³⁶

Promoting indigenous peoples' businesses by ensuring equal and effective access to markets

60. Many states are recognizing that indigenous businesses are viable business models that could make a significant contribution to the economy if given the right support. Due to ongoing structural discrimination many indigenous people are not on an equal level

³³ Submission from Australia

³⁴ Submission from Mexico.

³⁵ Alexey Tsykarev and Natalya Novikova, presentation to the Expert Seminar on Indigenous Peoples' Entrepreneurship

³⁶ Sakhalin Energy: <http://simdp.com/eng.php?id=44&pid=3>

with other actors in the market and without special state regulation, successful development of local indigenous economies would not be possible. Recognition of the commercial advantage in supporting indigenous business has been a catalyst for the creation of minority supplier development councils, in countries including the United States, Canada, Brazil and Australia.³⁷ Also in Australia, the federal government and some state governments have implemented indigenous procurement targets to increase the demand for indigenous businesses in government supply chains.³⁸

61. In Mexico, a National Fund for Indigenous Communities has been in place since 2015, with the objective of widening the coverage of formal financial services in indigenous communities. The Fund promotes financial inclusion as an instrument for economic development and facilitates access to improved credit conditions for indigenous peoples.³⁹

B. Indigenous peoples

62. This section outlines some of the strategies that indigenous peoples are pursuing to become more active players against the discrimination they face in the economic sector.

63. A number of indigenous not-for-profit economic models are focused on indigenous culture-based industries, with the primary purpose being preservation of indigenous people's cultural heritage and the safeguarding of indigenous peoples' land and resources.⁴⁰

64. At the same time, profit-driven indigenous owned enterprises also provide social returns. For example, in Canada the Millbrook Mi'kmaq First Nation, located in four reserve areas in Nova Scotia, has been very successful in pursuing economic independence and has established a number of enterprises that create wealth and employment. Millbrook's biggest business initiative is the Truro Power Centre, a commercial development that has been highly successful in attracting a number of businesses and jobs to the area. Millbrook is using the profits of its enterprise successes to improve services in the community; for example, \$4 million was provided to build a new administration building and health centre.⁴¹ Another example, is the Sakhalin Aborigine company in the Poronaysk District in Russia. During the fishing season, the company employs up to 100 people. The company takes part in addressing social problems of indigenous peoples of Sakhalin, as well as in financing and organizing the annual cultural festival "Feeding of the Sea Master Spirit".⁴²

65. Joint ventures are particularly common in the extractive industry where indigenous peoples tend to lack the capital to mine their own land. With any joint venture arrangement, there needs to be a regulatory framework, which recognizes and protects indigenous peoples' rights. Companies need to engage in due diligence and provide a fair and adequate consultation process. An example of an appropriate consultation process, which recognises the rights of indigenous peoples, is the Maya Consultation Framework. A primary objective of the framework is that consultations with the Maya people are

³⁷ House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Open for Business, Developing Indigenous Enterprises in Australia* (Canberra, The Parliament of the Commonwealth of Australia, 2008).

³⁸ Sara Hudson, presentation to the Expert Seminar on Indigenous Peoples' Entrepreneurship

³⁹ Submission from Mexico

⁴⁰ Urbis, 2014

⁴¹ Loizides and Wuttunee, 2005

⁴² Natalya Novikova, presentation to the Expert Seminar on Indigenous Peoples' Entrepreneurship

culturally appropriate, and meet international normative standards, particularly the requirement of free, prior, and informed consent.⁴³ When they can afford it, some indigenous peoples are initiating or taking over extractive industry on their lands. A number of indigenous peoples rationalize this decision by saying that if extraction is going to take place, then it is preferable if it is an indigenous owned business.

66. Indigenous businesses operate in a variety of sectors – with the most common types of industry being primary industries such as agriculture, forestry and fishing and culture-based industries such as arts and tourism. In the last two decades community-based approaches to tourism, such as eco-tourism and cultural tourism have become increasingly popular, as a sustainable development approach that provides employment opportunities. However, for indigenous people involved in the tourist industry, the challenge is deciding what aspects of their culture to share without compromising its integrity. To ensure indigenous peoples’ cultural integrity is not compromised it is important that they are provided with the opportunity to authorize any planned tourist activities on their land.⁴⁴

67. With ethno-cultural tourism representing one of the most promising spheres of entrepreneurship for indigenous peoples, the VII World Congress of Finno-Ugric Peoples advised governments of regions inhabited by indigenous Finno-Ugric peoples to establish multidisciplinary state educational programmes, which combine knowledge of studies related to the linguistics of indigenous language, business economics, and tourism, in order to encourage Finno-Ugric indigenous peoples to establish businesses that take advantage of Finno-Ugric languages and cultures. The Congress also recommended to pursue partnerships with the World Indigenous Tourism Alliance (WINTA), and rely on the Larrakia Declaration on the Development of Indigenous Tourism as guidelines for developing sustainable tourism based on the languages and cultures of their indigenous peoples.⁴⁵

68. The Kalevalsky district in the Russian Republic of Karelia is a promising target area for the development of ethno-cultural tourism. Karelian authorities have taken advantage of the intangible cultural richness of the Kalevalskiy district based on the Kalevala epic poem to introduce various ethno-cultural activities. Indigenous peoples of the region are actively running businesses around these activities. However, many of them operate in the grey market, because of a lack of education, tough taxation policy and numerous inspections of various inspection authorities.⁴⁶

69. In Brazil, ethnotourism activities have been only recently regulated by Funai⁴⁷ and it is still a controversial matter to many indigenous peoples and communities, due to the significant impact that it provokes on the environment and on indigenous community life, especially in remote areas. Experiences of economic abuse practiced by private companies or individuals to intermediate tourism activities have caused internal conflicts and raised communal governing concerns as any non-indigenous person must request an authorization of the community leaders to enter indigenous lands. In 2017, an innovative

⁴³ Cristina Coc and Pablo Miss, presentations to the Expert Seminar on Indigenous Peoples’ Entrepreneurship

⁴⁴ United Nations, *State of the World’s Indigenous Peoples* (New York, 2009).

⁴⁵ VII World Congress of Finno-Ugric Peoples
http://lahti2016.fucongress.org/sites/lahti2016.fucongress.org/files/4.Economy%20and%20Environment_Recommendations_eng.pdf

⁴⁶ World Bank. Study, *Socio-economic development through finno-ugric culture in Kalevalsky district, the Republic of Karelia*.

⁴⁷ Instrução Normativa FUNAI de 03 de julho de 2015

initiative of community based tourism co-managed by indigenous peoples and in accordance with the federal normative, supported by the State, will take place in the Rio Negro region as an assertion of indigenous peoples' self-determination⁴⁸

70. Regardless of the type of business indigenous people end up owning and operating, having ownership and meaningful control over their own business plays an important role in the well-being and collective dignity of indigenous peoples. Indigenous peer-support networks, such as indigenous chambers of commerce, also help to create a climate for indigenous business through networking and promotional/advocacy type activities. For example, in South Africa, Khoi and San leaders have formed their own chamber of commerce and industry to address their socio-economic marginalization and to lodge land claims⁴⁹

71. Cooperatives are another model for business organization that indigenous peoples have used successfully across the globe. For example, in Mexico, the Union of Indigenous Communities of the Isthmus Region has united coffee producers from ⁵³ communities, including 5000 families. They sell their coffee nationally through the fair trade market, and they have started a cooperative called Solidarity Fund which provides credit support. In Souss-Massa-Draa, Morocco, a cooperative of indigenous women produce argan oil. By owning their own business and making their own money, they are economically and socially empowered. In India, the Nirmala Niketan is a cooperative of domestic workers who protect indigenous women working in the domestic sphere. Cooperatives not only empower indigenous peoples and facilitate their involvement in business, they also promote values of self-help, accountability, equality and solidarity⁵⁰

72. Some indigenous peoples have established their own financial institutions, such as the Traditional Credit Union in the Northern Territory in Australia, the Caisse Populaire Kahnawake in Quebec, Canada and the Maskwacis Cree community in Canada.⁵¹ When faced with discrimination from banks, the Maskwacis Cree community established its own bank. The bank now handles 752 million CAD and has invested 2.5 billion in indigenous housing and indigenous businesses.⁵² In Australia, the Traditional Credit Union (TCU) in the Northern Territory is Australia's only Indigenous-owned and operated credit union. The idea for the TCU came from a group of Aboriginal Elders who had experienced disadvantage from the lack of banking and other financial services on their land. The TCU was established with grant funding from the former Aboriginal and Torres Strait Islander Commission (ATSIC) and the Arnhemland Progress Association. Through the efforts of a number of Aboriginal Elders and the Arnhemland Progress Association it was incorporated as a credit union in 1994. The first branch was opened in Milingimbi in 1995 and since then TCU has grown to a network of fifteen branches.⁵³

C. Financial institutions

73. Financial institutions, from local credit unions to multilateral institutions, have a crucial role to play in combatting discrimination and facilitating indigenous peoples'

⁴⁸ See: <http://www.serrasdetapuruquara.org/#expedição>

⁴⁹ Minority Rights Group International. State of the World's Minorities and Indigenous Peoples 2016 (London, 2016).

⁵⁰ Submission from Society for Threatened Peoples.

⁵¹ Loizides and Wuttunee, 2005

⁵² Grand Chief Wilton Littlechild, presentation to the Expert Seminar on Indigenous Peoples' Entrepreneurship

⁵³ Urbis, 2014

access to financial services. Article 41 of the Declaration calls upon intergovernmental bodies and institutions to contribute to its realization, through the mobilization of financial cooperation and technical assistance.

74. In this regard, the Australian government, has proposed a ‘Global Indigenous Investment Fund’, which they argue could help fill the gap in the investment market by providing “targeted, ethical, and culturally sensitive capital investments” to indigenous businesses in developing countries, particularly indigenous women and persons with disabilities at risk from marginalisation from mainstream lenders. The suggestion is that the fund could be capitalised with “blended finance” from government, philanthropic and private funding.⁵⁴

75. While the World Bank has no specific funding mechanism for indigenous peoples’ businesses, it is currently focusing on community-driven development, which is an approach to local development that empowers community groups with control over planning and investment decisions. The World Bank has established a Dedicated Grant Mechanism for indigenous peoples.⁵⁵ None of the regional development banks for Asia, Africa, Latin America and Europe have such a financing mechanism dedicated to indigenous peoples.

76. Another form of financial assistance provided to indigenous peoples to support their business aspirations are micro-finance loans. Micro-finance loans tend to be conceived for people who cannot access mainstream financial services due to low incomes and other disadvantages. Micro-finance loans often involve funding from investors from developed countries to entrepreneurs from developing countries. Initially, micro-finance loans were heralded as a way to alleviate poverty, however in recent times they have come under increasing scrutiny due to the unscrupulous practices of some lenders who are charging exorbitantly high interest rates. There are however promising practices of indigenous peoples themselves establishing micro-finance schemes. For example, in Canada, Waubetek Business Development Corporation is a group of 50 organizations that are owned and managed by Aboriginal Peoples. They provide financing, loans, and economic development services to First Nations and Aboriginal Peoples.⁵⁶

IV Challenges

A. Persistent prejudiced views of indigenous peoples’ business capacity

77. Indigenous peoples continue to be regarded as high risk borrowers by conventional banks and lending institutions, being sometimes denied loans because of so-called bad credit history. Generally, indigenous peoples have less intergenerational wealth, they don’t always have title over their lands and are less likely to own their own home, and therefore often lack collateral for securing loans.⁵⁷ In the United States of America, research found native business owners often begin with very small amounts of start-up

⁵⁴ Submission from Australia

⁵⁵ Ede Ijjasz-vasquez, “Urban Indigenous Peoples: the new frontier” World Bank blog (6 August 2017). Available from: <https://blogs.worldbank.org/category/tags/indigenous-peoples>

⁵⁶ Nahwegahbow, Barb. “Microfinance could be a good fit for Aboriginal people.” *Windspeaker*. Aboriginal Multi-Media Society. 2013. Web. 06 Apr. 2017..

⁵⁷ Native Nations Institute, *Access to Capital and Credit in Native Communities* (Tucson, Arizona, Native Nations Institute, 2016). Tucson, AZ: Native Nations Institute.

capital. For example, fifty-two percent of American Indian and Alaska Native respondents to the 2007 U.S. Census Survey of Business Owners began their business with less than \$5,000.⁵⁸

78. The lack of collateral is often exacerbated by some indigenous peoples' remote locations. Lack of communication infrastructures, limited market size and poor economies of scale, coupled with the high cost of living in remote and regional centres severely narrows business opportunities and makes it difficult to attract qualified employees or convince lenders of business profitability.⁵⁹ There is also a shortage of financial institutions on or near indigenous lands due to their remoteness which often imposes the existence of third or more parties to intermediate financial services, increasing the costs for indigenous peoples. Access to financial services is further limited by costly and time-consuming transportation. Women face particular challenges as they are often not allowed to hold accounts or borrow money.⁶⁰

79. In Latin America, the persistent prejudiced views against indigenous peoples' business capacity is also evident in the manner in which social and economic programmes and policies are developed and offered to indigenous peoples without targeting specific needs and concerns. Also, compensation and mitigation measures paid to indigenous peoples due to large scale enterprises rarely consider indigenous peoples business capacity in a full manner and may result in additional social disruption and cultural impact to indigenous peoples, for example when favoring selected individuals or families to receive benefits rather than investing in sustainable communal initiatives.

80. In many African countries, indigenous peoples practice nomadic pastoralism. There is a general lack of support to this sector of the economy as it is deemed unsustainable and destructive to the environment. Governments are spending huge budgets on other sectors of agriculture in the form of incentives such as fertilizer subsidies and insurance policies while neglecting pastoralism, which has nevertheless proven to be a viable livelihood activity.

B. Lack of legal protection for rights over lands and resources

81. Indigenous peoples are often not recognized as legal owners of their lands, which they cannot use as collateral when applying for a loan. Many lending institutions also do not consider collective land ownership as equivalent to individual land titles. Private companies and financial institutions also tend to simplify communal ownership and title to meet their own interests. For example, in the Amazon region there has been a number of speculative offers by private companies to buy the right to sell carbon credits from indigenous lands. In Brazil some individuals have signed contracts that were later considered void because they would be restricting collective use of land for traditional activities for 30 or more years to benefit a private entity.⁶¹

82. Furthermore, in many cases, resources on and under indigenous peoples' lands are considered to be State-owned. Globally, indigenous peoples' rights to their natural resources are restricted, particularly when it comes to sub-soil resources. Even in cases where indigenous peoples do have legal title deeds to their lands, the land is often leased to mining companies with little or no consultation with indigenous people. For example,

⁵⁸ Ibid. page 38

⁵⁹ Ibid.

⁶⁰ Submission from Cultural Survival.

⁶¹ See: <http://g1.globo.com/natureza/noticia/2012/03/funai-considera-nulas-vendas-de-terra-indigena-para-estrangeiros.html>

most of Sweden's ore production comes from mines in Sápmi, the Sámi traditional area.⁶² However, there is still no agreement or legislation that formalizes the implementation of the principle of Free, Prior and Informed Consent (FPIC), despite various treaty body recommendations and comments in general and to Sweden, specifically, on this subject.

83. These challenges undermine indigenous peoples' business capacities and opportunities. For example, the restrictions put on indigenous peoples' ability to protect, and benefit from their land and resources constitutes one of the main obstacles to real economic development among First Nations, Métis and Inuit in Canada. Due to the loss and of their land and limitations set by the various levels of government on how they can use and benefit from their land and natural resources, indigenous peoples in Canada have become increasingly dependent on welfare provided by federal or provincial governments.⁶³ This is also the case of Brazil where indigenous peoples often cannot access general financial credits for improving or ensuring their crops due to arguably lack of property rights⁶⁴ while there is a growing dependency on welfare.⁶⁵ Such dependency is sometimes being unfairly used to justify the lack of demarcation of indigenous lands as supposed indicator of lack of capacity of indigenous peoples to use their traditional lands.

C. Lack of inclusive indigenous governance and leadership in business

84. A number of human rights-related challenges facing indigenous peoples' businesses are organic to their communities' structures and institutions. Having an enabling environment for businesses in indigenous communities is often contingent on social stability and legitimate governance structures. Without these internal governance arrangements it can be difficult for communities to control disparate interests and to have the necessary stability to instill investment confidence.

85. Alongside effective governance structures, indigenous communities or business leaders also need to have a clear corporate vision that is inclusive, taking into account specific types of discrimination faced by certain groups within communities. The literature suggests economic development initiatives are more likely to be successful when they are indigenous-led and when leaders have a clear vision that aligns market needs with community capacity. Indigenous communities where successful enterprises

⁶² Preparatory Report from the Sami Parliament in Sweden/Sámediggi/Sámedigge/Saemiedigkie/Sametinget for the Special Rapporteur on the Rights of Indigenous Peoples prior to her 2015 visit to Sápmi and Sweden. See also: Minerals and Mines in Sápmi: the Viewpoint of the Swedish Sami Parliament, 2014, and Observations by the Sami Parliament with regard to Sweden's Sixth Periodic Report to the United Nations Human Rights Committee, 2009, para 3.

⁶³ United Nations, State of the World's Indigenous Peoples (New York, 2009).

⁶⁴ According to Brazilian Federal Constitution article 231, indigenous lands are registered as patrimony of the Union for the exclusive and permanent usufruct of indigenous peoples therefore there is no property title for indigenous peoples.

⁶⁵ In 2016, 112,081 indigenous families have accessed the family allowance welfare Bolsa Família, whereas that number in 2010 was of 66,168 families. (*Povos Indígenas no Brasil: 2011-2016*, editores gerais: Beto Ricardo e Fany Ricardo, São Paulo: Instituto Socioambiental, 2017) See also: <http://www1.folha.uol.com.br/poder/2016/09/1810078-bolsa-familia-altera-rotina-de-indigenas-na-regiao-do-xingu.shtml>

have been developed, tend to have leaders that have assessed the business possibilities available to the community in consultation with community members.⁶⁶

86. Therefore, initiatives to strengthen self-governing institutions, particularly those related to the use or management of land and resources are key to prevent internal and external conflicts when defining economic activities or indigenous business. For example, in the initial phase of a three years process of dialogue and consultation regarding the participative elaboration of the Indigenous Plan of Management for the regions of Médio and Alto Rio Negro in the Brazilian Amazon, it was identified that "local governing issues await solution, like the lack of awareness and respect of the territorial limits of each group (7 neighboring indigenous lands), which results in fishing, hunting and gathering activities by non-community members without the authorization of the indigenous leaders with serious consequences to the sustainability of the community affected."⁶⁷

D. Challenges facing indigenous women, youth and persons with disabilities

87. Overall, there is a lack of research on the experience of female indigenous entrepreneurship. However, what evidence there is suggests that women are more risk adverse and more likely to start a business out of necessity than men. Indigenous female entrepreneurship is often a reaction to lack of opportunity in the labour market for females (displaced opportunity).⁶⁸ Evidence from the World Bank's Regional Programme on Enterprise Development supports this view, suggesting that indigenous women's marginal social position acts as a driving force to become self-employed.⁶⁹ One of the challenges is how to articulate the value that women bring to the economy, both formally and informally. There is a strong social bias about what indigenous women are capable of and what sort of industry they should work in, with very little in the way of business mentorship available for indigenous women in many countries.⁷⁰

88. In African countries indigenous women entrepreneurs have more difficulty than male entrepreneurs in obtaining credit. The reason for this has been attributed to the small size of their businesses, as well as the lack of collateral offered by entrepreneurs. Public sector banks are often focused on government expenditure, while the private banks are oligopolistic in nature and concentrate on minimizing risk.⁷¹

89. Among the reindeer herding Sámi in Norway, women's position has traditionally been strong, and their work crucial to the well-being of society. However, their position has been weakened by factors such as legislation and state policy, with men more likely

⁶⁶ Stephen Cornell and Joseph P Kalt, *Reloading the Dice: Improving the Chances for Economic Development on American Indian Reservations* (Arizona, The Harvard Project on American Indian Economic Development, 2003); Hindle and Lansdowne 2005 pp.131-141.

⁶⁷ Governança e Bem Viver Indígena - Planos ed Gestão Territorial e Ambiental das Terras Indígenas do Médio e Alto Rio Negro, Vol.2 page. 8.

⁶⁸ Pearce, 2016

⁶⁹ Wim A. Naudé and J.J.D. Havenga "An overview of African entrepreneurship and small business research" In R. Anderson & L. P. Dana (Eds.) *International Handbook of Research on Indigenous Entrepreneurship* (Cheltenham, U.K. Edward Elgar Publishing Limited, 2007). pp. 28-45

⁷⁰ Laurie Buffalo, presentation to the Expert Seminar on Indigenous Peoples' Entrepreneurship

⁷¹ Naude and Havenga, 2007.

to be entered first on Reindeer Husbandry reports under the Norwegian Reindeer Herding Act of 1978.⁷²

90. In Mexico, a recent study found that the financial system and the traditional banking sector are not inclusive in terms of providing credit and other financial services. The lack of financial services within reach of vulnerable sectors, including women, young persons, and indigenous persons, has contributed to inequality and hampers their ability to exercise other rights, such as rights to food, housing, work, health and education.⁷³

91. Although no global data exists on the exact number of indigenous persons with disability, available data suggest that indigenous persons are more likely to experience disability compared to the general population. Indigenous persons with disabilities are amongst the most disadvantaged people in the world. They often experience multiple barriers to taking part in meaningful activities, particularly in relation to employment and business activities. Young indigenous people (aged 15-24) face additional challenges in establishing business enterprises due to their age and the lack of intergenerational wealth they inherit compared to other young non-Indigenous peoples.⁷⁴ As a result, reducing poverty by supporting business enterprise is particularly pertinent to young indigenous people.

⁷² Solveig Joks “Women’s position in the Sámi reindeer husbandry” In Anderson and Dana (Eds.) *International Handbook of Research on Indigenous Entrepreneurship* (Cheltenham, U.K. Edward Elgar Publishing Limited, 2007). pp. 246-256

⁷³ Submission from Mexico

⁷⁴ Kristy Muir, Fanny Salignac and others, *The Financial Economy and Indigenous Young People in Australia* (Sydney, Australia, Centre for Social Impact for the First Nations Foundation, 2015). Available from: http://www.csi.edu.au/media/uploads/FNF_Final_Report_-_23-3-16_tGwaz9Z.pdf

Annex

Expert Mechanism Advice No. 10 on indigenous peoples' businesses and access to financial services

1. States should adopt legal and policy frameworks that recognize, promote and protect rights that allow indigenous peoples, if they so wish, to operate businesses on their lands safely and viably. Such measures should be developed with the effective participation of indigenous peoples, as provided for by the United Nations Declaration on the Rights of Indigenous Peoples.
2. When developing and implementing national action plans to achieve the ends of the Declaration, pursuant to the outcome document of the World Conference on Indigenous Peoples (General Assembly resolution 69/2), States should include measures aiming to ensure that no undue obstacles are in place for indigenous peoples to access financial services free of discrimination and pursue business activities if they wish to do so.
3. States should take measures to ensure that indigenous peoples, and particularly indigenous persons with disabilities, indigenous women and indigenous youth, do not suffer from discrimination in their attempts to access financial services. Support should also be provided to business activities being undertaken by these groups.
4. Secure land tenure is essential for indigenous peoples to become engaged in business activities and access financial services. States should therefore ensure protection for indigenous peoples' rights to their lands territories and resources and take measures to protect and promote indigenous peoples' economic activities, recognizing that these activities are constitutive elements of their rights to lands and resources. States should further ensure accommodation of indigenous legal traditions within the national legal framework.
5. States should take measures to protect indigenous peoples' rights relating to culture and traditional-knowledge related activities. This should include both facilitating indigenous peoples' involvement in economic activities linked to the arts and tourism, and protecting indigenous peoples from the misuse or misappropriation of their cultural heritage and traditional knowledge. In this regard, States, in partnership with indigenous peoples, should continue to pursue the development of international instruments that ban cultural appropriation.
6. Laws that prohibit or limit sustainable indigenous hunting, fishing or gathering traditions, should be revised or amended in order to facilitate the development by indigenous peoples of small, locally based businesses in these sectors.
7. States should recognize indigenous peoples' contributions to development, and combat frequently held prejudices and stereotyped views of indigenous peoples as representing an obstacle to development. This is particularly crucial in cases where these views are used to justify land dispossession and economic marginalization. Furthermore, States policies and actions should recognize the important role that indigenous economies and business models can play in promoting sustainable development practices.
8. States should consider targeted measures to encourage and facilitate indigenous peoples' involvement in business and their access to financial services. These can include tax incentives, programmes to facilitate access to credit, and subsidies or cash transfers to promote traditional economic activities. However, States should not misuse this financial

support in order to put pressure on or interfere with the decision-making processes of indigenous communities.

9. States should provide safety net measures for indigenous businesses, including protection against hostile competition.

10. States should ensure that statistical data on employment and traditional livelihoods of indigenous peoples is available at all levels. These data can guide the design and implementation of support measures and programmes for indigenous entrepreneurship.

11. The use of indigenous languages in business activities should be enabled, and indigenous peoples should have access to information on financial services in their own languages.

12. In cases where indigenous peoples themselves, in exercising their self-determination, decide to exploit resources on their lands, the principle of free, prior and informed consent should still be respected in order to ensure that all sectors of the communities involved participate effectively.

13. Indigenous peoples should consider establishing peer support networks to facilitate exchange of experiences and networking relating to their participation in business and their access to financial services.

14. Financial institutions, including intergovernmental banks, should devise financial products and services that are accessible to indigenous peoples and considerate of their perspectives in business.
