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Study on the role of languages and culture in the promotion and protection of the rights and identity of indigenous peoples

Expert Mechanism on the Rights of Indigenous Peoples: Study on the role of languages and culture in the promotion and protection of the rights and identity of indigenous peoples

Summary

In resolution 18/8 the Human Rights Council requested the Expert Mechanism to prepare a study on the role of languages and culture in the promotion and protection of the rights and identity of indigenous peoples, and to present it to the Human Rights Council at its twenty-first session.

This study outlines international and regional standards on indigenous peoples' rights to language and culture, describes the relationship between indigenous cultures and languages to their self-determination and rights to their lands, territories and resources, analyses indigenous peoples' languages and identities and cultures and identities, including challenges faced in the promotion and protection of indigenous language and cultural rights. The study finishes with the Expert Mechanism's Advice No. 3 on indigenous peoples' languages and cultures.

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I. Introduction

1. In resolution 18/8 the Human Rights Council requested the Expert Mechanism to prepare a study on the role of languages and culture in the promotion and protection of the rights and identity of indigenous peoples, and to present it to the Human Rights Council at its twenty-first session.
2. The Expert Mechanism disseminated calls for submissions to States, indigenous peoples, non-State actors, national human rights institutions and other stakeholders to assist it in the preparation of this study. The submissions received by the Expert Mechanism are, where permission was granted, publicly available on the Expert Mechanism's website associated with this study.¹ The study also benefited from contributions made at the Brunel University Law School and Office of the High Commissioner for Human Rights expert seminar on indigenous peoples' languages and cultures in London, United Kingdom, on 8 and 9 March 2012.² The Expert Mechanism appreciates all the submissions received.
3. This study builds upon and supports the Expert Mechanism's first study on lessons learned and challenges to achievement of the right of indigenous peoples to education (2009), which specifically addressed education in indigenous languages and through culturally appropriate curricula.³ As the Committee on Economic, Social and Cultural Rights notes, "cultural life is intrinsically linked to the right to education ... , through which individuals and communities pass on their values, religion, customs, language and other cultural references, and which helps to foster an atmosphere of mutual understanding and respect for cultural values."⁴
4. This study also builds upon and supports the Expert Mechanism's study on indigenous peoples and the right to participate in decision-making,⁵ not least because indigenous peoples have the right to participate in decision-making that impacts on their languages, cultures and language and cultural rights.
5. Unless indicated otherwise, references to languages and culture are to indigenous peoples' languages and cultures.

II. Relevant international and regional standards on language and cultural rights

6. As the most comprehensive and detailed compilation of the rights of indigenous peoples, and with near-universal endorsement by States, the Declaration on the Rights of Indigenous Peoples provides an authoritative description of indigenous peoples' rights in relation to their cultures and languages. Many of the articles in the Declaration are related to the protection and promotion of indigenous peoples' cultures.
7. The Declaration includes numerous provisions on protection against discriminatory and adverse treatment of indigenous peoples on cultural grounds as well as positive measures to support indigenous peoples' cultures. These include: rights against assimilation and destruction of indigenous peoples' cultures (art. 8); rights to prevention of, and redress for, forced assimilation, dispossession of their lands, territories and resources (art. 8); rights to belong to an indigenous community or nation in accordance with

¹ <http://www.ohchr.org/EN/Issues/IPeoples/EMRIP/Pages/SubmissionsStudyLanguages.aspx>.

² <http://www.ohchr.org/EN/Issues/IPeoples/EMRIP/Pages/StudyLanguages.aspx>.

³ A/HRC/12/33.

⁴ Committee on Economic, Social and Cultural Rights, general comment No. 21 (2009) on the right of everyone to take part in cultural life

⁵ A/HRC/18/42 and A/HRC/15/35.

indigenous peoples' traditions and customs (art. 9); rights to practise and revitalize indigenous peoples' cultural traditions and customs (art. 11); rights to teach their cultural and religious traditions and to repatriation of their human remains (art. 12); rights to revitalize, use, develop and transmit to future generations their histories, languages and oral traditions, philosophies, writing systems and literatures (art. 13); rights to control their own education systems and institutions providing education in their own languages (arts. 14 and 15); rights to "maintain, control, protect and develop" their cultural heritage, traditional knowledge and traditional cultural expressions (art. 31); rights to determine their own identity and membership; and rights to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices, juridical systems or customs (art. 34). Central to all of these rights is indigenous peoples' right to self-determination, which includes indigenous peoples' rights to freely determine their cultural development, to autonomy and to participate fully, if they so choose, in the political, economic, social and cultural life of the State (arts. 3, 4 and 5).

8. Cultural and language rights are indivisible and central to all the other rights, including as expressed in International Labour Organization (ILO) Convention 169 concerning Indigenous and Tribal Peoples (1989). It requires, for example, due regard for indigenous peoples' customs and customary law and respect for the special importance for the cultures and spiritual values of the peoples concerned with their relationship with their land and territories.

9. The provisions of the Declaration on the Rights of Indigenous Peoples are consistent with, and elaborate upon, indigenous peoples' rights to their cultures and languages as expressed in a number of other human rights instruments, including the right of all to participate in the cultural life of the community as set out in the Universal Declaration on Human Rights and in United Nations human rights treaties.

10. The Human Rights Committee, in interpreting the right to culture as set out in article 27 of the International Covenant on Civil and Political Rights, has expressed the positive duties on States to protect indigenous peoples' cultural rights, including their rights in relation to their lands, territories and resources as well as in relation to their traditional activities,⁶ the need to include indigenous peoples in decisions affecting them,⁷ the requirement to interpret the right to culture consistently with the right to self-determination in the context of indigenous peoples' issues,⁸ and has called on States to adopt measures to support the revival of cultures and languages.⁹

11. Under the International Covenant on Economic, Social and Cultural Rights, States parties recognize the right of everyone to take part in cultural life. The Committee on Economic, Social and Cultural Rights has consistently called upon States parties to protect and promote indigenous peoples' rights to their cultures and languages. In its general comment No. 21 on the right of everyone to take part in cultural life, it recognizes the collective element of indigenous peoples' right to culture, noting that "the strong communal dimension of indigenous peoples' cultural life is indispensable to their existence, well-being and full development, and includes the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired."¹⁰ It also notes that States' educational programmes should respect the cultural specificities of indigenous peoples and incorporate them in such programmes.

12. The Committee on the Elimination of Racial Discrimination has called upon States to "recognize and respect indigenous distinct culture, history, language and way of life as

⁶ *Lubicon Lake Band v. Canada*, communication No. 167/1984 (1990) A/45/40.

⁷ *Poma Poma v. Peru*, communication No. 1457/2006 (2009).

⁸ *Mahuika v. New Zealand*, communication No. 547/1993 (2000), CCPR/C/70/D/547/1993.

⁹ CCPR/C/SLV/CO/6.

¹⁰ Committee on Economic, Social and Cultural Rights, general comment No. 21 (2009).

an enrichment of the State's cultural identity and to promote its preservation”, to “provide indigenous peoples with conditions allowing for a sustainable economic and social development compatible with their cultural characteristics” and to “ensure that indigenous communities can exercise their rights to practise and revitalize their cultural traditions and customs and to preserve and to practise their languages.”¹¹ It has expressed specific concern about prohibitions on the use of indigenous peoples’ languages.¹²

13. The Convention on the Rights of the Child states that indigenous children shall not be denied the right to enjoy their culture, to profess and practise their own religion and to use their language. In its general comment No. 11 on indigenous children, the Committee on the Rights of the Child recognizes that exceptional measures may be needed to enable indigenous children to enjoy their cultural rights, including positive action on the part of the State; the significance of the collectivity to indigenous children’s enjoyment of their cultures; and the need to include indigenous peoples in decisions about the best interests of indigenous children, noting the need for cultural sensitivity.¹³

14. Cultures and languages are an integral part of the mandate of the United Nations Educational, Scientific and Cultural Organization (UNESCO). UNESCO has a number of instruments especially relevant to cultures and languages, as well as a broader policy of encouraging indigenous peoples’ self-determined cultural development and work in relation to endangered languages. The 2001 UNESCO Universal Declaration on Cultural Diversity includes specific references to cultural diversity, cultural rights and indigenous peoples.¹⁴ Accordingly, under article 5,

All persons have therefore the right to express themselves and to create and disseminate their work in the language of their choice, and particularly in their mother tongue; all persons are entitled to quality education and training that fully respect their cultural identity; and all persons have the right to participate in the cultural life of their choice and conduct their own cultural practices, subject to respect for human rights and fundamental freedoms.

15. The UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage (2003) in its preamble recognizes that “communities, in particular indigenous communities, groups and, in some cases, individuals play an important role in the production, safeguarding, maintenance and re-creation of intangible cultural heritage.” Similarly, the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005) contains a number of references to indigenous peoples and requires that States parties endeavour to create an environment which encourages groups to “create, produce, disseminate, distribute and have access to their own cultural expressions, paying due attention to the special circumstances and needs of women as well as various social groups, including persons belonging to minorities and indigenous peoples.”

16. Other international standards reinforce the importance of rights to cultures and languages and can be of relevance to indigenous peoples, including the African Charter on Human and Peoples’ Rights, the United Nations Declaration on the Rights of Persons Belonging to National, Ethnic, Religious or Linguistic Minorities, the European Charter for Regional and Minority Languages, the ASEAN Declaration on Cultural Heritage and various policy documents of the international and regional system.

¹¹ Committee on the Elimination of Racial Discrimination, general recommendation No. 23 (1997) on indigenous peoples.

¹² For example, CERD/C/304/Add.113.

¹³ Committee on the Rights of the Child, general comment No. 11 (2009) on indigenous children and their rights under the Convention.

¹⁴ 41 ILM 57 (2001).

17. Courts and commissions on human rights at the regional level have supported robust indigenous peoples' rights to their cultures and languages. Notably, the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights have firmly established that States should create effective mechanisms for titling and demarcating indigenous peoples' lands, territories and resources in accordance with their customs, cultures and traditions.¹⁵ The African Commission on Human and Peoples' Rights, following the Inter-American Court, has drawn similar conclusions.

18. The United Nations special procedures and, in particular, the Special Rapporteur on the rights of indigenous peoples and the Independent Expert in the field of cultural rights have examined cultural and language rights in depth as they relate to indigenous peoples. The Independent Expert notes that cultural rights relate to a broad range of issues, including: "expression and creation, including in diverse material and non-material forms of art; information and communication; language; identity and belonging to multiple, diverse and changing communities; development of specific world visions and the pursuit of specific ways of life; education and training; access, contribution and participation in cultural life; the conduct of cultural practices and access to tangible and intangible cultural heritage."¹⁶

19. The international legal framework for the protection of indigenous peoples' traditional knowledge, traditional cultural expressions and genetic resources has been an area of significant development over recent years, especially under the Convention on Biodiversity and within the World Intellectual Property Organization.

III. Cultures and languages and their relationship to indigenous peoples' self-determination and rights related to lands, territories and resources

20. The close relationship between indigenous peoples' cultural rights and the right to self-determination is reflected in article 3 of the Declaration on the Rights of Indigenous Peoples, which states that by virtue of indigenous peoples' right to self-determination, they may freely pursue their cultural development. An integral part of the right to self-determination is the promotion and protection of all rights necessary for indigenous peoples to pursue their cultural development, underlining the indivisibility, interdependence and interrelation of indigenous peoples' rights. Cultural and language rights are inherent in the array of rights set out in the Declaration and, as such, are critical to the overall implementation of the Declaration.¹⁷

21. The right to culture in the context of indigenous peoples includes their right to self-determine their own culture and languages as an internal matter as well as to practise and celebrate their cultures and languages in the wider public domain.¹⁸ Indigenous peoples' cultures include their justice systems and the practice thereof, as well as their "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." (art. 5).

22. Languages are an important element and expression of indigenous peoples' right to self-determination and can facilitate the practice of indigenous peoples' self-determination. Languages contain within them the tools to express indigenous collective juridical and

¹⁵ *The Mayagna (Sumo) Awas Tingni Community v. Nicaragua* (2001).

¹⁶ A/HRC/14/36.

¹⁷ <http://www.un.org/en/development/desa/ug/statements/year-rapprochement-cultures.shtml>.

¹⁸ Submission by Panama to the Expert Mechanism on the study on indigenous peoples' languages and cultures, 2012.

political methodology and organization. In many cases, indigenous peoples have maintained their traditions orally, embedded in their languages. As some submissions to the Expert Mechanism stated, indigenous peoples' control over their languages can be a tool in their decolonization.¹⁹

23. Recognition of 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,²⁰ as recognized in the Special Rapporteur's report on indigenous peoples and their relationship to land.²¹ The Special Rapporteur outlines the following elements of the relationship of Indigenous peoples to their lands, territories and resources:²²

(i) a profound relationship exists between indigenous peoples and their lands, territories and resources; (ii) this relationship has various social, cultural, spiritual, economic and political dimensions and responsibilities; (iii) the collective dimension of this relationship is significant; and (iv) the intergenerational aspect of such a relationship is also crucial to indigenous peoples' identity, survival and cultural viability.

24. The maintenance and development of indigenous peoples' cultures requires the protection of their lands, territories and resources. Indigenous peoples' traditional territories, where their homes and kinships are located, are the spaces in which they practise their cultures. Indigenous peoples' connections to traditional territories, to their homes and to their communities are important, even for those who have migrated elsewhere for work and education, to maintaining and developing indigenous cultures.²³

25. In many cases, there is a close relationship between indigenous peoples' cultures and languages and their physical and spiritual environments. Moreover, languages can contain information about practices associated with indigenous peoples' lands, territories and resources such as knowledge about hunting, fishing, trapping and gathering. Environmental and other harms to indigenous peoples' lands, territories and resources can be devastating to their cultures. For all these reasons, it is imperative to protect and respect indigenous peoples' rights to their lands, territories and resources.

26. Nomadic indigenous peoples have frequently faced additional challenges in seeking to have their rights to their land, territories and resources recognized, which has adversely impacted on their ability to practise, protect and promote their languages and cultures. Some of the problems stem from failures to recognize and respect indigenous peoples' laws regulating the use of their lands, territories and resources and ways of life which are different from that of non-indigenous populations.

27. International human rights standards and jurisprudence have clearly recognized the relationship between indigenous peoples' cultures and their rights to their lands, territories and resources. The Declaration on the Rights of Indigenous Peoples recognizes "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" and states the conviction that "control by indigenous peoples over developments affecting

¹⁹ Kontinonhstats – The Mohawk Language Custodians.

²⁰ For example, when indigenous peoples conduct cultural ceremonies and songs that express treaty-making principles, these ceremonies and songs protect their traditional lands, territories and resources.

²¹ E/CN.4/Sub.2/2001/21.

²² Ibid.

²³ "Asia Indigenous Peoples' Perspectives on Development" at <http://www.aippnet.org/home/publication/reports>.

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”.

28. Equally, regional human rights bodies have determined that the right to property and the right to non-discrimination mean that indigenous peoples’ lands, territories and resources held under indigenous law are entitled to the same level of protection and recognition as other types of property.²⁴ The Committee on Economic, Social and Cultural Rights has highlighted the link between cultural rights, rights to lands, territories and resources and the duty to obtain indigenous peoples’ free, prior and informed consent in relation to the taking of indigenous peoples’ lands, territories and resources.

IV. Rights related to indigenous peoples’ languages and identity

29. In addition to the legal standards outlined above, the Declaration includes specific articles on indigenous peoples’ rights to their languages, supported by international instruments such as, inter alia, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Under article 13, 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”. States are also required 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. As discussed in the Expert Mechanism’s study on education, indigenous peoples have the right under article 14 to establish institutions providing education in their own languages. Moreover, article 16 states that “indigenous peoples have the right to establish their own media in their own languages” and that States “shall take effective measures to ensure that State-owned media duly reflect indigenous cultural diversity.” Also, States “should encourage privately owned media to adequately reflect indigenous cultural diversity”.

30. ILO Convention 169 also includes specific rights in relation to languages, requiring that indigenous children, where practicable, be taught to read and write in their own indigenous language and that adequate measures shall be taken to preserve and promote the development and practice of the indigenous languages of the peoples concerned (art. 28).

31. In addition, the Convention on the Rights of the Child has many provisions to recognize the right of the child to education with a view to achieving this right progressively on the basis of equal opportunity, and that these rights be ensured by the State parties.

32. Language is an essential part of, and intrinsically linked to, indigenous peoples’ ways of life, culture and identities.²⁵ Languages embody many indigenous values and concepts and contain indigenous peoples’ histories and development. They are fundamental markers of indigenous peoples’ distinctiveness and cohesiveness as peoples.²⁶ Knowledge of languages is often necessary to enable indigenous individuals to fully

²⁴ *The Mayagna (Sumo) Awas Tingni Community v. Nicaragua* (2001).

²⁵ See Permanent Forum on Indigenous Issues Expert Group Meeting on indigenous languages (2008) and associated submissions and papers and the first International Symposium on the World’s Indigenous Languages: Canadian Heritage, *Coming Together in Diversity: The Final Report of the First International Symposium on the World’s Indigenous Languages* (Ottawa, Canadian Heritage, 2005), p. 41.

²⁶ Dr Fernand de Varennes.

participate in their families and communities and to create a sense of belonging.²⁷ As one submission states, “(y)our language holds your identity, your family’s history, your belonging, roots, how to pass on knowledge and information, names of trees, plants, place, alive, growing.”²⁸

33. Language is the main mechanism in the intergenerational transmission of indigenous knowledge and is one of the signs of life of indigenous peoples’ cultures. It is one of the essential elements of the identity of Indigenous peoples. Indigenous women are central to this transmission of knowledge as traditional purveyors in communities in preserving and teaching languages.

34. Many languages are threatened with extinction. UNESCO estimates that at least 43 per cent of the estimated 6,000 languages spoken in the world are endangered,²⁹ of which many are those of indigenous peoples. This is a global challenge, affecting all regions of the world. On the Australian continent, at the time of European settlement, there were an estimated 250 indigenous languages in existence. Statistics suggest that in less than 300 years at least 205 of those 250 languages have either been lost or are at very serious risk of being lost.³⁰ In the Russian Federation, some languages are now spoken by people numbering less than ten. Africa is considered the most linguistically diverse continent in the world, but many of the languages spoken by its indigenous peoples are the most endangered.

35. Small indigenous groups,³¹ and those groups which are not formally recognized as indigenous peoples, face additional challenges in their efforts to promote, revitalize and keep their languages.

36. Despite the dismal state of indigenous peoples’ languages generally,³² ongoing negative external influences upon them, and rights in relation to their languages, there is often a lack of State support for their retention and revitalization.³³ For example, indigenous peoples’ languages are often not officially recognized in legislation and policy and insufficient funding is available for language revitalization. Even where official efforts are made to adopt bilingual education programmes, implementation can be a problem.³⁴

37. There are numerous concerns regarding loss of indigenous languages due to the introduction of the mainstream language as the national language, including the exclusive use of mainstream languages in governmental education systems.

38. Indigenous peoples’ languages are usually spoken by a minority of individuals within a State and have been, historically and today, subject to assimilationist policies including, in some cases, physical repression or punishment of indigenous individuals speaking their languages.³⁵ There are examples of the placement, often forced, of indigenous children into schools, including residential, boarding and day schools, to teach them non-indigenous ways, which has had a tremendously negative impact on the continuation and preservation of languages and cultures, on the physical and mental health

²⁷ Inuit Circumpolar Council (Canada).

²⁸ Robyn Lucienne and the National Congress of Australia’s First Peoples.

²⁹ <http://www.unesco.org/new/en/culture/themes/endangered-languages/>. Note also the statistics provided in the submission from Mexico.

³⁰ National Congress of Australia’s First Peoples.

³¹ Norway.

³² Dr Fernand de Varennes.

³³ Valerie Galley.

³⁴ Inuit Circumpolar Council (Canada).

³⁵ Robyn Lucienne.

of indigenous individuals and on the retention of their traditional knowledge.³⁶ Even when the schools closed, indigenous cultures remained devalued. The urbanization of many indigenous peoples, often mobilized by economic pressures and the introduction of market economies, can separate indigenous peoples from the lands and territories where their languages and cultures are practised, often leading to forced assimilation. As the Truth and Reconciliation Commission of Canada recently concluded, assimilationist policies were a direct assault on indigenous cultures and languages.³⁷

39. Discrimination against indigenous peoples on the basis of their languages continues, which can have a negative impact on indigenous peoples' identity and collective dignity,³⁸ with serious consequences, including in terms of health and social behaviour.³⁹

40. In some places, fewer indigenous children are learning their languages, even when their parents, families and communities speak the language, meaning that indigenous languages are more commonly spoken by elders. As UNESCO has recognized, social factors can contribute to failures to transmit languages, such as perceptions of their lack of utility in mainstream society and concerns about the discrimination that can attach to indigenous language speakers, especially indigenous children. It is important that indigenous peoples, with appropriate State and international support, pass on their languages to the next generation of youth and that youth take responsibility for learning their languages.⁴⁰ In addition, one submission also highlighted the need to protect against discrimination against individuals who do not speak their indigenous language.⁴¹

41. There are, unfortunately, too few positive examples of the promotion and revitalization of languages. However, where they exist, they have usually involved indigenous peoples and States working in partnership to provide the requisite support, including official recognition of indigenous languages as national languages, the recognition of indigenous language place names, funding for indigenous language immersion and/or bilingual schooling for children and adults,⁴² media available in indigenous languages, the use of indigenous languages in official proceedings (including legal and judicial and quasi-judicial), with provision made for translation and interpretation,⁴³ support for publications in indigenous languages, support for indigenous-led and culturally sensitive education systems,⁴⁴ public awareness campaigns and the allocation of funds for language revitalization.⁴⁵

42. Research and studies indicate that children who receive indigenous language immersion education have stronger indigenous language skills than children who learn indigenous languages in second language programmes and, in addition, have the same level of the dominant language of the State.⁴⁶ They are also better equipped to take part in

³⁶ Valerie Galley, "Kontinonhstats – The Mohawk Language Custodians", the National Indian Youth Council and Dr Fernand de Varennes

³⁷ Truth and Reconciliation Commission of Canada, Interim Report, http://www.cbc.ca/news/pdf/TRC_InterimReport_Feb2012.pdf

³⁸ Sophie Simon.

³⁹ Kontinonhstats – The Mohawk Language Custodians and the National Congress of Australia's First Peoples.

⁴⁰ Kontinonhstats – The Mohawk Language Custodians.

⁴¹ Inuit Circumpolar Conference.

⁴² The human rights treaty bodies have called for bilingual education for indigenous individuals, inter alia: E/C.12/1/Add.71, para. 13; E/C.12/MEX/CO/4, para. 26; CRC/C/15/Add.266, para. 18; CERD/C/GTM/CO/11, para. 20. Note the experiences with bilingual education cited in submissions from Chile, Panama, Guatemala and Peru.

⁴³ Submissions from Guatemala and Mexico.

⁴⁴ Submissions from the United States of America, France and Chile.

⁴⁵ Tasmanian Aboriginal Centre Inc.

⁴⁶ Inuit Circumpolar Council (Canada) and the Tasmanian Aboriginal Centre Inc.

cultural activities. Notably, the UNESCO strategy for language in education is guided by principles to foster mother-tongue instruction and bilingual and multilingual education.⁴⁷

43. Traditional knowledge associated with indigenous peoples' natural environment is often embedded in indigenous peoples' languages.⁴⁸

44. Families and, in particular, indigenous women and youth are repositories of indigenous peoples' traditions and cultures and can play a central role in the retention, transmission and revitalization of indigenous peoples' languages. As a caregiver, a mother has an integral role in passing on indigenous languages to her children and embedding in them the importance of language. Concern has been raised about legislation and policies that discriminate against indigenous women and the impact that has had on the retention of languages and cultures.⁴⁹ Notably, the Declaration requires that particular attention be paid to the rights and special needs of indigenous women, youth and children, *inter alia* (art. 22).

45. Indigenous women and youth inherit much responsibility for the preservation of their indigenous languages and should work together with other members of their communities to do so, including elders.⁵⁰

46. States should take primary responsibility for providing formal legal and policy support for the promotion and, where necessary, revitalization of indigenous peoples' languages, albeit with the consent of the indigenous peoples affected.⁵¹ Positive examples in this regard include the New Zealand Maori Language Act 1987, which recognizes the Maori language as an official language, the Constitution of Morocco 2011,⁵² the Norwegian Constitution and Norwegian Sami Act, the Northwest Territories' Official Act and the establishment of the Foundation of Indigenous Languages in Canada, which developed draft legislation aimed at promoting and protecting indigenous languages.

47. In some States, support of indigenous languages and cultures is consistent with their obligations in treaties, agreements and other constructive arrangements between indigenous peoples and States.⁵³

48. Use of indigenous languages need not be confined to indigenous individuals and peoples and should be encouraged outside of their communities.⁵⁴ As one submission noted in the Australian context, "the adoption of First Peoples languages by the wider Australian community as everyday vernacular, including place and street names, national park and conservation reserve names and interpretative signage, plant and animal names and description of natural phenomena and landmarks is an important part of Australian society, reconciliation, awareness-raising, as well as being a matter of deep pride for First Peoples."⁵⁵

49. Media and information technology, including the internet, can provide essential and effective tools for the promotion and revitalization of indigenous languages and are particularly valuable tools to educate indigenous children. The use of indigenous languages in media increases the visibility of indigenous languages, illustrates and promotes their relevance in contemporary life, demarginalizes indigenous languages and improves indigenous peoples' access to their languages. Positive examples include the development

⁴⁷ UNESCO.

⁴⁸ Kontinonhstats – The Mohawk Language Custodians.

⁴⁹ Kontinonhstats – The Mohawk Language Custodians.

⁵⁰ A number of submissions, including Kontinonhstats – The Mohawk Language Custodians.

⁵¹ Assembly of First Nations.

⁵² United Nations Independent Expert in the Field of Cultural Rights, visit to Morocco and Western Sahara, preliminary conclusions and observations, Rabat, 16 September 2011.

⁵³ Assembly of First Nations.

⁵⁴ New Zealand Human Rights Commission.

⁵⁵ National Congress of Australia's First Peoples.

of the Google search engine site in the Maori language and the Cree Dictionary online project in collaboration with the University of Alberta and the Maskwacis Cree.

V. Indigenous peoples' cultural identity

50. Indigenous peoples' languages and cultures are often one of their defining features, of crucial importance to their identity as collectives, forming a bond as nations, and as indigenous individuals. Indigenous cultures are often based on the concept of respect for others, mutual support and the maintenance of the integrity of the individual, providing the basis for harmonious relations.⁵⁶ Indigenous peoples' cultural distinctiveness, on the one hand, and commonalities between indigenous cultures, such as the value placed on collectivity and spirituality have provided cohesion to the global indigenous peoples' movement.

A. Definition of culture

51. Numerous definitions of culture have been proposed at the international legal and policy level, as has been reviewed by the Committee on Economic, Social and Cultural Rights.⁵⁷ The Declaration on the Rights of Indigenous Peoples does not define culture per se, although indigenous peoples' cultural rights are implicit in many articles and are clearly recognized and delineated throughout, as set out above. The Independent Expert in the field of cultural rights has noted that it is unnecessary for her to define culture, "and may be inappropriate."⁵⁸ Any definition of culture, including that implicit in this study, should not be viewed as exclusive.

52. Indigenous peoples' cultures include tangible and intangible manifestations of their ways of life, achievements and creativity, are an expression of their self-determination and of their spiritual and physical relationships with their lands, territories and resources. Indigenous culture is a holistic concept based on common material and spiritual values and includes distinctive manifestations in language, spirituality, membership, arts, literature, traditional knowledge, customs, rituals, ceremonies, methods of production, festive events, music, sports and traditional games, behaviour, habits, tools, shelter, clothing, economic activities, morals, value systems, cosmovisions, laws, and activities such as hunting, fishing, trapping and gathering. Indigenous cultures are influenced by their environment, which impacts on a people's common perspective of the world and underlines its connection with nature. Indigenous cultures shape their views of the world and life.

B. Collective

53. Values of collective responsibility and respect for elders, ancestors, spirits and the community are often embodied in indigenous cultures, which can guide indigenous individuals' behaviour in everyday life. Indigenous social systems are closely related to the culture on which they are based, including respect for the dignity of all members of the community, expressed through reciprocity, mutual trust and service to others. Many indigenous social systems uphold and recognize the equal rights, worthiness and usefulness of each member of a community. Balanced, harmonious and cohesiveness relations provide

⁵⁶ *Asia Indigenous Peoples' Perspectives on Development*

⁵⁷ Committee on Economic, Social and Cultural Rights, general comment No. 21 (2009).

⁵⁸ A/HRC/14/36, para. 5.

the basis for co-responsibility to each member. The close relationship among members of indigenous peoples is one of their key characteristics.

54. Indigenous peoples have unique structures and institutions that have developed over time. These structures often have the family as a primary unit, expanding to larger communal and social institutions, and are generally governed by indigenous law and sacred teachings.

55. In many communities, the values of collectivity and of working and socializing together are being undermined, in part due to the imposition of administrative structures. In the past, many societies had councils of elders dealing with issues in the community but now these issues are in the hands of State governmental bodies, in which the local community has no say. The value of collectivity, the traditional work ethic and communal work is challenged and also endangered as money matters take up a larger role. The Declaration on the Rights of Indigenous Peoples states that indigenous peoples have the right to determine their own identity and membership in accordance with their customs and traditions and the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where these exist, juridical systems or customs.

C. Indigenous spirituality

56. The concept of indigenous spirituality is the application of respect for Creation into everyday living and relationships. The important elements of indigenous spirituality include maintaining connections with ancestors and spirits or deities, social relations, respect for nature and the relationship with their lands, territories and resources. Indigenous spirituality is inclusive and may be practised by holding rituals, ceremonies, applying positive and respectful values, and by ensuring spirituality is transferred through generations. It is closely linked to indigenous culture and nature. In particular, land is a source of spirituality. There is a strong belief that belongingness to land is also socio-economical, emotional and political.

57. Mainstream religions can be a threat to indigenous peoples' cultural development, particularly if governments adopt policies to promote a particular religion or prohibit indigenous spiritual practices or if States' laws and policies and courts do not recognize indigenous peoples' spirituality and spiritual associations, including to land, territories and resources, as equal to other forms of spirituality. Some argue that to lose one's language means one can no longer practise spirituality as originally given.

58. The Declaration on the Rights of Indigenous Peoples guarantees indigenous peoples' rights to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies and to maintain, protect, and have access in privacy to their religious and cultural sites (art. 12). The Committee on Economic, Social and Cultural Rights has stated that "States parties must also respect the rights of indigenous peoples ... to maintain and strengthen their spiritual relationship with their ancestral lands and other natural resources traditionally owned, occupied or used by them, and indispensable to their cultural life."⁵⁹

⁵⁹ E/C.12/GC/21, para. 49.

D. Cultural diversity and heritage

59. Indigenous peoples have made considerable contributions to the world's cultural diversity and heritage.

60. The Declaration on the Rights of Indigenous Peoples affirms that all peoples contribute to the diversity and richness of civilizations and cultures, which constitute the common heritage of humankind and express indigenous peoples' 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 (art. 11). The Independent Expert in the field of cultural rights has stated "in order to respect and protect cultural identity, tangible cultural heritage should be preserved with a view to maintaining its authenticity and integrity, intangible cultural heritage should be safeguarded to ensure viability and continuity, and the rights of access to and enjoyment of cultural heritage should be guaranteed."⁶⁰

61. An important component of indigenous peoples' rights to their cultural heritage is their right to the repatriation of ceremonial objects and human remains (art. 12), which requires the cooperation of the places where such objects and remains are stored, such as museums.

E. Traditional knowledge, traditional cultural expressions and genetic resources

62. As is well documented, indigenous peoples have expressed the concern that existing international mechanisms to protect intellectual property are inadequate to protect traditional knowledge, traditional cultural expressions and genetic resources and are culturally inappropriate. Concerns identified include the fact that intellectual property systems are often focused on protecting the intellectual property of individuals rather than collectives, view intellectual property as alienable, and are not consistent with indigenous peoples' laws and policies related to their knowledge.

63. It is essential that international processes in which laws governing the use of traditional knowledge, cultural expressions and genetic resources that are developed conform to indigenous peoples' rights under the Declaration on the Rights of Indigenous Peoples and, in particular, article 31.

F. Positive duties

64. As expressed by the Committee on Economic, Social and Cultural Rights, the right to culture includes positive, as well as negative, obligations on States.⁶¹ Moreover, the Human Rights Committee has stated that,⁶²

culture manifests itself in many forms, including in a particular way of life associated with the use of land resources, especially in the case of indigenous peoples. That right might include such traditional activities as fishing or hunting and the right to live in reserves protected by law. The enjoyment of those rights may require positive legal measures of protection and measures to ensure the effective participation of members of minority communities in decisions which affect them.

⁶⁰ A/HRC/17/38, para. 21.

⁶¹ Committee on Economic, Social and Cultural Rights, general comment No. 21 (2009).

⁶² Human Rights Committee, general comment No. 23 (1994) on article 27

The protection of these rights is directed to ensure the survival and continued development of cultural identity, thus enriching the fabric of society as a whole.

VI. Challenges faced in the promotion and protection of indigenous language and culture rights

A. Adaptation of culture

65. As the Independent Expert in the field of cultural rights has noted, protecting cultures can be challenging “especially in societies where people feel that their cultural heritage is under threat, due in particular to the dynamism or dominance of other cultures, globalization and development processes and/or the dominant position of corporate actors in the field of culture and leisure.”⁶³ Moreover, loss of lands, territories and resources can limit the ability of indigenous cultures to adapt organically. Because of these changes and obstacles, there must be a conscious effort to maintain traditional values and instil cultural strength, pride and dignity. Part of this effort may include fostering traditional ways of learning to transfer indigenous knowledge, culture and traditions to future generations and to maintain pride and identity in indigenous culture.

66. Cultural identity cannot exist without people practising their culture and traditions. New expressions of traditional values may be necessary to revitalize cultural practices in the modern context but should not alter the essence of the indigenous culture. Adaptation of cultures is an indicator of their strength and is necessary to attract the young. Indigenous cultures should not be viewed as relics of the past belonging to museums but, instead, be understood and protected as alive and dynamic, in need of enrichment, to enable them to strengthen despite external influences on them.

B. Revitalization of indigenous peoples’ cultures

67. Where indigenous languages and cultures are under threat, indigenous peoples and States together in partnership have the primary responsibility for the revitalization of cultures and languages. In many cases, it is for indigenous peoples, as an expression of their right to cultural self-determination, to show the commitment and take the necessary action to implement practices in support of their cultures and languages. For example, mandatory immersion programmes should be established.

68. The role of States should be to support indigenous peoples in their endeavours to practise and express their cultures and languages. States should be careful not to intrude on indigenous peoples’ self-determination in this respect by, for example, implementing cultural and language programmes without the free, prior and informed consent of indigenous peoples. Instead, States may be better placed to provide the requisite legislative and institutional framework necessary to protect and promote indigenous peoples’ languages and cultures and, in addition, provide financial and technical support.⁶⁴

69. There are many positive examples of indigenous peoples taking the initiative to protect and promote their cultures and languages, such as activities leading to the revitalization of the Maori language, which now has considerable State support,⁶⁵ including

⁶³ A/HRC/14/36.

⁶⁴ New Zealand Human Rights Commission.

⁶⁵ New Zealand Human Rights Commission, New Zealand Government.

in the reservation of radio frequencies for the promotion of Maori culture and language and the legislative creation of a Maori television service. In Canada there is the Aboriginal Peoples Television Network.

C. Recognition of indigenous peoples' cultures

70. In some States, indigenous peoples are required to provide evidence of their historical connections to their lands, territories and resources to obtain formal and official recognition of their rights to those lands, territories and resources. Imposing such evidential burdens on indigenous peoples is costly and difficult, especially where they were colonized, and had lost their lands, territories and resources many centuries in the past. There are also significant threats to indigenous cultures when they are subjected to imposed legal evidentiary tests that require the inappropriate public sharing of cultural heritage.

D. The right to equality

71. Unique measures to support indigenous peoples' cultures may be required to achieve substantive equality. In many cases, and especially where indigenous peoples are not dominant in the State within which they are located, they may find it difficult to protect their cultures as compared with the non-indigenous dominant groups. Non-indigenous dominant groups can better reflect their cultural preferences in law and policy, to which indigenous peoples are subjected. At the same time, it must be recognized that indigenous peoples' rights should not be conceptualized as special measures but, instead, as distinct and permanent rights.

72. Measures to promote indigenous cultures should be premised on an intercultural approach – a coming together of different but equal cultural viewpoints.

E. Individual and collective aspects

73. Indigenous peoples have consistently asserted the collective nature of their cultural rights. The Declaration on the Rights of Indigenous Peoples is clear that cultural rights can be vested in indigenous peoples as collectives. Other instruments also recognize collective rights, such as the African Charter on Human and Peoples' Rights. These instruments recognize the value of the collective in its own right and, also, that violations have occurred against the cultures of collectives such as indigenous peoples.

74. One of the challenges to the recognition of collectives' rights to cultures has been the perception that they pose a threat to the sovereignty of States. However, in many cases it is States' failures to recognize collectives, in attempts to assimilate them and/or discriminate against them, which have fuelled groups' desires to challenge the authority of the State.

F. Development as a threat to indigenous peoples' cultures and languages

75. Non-indigenous development of indigenous peoples' lands, territories and resources has had, in many cases, a detrimental effect on indigenous peoples' cultures, including the destruction of the places and spaces where indigenous peoples' cultures are practised. In some cases, indigenous peoples have been involuntarily displaced. Ongoing threats to indigenous cultures include the power of dominant cultures and the influx of non-

indigenous people into indigenous territories, for reasons including resource exploitation, extraction and tourism.⁶⁶

76. Indigenous peoples' cultures should, as UNESCO policy provides, be at the centre of the development of their lands, territories and resources, which in most cases requires their participation and consent. As ILO Convention 169 provides, indigenous peoples "shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development" (art. 7). The Human Rights Committee has confirmed that "economic development may not undermine the rights protected by" the right to culture.⁶⁷

G. Climate change

77. Equally, many indigenous peoples' cultures are threatened by the consequences of climate change, including, potentially, loss of their lands, territories and resources. Moreover, neo-liberal approaches to measures to address climate change, such as the commodification of natural resources, conflict with some indigenous peoples' philosophical approaches to their relationship to the natural world.

H. Private sector

78. Many of the human rights challenges facing indigenous peoples in their enjoyment of their cultures come from the private sector. States' duties to protect indigenous peoples' rights to languages and cultures extend to preventing third parties from interfering with such rights.⁶⁸ Moreover, in accordance with the Human Rights Council's Guiding Principles on Business and Human Rights, business enterprises have the responsibility to respect human rights, including cultures and languages, for example to ensure understanding in negotiations and agreements with indigenous peoples by providing translation in indigenous languages where necessary.

I. Women and children

79. In many indigenous peoples' communities, women and children hold much cultural knowledge. They also have a special role to play in the protection and promotion of indigenous peoples' cultures.⁶⁹ Further, they can be the principal victims of violations of indigenous peoples' rights to their cultures, meaning that they deserve considerable attention in the process of protecting and promoting indigenous peoples' cultures, in accordance with article 22 of the Declaration on the Rights of Indigenous Peoples.

J. Assimilation

80. The perceived threat of indigenous cultures to "the national identity" has led many States to counter-factually deny the existence of indigenous peoples and to implement policies directed at assimilating them into mainstream society. Assimilation of indigenous

⁶⁶ Habitat Pro Association.

⁶⁷ *Poma Poma v Peru* (above).

⁶⁸ E/C.12/GC/21.

⁶⁹ *Ibid.*

peoples and individuals into mainstream cultures is a violation of international human rights law and especially indigenous peoples' and individuals' right to culture.⁷⁰

81. The forced and sometimes violent separation of indigenous children from their families and placement in boarding, residential or day schools or orphanages, with the aim of assimilating them into mainstream culture, constitutes a serious and ongoing breach of indigenous peoples' rights to culture, contrary to article 8 of the Declaration on the Rights of Indigenous Peoples.

K. Indigenous peoples' rights to engage in economic activities associated with their culture

82. Indigenous peoples' economic activities embody much of their culture and often involve the application of their knowledge, skills, technologies and values, as passed down to them by their ancestors. They can also contain information about the sustainable use of the natural environment.

L. Importance of indigenous cultures and languages for indigenous health

83. The importance of indigenous languages and cultures to their social, mental and physical health has been well highlighted. The dislocation and disaffection experienced by indigenous peoples who have been colonized, dispossessed, urbanized and assimilated has had a devastating impact on the health of many indigenous peoples as collectives and as individuals. In contrast, strong cultural affiliations to cultures can be positive and, "protective factors against the high risk of suicide in indigenous communities".⁷¹

M. Cultural relativity

84. As the Independent Expert has noted, "there is a misplaced tendency to equate cultural diversity with cultural relativism."⁷² Equally, it has been noted that the full promotion and protection of cultural rights has been hampered by the perception that these support cultural relativity, undermining the universality of human rights. As outlined above, cultural diversity is of universal value, with each culture and language contributing to our understanding of human capacity. Similarly, cultural rights are of universal application and indivisible from other human rights, especially when applied to indigenous peoples.

N. Alleged discrimination

85. Sometimes indigenous cultures, and especially their traditions and customs, are criticized on the grounds that they are allegedly discriminatory. Too often, alleged discrimination within indigenous cultural practices is cited as a reason not to respect, promote and fulfil indigenous peoples' right to culture, to the detriment of indigenous peoples' right to self-determination and the marginalization of their cultures.

⁷⁰ The undesirability of assimilation was recognized by the International Labour Organization in its revision of its Convention No. 107 concerning Indigenous and Tribal Peoples.

⁷¹ Inuit Circumpolar Council (Canada).

⁷² A/HRC/14/36, para. 32.

86. In assessing whether indigenous peoples' cultural practices infringe individuals' human rights, caution is necessary lest the judgment be made from a non-indigenous perspective and with a poor understanding of indigenous peoples' philosophies or the rationales behind their mores. The perspectives of the alleged victim of the allegedly discriminatory practice should be sought and prioritized. Indeed, the perspective of indigenous women is often unique, different from the perspectives of non-indigenous women. At the same time, discrimination against individuals should be eliminated.

87. It is important that the causes of discrimination within indigenous peoples' cultures are understood in an assessment of discrimination within indigenous cultural practices, such as the role that colonization and domination may have played, and are taken into account in measures to balance indigenous peoples' cultural and self-determination rights and the human rights of individuals.

O. Limitations on the right to culture

88. Human rights law permits certain limitations on the right to culture, which has been analysed by the Committee on Economic, Social and Cultural Rights. Article 46(2) of the Declaration on the Rights of Indigenous Peoples states that any limitation must be "in accordance with international human rights obligations", "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." It has been required under human rights law that a limitation be reasonably and objectively justified, proportionate and necessary. Accordingly, the means to address discriminatory indigenous cultural practices should impinge to the smallest extent possible on indigenous peoples' cultural and self-determination rights.⁷³ Thus, in most cases, discriminatory indigenous cultural practices are best addressed by the indigenous peoples themselves, according to their own processes.⁷⁴ This may mean, for example, that it is inappropriate for States to abolish a cultural practice outright but to, instead, adopt a gentler means of influencing change consistent with human rights, as has been recognized by the Committee on the Rights of the Child.⁷⁵

⁷³ The Independent Expert in the field of cultural rights, visit to Morocco and Western Sahara, preliminary conclusions and observations, Rabat, 16 September 2011, para. 35. Note also Dr Alexandra Xanthaki.

⁷⁴ *Ibid.*, para. 36.

⁷⁵ Committee on the Rights of the Child, general comment No. 11 (2009).

Annex

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

A. General

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

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

3. Indigenous cultures include their ways of life, protected by the right to self-determination, and indigenous peoples' relationships, including spiritual connections, with their lands, territories and resources. They include manifestations of cultural practices, including economically driven activity, traditional knowledge, cultural expressions, jurisprudence, cosmovisions, spirituality, philosophies, membership codes, dispute resolution techniques, social values, arts, dress, song and dance.

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

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

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

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

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

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

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

B. States

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

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

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

14. States, in partnership with indigenous peoples, must advance the protection, promotion and respect for indigenous cultures, languages, traditions and customs. State laws and policies addressing indigenous peoples' languages and cultures must go beyond symbolism and be effective in practice, setting out clear and practical methods to support indigenous peoples in their own promotion and protection of their languages and cultures, in accordance with their right to self-determination. This must include the allocation of sufficient financial, legal and policy support for the learning of indigenous languages, the teaching of indigenous cultural values and the training of indigenous educators. Also, States must provide incentives for indigenous peoples to transmit their languages and cultures to younger generations, recognition of place names in indigenous languages, strategic plans for implementing public awareness campaigns about indigenous cultures and languages, incorporating indigenous language and cultures in relevant media, publishing books (for example, textbooks) and establishing immersion and bilingual schooling.

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

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

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

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

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

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

21. States should ensure that non-indigenous third parties, especially the private sector, do not infringe indigenous peoples' rights to languages and culture and understand the flow-on effects that their activity on indigenous peoples' lands, territories and resources can have on their languages and cultures.

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

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

C. Indigenous peoples

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

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

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

D International institutions

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

28. It is imperative that United Nations institutions and related entities take a human rights-based approach to the development of international legal standards and policies on traditional knowledge, traditional cultural expressions and genetic resources, including in relation to access and benefit sharing, to ensure that they conform to the Declaration on the Rights of Indigenous Peoples. 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.

G. Media

32. 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.

F. Keepers of indigenous peoples' cultural heritage

33. 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.
