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**World Conference on Indigenous Peoples**

**Compilation of Recommendations, Conclusions and Advice  
from Studies Completed by the Expert Mechanism on the  
Rights of Indigenous Peoples**

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## **I. Introduction**

1. This is a compilation of recommendations, conclusions and Advice from studies completed by the United Nations (UN) Expert Mechanism on the Rights of Indigenous Peoples (the Expert Mechanism). The purpose of this compilation is to highlight the work completed to date that may inform the preparations for the World Conference on Indigenous Peoples, to be held in 2014.

2. At the end of each study, the Expert Mechanism presents advice based on its research and findings. Advice has been general or directed specifically to States, United Nations agencies and bodies, Indigenous Peoples and others (such as businesses). This is determined to be an effective way to contribute to the advancement of the human rights of Indigenous peoples.

## **II. The Mandates of the Indigenous-Specific Mechanisms at the United Nations**

3. In terms of the specific mandates of the three Indigenous UN bodies, there are distinctions that are important to consider. First, the Expert Mechanism provides the Human Rights Council with thematic advice, through studies and research, on the rights of Indigenous peoples as directed by the Human Rights Council. The Expert Mechanism participates in an interactive dialogue at the Council session held annually in September and presents proposals to the Council for its consideration and approval. An annual agenda item of the Expert Mechanism session is the UN Declaration on the Rights of Indigenous Issues.

4. The Permanent Forum on Indigenous Issues is an advisory body to the Economic and Social Council (ECOSOC) on Indigenous issues related to economic and social development, culture, the environment, education, health and human rights. It provides expert advice and recommendations to ECOSOC and UN Programmes, funds and agencies, raises awareness and promotion of the integration and coordination of activities into the UN system and prepare and disseminates information on Indigenous issues. Each session, under human rights, the Permanent Forum discusses implementation of the UN Declaration.

5. The Special Rapporteur on the Rights of Indigenous Peoples addresses specific cases of alleged violations of the rights of Indigenous peoples in selected countries through country reports, promotes good practices (such as new laws, government programs and constructive agreements between Indigenous peoples and states), reports on the overall human rights situations of Indigenous peoples through communications with governments and others, and conducts or contributes to thematic studies on relevant human rights topics. Throughout all of the Special Rapporteur's work, the UN Declaration is integrated as the framework for analysis.

6. Given the timing of the sessions, the Expert Mechanism's 7th Session will provide one of the last opportunities for Indigenous specific mechanisms to inform the World Conference on Indigenous Peoples.

7. The following synopsis identifies relevant advice, recommendations and conclusions made by the Expert Mechanism to the Draft Alta Outcome Document of the World Conference on Indigenous Peoples, which was issued at the Global Indigenous Preparatory Conference for the High Level Plenary Meeting of the General Assembly on 10-12 June 2013 in Alta, Norway.

### III. The Alta Outcome Document

#### A. Preamble of the Alta Outcome Document

##### **Preambular Paragraph 5: The Right to Participate in Decision-Making**

8. This refers to the inherent rights of Indigenous peoples to participate fully in decision-making. The Expert Mechanism notes Advice No.2 contained in both the Final report of the study on indigenous peoples and the right to participate in decision-making (A/HRC/18/42) and Advice No. 4 contained in the Follow-up report on indigenous peoples and the right to participate in decision-making, with a focus on extractive industries (A/HRC/21/55) related to the right to participate in decision-making.

##### **Preambular Paragraphs 1 and 6: Spirituality and Spiritual Rights of Indigenous Peoples**

9. These preambular paragraphs discuss, inter alia, the importance of spirituality and spiritual rights of Indigenous peoples. In this regard, the Expert Mechanism underscores the importance of preambular paragraph 7 and article 25 of the UN Declaration on the Rights of Indigenous Peoples as well as paragraphs 3 and 17 of Advice No. 3 contained in 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 (A/HRC/EMRIP/2012/3), which state:

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.<sup>1</sup>

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.<sup>2</sup>

##### **Preambular Paragraph 9 and Theme 3, Paragraph 6: Violence against Indigenous Women, Youth and Children**

10. This paragraph refers to violence against Indigenous women, youth and children as one of the worst human rights violations facing Indigenous peoples. In Advice No. 2, the Expert Mechanism has identified the following pertinent observations in this area:

Indigenous women often face exceptional impediments to participation in decision-making. States, international organizations, indigenous peoples and other decision-making entities should therefore conduct more intensive studies and design appropriate mechanisms to facilitate the participation of indigenous women in their activities and increase their access to address difficulties facing indigenous women

<sup>1</sup> A/HRC/EMRIP/2012/3, para 3.

<sup>2</sup> A/HRC/EMRIP/2012/3, para 17.

seeking to fully participate in decision-making. Likewise, the inclusion of indigenous youth in decision-making is essential in both internal and external, including legislative, decision-making.<sup>3</sup>

11. Also, in the Expert Mechanism's Advice No. 5: Access to Justice in the Promotion and Protection of the Rights of Indigenous Peoples (UN Doc. No. A/HRC/EMRIP/2013/2), there are references to addressing violence against Indigenous women and children. This includes the need for states to work in partnership with Indigenous peoples, particularly Indigenous women to overcome barriers to access to justice; improving data on victimization, disaggregated by age, gender and disability; addressing discrimination and ensure accessibility to Indigenous persons with disabilities; and representation of Indigenous peoples, particularly Indigenous women in transitional justice processes:

States should work in partnership with indigenous peoples, particularly indigenous women, to determine the most effective strategies for overcoming barriers to access to justice.<sup>4</sup>

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

\* Formulate plans of action to address both the high levels of indigenous victimisation and the treatment of indigenous peoples in domestic criminal justice systems.

\* Develop appropriate methodologies to obtain comprehensive data on 1) victimization of indigenous peoples, including information on the number of cases prosecuted; and 2) the situation of indigenous peoples in detention, disaggregated by age, gender and disability.<sup>5</sup>

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

14. Indigenous peoples should ensure that all persons are effectively represented in transitional justice processes, especially women.<sup>6</sup>

## **B. Theme 1: Indigenous Peoples' Lands, Territories and Resources**

### **Paragraphs 1 and 5: Permanent Sovereignty and Self-Determination of Indigenous Peoples**

15. This paragraph relates to the right to self-determination and to permanent sovereignty over Indigenous peoples' lands, territories, resources, air, ice, oceans and waters, mountains and forests. As set out in the Expert Mechanism's Advice No. 4, the right to sovereignty includes the right not to consent to extractive industries:

Given indigenous peoples' permanent sovereignty over natural resources and the United Nations Declaration on the Rights of Indigenous Peoples, as set out in the international legal and policy framework of the present report, the right of

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<sup>3</sup> A/HRC/18/42, para. 32.

<sup>4</sup> A/HRC/EMRIP/2013/2, para. 6

<sup>5</sup> A/HRC/EMRIP/2013/para. 12.

<sup>6</sup> A/HRC/EMRIP/2013/para. 18

indigenous peoples to participate in decision-making also includes the right not to consent to extracting resources as an exercise of their sovereignty.”<sup>7</sup>

16. Furthermore, equal partnerships among Indigenous peoples, states and business enterprises can lead to sustainable development in the area of extractive resource development where adequate environmental protections are put in place:

Indigenous peoples who choose to extract resources can continue to play a positive role in sustainable development by asserting their international human rights relating to extractive industries, with an emphasis on forming equal partnerships with States and business enterprises to engage in sustainable development where adequate environmental protections are in place.<sup>8</sup>

17. In the Expert Mechanism’s Comment on the Human Rights Council’s Guiding Principles on Business and Human Rights as related to Indigenous Peoples and the Right to Participate in Decision-Making with a Focus on Extractive Industries (A/HRC/EMRIP/2012/CRP1), permanent sovereignty and self-determination are also promoted:

An underlying theme of permanent sovereignty of Indigenous peoples over natural resources, the Declaration on the Rights of Indigenous Peoples and the Guiding Principles on Business and Human Rights is Indigenous peoples’ global concerns for engaging with extractive industries in a manner that supports sustainable development, where indigenous peoples’ rights related to self-determination and lands, territories and resources are upheld in a manner that also respects the environmental responsibilities that Indigenous peoples in a manner that also respects the environmental responsibilities that Indigenous peoples highly value.<sup>9</sup>

## **C. Theme 2: United Nations System Action for the Implementation of the Rights of Indigenous Peoples**

### **Paragraph 1: The Creation of a UN Body to Promote Implementation of Indigenous Peoples’ Rights**

18. In relation to the right to education, the Expert Mechanism has promoted the right to full and effective participation of Indigenous peoples in its Advice No. 1, contained in its Study on Lessons Learned and Challenges to Achieve the Implementation of the Right of Indigenous Peoples to Education (A/HRC/EMRIP/2009/2):

The Expert Mechanism is of the view that educational programmes and services for indigenous peoples must be developed and implemented in consultation and cooperation with the indigenous peoples concerned in order to address and incorporate their special needs, histories, identities, integrity, values, beliefs, cultures, languages and knowledge, as well as their social, economic and cultural priorities and aspirations. Educational programmes and services for indigenous peoples should be of high quality, culturally safe and appropriate, and must not aim at or result in unwanted assimilation of indigenous peoples.<sup>10</sup>

19. Also contained in its final report of the study:

<sup>7</sup> A/HRC/21/55, para. 45.

<sup>8</sup> A/HRC/21/55, para 44.

<sup>9</sup> A/HRC/EMRIP/2012/CRP1, para. 62.

<sup>10</sup> A/HRC/EMRIP/2009/para 13.

The right to full and effective participation in external decision-making is of fundamental importance to indigenous peoples' enjoyment of other human rights. For instance, the right of indigenous peoples to identify their own educational priorities and to participate effectively in the formulation, implementation and evaluation of education plans, programmes and services is crucial for their enjoyment of the right to education. When implemented as a treaty right, the right to education can offer a framework for reconciliation. Truth and reconciliation commissions offer a model for improved relations between States and indigenous peoples as well.<sup>11</sup>

20. In Advice No. 3, the Expert Mechanism has called for the establishment of monitoring mechanisms by States in the area of access and benefit-sharing arrangements:

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.<sup>12</sup>

21. In Advice No. 3, the Expert Mechanism also calls for an Ombudsman to monitor cultural and linguistic rights of Indigenous peoples:

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 practice their cultures, such as an ombudsman to address complaints about failures to respect, protect and promote indigenous cultures and languages.<sup>13</sup>

22. In Advice No. 4, the Expert Mechanism calls for business enterprises to establish policies and processes to respect the rights of Indigenous peoples:

Enterprises in extractive industries should, together with indigenous peoples, assess the risks and actual impacts on the rights of indigenous peoples arising from their activities and business relationships. Commitment to respecting the rights of indigenous peoples should be reflected in the business enterprises policies and processes; such policies and processes should be put in place by the enterprise in order to meet its responsibility to respect human rights. Enterprises are advised to assess company compliance with indigenous peoples' rights and establish a company policy on how best to meet their responsibility to respect such rights, where possible by including indigenous peoples affected by their operations. When activities may affect indigenous peoples, the business enterprise must take adequate steps to ensure meaningful and effective engagement with indigenous peoples. As part of implementing their responsibility, business enterprises engaged in extractive activities must ensure that employees have an understanding of the content of indigenous peoples' rights, including their right to participate in decision-making.<sup>14</sup>

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<sup>11</sup> Expert Mechanism Advice No. 2 (2011): para.13.

<sup>12</sup> A/HRC/EMRIP/2012/3, para. 20.

<sup>13</sup> A/HRC/EMRIP/2012/3, para. 18.

<sup>14</sup> A/HRC/21/55, para. 41

**Paragraph 2: Establishment of an International Mechanism regarding Treaties, Agreements and Other Constructive Arrangements**

23. This paragraph calls for the establishment of an international mechanism for the enforcement of rights related to Treaties, Agreements and other Constructive Arrangements. In Advice No. 3, the Expert Mechanism refers to recognition of the duty of States to consult with Indigenous peoples and to seek to obtain their consent as it relates to Treaty rights and relationships:

The duty of States to consult with indigenous peoples and to obtain their consent are also expressed in the jurisprudence of, inter alia, the universal periodic review of the Human Rights Council, the Inter-American Court of Human Rights and the Inter-American Commission on Human Rights, the African Commission on Human and Peoples' Rights, the Special Rapporteur on the rights of indigenous peoples, and in international policy, some of which is described in the Expert Mechanism's progress report on indigenous peoples and the right to participate in decision-making. In the progress report, the Expert Mechanism noted that several treaties between States and indigenous peoples affirmed the principles of indigenous peoples' consent as an underpinning of the treaty relationship between States and indigenous peoples.<sup>15</sup>

24. Note also the three UN Treaty Seminars that have been held pursuant to the recommendation of the Special Rapporteur, the late Professor Miguel Alfonso Martinez, which together with the Enoch Declaration call for all partners to respect and honour Treaties according to their original spirit and intent and as understood by Indigenous peoples. [OAS Declaration, article XXIII.]

**Paragraph 5: Indigenous Officer for United Nations Agencies, Programs and Funds**

25. This paragraph calls for UN agencies, programs and funds to appoint Indigenous officers where their mandates impact Indigenous peoples, to ensure responsive services to Indigenous peoples, and to recruit Indigenous staff people. Similarly, in Advice No. 5, the Expert Mechanism recommends to the United Nations that resources be dedicated to carrying out training on Indigenous peoples' rights related to access to justice:

The United Nations should dedicate resources to the development and carrying out, in cooperation with indigenous peoples, of trainings on indigenous peoples' rights in relation to access to justice for law enforcement officials and members and staff of the judiciary.<sup>16</sup>

26. Furthermore, in Advice No. 4, the Expert Mechanism recommends the following measures be adopted by States, in collaboration with Indigenous peoples, to ensure human rights accountability in relation to extractive industry accountability:

The Expert Mechanism advises States to establish, together with indigenous peoples, (permanent) mechanisms to enable consultation with indigenous peoples which can provide guidance on:

- (a) When the context requires consultations with indigenous peoples in line with the present advice;
- (b) How to reach indigenous peoples;
- (c) Identifying the representatives with which consultation should take place;

<sup>15</sup> A/HRC/18/42, para. 12.

<sup>16</sup> A/HRC/EMRIP/2013/2, para. 20.

- (d) How to ensure an independent assessment of consultation practices;
- (e) How to undertake the requisite environmental and social impact studies associated with proposed and ongoing extractive activities;
- (f) Providing translation and interpretation services so that information relevant to indigenous peoples' decisions and interests can be provided for indigenous peoples in an understandable way;
- (g) Enabling indigenous peoples to obtain expert independent and technical assessments of the potential impact of extractive activities on them, including on their lives, lands and territories;
- (h) How to ensure that indigenous peoples' perspectives on the extractive activity are taken into account, including their ideal benefit-sharing arrangements if they so choose;
- (i) How to ensure that the permitting and monitoring boards of State corporations and extractive enterprise include indigenous peoples' representation and effective participation, which will also ensure human rights accountability at the corporate level.<sup>17</sup>

## **D. Theme 3: Implementation of the Rights of Indigenous Peoples**

### **Paragraph 1: Self-Determination in Relation to Negotiation of Relationships between States and Indigenous Peoples**

27. This paragraph underscores that the right to self-determination recognizes the authority of Indigenous peoples to develop with States, on an equal basis, standards and mechanisms to govern their relationships, in a manner consistent with the UN Declaration. In Advice No. 2, the Expert Mechanism, inequality and lack of recognition of the rights and circumstances of Indigenous peoples is identified as an underlying cause for adverse conditions as well:

Many indigenous peoples remain vulnerable to top-down State interventions that take little or no account of their rights and circumstances. In many instances, this is an underlying cause for land dispossession, conflict, human rights violations, displacement and the loss of sustainable livelihoods.<sup>18</sup>

### **Paragraph 4: Implementation of the Rights of Indigenous Peoples through State Laws, Policies and Strategies**

28. This paragraph refers to the right of Indigenous peoples to free, prior and informed consent in relation to State legislative, policy and strategic developments based on ethical collection, analysis and use of disaggregated data. In Advice No. 3, the Expert Mechanism calls for a human rights-based approach and the direct, full and equal participation of Indigenous peoples in the context of traditional knowledge:

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

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<sup>17</sup> A/HRC/21/55, para. 39.

<sup>18</sup> A/HRC/18/42, para. 15.

essential that such processes include the direct, full and equal participation of indigenous peoples to protect indigenous peoples' traditional knowledge.<sup>19</sup>

29. Note also the Report of the UN Permanent Forum on Indigenous Issues' Expert Seminar on Indigenous Peoples and Indicators of Well-Being held in Ottawa in 2006.<sup>20</sup>

#### **Paragraph 5: Rights of Indigenous Women**

30. This paragraph calls for the rights of Indigenous women to be implemented by States with the full and effective participation of Indigenous women and girls through national, regional and international plans of action. In Advice No. 1, the Expert Mechanism calls for equal access to education for Indigenous women and girls:

Measures to ensure the provision of education at all levels for indigenous girls and women should be seen as a matter of urgency. The Expert Mechanism is of the view that instruments of dialogue would help to mediate conflicting issues and norms within indigenous societies and to ensure equal access to education for indigenous girls and women.<sup>21</sup>

31. Note in Advice No. 3, the Expert Mechanism calls for equal participation of Indigenous women and youth in decision-making as previously referenced on paragraph 9.

#### **Paragraph 8: Commissions of Inquiry and Other Mechanisms**

32. This paragraph calls for joint establishment and development by States and Indigenous Peoples of Commissions of Inquiry and Other Independent, Impartial and Investigative Mechanisms to document and address impunity and other human rights concerns facing Indigenous peoples. In Advice No. 5, the Expert Mechanism calls for transitional justice mechanisms that address historical injustices (which often continue to have contemporary impacts), that are consistent with the UN Declaration and that fully involve Indigenous peoples, reflecting their values and cultures:

In relation to transitional justice mechanisms:

- Indigenous peoples and indigenous peoples' representative institutions should be consulted and involved in all stages of the establishment and carrying out of transitional justice mechanisms.
- Truth commissions should be guided by and should make explicit reference to the Declaration on the Rights of Indigenous Peoples.
- Truth commissions should recognize and address the historical injustices experienced by indigenous peoples, as well as how failures to recognise indigenous peoples' self-determination historically and today have created conditions for human rights violations.
- Truth processes should be linked to larger outreach and education efforts. These efforts should include explaining important justice issues, such as self-determination, to the broader public.

<sup>19</sup> A/HRC/EMRIP/2012/3, para. 28.

<sup>20</sup> E/C.19/2006/CRP.3.

<sup>21</sup> A/HRC/12/33, para. 97.

- Truth processes and reparations programs should be designed in a way that respects the cultures and values of indigenous peoples.<sup>22</sup>

33. Furthermore, in Advice No. 5, the Expert Mechanism calls for the monitoring of such mechanisms and their outcomes by relevant UN special procedures:

Relevant United Nations special procedures should monitor implementation of transitional justice processes to ensure that they respect the principles of the Declaration, and that states act in a timely way on truth commission recommendations and the implementation of reparations programs for indigenous peoples.<sup>23</sup>

## **E. Theme 4: Indigenous Peoples' Priorities for Development with Free, Prior and Informed Consent**

### **Paragraph 1: Indigenous Peoples' Priorities for Development**

34. This paragraph calls for full recognition of the rights of Indigenous peoples related to development, including sustainable development goals and the post 2015 UN Development Agenda. In Advice No. 3, the Expert Mechanism refers to Indigenous peoples' cultures, languages and ways of life protected by the right to self-determination, including how these rights relate to economically driven activity, as previously referenced at page 2 regarding preambular paragraphs 1 and 6.

35. Further, the Expert Mechanism has stated that:

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.<sup>24</sup>

### **Paragraph 4: Rights-Based and Culturally Appropriate Approach to Public Safety and Access to Justice**

36. This paragraph calls on States to take a rights-based and culturally appropriate approach to public safety and access to justice guided by Indigenous peoples' laws and justice systems and by standardized and disaggregated data focused on preventative and restorative justice. The Expert Mechanism addresses this issue throughout its Advice No.5. Specifically, the Expert Mechanism calls for recognition of Indigenous peoples' understandings of justice, and practices associated with such understandings as well as,

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<sup>22</sup> A/HRC/EMRIP/2013/2, para. 13.

<sup>23</sup> A/HRC/EMRIP/213/2, para. 23.

<sup>24</sup> A/HRC/EMRIP/2012/3, para. 14.

more broadly, recognition and promotion by states of the right to self-determination in terms of justice systems.

37. Indigenous peoples' understanding of access to justice might differ from that of states, in some cases informed by their own understandings of, and practices associated with, justice. This means that, at the outset, before undertaking activities to respect, promote and protect indigenous peoples' access to justice, common understandings of the best means to attain access to justice should be sought, consistently with indigenous peoples' rights to participate in decision making affecting them.<sup>25</sup>

38. Consistent with indigenous peoples' right to self-determination and self-government, states should recognise and provide support for indigenous peoples' own justice systems and should consult with indigenous peoples on the best means for dialogue and cooperation between indigenous and state systems.<sup>26</sup>

39. Advice No. 5 calls for training and sensitization of law enforcement and judicial officials, including the involvement of National Human Rights Institutions in such training.

40. Training and sensitization for law enforcement and judicial officials on indigenous peoples' rights is recommended.<sup>27</sup>

41. National human rights institutions, in partnership with indigenous peoples, can play an important role in ensuring improved access to justice for indigenous peoples including by encouraging recognition of and providing support for indigenous justice systems and promoting the implementation of the Declaration at the national level. National human rights institutions, in partnership with indigenous peoples, have the opportunity to provide training on indigenous peoples' rights in relation to access to justice for judiciaries.<sup>28</sup>

#### **Paragraph 8: Free, Prior and Informed Consent**

42. This paragraphs calls for States to ensure the full and effective participation and the free, prior and informed consent of Indigenous peoples in relation to educational systems. This topic is dealt with throughout Advice No. 1. Specifically, in Advice No. 1, the Expert Mechanism recognizes the UN Declaration as the normative framework in relation to the rights of Indigenous peoples, including the right to education.

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

44. This Advice also identifies that Indigenous peoples have the right to education autonomy:

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

<sup>25</sup> A/HRC/EMRIP/2012, para. 3.

<sup>26</sup> A/HRC/EMRIP/2013/2, para. 5.

<sup>27</sup> A/HRC/EMRIP/2013/2, para 11.

<sup>28</sup> A/HRC/EMRIP/2013/2, para. 24.

<sup>29</sup> A/HRC/EMRIP/2009/2, para. 8.

as having prepaid present and future financial allocations from the State, including allocations to education, by sharing their lands, territories and resources with others.<sup>30</sup>

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

#### **Paragraph 9: Economic, Social and Cultural Development**

46. This paragraph calls on States to reaffirm the rights of Indigenous peoples to their economic, social and cultural development and to ensure the full and effective participation of Indigenous peoples in sustainable development mechanism that are consistent with the rights of Indigenous peoples and are in harmony with Mother Earth.

47. In Advice No. 1, the Expert Mechanism underscores the right to education as a means to realizing Indigenous peoples' right to self-determination including in the area of economic, social and cultural development:

Education is the primary means ensuring indigenous peoples' individual and collective development; it is a precondition for indigenous peoples' ability to realize their right to self-determination, including their right to pursue their own economic, social and cultural development.<sup>31</sup>

48. In Advice No. 2, the Expert Mechanism refers to article 3 of the UN Declaration as it relates to self-determination over the right of Indigenous peoples to manage their own economic, social and cultural development and to manage their own natural resources based on the right to free, prior and informed consent:

Article 3 of the Declaration on the Rights of Indigenous Peoples mirrors common article 1, paragraph 1, of the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights. Consequently, indigenous peoples have the right to determine their own economic, social and cultural development and to manage, for their own benefit, their own natural resources. The duties to consult with indigenous peoples and to obtain their free, prior and informed consent are crucial elements of the right to self-determination.<sup>32</sup>

49. In the Expert Mechanism's Follow-up Report on Indigenous Peoples and the Right to Participate in Decision-making, with a focus on extractive industries (UN Doc. No. A/HRC/EMRIP/2012/2), the protection of Indigenous peoples' economic, social and culture rights related to lands, territories and resources and the right to free, prior and informed consent, consistent with common article 1 (2) and (3) of the International Covenants is explained as follows:

While only paragraph 1 of common article 1 of the Covenants appears in article 3 of the United Nations Declaration on the Rights of Indigenous Peoples, the content of paragraphs 2 and 3 of common article 1 are found in articles 23 and 32 of the Declaration. Further, article 3 needs to be read together with a cluster of articles (10,

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<sup>30</sup> A/HRC/EMRIP/2009/2, para. 16.

<sup>31</sup> A/HRC/EMRIP/2009/2, para. 2.

<sup>32</sup> A/HRC/18/42, para. 18.

11, 12, 20 and 25-31) in the Declaration, which generally relate to lands, territories and resources. Article 3 must also be read in the light of the articles specific to extractive industries, which include article 26, article 28 and, of particular importance, article 32. The latter article provides protection analogous to that provided under common article 1, paragraphs 2 and 3, ensuring that the free, prior and informed consent of indigenous peoples is obtained prior to approval of the use by private industries of indigenous peoples' lands, territories and resources.<sup>33</sup>

### **III. Conclusion**

50. **Finally, the Expert Mechanism thanks all delegations and the Secretariat for the Alta Outcome Document. This Conference Room Paper is a preliminary comment and the observations contained within it support the Alta Outcome Document as the above stated references indicate. The Alta Outcome Document builds on the strength of the UN Declaration on the Rights of Indigenous Peoples and focuses on advancing the dialogue in preparation for the World Conference on Indigenous Peoples. It can enhance the mandates of the three Indigenous UN mechanisms, leading up to the World Conference. Perhaps, further reflection can be made on how to most effectively advance the rights of Indigenous peoples throughout the UN system. There may be an opportunity to consolidate the existing Alta Outcome Document text over the upcoming year.**

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<sup>33</sup> A/HRC/21/55, para 11.

## **Appendix: Advice, Recommendations and Conclusions of the Expert Mechanism**

### **Expert Mechanism on the Rights of Indigenous Peoples' Study on Lessons Learned and Challenges to Achieve the Implementation of the Right of Indigenous Peoples to Education. A/HRC/EMRIP/2009/2**

#### **Advice:**

1. Education is a universal human right fundamental to the exercise of other human rights; everyone has the right to education pursuant to international human rights law. Education is also an empowerment right, through which economically and socially marginalized individuals can obtain means to participate fully in their communities and economies, and in the society at large.
2. Education is the primary means ensuring indigenous peoples' individual and collective development; it is a precondition for indigenous peoples' ability to realize their right to self-determination, including their right to pursue their own economic, social and cultural development.
3. The right of indigenous peoples to education includes the right to provide and receive education through their traditional methods of teaching and learning, and the right to integrate their own perspectives, cultures, beliefs, values and languages in mainstream education systems and institutions. The right to education for indigenous peoples is a holistic concept incorporating mental, physical, spiritual, cultural and environmental dimensions.
4. The full enjoyment of the right to education as recognized in international human rights law is far from reality for most indigenous peoples. Deprivation of access to quality education is a major factor contributing to social marginalization, poverty and dispossession of indigenous peoples. The content and objective of education to indigenous peoples in some instances contributes to the assimilation of indigenous peoples into mainstream society and the eradication of their cultures, languages and ways of life.
5. The right of everyone to education is enshrined in numerous international human rights instruments, including the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, ILO Convention No. 117 on Social Policy, the UNESCO Convention against Discrimination in Education. It is also reaffirmed in various regional human rights instruments.
6. The United Nations Declaration on the Rights of Indigenous Peoples, and ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries contain specific provisions on indigenous peoples' right to education. Several treaties between indigenous peoples and States acknowledge the right of indigenous peoples to education and educational services as a treaty right.
7. The Declaration is coherent with and expands upon legally binding human rights instruments and international jurisprudence developed by international supervisory bodies and mechanisms. The Declaration, interpreted in conjunction with other international instruments, provides an authoritative normative framework for the full and effective protection and implementation of the rights of indigenous peoples. In the context of

education, the Declaration reaffirms and applies the right to education to the specific historical, cultural, economic and social circumstances of indigenous peoples.

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

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

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

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

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

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

14. Indigenous peoples, in exercising their right to self-determination, have the right to educational autonomy. States, in consultation and cooperation with the peoples concerned, must ensure the realization of educational autonomy, including the financing of such autonomous arrangements. Indigenous peoples should be regarded as having prepaid present and future financial allocations from the State, including allocations to education, by sharing their lands, territories and resources with others.

15. The Expert Mechanism is of the view that the right of indigenous peoples to educational autonomy includes the right to decide their own educational priorities and to

participate effectively in the formulation, implementation and evaluation of education plans, programmes and services that may affect them, as well as the right to establish and control their own education systems and institutions, if they so choose.

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

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

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

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

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

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

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

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

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

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## **Final report of the study on indigenous peoples and the right to participate in decision-making. A/HRC/18/42**

### **Advice:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16. The duty to consult indigenous peoples applies whenever a measure or decision specifically affecting indigenous peoples is being considered (for example, affecting their lands or livelihood). This duty also applies in situations where the State considers decisions or measures that potentially affect the wider society, but which affect indigenous peoples, and in particular in instances where decisions may have a disproportionately significant effect on indigenous peoples.

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

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

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

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

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

22. The Declaration on the Rights of Indigenous Peoples requires that the free, prior and informed consent of indigenous peoples be obtained in matters of fundamental importance for their rights, survival, dignity and well-being. In assessing whether a matter is of importance to the indigenous peoples concerned, relevant factors include the perspective and priorities of the indigenous peoples concerned, the nature of the matter or proposed activity and its potential impact on the indigenous peoples concerned, taking into account, inter alia, the cumulative effects of previous encroachments or activities and historical inequities faced by the indigenous peoples concerned. Premised on the right to self-determination, article 10 of the Declaration prohibits the forcible removal of indigenous

peoples from their lands and territories. In contrast, ILO Convention No. 169, article 16(2), includes procedural elements that permit forced relocation as an exceptional measure, without the consent of the indigenous peoples concerned. The Declaration moreover requires States to obtain the free, prior and informed consent of indigenous peoples in certain other situations, as reflected in its articles 11(2), 19, 28(1), 29(2), 32(2) and 37.

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

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

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

### **Measures**

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

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

28. Free, prior and informed consent implies that States have a duty to obtain indigenous peoples' consent in relation to decisions that are of fundamental importance for their rights, survival, dignity and well-being. States should ensure that consultations and negotiations with indigenous peoples as required by article 18 of the Declaration on the Rights of Indigenous Peoples and consistent with other human rights standards.

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

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

31. States should enact and implement constitutional and other legal provisions that ensure indigenous peoples' participation in decision-making consistent with the Declaration

on the Rights of Indigenous Peoples, in particular where that is sought by affected indigenous peoples.

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

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

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

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

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

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

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

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

**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. A/HRC/EMRIP/2012/3**

**Advice:**

**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. States should provide incentives for museums and other places where indigenous remains, artifact 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.

16. 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.

17. 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 practice their cultures, such as an ombudsman to address complaints about failures to respect, protect and promote indigenous cultures and languages.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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**

23. 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.

24. 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.

25. 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**

26. The United Nations should dedicate resources and expertise to the promotion and protection of indigenous peoples’

27. 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.

28. 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**

29. 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**

30. 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**

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

**H. Keepers of indigenous peoples’ cultural heritage**

32. 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.

## **Follow-up report on indigenous peoples and the right to participate in decision-making, with a focus on extractive industries. A/HRC/21/55**

### **Advice:**

### **Conclusions:**

1. Practical advice for States on how to meet their obligations to consult and seek the consent of indigenous peoples in the context of extractive industry
2. The Expert Mechanism advises States to establish, together with indigenous peoples, (permanent) mechanisms to enable consultation with indigenous peoples which can provide guidance on:
  - (a) When the context requires consultations with indigenous peoples in line with the present advice;
  - (b) How to reach indigenous peoples;
  - (c) Identifying the representatives with which consultation should take place;
  - (d) How to ensure an independent assessment of consultation practices;
  - (e) How to undertake the requisite environmental and social impact studies associated with proposed and ongoing extractive activities;
  - (f) Providing translation and interpretation services so that information relevant to indigenous peoples decisions and interests can be provided for indigenous peoples in an understandable way;
  - (g) Enabling indigenous peoples to obtain expert independent and technical assessments of the potential impact of extractive activities on them, including on their lives, lands and territories;
  - (h) How to ensure that indigenous peoples perspectives on the extractive activity are taken into account, including their ideal benefit-sharing arrangements if they so choose;
  - (i) How to ensure that the permitting and monitoring boards of State corporations and extractive enterprise include indigenous peoples' representation and effective participation, which will also ensure human rights accountability at the corporate level
3. Practical advice for extractive industries on how to meet the requirement to respect the right of indigenous peoples to participate in decision-making in the context of extractive industry.
4. States retain the primary obligation to ensure indigenous peoples right to participate is respected; nevertheless, to meet their own responsibility to respect human rights, extractive businesses should ensure, and make their own assessment as to, compliance with the right of indigenous peoples to participate in decision-making. Indeed, positive experience illustrates that extractive industries should work in partnership with States and indigenous peoples at all planning and implementation stages of extractive activities that might impact on indigenous peoples interests.
5. Enterprises in extractive industries should, together with indigenous peoples, assess the risks and actual impacts on the rights of indigenous peoples arising from their activities and business relationships. Commitment to respecting the rights of indigenous peoples should be reflected in the business enterprises policies and processes; such policies and

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

6. The Special Rapporteur on the rights of indigenous peoples notes that companies must exercise due diligence by identifying, prior to commencing their activities, various matters relating to the basic rights of indigenous peoples, and by paying adequate attention to those matters as the activities are being carried out. Such matters include recognition of the existence of indigenous peoples and of their own social and political structures; indigenous possession and use of land, territory and natural resources; exercise by the State of its duty to consult indigenous peoples in relation to activities that might affect them, and the related responsibility of business; impact studies and mitigation measures; and benefit sharing with indigenous peoples.

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

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

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

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

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

## **Expert Mechanism on the Rights of Indigenous Peoples Advice No. 5: Access to Justice in the Promotion and Protection of the Rights of Indigenous Peoples. A/HRC/EMRIP/2013/2**

### **A. General**

1. 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' right to access to justice. The implementation of the Declaration should

be seen a framework for reconciliation and as a means of implementing indigenous people's access to justice.

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

3. Indigenous peoples' understanding of access to justice might differ from that of states, in some cases informed by their own understandings of, and practices associated with, justice. This means that, at the outset, before undertaking activities to respect, promote and protect indigenous peoples' access to justice, common understandings of the best means to attain access to justice should be sought, consistently with indigenous peoples' rights to participate in decision making affecting them.

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

## **B. States**

5. Consistent with indigenous peoples' right to self-determination and self-government, states should recognise and provide support for indigenous peoples' own justice systems and should consult with indigenous peoples on the best means for dialogue and cooperation between indigenous and state systems.

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

7. States should work in partnership with indigenous peoples, particularly indigenous women, to determine the most effective strategies for overcoming barriers to access to justice.

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

9. States should consider the impact of law and policy on indigenous peoples' access to human rights processes and institute reform where such law and policy interferes with indigenous peoples' enjoyment of substantive equality in this regard.

10. States should recognize indigenous peoples' rights to their lands, territories and resources in laws and should harmonize laws in accordance with indigenous peoples' custom on possession and use of lands. Where indigenous peoples have won land rights and other cases in courts, States must implement these decisions. The private sector and government must not collude to deprive indigenous peoples of access to justice.

11. Training and sensitization for law enforcement and judicial officials on indigenous peoples' rights is recommended.

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

- Ensure that the criminal justice system does not become a self-promoting industry benefitting from the over-representation of indigenous peoples.
  - Formulate plans of action to address both the high levels of indigenous victimisation and the treatment of indigenous peoples in domestic criminal justice systems.
  - Develop appropriate methodologies to obtain comprehensive data on 1) victimization of indigenous peoples, including information on the number of cases prosecuted; and 2) the situation of indigenous peoples in detention, disaggregated by age, gender and disability.
  - Reduce the number of indigenous individuals in prison, including through the pursuit of non-custodial options, including through use of traditional restorative and rehabilitative approaches.
13. In relation to transitional justice mechanisms:
- Indigenous peoples and indigenous peoples' representative institutions should be consulted and involved in all stages of the establishment and carrying out of transitional justice mechanisms.
  - Truth commissions should be guided by and should make explicit reference to the Declaration on the Rights of Indigenous Peoples.
  - Truth commissions should recognize and address the historical injustices experienced by indigenous peoples, as well as how failures to recognise indigenous peoples' self-determination historically and today have created conditions for human rights violations.
  - Truth processes should be linked to larger outreach and education efforts. These efforts should include explaining important justice issues, such as self-determination, to the broader public.
  - Truth processes and reparations programs should be designed in a way that respects the cultures and values of indigenous peoples.

### **C. Indigenous Peoples**

14. Indigenous peoples should strengthen advocacy for the recognition of their justice systems.
15. Indigenous peoples' justice systems should ensure that indigenous women and children are free from all forms of discrimination and should ensure accessibility to indigenous persons with disabilities.
16. Indigenous peoples should explore the organization and running of their own truth-seeking processes.
17. Indigenous peoples should strive for explicit inclusion of their particular interests in transitional justice initiatives in those cases where indigenous peoples are one among many groups that suffered human rights abuse.
18. Indigenous peoples should ensure that all persons are effectively represented in transitional justice processes, especially women.

### **D. International Institutions**

19. The Declaration should guide the efforts of UN system entities and mandates, including the Special Rapporteur on truth, justice, reparations and guarantees of non-recurrence.

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

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

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

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

**E. National human rights institutions**

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

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