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Expert Mechanism on the Rights of Indigenous Peoples

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**United Nations Declaration on the Rights of Indigenous Peoples**

**Compilation of References to Indigenous Women and Girls in  
Reports and Advice of the Expert Mechanism on the Rights of  
Indigenous Peoples (1<sup>st</sup> to 6<sup>th</sup> Sessions)**

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## I. Introduction

1. This compilation of references to Indigenous women and girls was initially presented by International Chief Littlechild on behalf of the Expert Mechanism on the Rights of Indigenous Peoples at the 1<sup>st</sup> Global Conference on Indigenous Women, held in Peru from October 28<sup>th</sup> to 30<sup>th</sup>, 2013

## II. Access to justice in the promotion and protection of the rights of Indigenous Peoples. Study by the Expert Mechanism on the Rights of Indigenous Peoples. 30 July 2013. (A/HRC/24/50)

2. The references are as follows:

4. Access to justice is of particular importance “given the gravity of the issues facing indigenous peoples, including discrimination in criminal justice systems, particularly for indigenous **women** and youth. Overrepresentation of indigenous peoples in incarceration is a global concern.” It raises issues of both procedural fairness and substantive justice, including fair, just and equitable remedies for violations of human rights. Access to justice cannot be examined in isolation from other human rights issues, including structural discrimination, poverty, lack of access to health and education, and lack of recognition of rights to culture and lands, territories and resources.

15. Under international law, States must take positive measures to enable realization of human rights, including through the removal of economic, social and cultural barriers to access to justice. In addition to the adoption of legislative measures, such measures may include administrative, financial, educational and social measures, the provision of judicial remedies, and the establishment of national commissions or other appropriate bodies. The Committee on Economic, Social and Cultural Rights has found that positive measures to be taken by States in relation to the fulfilment of economic, social and cultural rights include making available and accessible appropriate remedies and establishing appropriate venues for redress such as courts, tribunals or administrative mechanisms that are accessible to all on an equal basis, including the most disadvantaged men and **women**. In the light of the historic abuses experienced by indigenous peoples, the International Convention on the Elimination of All Forms of Racial Discrimination is particularly noteworthy, as it recognizes the need for special measures to deal with discrimination.

### VI. Indigenous peoples’ legal systems

49. Tribal justice systems are diverse. In some cases, indigenous justice systems employ adversarial processes while others conduct traditional dispute resolution. Many indigenous courts apply written or positive law and others are guided by unwritten customary laws, traditions and practices that may be learned primarily by example and through oral teachings. Indigenous justice systems often reflect closely the cultures and mores of the peoples concerned, contributing to their legitimacy. In some cultures, indigenous **women** play an important role, such as the Naga **women** in north-east India.

51. Despite their long usage, there may also be challenges associated with the administration of traditional justice. These include the difficulties of applying complex norms that may vary considerably among local communities. This may also include processes that give collective concerns paramount importance over individual rights, such as in the context of domestic or sexual violence against **women** and **girls**.

55. Indigenous peoples often continue to struggle to have their institutions and systems, including legal systems, traditional laws and approaches to justice, recognized.

In some cases, customary laws are recognized in legislation but often with limitations, subject to jurisdictional limitations or so-called repugnancy clauses, which provide that customary laws are recognized where they do not conflict with domestic laws. Such provisions undermine and discriminate against indigenous peoples' legal systems. However, there may be a growing recognition of the need for greater tribal authority over criminal matters, as evidenced, for example, by the 2013 re-enactment of the **United States Violence against Women Act**, which included landmark provisions reducing federal restrictions on tribal jurisdiction and empowering Native American tribal authorities to prosecute non-Native Americans for abuses committed on tribal lands.

## A. Women

### 1. Barriers

62. Multiple discrimination, structural violence and poverty are among the root causes of indigenous **women's** lack of access to justice. Indigenous **women** are disproportionately represented in the criminal justice system and, in some cases, the numbers are growing. In Canada, for example, in 2010/11, Aboriginal **women** accounted for over 31.9 per cent of all federally incarcerated **women**, representing an increase of 85.7 per cent over the previous decade. Reference can be made to the recently published report **Breaking the Silence on Violence against Indigenous Girls, Adolescents and Young Women** produced by the United Nations Children's Fund (UNICEF), the United Nations Population Fund (UNFPA), the ILO, **UN-Women** and the Special Representative of the Secretary-General on Violence against Children.

63. In many regions, indigenous **women** face significant barriers to criminal justice at all stages. They can experience a higher incidence of violence, including sexual violence, and an increased risk of violations to their sexual and reproductive health and rights, including an increased risk of HIV/AIDS in prisons. The ability of indigenous justice systems to address violence experienced by indigenous **women** is sometimes limited by State-imposed jurisdictional restrictions. In some cases, there may also be a need for tribal justice systems to strengthen their willingness and ability to protect indigenous **women** and **girls** from violence. Moreover, in some instances, traditional justice systems are male dominated, and may not adequately address indigenous **women's** access to resources..

64. Where traditional justice systems are unable to address violence against indigenous **women**, they must turn to the national justice system. However, in some instances, allegations of police abuse, including excessive use of force and physical and sexual assault, exist, leaving indigenous **women** in a precarious situation with few options in terms of reporting abuse. For those living in remote regions, law enforcement may not be on hand to respond to reports or to conduct a prompt investigation, and **women** may not have access to forensic examinations often used to gather physical evidence of sexual violence.

### 2. Remedies

65. International human rights law requires that States take all measures to ensure equality before the law. States are also to ensure **women's** equal right to conclude contracts and administer property. **The Committee on the Elimination of**

**Discrimination against Women** has noted with concern the lack of **women**, including indigenous **women**, and has called for gender-sensitization training of justice officers. The Committee has further noted that laws or customs that limit a woman's access to legal advice or ability to seek remedy before courts, or accord lesser value to a female testimony, violate the right to equality before the law.

99. Additional requirements for transitional justice in the indigenous context include that truth-seeking processes should not be viewed as a tool to legitimize the current governance structures but rather should proceed on a nation-to-nation basis. In addition, they should be designed to focus on historical as well as contemporary grievances suffered collectively. They should also be considered as part of a much broader strategy to address ongoing human rights abuses suffered by indigenous peoples, including, for example, political empowerment, and implementation of economic, social and cultural rights. Truth commissions must be accessible to indigenous peoples, which can include ensuring processes in indigenous languages and/or interpretation, and must ensure the participation of indigenous **women** and youth. Because the sharing of traumatic experiences can lead to retraumatization, culturally appropriate support services must be provided.

#### ADVICE

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

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

### III. Report of the Expert Mechanism on the Rights of Indigenous Peoples on its Sixth Session. 8-15 July 2013 (A/HRC/24/49).

3. The references are as follows:

Proposal 1: Continuation of the access to justice study

5. The Expert Mechanism on the Rights of Indigenous Peoples proposes that Human Rights Council authorize the Expert Mechanism to continue its study on access to justice in the promotion and protection of the rights of indigenous peoples, with a focus on restorative justice and indigenous juridical systems, particularly as they relate to achieving peace and reconciliation. This would include an examination of access to justice related to indigenous **women**, children, youth and persons with disabilities.

35. Participants expressed support for the Alta Outcome Document and the recommendations of the Indigenous Global Coordinating Group and called upon States to engage indigenous peoples in constructive dialogue at the national level. Several indigenous people's (sic) representatives made recommendations concerning the need for the full, effective and equal participation and consultation of indigenous peoples through all stages of the process, including in the development of the action-oriented outcome document of the World Conference. Participants also emphasized the need to ensure the equal participation of indigenous **women**, youth and persons with disabilities. Many participants voiced the importance of ensuring the availability of

sufficient financial resources to enable such participation and recommended different forms of participation, including webcasting. Numerous States acknowledged the Alta Outcome Document, noting that it would be considered in the preparation for the World Conference.

45. Participants also referred to the mechanism's follow-up report on indigenous peoples and the right to participate in decision-making, with a focus on extractive industries (A/HRC/21/55). Interventions highlighted the impact of extractive industries in the lives of indigenous peoples, including the negative effects on health, lands, the environment, cultures and livelihoods. Concerns were expressed more specifically about the negative effects on indigenous **women and girls**, and conflict between indigenous peoples and businesses

58. Ms. McKay informed participants about the discussion on **women**, youth and children during the Expert Seminar, highlighting this discussion within the context of the study and advice on access to justice. She welcomed further dialogue on the topic with participants in this session, noting statements related to sexual and reproductive rights of indigenous **women** in custody.

59. Ms. McKay highlighted the barriers to access to justice for indigenous **women**, youth and children, which include multiple discrimination, structural violence, high rates of incarceration and poverty, and the need to involve youth in truth and reconciliation commissions. Remedies highlighted included taking measures aimed at ensuring equality before the law. Concrete examples of this include gender-sensitization training of justice officers (in this case, with regard to indigenous **women's** issues in particular), increased appointment of **women** to the judiciary, and legal reforms in areas where access to legal mechanisms is formally prohibited for **women**. She urged States to work in partnership, especially with indigenous **women**, to achieve equality before the law, particularly in the context of State and indigenous judicial systems.

68. Some States requested the panellists to provide more information about examples of good practices. Ms. McKay highlighted the efforts to utilize alternative justice systems to address the particular needs of indigenous **women** as one example and referred participants to the plans of the Expert Mechanism and Columbia University to publish the proceedings of the Expert Seminar.

74. Ms. de Carvalho welcomed the 20 beneficiaries of the Voluntary Fund and emphasized its role in ensuring the participation of indigenous peoples in United Nations meetings. She noted that since 2012, the Voluntary Fund has supported the participation of indigenous peoples in the sessions of the Permanent Forum, the Expert Mechanism, the Human Rights Council and the UPR process, as well as the Human Rights Committee, the Committee on the Rights of the Child, the Committee on the Elimination of Racial Discrimination, the Committee on Economic, Social and Cultural Rights, the Committee Against Torture, the Committee on the Rights of Persons with Disabilities and the **Committee on the Elimination of Discrimination against Women**.

84. Specifically, participants highlighted challenges concerning the rights of indigenous peoples to access to justice; issues related to the protection of indigenous peoples' lands, territories and resources; the situation of human rights defenders and assassination of indigenous leaders; the impact of climate change; violence against indigenous **women** and their lack of representation in decision-making; and the marginalization of indigenous persons with disabilities. Some participants also stressed the importance of the role of the media in the promotion of the Declaration..

88. States highlighted their efforts to find new ways of translating the rights set out in the Declaration on the Rights of Indigenous Peoples into concrete benefits for

indigenous peoples. They shared many examples of the programmes and laws developed to implement the Declaration. States also highlighted public policies that promote the participation, consultation, self-governance, economic development and entrepreneurship of indigenous peoples; indigenous cultures; and the overall improvement of living standards of indigenous peoples. States also highlighted the situation of indigenous **women and girls** and their efforts to ensure the effective participation of **women and girls** in decision-making processes. Some States noted the Expert Mechanism's role in providing technical advice in the creation of specialized mechanisms to realize the rights enshrined in the Declaration.

106. Participants recommended that the Expert Mechanism conduct studies on peace and security; violence against **women and girls**; the situation of indigenous human rights defenders; cultural heritage and sacred sites; climate change and the human rights of indigenous peoples; land, territories and resources; traditional livelihoods; the role of **women** as entrepreneurs; the preservation of indigenous cultures; indigenous governance; the rights of indigenous persons with disabilities; and the post-2015 development agenda.

107. Participants also recommended that the Expert Mechanism continue to undertake its study on access to justice in the promotion and protection of indigenous peoples with a focus on challenges and barriers for access to justice for indigenous **women**, children, youth and persons with disabilities; peace, including in peace and conflict resolution processes; lands, territories and resources; indigenous peoples' understanding of restorative justice; non-repetition and non-recurrence; justice for historic human rights violations including those which have inter-generational and ongoing impacts; the role of indigenous peoples' traditional justice systems, authorities and institutions; and the role of treaties, agreements and other constructive arrangements between States and indigenous peoples.

#### **IV. Final summary of responses to the questionnaire seeking the views of States and indigenous peoples on best practices regarding possible appropriate measures and implementation strategies to attain the goals of the United Nations Declaration on the Rights of Indigenous Peoples. Report of the Expert Mechanism on the Rights of Indigenous Peoples. 25 April 2013. (A/HRC/EMRIP/2012/3)**

4. The references are as follows:

All the rights in the Declaration

17. The Plurinational State of Bolivia has passed Law No. 3760 of 7 November 2007, on the United Nations Declaration on the Rights of Indigenous Peoples. In its response, Bolivia provided extensive information on laws and programmes that are relevant to the implementation of the rights in the Declaration, including in the areas of education and languages, communications and media, housing, economic policies, food security, land and agricultural development, justice and **women's** rights in the administration of justice in particular, human rights, land, water, consultation processes, decolonization and processes to reduce patriarchy.

23. The Plurinational State of Bolivia has begun a process of recognizing the autonomy of indigenous communities. Several communities have voted in favour of autonomy and have begun the process of developing their statute for autonomy with technical support

from the Ministry of Autonomy. The process recognizes the need for equal participation of **women** in the governance structure.

90. The Plurinational State of Bolivia particularly demonstrated good practices of gender equality by recognizing the need to ensure that programmes specifically target and benefit indigenous **women**. As part of its strategy to address violence against indigenous **women**, the national plan of Australia includes strengthening indigenous communities through the fostering of leadership of indigenous **women** within communities and broader Australian society.

## **V. Summary of responses from the questionnaire seeking the views of States on best practices regarding possible appropriate measures and implementation strategies in order to attain the goals of the United Nations Declaration on the Rights of Indigenous Peoples. Report of the Expert Mechanism on the Rights of Indigenous Peoples. 16 August 2012 (A/HRC/21/54)**

5. The references are as follows:

12. The Plurinational State of Bolivia has passed Law No. 3760 of 7 November 2007, on the United Nations Declaration on the Rights of Indigenous Peoples. In its response, Bolivia provided extensive information on laws and programmes that are relevant to the implementation of the rights in the Declaration, including in the areas of education and languages, communications and media, housing, economic policies, food security, land and agricultural development, justice and **women's** rights in the administration of justice in particular, human rights, land, water, consultation processes, decolonization and processes to reduce patriarchy.

16. Bolivia has begun a process of recognizing the autonomy of indigenous communities. Several communities have voted in favour of autonomy and have begun the process of developing their statute for autonomy with technical support from the Ministry of Autonomy. The process recognizes the need for equal participation of **women** in the governance structure.

79. Bolivia particularly demonstrated good practices of gender equality by recognizing the need to ensure programmes specifically target and benefit indigenous **women**.

## **VI. Role of languages and culture in the promotion and protection of the rights and identity of indigenous peoples. Study of the Expert Mechanism on the Rights of Indigenous Peoples. 16 August 2012 (A/HRC/21/53)**

6. The references are as follows:

15. The UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage (2003) recognizes that “communities, in particular indigenous communities, groups, and in some cases, individuals, play an important role in the production, safeguarding, maintenance and re-creation of intangible cultural heritage.” The UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005) includes references to indigenous peoples and requires that States parties endeavour to create an environment which encourages groups to “create,



produce, disseminate, distribute and have access to their own cultural expressions, paying due attention to the special circumstances and needs of **women** as well as various social groups, including persons belonging to minorities and indigenous peoples.”

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

44. Families and, in particular, indigenous **women**, are repositories of indigenous peoples’ traditions and culture and can play a central role in the retention, transmission and revitalization of indigenous peoples’ languages. As a caregiver, a mother has an integral role in passing on indigenous languages to her children and embedding in them the importance of language. Concern has been raised about legislation and policies that discriminate against indigenous **women** and the impact that has had on the retention of languages and cultures.<sup>50</sup> Notably, the Declaration requires that particular attention be paid to the rights and special needs of indigenous **women**, youth and children, inter alia (art. 22).

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

79. In many indigenous peoples’ communities, men and **women** have distinct and gendered responsibilities to transmit their knowledge. Frequently, the gendered roles are of equal importance and should receive equal protection and acknowledgement. However, indigenous **women** have a unique role to play in the protection and promotion of indigenous peoples’ cultures. Further, they may be the principal victims of violations of indigenous peoples’ rights to their cultures, meaning that they deserve considerable attention in the protection and promotion of indigenous peoples’ cultures consistent with article 22 of the Declaration.

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

## VII. Report of the Expert Mechanism on the Rights of Indigenous Peoples on its Fifth Session. 9-13 July 2012 (A/HRC/21/52)

7. The references are as follows:

D. Proposals

Proposal 1: Indigenous peoples and access to justice

The Expert Mechanism on the Rights of Indigenous Peoples:

- (a) Refers to paragraph 1 (b) of Human Rights Council resolution 6/36;

- (b) Proposes that the Human Rights Council request the Expert Mechanism to prepare a study on indigenous peoples and access to justice given the gravity of the issues facing indigenous peoples, including discrimination against indigenous peoples in criminal justice systems, particularly for indigenous **women** and youth. Overrepresentation of indigenous peoples in incarceration is a global concern. Good practices, particularly those associated with traditional justice systems, would be examined.

15. Grand Chief Edward John, Chairperson of the Permanent Forum on Indigenous Issues, noted the coordination between the three United Nations mechanisms on indigenous peoples and emphasized the overarching goal of implementing the United Nations Declaration on the Rights of Indigenous Peoples. He discussed the importance of recognizing and protecting indigenous peoples' languages and cultures in context of the implementation of the human rights of indigenous peoples and expressed particular concern relating to the continued violence against indigenous **women**.

37. Ms. Lasimbang emphasized the need for recognition and acceptance of the positive value of indigenous languages and cultures to ensure cultural flexibility in local governing structures, and to provide means to communities for protecting languages and cultures. She also noted that programmes and measures to address the promotion and protection of indigenous languages and culture should not be implemented without adequate reflection and the participation of indigenous peoples themselves. Ms. Lasimbang also expressed concern about existing patriarchal systems that discriminated against **women**, thus hampering their roles in transmitting linguistic and cultural values and norms.

76. Observers recommended that the Expert Mechanism conduct studies on, inter alia: access to justice; the militarization of indigenous peoples; indigenous peoples' tribal governance; the right to self-determination; climate change; best practices on **women** and economic development; and, as a follow-up, on indigenous peoples' permanent sovereignty over land and natural resources.

## **VIII. Final Report of the Study on Indigenous Peoples and the Right to Participate in Decision-Making. Report of the Expert Mechanism on the Rights of Indigenous Peoples. 17 August 2011 (A/HRC/18/42)**

8. The references are as follows:

28. In the Philippines, the Indigenous Peoples Rights Act 1997 established a consultative body comprising traditional leaders, elders and representatives from the **women** and the youth sectors of different indigenous peoples, which advises the National Commission on Indigenous Peoples on matters relating to the problems, aspirations and interests of indigenous peoples. In 2003, the Commission adopted a set of guidelines for the constitution and operationalization of the consultative body, which recognize the constitution of consultative bodies at the national, regional and provincial levels, as well as at the community level when the need to hold focused consultations arises. The consultative body evaluates, inter alia, important indigenous peoples' issues and concerns and provides input to and makes recommendations on policies for adoption by the Commission.

- D. Indigenous **women** in decision-making

36. Under human rights law and the Declaration on the Rights of Indigenous Peoples, **women** have the right to equality in the exercise of the right of indigenous

peoples to participate in both internal and external decision-making processes and institutions. There is still much to be done to address deficiencies.

37. Within many indigenous societies, **women** continue to have important decision-making roles, including in cultural and ceremonial events, where interaction, learning and intergenerational transfer of knowledge take place. Through these processes, **women** have the opportunity to empower themselves and others. **Women** also make important decisions daily with respect to farming and the choice of crops, as well as about the daily supply of food for the family, thus contributing to the livelihoods of families and communities.

38. Among the Naga women in north-east India, where indigenous communities continue to face conflict, indigenous women have been playing an important role as peacekeepers. Decisions made by the Naga **women** in tense situations have been acknowledged by many to have helped to diffuse conflicts and maintain peace.

39. The Expert Mechanism received information about the Nupi Keithel – a traditional indigenous **women’s** market guild in Manipur, India – as an example of indigenous **women’s** participation in State decision-making, albeit through peaceful protest and agitation rather than through formalized processes to make the voice of indigenous **women** heard. The Nupi Keithel successfully fought for inclusion in governmental processes to consider the construction of a supermarket in the environs of the markets of the Nupi Keithel. As a result, and consistent with the demands of the Nupi Keithel **women**, a new building was constructed to house “their” market.

Annex:

31. 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.

## **IX. Report of the Expert Mechanism on the Rights of Indigenous Peoples on its Fourth Session. 11-15 July 2011 (A/HRC/18/43)**

9. The references are as follows:

Proposal 5:

(d) Proposes that the Human Rights Council support the full participation of indigenous peoples, including youth and **women**, at all stages of the World Conference on Indigenous Peoples.

30. Observers raised several issues, such as the challenges associated with the implementation of the right to participate in decision-making at the national level, the importance of the right to participate in decision-making processes associated with public policies, the participation of **indigenous women** in decision-making, the right to self-determination, the right to free, prior and informed consent in relation to indigenous peoples’ lands, natural resources and territories, and deficiencies in funding and the lack

of infrastructure to support indigenous peoples' participation and the right to use traditional systems of decision making. Other observers highlighted the fact that, in the matter of participation in decision-making, national human rights institutions can represent a bridge between the State and indigenous peoples. Several States highlighted good practices and the improvements made in the area.

## **X. Progress Report on the Study of Indigenous Peoples and the Right to Participate in Decision-Making. Report of the Expert Mechanism on the Rights of Indigenous Peoples'. 23 August 2010 (A/HRC/15/35)**

10. The references are as follows:

13. Articles 7 and 8 of the **Convention on the Elimination of All Forms of Discrimination against Women** make clear that **women's** right to participation in the political and public life of a State should be on equal terms with that of men, including in the international area. While the Convention does not specifically make reference to the rights of **indigenous women**, the articles must be read in the light of article 22 of the Declaration on the Rights of Indigenous Peoples, which ensures that the special needs of **indigenous women** should be protected against all forms of discrimination. Similarly, although the Beijing Declaration and Platform for Action does not explicitly refer to the participation of indigenous **women**, the **Commission on the Status of Women** has now called for the participation of indigenous women in both the Beijing Platform and the Millennium Development Goals.

E. The role of indigenous women in decision-making

60. Generally, indigenous **women** are not part of official decision-making authorities, although they may participate in all deliberations on an equal footing with men. It is important to note that indigenous **women** have not always been excluded from decision-making, and traditionally played, and may still play, a significant role. For example, in North America prior to colonization, **women** played a much more prominent role in decision-making, but the recognition of male roles by colonizers contributed to a perception of male dominance that was subsequently perpetuated. Among the Kadazan in Malaysia, for instance, the bobohizan or priestess played an active part in the council of elders and **women** still play significant leadership roles in the intergenerational transfer of knowledge, particularly conservation, language, culture, spirituality and social relations.

61. Some indigenous laws may also be seen as being unfair to **women**, whereas the Declaration on the Rights of Indigenous Peoples establishes that laws and practices must be made compatible with internationally recognized human rights standards. Indigenous **women** now demand representation and ask for customary processes to be reformed, lobbying their traditional institutions to include **women** representatives at various levels of decision-making and to recognize **women's** potential for leadership. The rising literacy and awareness levels of indigenous **women** provide scope for greater involvement in seeking participation in governance, including their commitment as keepers of traditional knowledge. Furthermore, most governments are now more sensitive to the representation of **women** in decision-making spheres and there is now greater awareness of their involvement at the national level. It is also recognized that, since learning takes place in cultural and ceremonial events where women continue to play a crucial role, **women** should play a decision-making role in such spheres.

63. Indigenous communities continue to maintain and adapt decision-making processes and institutions in dynamic ways, as evidenced by the involvement of wider sectors of the community, such as **women** and youth leaders. It should be noted, however, that while changes, such as the incorporation of voting standards, are sometimes voluntary, in many instances they are not by choice but due to external influences, including the State and other factors. Nevertheless, indigenous peoples continue to adapt their processes to find workable solutions. For example, today, by and large, electoral systems for selecting traditional leadership and for internal decision-making have replaced traditional processes of decision-making, a practice which was once considered culturally foreign to many indigenous peoples. In many ways, voting shortcuts and individualizes decision-making processes; it can often be more limited than traditional procedures in terms of addressing dissent and the concerns of minority voices within a community, and therefore may not encourage cohesion within a community. However, many indigenous communities have managed to integrate key elements and principles of traditional decision-making systems into modern electoral systems, thus maintaining important aspects of internal decision-making processes within more contemporary electoral structures.

66. The deficiencies of not including **women** in traditional decision-making systems also need to be confronted. This challenge provides an opportunity to address issues that governments, non-governmental organizations and social scientists often highlight in relation to indigenous systems.

100. It is also important that all sectors of indigenous society have the opportunity to engage and participate in consultative and decision-making structures. This is especially true for **women** and youth, who are often marginalized from these processes.

## **XI. Study on the Lessons Learned and Challenges to Achieve the Implementation of the Right of Indigenous Peoples to Education. Report of the Expert Mechanism on the Rights of Indigenous Peoples. 31 August 2009 (A/HRC/12/33)**

11. The references are as follows:

9. Article 26 of the Universal Declaration of Human Rights states that everyone has the right to education. This right is reaffirmed, contextualized and further elaborated upon in numerous other international instruments, including the International Covenant on Economic, Social and Cultural Rights (arts. 13-14), the International Covenant on Civil and Political Rights (art. 18 (4)), the Convention on the Rights of the Child (arts. 28-31), the International Convention on the Elimination of All Forms of Racial Discrimination (art. 5 (e) (v)), the **Convention on the Elimination of All Forms of Discrimination against Women** (art. 10), the International Labour Organization (ILO) Convention concerning Discrimination in Respect of Employment and Occupation (Convention No. 111, art. 3), the Convention concerning Basic Aims and Standards of Social Policy (Convention No. 117, arts. 15-16), the Convention against Discrimination in Education, World Declaration on Education for All (UNESCO, 1990), the Vienna Declaration and Programme of Action (part I, para. 33, and part II, para. 80), and the outcome document of the Durban Review Conference (para. 72).

59. The improvement of infrastructure, particularly of education centres in remote villages, is necessary to allow indigenous children equal access and opportunities to obtain quality education. Home schooling, a remote learning model, provides an opportunity for children in remote villages to receive an education without having to attend boarding schools. Funding priorities should include providing quality education

to nomadic communities and indigenous peoples in remote areas and to **women and girls** through mobile school and scholarships.

H. Networking and participation

84. A former Special Rapporteur recommended the participation of indigenous peoples in all phases of the planning, design, implementation and evaluation of reforming education systems. Shared decision-making and involvement of community leaders and parents is critical to the successful implementation of indigenous peoples' right to education.<sup>35</sup> As such, training of community leaders, especially women, and responding to the needs of the community to support community education initiatives are considered complementary activities.

C. Issues affecting women

96. In certain communities, social norms prevent indigenous **girls** from attending schools. Families often prefer **girls** to remain at home to perform domestic chores and care for children and siblings; others prefer their daughters to be married off at a young age. This, coupled with other ongoing exclusion and discrimination of indigenous **girls and women**, has led to serious consequences for the community and society.

97. Measures to ensure the provision of education at all levels for indigenous **girls and women** should be seen as a matter of urgency. 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**.

Annex:

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.

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**.

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

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.

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**.

## **XII. Report of the Expert Mechanism on the Rights of Indigenous Peoples in its Second Session. 10-14 August 2009 (A/HRC/12/32)**

12. The references are as follows:

42. She summarized the challenges and measures identified in the draft study as being the non-recognition of traditional education and institutions; discrimination and poor access; issues affecting **women**; aid effectiveness; public spending; institutionalization of educational services; governance and creating appropriate curriculum; gaps in educational quality and measurements of achievements.

44. The Chairperson-Rapporteur said that in some communities, indigenous **girls** were prevented from attending schools due to societies' norms. Issues faced include **girls** remaining at home to perform domestic chores and to care for children and siblings, being married off at a young age, and ongoing exclusion and discrimination. She said that instruments of dialogue to help mediate conflicting issues and norms within indigenous societies could include measures to ensure equal access to education for **indigenous girls and women**. She further stated that donors and international agencies should prioritize indigenous peoples' right to education within their programmes and strengthen developing countries' capacities to meet the educational needs of indigenous peoples. Financial support for development of materials, testing curricula and adequate support and incentives for teachers to teach in rural schools is limited, or unavailable. She noted the lack of well-trained, culturally competent teachers as a serious problem which could be resolved through recruitment and deployment of teachers from the community.

## **XIII. Report of the Expert Mechanism on the Rights of Indigenous Peoples on its First Session. Human Rights Bodies and Mechanisms. 1-3 October 2008 (A/HRC/10/56)**

13. The references are as follows:

27. The need for the Expert Mechanism to identify global and cross-cutting issues of significance to indigenous peoples and engage in subsequent studies was stressed on several occasions. Some suggestions were made on potential areas or themes of interest, including the right to land and territories; the right to self-determination; the right to free, prior and informed consent; indigenous refugees and internally displaced persons; customary law; challenges to the implementation of indigenous peoples' rights; treaties; oil and mining industries; the impact of environmental contamination on indigenous peoples' lives; and the specific challenges and rights of indigenous children, **women** and people with disabilities.

37. Indigenous representatives noted that the study should also take into consideration the fact that no actions or measures could be effective if the issue of the

high level of illiteracy among indigenous communities, particularly **women and girls**, was not overcome. It was also important to address the serious lack of educational resources faced by indigenous communities living in remote areas, including human resources, infrastructure and educational materials.

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