27 February 2014

Contribution by the

FEDERAL REPUBLIC OF GERMANY

on the UN Expert Mechanism on the Rights of Indigenous Peoples

In reference to operative paragraph 5:

Germany takes the view that its own national minorities and other ethnic groups within the territory of Germany - all of which enjoy full protection of their rights and fundamental freedoms in Germany - do not fall under the definition of Indigenous Peoples.

Therefore, the request for information on the specific matter, such as restorative justice, indigenous juridical systems and access to justice, is not applicable to Germany.

As for operative paragraph 6:

Germany promotes disaster risk management in the context of its strategy on transitional development assistance. This strategy takes a comprehensive approach that aims to integrate the issue into national and international development agendas as a cross-sectoral theme. At the same time the strategy places great importance on establishing close links with national as well as local disaster risk management and climate change adaptation plans as well as on sound interaction between national and local institutional levels and communities, including indigenous peoples, as key components in transitional development assistance in general and for disaster risk management in particular. Indigenous peoples are often the most vulnerable in a society, but at the same time there is a vast body of indigenous knowledge and skills to recognize, prepare for, cope with and survive disasters. By aiming at actively engaging local populations, including members of indigenous communities, in the decision making processes on disaster risk management, German Development Cooperation as well as German humanitarian assistance tries to preserve and incorporate local and indigenous knowledge and skills/practice into DRR and preparedness policies, to better reduce communities' risks and vulnerabilities. This is in line with the human rights strategy of German Development Cooperation as well as the strategy for German humanitarian assistance that is committed to the protection of the rights of indigenous peoples, including their active participation in decision making processes based on the principle of free prior informed consent.

In reference to the questionnaire:

With identical reasoning to our reply above for paragraph 5, Germany takes the view that its own national minorities and other ethnic groups within the territory of Germany - all of which enjoy full protection of their rights and fundamental freedoms in Germany - do not fall under the definition of Indigenous Peoples.

Therefore, the request for information, in form of a questionnaire, is not applicable to Germany itself.

However, in relation to question number two of the questionnaire, Germany would like to add some information in regard to our foreign and development policy:

Have specific legal, policy or other measures been adopted especially to implement any or all rights in the Declaration? If yes:

- Please provide detail about the measures adopted to implement the Declaration with reference to the specific rights in the Declaration, for example self-determination, participation in decision making, cultures and languages, non-discrimination and equality, lands, territories and resources and treaties, agreements and other constructive arrangements with states.

German Development Policy aims to contribute to poverty reduction and sustainable development by improving the implementation of the human rights obligations undertaken by Germany and the developing countries. Accordingly, the Human Rights Strategy of the Federal Ministry for Economic Cooperation and Development (BMZ) references the core human rights conventions as well as, where indigenous peoples' rights are concerned, ILO Convention 169 and the UN Declaration on the Rights of Indigenous Peoples (explicitly mentioned on pp. 19 and 25).

The BMZ Strategy "Human Rights in German Development Policy" (2011, http://www.bmz.de/en/publications/type_of_publication/strategies/Strategiepapier305_04_2011.pdf) is an overarching framework which provides for the mainstreaming of the human rights-based approach throughout all priority areas and sectors of development cooperation. It is binding for all institutions involved in bilateral German development cooperation.

In Section 4.4 "*Promoting Inclusive Development",* the BMZ Human Rights Strategy aims in particular to strategically promote the rights of indigenous peoples with explicit reference to ILO Convention 169 and UNDRIP, including the principle of free, prior and informed consent, as essential landmarks which need to be adhered to in any planning of development measures which might affect indigenous peoples and local communities (pp. 19-20).

In order to operationalize the BMZ Human Rights Strategy, Guidelines on incorporating human rights standards and principles, including gender, in programme proposals for bilateral German Technical and Financial Cooperation (BMZ Human Rights Guidelines) were adopted by the BMZ in 2013.

The BMZ Human Rights Guidelines list human rights risk areas and explicitly mention participation rights. In regard to indigenous peoples the following collective rights are explicitly mentioned:

- Right to self-determination and political participation;
- Right to preserve cultural heritage and traditional knowledge;
- Right of disposal over commonly administered land and natural resources.

The principle of free, prior and informed consent (FPIC) which derives from these rights is explicitly referred to as well as the United Nations Declaration on the Rights of Indigenous Peoples (see pp.2-3). The Guidelines stipulate that the principle of FPIC must be respected in development measures that affect the rights of indigenous peoples.

- *Is the Declaration explicitly mentioned in such measures?*

Yes, Section 4.4 and Annex p. 25 (see above).

- *Have these measures been successful in attaining goals of the Declaration?*

With the publication of the Human Rights Strategy and the Guidelines in 2011 and 2013, respectively, German development policy is still in the process of operationalising and implementing strategic priorities reflected in these documents and there has been no comprehensive evaluation to date. However, as a side-effect the documents as such encouraged a fruitful discussion among experts and pertinent civil society organisations in and outside Germany.

- *Were indigenous peoples included in the development of these measures?*

The Strategy Paper and further concept papers on indigenous peoples' involvement in development measures (see the guidelines mentioned above) have been discussed together with indigenous representatives and civil society organisations in a number of expert rounds and thematic workshops since 2003.