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Statement of
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Special Rapporteur on the Rights of Indigenous Peoples

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Mr. President,

Distinguished delegates, Indigenous Peoples' Representatives

Ladies and gentlemen,

I have the honor to present today my fourth annual report to the Human Rights Council. I would like to start by expressing my gratitude to the numerous States, indigenous peoples, and others, and in particular to the Office of the High Commissioner for Human Rights, for the support they have provided as I have carried out my mandate over the past year.

Mr. President,

2017 marks the tenth Anniversary of the adoption the United Nations Declaration on the Rights of Indigenous Peoples in the General Assembly. The resolution establishing my mandate specifically sets out that I should promote the Declaration and international instruments relevant to the advancement of the rights of indigenous peoples. Closing the gap between the recognition of indigenous peoples' rights at the international and national levels and improving actual implementation on the ground remain my main pre-occupations. In my capacity, I have participated actively in celebrating the anniversary but have also critically examined and taken stock of progress made in the last decade as detailed in the report I present to the General Assembly next month (A/72/186). I have recently returned from an anniversary event hosted by the United Nations Permanent Forum on Indigenous Issues and the University of Colorado in Denver, Colorado to celebrate this important milestone.

In April this year, I spoke in the General Assembly during the High Level Event commemorating the Anniversary of the Declaration. During its adoption in 2007, I also had the honour to address the General Assembly as the Chairperson of the United Nations Permanent Forum on Indigenous Issues. Ten years later, I

note there has been certain progress in the implementation of the Declaration, especially in terms of the emergence of national laws and policies to protect the rights of indigenous peoples in several countries.

It is very significant that national courts, including Supreme Courts and Constitutional Courts among others, have cited the Declaration as a source of law in their jurisprudence. Of particular importance is the application of the Declaration as a source of law in the jurisprudence of regional human rights mechanisms, notably the Inter-American Court on Human Rights and the African Court on Human and Peoples' Rights.

At the international level, the Declaration has bolstered the focus that international human rights treaty bodies dedicate to indigenous rights. The provisions in the Declaration elaborate upon existing binding rights in the specific cultural, historical, social and economic circumstances of indigenous peoples and the various human rights treaty bodies have drawn upon the Declaration in their recommendations to States.

I also wish to underline the importance of decisions adopted at the Conferences of Parties to the UN Framework Convention on Climate Change and to the Convention on Biological Diversity, all of which refer to standards set out in the Declaration. During the negotiations of the Paris Agreement in December 2015, I, together with the Special Rapporteur on human rights and the environment and the Office of the United Nations High Commissioner for Human Rights successfully advocated for the inclusion of provisions on indigenous peoples and human rights. I also took part in the Marrakesh Conference of Parties of the UNFCCC in 2016 which adopted a decision to establish a platform for the exchange of experiences and sharing of best practices of indigenous peoples and local communities on climate change mitigation and adaptation in a holistic and integrated manner. I contributed my views on how to operationalize this

platform which has the potential of reinforcing the contributions of indigenous peoples to climate change solutions and enabling their full participation at global and national climate change processes.

I am furthermore encouraged that the 2030 Development Agenda and the Sustainable Development Goals set targets and indicators relevant for indigenous peoples and that the United Nations has adopted a System Wide Action Plan for the Rights of Indigenous Peoples last year. I will certainly look forward to seeing more efforts in effectively implementing these policies and decisions.

Another achievement is the strengthening of indigenous peoples' movements in many parts of the world. The Declaration, no doubt, has been a tool for empowerment of indigenous peoples. Indigenous peoples are getting better organized and equipped in their efforts to assert and claim their rights. This progress, however, is challenged by current obstacles, particularly by the roll-back on the rights of indigenous peoples to freely organize and strengthen their capacities to assert and claim their rights. The criminalization and attacks against indigenous leaders and community members who seek to defend their land rights is a serious challenge that needs to be addressed by the duty bearers.

Beyond the increasing recognition of the moral and legal obligations enshrined in the Declaration, we seem to have arrived to an impasse, in which the Declaration is not openly challenged but remains far from being implemented. I have held constructive but worrying dialogues with Governments and other actors during which they openly recognize the problems and needs, and their own inability to carry out the needed measures for the implementation of their duties and responsibilities. The mere recognition of the problems and their limitations to solve them does not liberate them from further scrutiny or from effective compliance.

To respond to this situation and adequately promote the Declaration, successive Special Rapporteurs have made efforts to refine the working procedures so they are more effective, within the framework of the code of conduct of the Council which guides our work.

The mandate of the Special Rapporteur on the rights of indigenous peoples plays an essential role in monitoring and advancing the effective implementation of international human rights standards related to indigenous peoples, particularly the UN Declaration. Besides dealing with allegations of human rights violations and country monitoring functions, the mandate provides advice and technical assistance. It is my hope that States, indigenous peoples, civil society and the UN bodies, programmes, agencies and funds use this mandate to help them implement more effectively the UN Declaration on the Rights of Indigenous Peoples.

For me, the most fitting way to celebrate the 10th anniversary of the Declaration is to honestly identify and confront the obstacles faced for its effective implementation at all levels.

Among the challenges, I, and my two predecessors, have observed that the failure by certain States to recognise indigenous peoples as such is an important barrier to the implementation of the Declaration in several parts of the world. This lack of recognition denies many indigenous peoples their rights enshrined in international human rights law.

While an increasing number of countries are adopting legislation that recognises the rights of indigenous peoples, regrettably there are often glaring inconsistencies between such legislation and other laws.

In order to advance implementation, it is imperative that States undertake thorough harmonisation of their national legal framework with applicable

international human rights standards on the rights of indigenous peoples, particularly the Declaration.

Linked to this is also the importance that legislation be effectively enforced and complied with. The failure to comply and implement decisions affirming the rights of indigenous peoples by the national judiciary as well as judgments by regional human rights courts remains a major concern. I also regret the lack of effective implementation at the national level of recommendations made by human rights bodies.

An important element to translate rights into practice is the adoption of adequate public policies. Public policies need to be based on participation and should address the underlying causes of poverty and marginalisation. The denial to self-determination is a central causal factor in the prevalence of poverty among indigenous communities. In order to overcome this, policy design should be done in consultation with indigenous peoples in order to jointly assess their needs, identify priorities and develop strategic action plans with goals and time frames for implementation.

The lack of adequate data and indicators to measure progress in relation to the policies and measures adopted makes it difficult to assess the adequacy of State initiatives. I have noted this to be a major shortcoming in most of my country visits. Furthermore, widespread efforts in raising awareness on the Declaration and use of it as a tool for reconciliation should also be undertaken.

In this present era where the world faces complex economic, environmental, political and social crises, it is time that nation-states and the UN system join hands with indigenous peoples to solve these crises. Respect, protection and fulfillment of indigenous peoples' rights as enshrined in the United Nations

Declaration on the Rights of Indigenous Peoples would provide long-lasting solutions towards attaining a just and sustainable world.

Areas of work

While seeking to cooperate as appropriate with relevant international mechanisms and institutions, I have engaged in a range of activities within my mandate. The various activities I have carried out can be described as falling within four, interrelated areas of work. These are promoting good practices; thematic studies; country reports; and responding to cases of alleged human rights violations.

In this presentation to the Council, I will focus mainly on my thematic studies and my two country visit reports undertaken this year.

Cases of alleged human rights violations

During the period since I last reported to the Human Rights Council (from 1 June 2016 to 31 May 2017), the mandate has issued 37 allegation letters to 20 countries and to the World Bank. Allegation letters were sent to Australia, Brazil, Canada, Colombia, Democratic Republic of the Congo, Ecuador, Ethiopia, Guatemala, Honduras, India, Kenya, Malaysia, Mexico, Morocco, Nicaragua, Panama, Paraguay, Philippines, Tanzania and United States of America. I wish to thank those Governments who have engaged with the mandate and responded to the alleged human rights violations and encourage those that have not yet responded to do so.

Thematic studies

I now wish to present you with information related to the report which I have submitted to this Council session (A/HRC/36/46), which closes the series of reports which deal with indigenous peoples' rights in the context of

international bilateral investment and free-trade agreements (see reports A/70/301 and A/HRC/33/42). For the third and final report dealing with this topic, I decided to devote my attention on climate change and climate funds and how indigenous peoples' rights are affected by these mechanisms.

Indigenous peoples are among those who have least contributed to the problem of climate change yet are the ones suffering from its worst impacts. They are disproportionately vulnerable to climate change because many of them depend on ecosystems that are particularly prone to the effects of climate change and extreme weather events such as floods, droughts, heat waves, wildfires and cyclones. Some of the most affected regions are small islands, high altitudes, humid tropics, coastal regions, deserts and polar areas. Global warming increases disease risks, changes animal migration routes, reduces biodiversity, causes saltwater inundation of freshwater, destroys crops and results in food insecurity

While indigenous peoples account for 5 per cent of the world's population, they represent 15 per cent of those living in poverty. Some 33 per cent of people living in extreme rural poverty globally come from indigenous communities. Estimates indicate that more than 100 million people across the world risk being forced into extreme poverty by 2030 due to climate change. This carries significant implications for indigenous peoples who are already facing severe socio-economic disadvantages.

Indigenous peoples are not simply victims of climate change but have an important contribution to make to address climate change. Due to their close relationship with the environment, indigenous peoples are uniquely positioned to adapt to climate change. Indigenous peoples are repositories of learning and knowledge on successfully coping with local-level climate change and effectively responding to major environmental changes such as natural disasters.

They play a fundamental role in the conservation of biological diversity, protection of forests and other natural resources, and their traditional knowledge of the environment can substantively enrich scientific knowledge and adaptation activities when taking climate change-related actions.

Indigenous peoples can assist in providing solutions to mitigate and adapt to the effects of climate change. The International Indigenous Peoples Forum on Climate Change and UNEP have noted that indigenous peoples can contribute to numerous potential adaptation activities by drawing on their traditional knowledge. Examples of such activities include documentation of traditional knowledge, climate monitoring and reporting, disaster preparedness, response and early warning systems, rain water harvesting, traditional farming techniques and agriculture, coastal marine management, alternative energy development and the development of sustainable livelihoods. Furthermore, indigenous peoples can play an important role in stopping deforestation by land titling, forest management and conservation and local governance strengthening.

In its Fifth Assessment Report in 2014, The Intergovernmental Panel on Climate Change (IPCC) noted that indigenous knowledge has been effective in developing measures to cope with climate hazards and has contributed to increased food security in many parts of the world. Examples include the Inuit knowledge of climate variability when hunting, the Inca traditions of crop diversification and knowledge of genetic diversity and, in the Sahel in Africa, the use of water harvesting strategies and weather forecasting.

Climate change impacts negatively on a broad range of human rights and indigenous peoples are particularly vulnerable due to the exposure of their traditional lands and territories. Human rights bodies have established that States' human rights obligations include their duty to protect rights-holders against foreseeable environmental impairment of human rights whether or not

the particular environmental harm violates human rights law, and even when the harm is not directly caused by the State. It is important to emphasize that States have specifically committed to international cooperation through a range of international treaties.

Indigenous peoples have been engaged with the climate change processes since 1992, the ratification of the United Nations Framework Convention for Climate Change, and have consistently advocated for respect and protection of their rights. While there are no references to indigenous peoples in the Convention, in subsequent Conference of Parties decisions and in the Paris Agreement, indigenous peoples' rights have been recognised. Respect for human rights must be an integral component in all decisions and actions taken on climate change mitigation and adaptation measures.

In order to prove their commitment to honouring their human rights obligations, States must acknowledge the implications climate change has on human rights in the context of climate change mitigation and adaptation law and policies. As noted by the IPCC, indigenous traditional knowledge systems and practice are a major resource for adapting to climate change and will contribute to making such measures more effective.

Climate finance refers to funding, sourced from public and private sectors, channeled through various mechanisms and funds for climate change mitigation and adaptation projects and programs.

Already in 2009, developed countries committed to a goal of mobilizing US\$100 billion per year by 2020 to address the needs of developing countries in the context of 'meaningful mitigation actions'. However, pledges have remained far below the \$100 billion annual target and financial commitments for loss and damage caused by the effects of climate change remain pending.

There is no reliable data on the amount of climate finance which has reached indigenous peoples' communities. Certain indigenous peoples' communities, organizations or networks have requested NGOs to access climate finance to support projects or programmes which benefit them, and that are implemented by indigenous peoples' themselves. For example, some barriers remain for indigenous peoples to engage effectively with international climate funds. In relation to the Green Climate Fund, the largest international climate fund helping developing countries respond to climate change, indigenous peoples' organizations have yet to be accredited or apply to become accredited entities or executing entities for project. Among the obstacles are the high costs and complexities of preparing funding proposals, which disadvantages indigenous peoples, given their limited resources.

I wish to note as positive that the Green Climate Fund published a draft indigenous peoples' policy for in July this year and circulated it for consultation. During the sidelines of the EMRIP session in July this year, I organized a meeting with indigenous peoples where this draft was presented and discussed. The Policy provides an opportunity for the Green Climate Fund to incorporate indigenous peoples' considerations into its decision-making and operations in ways that not only include safeguard measures of 'do no harm,' but also identify opportunities to 'do good' and improve outcomes.

Climate finance has the potential to reinforce the efforts of indigenous peoples to adapt to the climate change impacts and contribute to climate change mitigation. However, it also has the potential to create adverse impacts which undermine the rights of indigenous peoples. Violations of indigenous peoples' rights have been seen in the implementation of renewable energy projects such as hydroelectric dams and windmills and REDD+ projects.

Regarding climate change funds, indigenous peoples' rights are referred to in the policies and safeguards of the REDD+, the Green Climate Fund, the Adaptation Fund and the Global Environmental Facility. The practical application of these policies however requires continuous independent monitoring. Climate change projects brought to indigenous territories should be mutually agreed upon by the concerned indigenous peoples and the project-holders and should ideally be jointly designed and implemented. Results should also include co-benefits for indigenous peoples. Some climate finance mechanisms still fail to acknowledge the UNDRIP and human rights standards.

The adoption of a human rights based approach to climate finance is crucial.

Country reports

I would also like to refer to my most recent official country visit, which took place to Australia from 20 March to 3 April, upon invitation by the Government. At the end of my visit, after fifteen days of travelling across the country, I regret that I observed overall negative trends despite Australia's commitment to advancing UNDRIP and the rights of indigenous peoples. While the Government has adopted numerous policies to address the socio-economic disadvantage of Aboriginal and Torres Strait Islanders, these policies do not duly respect the rights to self-determination and to full and effective participation in society. Notably, Government policies have failed to reach targets in the key areas of health, education and employment and have led to a growing number of Aboriginal and Torres Strait Islanders being jailed, and have resulted in an escalation of children being removed from their homes.

The high rates of incarceration were described to me as a tsunami affecting indigenous peoples. It is a major human rights concern. The figures are simply astounding. While Aboriginal and Torres Strait Islanders make up only 3% of

the total population, they constitute 27% of the prison population, and much more in some prisons. Unless urgent measures are taken as a national priority, the numbers of imprisoned Aboriginal and Torres Strait Islanders will continue to rise and is expected to reach 50% of the prison population by 2020.

The rate of incarceration of Aboriginal and Torres Strait Islander youth is particularly alarming as are the punitive conditions they are kept in. I visited Cleveland Youth Detention Centre in Townsville, Queensland, where Aboriginal and Torres Strait Islander children constitute 95% of the children detained.

Aboriginal children are essentially being punished for being poor and in most cases, prison will only aggravate the cycle of violence, poverty and crime. I found meeting young children, some only 12 years old, in detention the most disturbing element of my visit. As already recommended by the UN Committee on the Rights of the Child, I urge Australia to increase the age of criminal responsibility, which is currently only ten years throughout the country.

Much more must be done to ensure that the detention of children remains the exception and measure of last resort, rather than the norm. If Aboriginal and Torres Strait Islander children are detained, they should be treated with respect and dignity. As demonstrated by the ongoing work of the Royal Commission into youth detention in the Northern Territory, there have been serious human rights abuses committed against Aboriginal children in custody.

As long as issues such as the over-representation of Aboriginal and Torres Strait Islanders in custody and out-of home care are not addressed in practice, there will only be limited progress in closing the gap in the areas of health, education and employment. I therefore strongly recommend the inclusion of targets on justice, child removal incidence and violence against women in the national

Closing the Gap strategy and the development and implementation of a national plan of action to address these issues.

The non-recognition of the impacts of socio-economic exclusion and inter-generational trauma of indigenous peoples continues to undermine reconciliation efforts. Aboriginal and Torres Strait Islander people continue to die 10 years younger than other Australians, with no major health indicator improvements being recorded. During my visit, I observed first-hand the Government's attempts to amend and water down provisions in the Racial Discrimination Act. This was done seemingly without consideration of the huge damage it causes to indigenous peoples' trust in the Government and the signals it sends to the public and the media that racial vilification is permissible.

On a positive note, though, I want to emphasise that I was impressed and inspired by the strength of spirit and commitment of Aboriginal and Torres Strait Islanders to develop innovative measures to support their own communities. I observed effective community led initiatives in a range of areas including public health, housing, education, child protection, conservation and administration of justice, which all have the potential of making immediate significant positive changes in the lives of Aboriginal and Torres Strait Islanders.

I also carried out a visit to the United States of America from 22 February to 3 March 2017 to study the human rights situation of indigenous peoples, in particular with regard to energy development projects.

The United States' commitment to a process of consultation with tribal governments presents opportunities for a more positive future and meaningful engagement. But challenges remain. The contemporary executive action that provides the most direct guidance on consultation with tribes, Executive Order

13175, is well intentioned but has developed into a confusing and disjointed framework that suffers from loopholes, ambiguity, and a general lack of accountability. As the United States indicated at the time it supported the Declaration, meaningful consultation with tribes, without the need for the tribes' agreement, is the preferred process of the United States in lieu of obtaining "free, prior, and informed consent" as set forth in the Declaration. Therefore, at a minimum, meaningful engagement and effective participation of tribal governments in assessing and reviewing extractive industry projects is a key element to the United States' meeting its human rights obligations as a signatory to the Declaration.

Many indigenous peoples in the United States perceive a general lack of consideration of the future impacts on their lands in approving extractive industry projects in particular. In the context of the Dakota Access Pipeline, the potentially affected tribes were denied access to information and excluded from consultations at the planning stage of the project. Without an adequate social, cultural or environmental study, and the absence of meaningful consultation with or participation by the tribes, the Corps gave multiple domestic authorizations permitting the construction of DAPL.

Sadly, I found the situation faced by the Standing Rock Sioux Tribe is shared by many other indigenous communities in the United States. The goal of tribal consultation is not simply to check a box, or to merely give tribes a chance to be heard. Rather, the core objective is to provide federal decision makers with context, information, and perspectives needed to support informed decisions that actually protect tribal interests.

During my mission, I also received reports regarding the criminalization of indigenous peoples asserting their right to protest in the now-world famous struggle of several tribes in opposition to the Dakota Access Pipeline. As is

well-documented, the controversy surrounding the Dakota Access Pipeline has drawn thousands of people to the boundaries of the Standing Rock Sioux Reservation as they sought to protect the land and the water and uphold tribal sovereignty. While the actions taking place have been almost completely non-violent and peaceful, there has been a militarized, at times violent, escalation of force by local law enforcement and private security forces. As noted in my predecessor James Anaya's previous reports, indigenous peoples have the right to oppose extractive activities that impact their land and resources free from reprisals, acts of violence, or undue pressures to accept or enter into consultations about extractive projects.

In order to fully realize the rights of indigenous peoples as enshrined in the Declaration, I recommended that the United States government must, at a minimum, adhere to its own consultation policy as set forth in Executive Order 13175. The federal, state, and local governments should adopt consistent practices in consulting with tribes on projects that could affect indigenous rights.

In order to ensure that native communities are not further plagued by violence, the United States must take measures to create positive impacts on tribal communities, such as the 2013 reauthorization of the Violence against Women Act, and ensure tribal governments are able to implement, including by providing adequate resources. The United States should also take appropriate measures to ensure the United Nations Guiding Principles on Business and Human Rights are properly considered by all accountable actors in any projects that have impacts on indigenous peoples in the United States.

Finally, I recommended that for any extractive industry project affecting indigenous peoples, regardless of the status of the land, the United States should

require a full environmental impact assessment of the project in consideration of the impact on indigenous peoples' rights.

Besides my work with respect to thematic studies and country reports, I have also engaged with various stakeholders to promote good practices. In June 7 and 8, 2017, I participated in a working meeting in Lima, Peru jointly organized by the Inter-American Commission on Human Rights, the OHCHR Office in South America and the International Workgroup on Indigenous Affairs (IWGIA) and Tebtebba to look into how the rights of indigenous peoples in voluntary isolation and initial contact in the Amazon and Gran Chaco regions have been protected. The objectives of this activity were to evaluate how the responses undertaken by States and international institutions have been effective; to identify current trends and best practices in the protection of indigenous peoples in voluntary isolation and initial contact that have some positive impact; and to identify the main challenges, gaps and emerging problems in the current efforts to protect these peoples. It also looked at how the 2012 "Guidelines for the protection of indigenous peoples in voluntary isolation of the Amazon region, the Gran Chaco, and Eastern Paraguay" developed by the Office of the High Commissioner for Human Rights have been implemented. The meeting developed practical recommendations through which the work undertaken in this area by the international and inter-American human rights systems can be further advanced and will issue a joint report by the IACHR and my mandate.

In November 2016, I delivered a keynote statement "Consultation and consent: Principles, experiences and challenges" in the "International Colloquium on the Right to free, prior, informed consultation: International and regional standards and experiences" organized by the OHCHR Office in Mexico. The issue of consultation and free, prior and informed consent has repeatedly risen in the context of cases brought to my attention through the communications

procedure, in country visits, and meetings with indigenous and government representatives. The regulation of consultation has been an objective of many indigenous peoples and State governments and there are ongoing efforts to draft and adopt laws on consultation in Honduras, Mexico, Colombia and Brazil. I undertook a Working Visit to Honduras from 17-20 April 2017 to observe developments on this particular issue after providing commentaries on their draft law on consultation.

While I was attending the 2017 Session of the UN Permanent Forum on Indigenous Issues, I was invited to a meeting with the Latin American Network of the Office on Genocide Prevention and the Responsibility to Protect. After the presentation of my report to the General Assembly this year, I will also participate in an annual meeting organized this body. Later in the year, I have also been invited to give expert advice by the Inter-American Commission on Human Rights.

As for future country visits, I am in the process of preparing an official country visit to Mexico in November 2017. In response to a call for submission, I have received a significant number of responses from civil society organizations, which I and my team are currently reviewing. This visit is a follow up visit to Rodolfo Stavenhagen's visit in 2003. I would like to take the time to honour the memory of the first Special Rapporteur on the rights of indigenous peoples. My friend and mentor, Rodolfo, passed away in November 2016, the day before I arrived in Mexico City for a working visit. My renewed condolences to his family and may his work and memory live for many more generations. He is and will be sorely missed.

I will be remiss if I fail to mention that there are still countries in which the existence and identity of indigenous peoples are denied by some States which justifies their claim that the Declaration does not apply in their context. This

creates a void of protection. It is very difficult me as the Special Rapporteur to work in these circumstances, as these States are reluctant to initiate a dialogue and will not provide invitations for visits. I have invested a lot of effort in increasing visits and work in Asia and Africa but, as of today, only one invitation from an African country has materialized from an African country (Cameroon) and none as of yet from an Asian country. Therefore, I would like to kindly request countries to accept my requests and follow up requests for official country visits, particularly in Africa and Asia where I remain keen to conduct a visit.

As already mentioned, I am seriously concerned on the increasing trend of attacks against and the criminalization of indigenous land rights defenders, organizations and movements. Many ardent and committed indigenous persons who are devoting their lives to the promotion and effective implementation of the Declaration, face trumped up criminal charges which prevent them from pursuing their advocacy. Some of them end up prisons and at worst are physically assaulted or killed, as illustrated by the cases of Berta Caceres and many more. Several indigenous peoples' organizations and institutions have been stopped from operating or were taken over by governments. This is increasingly clear evidence of the lack of political will on the part of some states to respect and promote the UN Declaration on the Rights of Indigenous Peoples. More efforts and resources should be provided to redress these situations and bring the perpetrators to justice. Sustained interventions by all actors should be undertaken to put a stop to criminalization efforts and continuing assassinations of indigenous leaders. Therefore, I decided to draft a report devoted to this topic and will also convene an Expert Meeting in Geneva in the first quarter of 2018.

I thank you all for your kind attention and I look forward to the interactive dialogue.
