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## Human Rights Council

### Twenty-seventh session

Agenda item 3

**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

## Report of the Special Rapporteur on the rights of indigenous peoples, Victoria Tauli Corpuz

### *Summary*

The present report is submitted by the Special Rapporteur on the rights of indigenous peoples to the Human Rights Council pursuant to its resolutions 15/14 and 24/9. It is the first report submitted by Victoria Tauli Corpuz, who assumed her mandate on 2 June 2014. In the report, the Special Rapporteur presents some preliminary reflections on the status of operationalization of international standards relating to indigenous peoples and her vision for her work as Special Rapporteur in that context. There are a number of addenda to the present report, all reports by the previous Special Rapporteur.

The Special Rapporteur notes that there is a strong legal and policy foundation upon which to move forward with the implementation of indigenous peoples' rights, and there have been many advances, which the Special Rapporteur hopes to examine and document during the course of her mandate. Nevertheless, many challenges continue to confront indigenous peoples throughout the world. In accordance with Human Rights Council resolution 15/14, a core aspect of the mandate of the Special Rapporteur is to examine ways and means of overcoming existing obstacles to the full and effective protection of the rights of indigenous peoples. As an initial step, and given that the present report is her first to the Human Rights Council, the Special Rapporteur identifies in broad strokes some of those obstacles, which are found to some extent in all countries in which indigenous peoples are living.

The obstacles identified in section III of the report include (a) the failure or reluctance of governments to recognize indigenous peoples; (b) challenges in the development of practical implementation measures; (c) reconciliation and redress for historical wrongs yet to be completed; (d) ongoing negative attitudes towards indigenous peoples on the part of broader societies in which they live; and (e) social and economic conditions preventing the full exercise of indigenous peoples' human rights. The list is neither comprehensive nor exhaustive, and the obstacles identified are in many ways interrelated. It is meant, however, to provide a framework for understanding where further work is needed and to assist in developing measures for action. While the Special

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Rapporteur fully acknowledges the difficulties in confronting and overcoming those continuing problems, she hopes to be able to make headway on tackling some of the obstacles during the course of her mandate.

In accordance with her mandate from the Council, the Special Rapporteur intends to carry out her work within those areas generally targeted by special procedures mandate holders, i.e.: the promotion of good practices, country assessments, communications concerning alleged human rights violations and thematic studies. While carrying out work in those areas, she will coordinate her activities with the other two United Nations mechanisms with a specific mandate concerning indigenous peoples, as well as with the treaty bodies and regional human rights systems. In all of that work, the Special Rapporteur intends to follow up and reinforce the observations and recommendations made by her predecessors. There are numerous issues that merit thematic attention. Nevertheless, in order to maximize the impact of her investigations, the Special Rapporteur intends to focus particular efforts over the next three years of her mandate on issues surrounding the economic, social, cultural and environmental rights of indigenous peoples.

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## I. Introduction

1. The present report is submitted by the Special Rapporteur on the rights of indigenous peoples to the Human Rights Council pursuant to its resolutions 15/14 and 24/9. It is the first report submitted by Victoria Tauli Corpuz, who assumed her mandate on 2 June 2014. The Special Rapporteur would like to thank the Human Rights Council for entrusting her with the important task of fulfilling that mandate and she commits herself to do so in an impartial and constructive manner and in accordance with the requirements set forth by the Council. She also would like to express her gratitude to the numerous indigenous groups and organizations that have already engaged with her mandate, and to affirm her strong commitment to her role as Special Rapporteur, acknowledging with humility the responsibility it represents.

2. In the present report, the Special Rapporteur sets out some preliminary reflections on the status of operationalization of international standards relating to indigenous peoples and her vision for her work as Special Rapporteur in that context. The report consists of four parts. Section II provides a background to the mandate of the Special Rapporteur. Section III discusses structural problems that present obstacles to the full realization of the rights of indigenous peoples. Section IV presents some preliminary comments regarding the vision and work areas of the current Special Rapporteur for her three-year mandate. Finally, section V offers conclusions made on the basis of the comments provided in the present report.

3. There are a number of addenda to the present report, all of which are reports issued by the previous Special Rapporteur. Addendum 1 is his report on the situation of indigenous peoples in Panama, addendum 2 is his report on the situation on indigenous peoples in Canada, and addendum 3 is his report on the situation of indigenous peoples in the context of extractive industries in Peru, which includes an annex on the proposed expansion of the Camisea gas project. Addendum 4 contains observations on communications sent and replies received. As indicated in that report, the communications contained therein were sent by the previous Special Rapporteur and contain observations and recommendations made by him.

## II. Mandate of the Special Rapporteur

4. The mandate of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people was originally established by the Commission on Human Rights in 2001 (resolution 2001/57) and subsequently extended by the Commission (resolution 2004/62), by the General Assembly (resolution 60/251) and by the Human Rights Council (resolutions 5/1, 6/12, 15/14 and 24/9). In 2010, the name of the mandate was changed to the Special Rapporteur on the rights of indigenous peoples in Council resolution 15/14. The first two mandate holders were Rodolfo Stavenhagen, from Mexico, and James Anaya, from the United States of America. The Special Rapporteur would like to recognize and honour the outstanding work of her predecessors and hopes that she will continue to build upon the important contributions they have made to the advancement of the rights of indigenous peoples.

5. The Human Rights Council has entrusted the Special Rapporteur with a mandate to examine ways and means of overcoming existing obstacles to the full and effective protection of the rights of indigenous peoples; to identify, exchange and promote best practices; to gather, request, receive and exchange information and communications from all relevant sources, including governments, indigenous peoples and their communities and organizations, on alleged violations of the rights of indigenous peoples; and to formulate

recommendations and proposals on appropriate measures and activities to prevent and remedy violations of the rights of indigenous peoples (Council resolution 15/14). In carrying out her mandate, the Special Rapporteur is to coordinate with other human rights bodies, including the Permanent Forum on Indigenous Issues and the Expert Mechanism on the Rights of Indigenous Peoples, as well as with the treaty bodies and regional human rights mechanisms. The Human Rights Council has also asked the Special Rapporteur to pay particular attention to the situation of indigenous women and children, an aspect of her mandate to which she intends to devote particular attention, as noted further below.

6. The principal normative framework for the mandate is the United Nations Declaration on the Rights of Indigenous Peoples, and the Human Rights Council specifically requests the Special Rapporteur in its resolution 15/14 to promote that Declaration and international instruments relevant to the advancement of the rights of indigenous peoples, where appropriate. Other instruments that the Special Rapporteur will promote throughout her mandate include the International Labour Organization Convention No. 169 (1989) concerning Indigenous and Tribal Peoples in Independent Countries, which has been widely ratified by countries in Latin American and is thus of particular relevance in that region. Also important are the core United Nations human rights treaties, especially the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, all of which have been authoritatively interpreted by the corresponding treaty monitoring bodies to protect a range of indigenous peoples' rights.

7. At the regional level, the American Convention on Human Rights and the American Declaration of the Rights and Duties of Man also contain provisions relevant to indigenous peoples. Since 2001, the inter-American human rights system has developed a rich body of jurisprudence on the basis of those instruments which affirms indigenous peoples' rights to lands and resources, the duty of States to consult in the context of natural resource development, and the right of indigenous peoples to political participation. The African Commission on Human and Peoples' Rights has also more recently addressed indigenous rights in the Endorois case from Kenya and through its Working Group on Indigenous Populations/Communities in Africa, established in 2000, which has carried out several research-based missions to individual countries to assess their human rights situations.

8. The Special Rapporteur has also been mandated by the General Assembly to participate in the high-level plenary meeting of the General Assembly, to be known as the World Conference on Indigenous Peoples, in September 2014. The General Assembly, in its resolution 65/198, in which it decided to organize the World Conference, invited the President of the General Assembly to conduct open-ended consultations with Member States and with representatives of indigenous peoples and the Special Rapporteur. Accordingly, on 17 and 18 June 2014, the Special Rapporteur participated in an interactive consultation convened by the President of the General Assembly in New York, and provided comments on priority issues for indigenous peoples in the context of development and the post-2015 agenda. In a second resolution on the World Conference (resolution 66/296), the General Assembly decided that the Special Rapporteur should participate in the interactive panel discussion during the conference, which is to focus on indigenous peoples' development and the post-2015 development agenda. As noted in more detail below, that is also the subject to which the Special Rapporteur is dedicating her first report to the General Assembly.

9. In the view of the Special Rapporteur, the World Conference represents an important opportunity for States to recommit to implementing the rights of indigenous peoples and for direct negotiations between Member States and indigenous peoples' representatives on key outstanding issues. The Special Rapporteur is committed to participating in all stages of planning for the World Conference and follow-up to any outcome document.

### **III. Ongoing obstacles to the full realization of indigenous peoples' rights**

10. There is a strong legal and policy foundation upon which to build the implementation of indigenous peoples' rights, and there have been many advances, which the Special Rapporteur hopes to examine and document during the course of her mandate. Nevertheless, many challenges continue to confront indigenous peoples throughout the world. As noted above, a core aspect of the mandate of the Special Rapporteur is to examine ways and means of overcoming existing obstacles to the full and effective protection of the rights of indigenous peoples. As an initial step, and given that the present report is her first to the Human Rights Council, the Special Rapporteur would like to identify in broad strokes some of those obstacles which are found to some extent in all countries in which indigenous peoples are living.

11. The obstacles identified in the present section are (a) the failure or reluctance of governments to recognize indigenous peoples; (b) challenges in the development of practical implementation measures; (c) reconciliation and redress for historical wrongs yet to be completed; (d) ongoing negative attitudes towards indigenous peoples on the part of the broader societies in which they live; and (e) social and economic conditions preventing the full exercise of indigenous peoples' human rights. The list is of course neither comprehensive nor exhaustive and the obstacles identified above are in many ways interrelated. It is meant, however, to provide a framework for understanding where further work is needed and to assist in developing measures for action. While the Special Rapporteur fully acknowledges the difficulties in confronting and overcoming those continuing problems, she hopes to be able to make headway on tackling some of the obstacles during the course of her mandate.

#### **A. Recognition of indigenous peoples**

12. One barrier to the implementation of the international human rights standards concerning indigenous peoples relates to how the concept of "indigenous peoples" is applied in relation to certain groups, as its application can be both under- and over-inclusive: the indigenous rights framework can be applied in relation to groups that share characteristics similar to indigenous peoples worldwide and, to a somewhat lesser extent, to groups that do not. Clearly, the human rights situation of groups around the world is diverse and complex, and varies from country to country and community to community, and yet there are issues and circumstances that are common to certain groups that are generally identified as indigenous peoples. The Special Rapporteur is concerned that, by failing to recognize groups as indigenous peoples, States and other powerful actors avoid applying the international standards and protection mechanisms that are most appropriate to address the kinds of human rights concerns that these groups face in common with groups which are generally identified as indigenous around the world.

13. In that regard, the Special Rapporteur would like to emphasize that this is not a problem resulting from, or which can be resolved by, attempting to arrive at an international definition of "indigenous peoples". As is often repeated in the literature on the subject, no such definition exists. The United Nations Declaration on the Rights of Indigenous Peoples does not attempt to provide one, although it does affirm that indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions (art. 33). For its part, International Labour Organization Convention No. 169 (1989) concerning Indigenous and Tribal Peoples in Independent Countries refers to self-identification "as a fundamental criterion for determining the groups to which the provisions of this Convention apply" (art. 1, para. 2) and notes that the

Convention will apply to those peoples “whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions”, as well as those descended from pre-colonial populations and who retain some or all of their own social, economic, cultural and political institutions (art. 1, para. 1).

14. The Special Rapporteur notes with particular concern that a number of States have somewhat restrictive criteria relating to the recognition of indigenous status. That may result in approaches to land rights, socioeconomic policy and development, for example, that may fail to recognize the distinct circumstances, problems and experiences faced by indigenous peoples, including connections to land, distinct cultures and ways of life, discrimination and exclusion, and disadvantage. Approaches that do not recognize indigenous peoples or acknowledge that certain groups may face distinct challenges similar to other indigenous peoples around the world, do not allow for key tools and resources offered by the international indigenous framework to be employed — a framework that was developed precisely to respond to indigenous peoples’ concerns in a way that takes into consideration their distinct contexts and experiences.

15. The Special Rapporteur fully acknowledges that this is a sensitive topic in many areas, especially in the context of Africa and Asia, where many groups can be considered in a literal sense indigenous or native to the areas in which they continue to live. That concern was addressed by the Working Group of Experts on Indigenous Populations/Communities in Africa of the African Commission on Human and Peoples’ Rights, which observed rightly that “if the concept of *indigenous* is exclusively linked with a colonial situation, it leaves us without a suitable concept for analysing internal structural relationships of inequality that have persisted after liberation from colonial dominance”. Thus, the Working Group noted that the understanding of the term indigenous peoples “should put much less emphasis on the early definitions focusing on aboriginality ... The focus should be more on the more recent approaches focusing on *self-definition* as indigenous and distinctly different from other groups within a state”.<sup>1</sup>

16. There is therefore a need to implement a flexible approach that takes into account the core attributes that distinguish indigenous peoples from minority groups or other local communities. In that regard, the Special Rapporteur welcomes and adopts the approach of the previous Special Rapporteur, which focuses on the rights at stake and asks whether the international framework with respect to the rights of indigenous peoples proves useful in addressing the issues and concerns faced by the group in question. In particular, the previous Special Rapporteur stated that the mandate is relevant to those groups “who are indigenous to the countries in which they live and have distinct identities and ways of life, and who face very particularized human rights issues related to histories of various forms of oppression, such as dispossession of their lands and natural resources and denial of cultural expression” (A/HRC/15/37/Add.1, para. 213). In any case, in line with the practice of other international human rights mechanisms and the previous Special Rapporteur, the Special Rapporteur will not necessarily accept *prima facie* a State’s determination of a group’s indigenous status, without looking at other factors when examining the specific human rights situation of a group within a particular country.

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<sup>1</sup> African Commission on Human and Peoples’ Rights, Report of the African Commission’s Working Group of Experts on Indigenous Populations Communities, submitted in accordance with the “Resolution on the Rights of Indigenous Populations/Communities in Africa”, adopted by the African Commission on Human and Peoples’ Rights at its 28th ordinary session (2005), pp. 92–93.

## **B. Challenges to the practical implementation of indigenous peoples' rights**

17. As the United Nations Declaration on the Rights of Indigenous Peoples was adopted by the General Assembly only in 2007, its implementation is still somewhat in a formative stage. States are facing various difficulties in the operationalization of indigenous peoples' rights, which include a lack of awareness about the rights and standards, difficulties in identifying practical steps for implementation and conflicting interpretations of the content of rights. Certainly, in addition to addressing the issues identified in the present subsection, it is also necessary for States to demonstrate political will, technical capacity and financial commitment in order for operationalization to take place and be successful, although the Special Rapporteur will not go into depth on those factors here.

### **1. Lack of awareness and understanding of the United Nations Declaration on the Rights of Indigenous Peoples**

18. An initial issue is the lack of awareness and understanding of the Declaration and other relevant instruments among State and non-State actors. In his first report to the Human Rights Council, the previous Special Rapporteur identified various mechanisms for the operationalization of the Declaration, and specifically recommended that States "make efforts to raise awareness [about the Declaration] and provide technical training to government officials, members of the legislative branch and of national human rights institutions, judicial authorities and all other relevant actors, including civil society and indigenous peoples themselves" (A/HRC/9/9, para. 58). While many States have made significant headway in that regard, within other States there is still very insufficient knowledge among relevant actors about the international standards concerning indigenous peoples.

### **2. Need for concerted implementation efforts**

19. However, even when State authorities are aware of international standards, there is need for further guidance on how to implement the standards. A first step is undoubtedly, together with indigenous peoples, to assess needs, identify priorities and develop strategic action plans with goals and time frames for implementation. Planning that takes into account and incorporates steps to implement indigenous peoples' rights can take place in the context of the development of broader education, health, housing, elections, local governance and resource development strategies (see A/HRC/24/41, paras. 49–51), as well as in other areas. Involving indigenous peoples at the outset in planning will go a long way in speeding up implementation and avoiding conflicts about how implementation is carried out down the road; yet, it is a step that is often overlooked.

20. As part of the planning process, baselines and indicators can also serve as steady reference points for guiding action and measuring progress. They can be established at both the international and national levels, through the creation of new indicators and new forms of data collection, or through the disaggregation of data to ensure that indigenous peoples' situations are understood and their needs are assessed. At the most basic level, the indicators should assist with the detection of discrimination, inequality and exclusion, and allow for comparisons to be made between indigenous peoples and other social groups. In any case, it is essential that indigenous peoples participate in defining the issues to be addressed and the indicators used, and that indigenous peoples' own views on well-being and their visions for the future are taken into account.

21. It is of course also useful in that connection to identify what has worked and to try to replicate successful experiences in other contexts. While it is no secret that good practices for the promotion and protection of indigenous peoples' human rights are still few and far

between, examples are emerging. In that regard, a core aspect of the mandate of the Special Rapporteur is the identification of good practices and she hopes to contribute to documenting positive experiences during the course of her mandate. States, indigenous peoples themselves, non-governmental organizations and the United Nations system also play important roles in exchanging experiences about where good practices are occurring, and they should take advantage of reporting processes before international human rights mechanisms, such as the United Nations treaty bodies and the universal periodic review, to highlight examples.

22. It is also important to obtain reports on good practices and obstacles from various United Nations agencies, programmes and funds and other multilateral institutions that have policies on indigenous peoples for which the United Nations Declaration on the Rights of Indigenous Peoples was used as a reference point. Related to that is the extent of implementation of the human rights-based approach to development has been applied to address the specific situations of indigenous peoples. The common understanding of a rights-based approach championed by the Office of the United Nations High Commissioner on Human Rights, jointly with the United Nations Development Group, is one important framework which links the development agenda with economic, social and cultural rights.

### **3. Conflicting interpretations about the content of core rights**

23. Yet, the steps outlined above will still not resolve some of the more complex issues related to implementation. There are still conflicting interpretations among key actors of the content of core rights of indigenous peoples and disagreement about how rights are to be applied in specific situations, especially when competing rights and interests may be at stake and balancing of rights needs to take place. Differing interpretations of rights by States, indigenous peoples, business enterprises, non-governmental organizations and others result in an uneven application of the standards and stymie progress in implementation. The Special Rapporteur has observed that differences in interpretation exist especially in relation to rights to lands and resources; the application of the duty of States to consult with and seek the free, prior and informed consent of indigenous peoples in matters that affect them; and harmonizing State and customary indigenous governance and justice systems.

24. The Special Rapporteur observes that much work remains to be done to ensure that States and indigenous peoples come together to find common ground and agreement on the most controversial issues. In that regard, States and indigenous peoples often settle into entrenched positions and take adversarial approaches, a tendency that is especially notable in the context of natural resource development.

25. Assistance and guidance by international human rights mechanisms and other external experts is essential in that regard. First, the international and other external actors can help provide guidance and a deeper understanding of the content of international human rights standards. The mandate of the Special Rapporteur can play, and already has played, a crucial role in that regard, as has the work of other international human rights mechanisms, including the Permanent Forum on Indigenous Issues, the Expert Mechanism on the Rights of Indigenous Peoples, the United Nations treaty bodies and regional human rights mechanisms, and the work of the Secretariat. Second, beyond just engaging in thematic analysis and interpretation of particular rights, assistance from the international system and other experts can provide technical assistance, including mediation, to help States and indigenous peoples work through conflicts and disagreements where they arise. In this second area in particular, much more work can be done.

26. In situations in which agreement simply cannot be reached and decisions must be taken, recourse mechanisms must be available at the national and international levels. At the national level, domestic courts are intended to provide that oversight, although in some

cases there is debate as to their effectiveness. At the international level, there are already various mechanisms for monitoring State compliance, including the treaty bodies, the Human Rights Council's universal periodic review process, regional human rights oversight mechanisms and the mandate of the Special Rapporteur on the rights of indigenous peoples. Of those mechanisms, only the Special Rapporteur's mandate focuses on monitoring how the rights of indigenous peoples in particular are respected, protected and fulfilled.

### **C. Unfulfilled need for reconciliation and redress for historical wrongs**

27. Also presenting barriers to the full and effective realization of the rights of indigenous peoples are steps that have not yet been taken towards reconciliation with indigenous peoples and redress for past violations of human rights. Indigenous peoples around the world in the past have suffered gross and systematic violations of their human rights and those violations have ongoing consequences in the present day that continue to affect their human rights situation. In most countries in which indigenous peoples live, however, meaningful reconciliation efforts have yet to place. Without such efforts, it will be difficult for indigenous peoples to overcome their situations of extreme marginalization, and to ensure sustainable relationships based on trust, mutual respect and partnership, between indigenous peoples and the States within which they live.

28. There is no one path or fast track towards reconciliation, and the history and context in each country will necessarily make responses different. However, the process generally includes a first step of acknowledging a history of wrongdoing. In some countries, reconciliation efforts have included a formal apology to indigenous peoples for past wrongdoing or particularly egregious human rights violations. For example, in 2008 the Government of Australia issued a formal apology to aboriginal peoples, "for the laws and policies of successive Parliaments and governments that have inflicted profound grief, suffering and loss" and in particular for "the removal of Aboriginal and Torres Strait Islander children from their families, their communities and their country".<sup>2</sup> Similarly, in 2008 in Canada, the Government apologized to aboriginal peoples for its role in the Indian Residential Schools system, recognizing that "the absence of an apology has been an impediment to healing and reconciliation".<sup>3</sup> Other States that have issued formal apologies are the United States with regard to historical suffering inflicted upon Native Americans; Norway and Sweden, with respect to past treatment of the Sami peoples; and New Zealand, where formal apologies often form part of negotiated settlement agreements under the Treaty of Waitangi.

29. It is worth noting that the public nature of those apologies contributes to their efficacy. In a counter-example mentioned by the previous Special Rapporteur in his report on the situation of indigenous peoples in the United States (A/HRC/21/47/Add.1), although the Government made the important step in 2010 of issuing a formal apology to Native Americans which acknowledged widespread wrongdoing by the Government "strangely, the apology was buried deep in a defense appropriations act, and apparently few indigenous people, much less the public in general, were made aware of it" (*ibid.*, para. 74). Public recognition is fundamental for numerous reasons, including providing recognition to indigenous victims, demonstrating a commitment on the part of the State to put an end to or remedy violations and educating the broader society about the history of mistreatment of indigenous peoples and the Government's role in that regard.

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<sup>2</sup> The transcript and further information on the apology are available from <http://australia.gov.au/about-australia/our-country/our-people/apology-to-australias-indigenous-peoples>.

<sup>3</sup> Further information on the apology is available from [www.pm.gc.ca/eng/news/2008/06/11/pm-offers-full-apology-behalf-canadians-indian-residential-schools-system](http://www.pm.gc.ca/eng/news/2008/06/11/pm-offers-full-apology-behalf-canadians-indian-residential-schools-system).

30. Also essential to reconciliation are affirmative steps of redress to remedy the ongoing manifestations of harm. Throughout the United Nations Declaration on the Rights of Indigenous Peoples there are calls for “effective mechanisms” for redress in connection with a range of rights. Indeed, as noted by the previous Special Rapporteur in his first report to the Human Rights Council, the Declaration in its entirety can be understood as fundamentally a “remedial” instrument that “aims at repairing the ongoing consequences of the historical denial of the right to self-determination and other basic human rights affirmed in international instruments of general applicability” (A/HRC/9/9, para. 36). Specifically, redress is required for any action aimed at depriving indigenous peoples of their integrity as distinct peoples (art 8, para. 2 (a)); any action with the aim or effect of dispossessing them of their lands, territories or resources (art. 8, para. 2 (b)); any form of forced assimilation or integration (art. 8, para. 2 (d)); for the taking of their cultural, intellectual, religious or spiritual property (art 11); depriving them of their means of subsistence (art. 20, para. 2); as well as for the development, utilization or exploitation of their mineral, water or other resources (art. 32, para. 2).

31. Perhaps the clearest manifestation that redress is still needed for indigenous peoples around the world is their continued lack of access to and security over their traditional lands. In that regard, in article 28 of the Declaration, it is stated that “indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent” and that this compensation “shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress”. While advances have without a doubt been made over the past several decades in returning lands to indigenous peoples and protecting their existing land bases, more remains to be done nearly everywhere. There are, of course, a number of ways in which land restitution can and has taken place, including through executive decrees, judicial decisions or negotiated arrangements, although complications can arise, especially when competing private third party interests are involved.

32. Finally, meaningful reconciliation must also include steps to ensure the non-recurrence of violations. This is essential for rebuilding trust and restoring confidence in the State and indeed, it is difficult to envision true healing by indigenous peoples in an environment in which violations continue to occur. While States have gone a long way towards putting an end to the most egregious human rights violations against indigenous peoples, abuses are still occurring in all the countries in which they live. Current violations often present the most urgent issues that need addressing and are often the focus of attention of the international human rights system. However, addressing those violations does not take the place of the still much needed deeper reconciliation efforts that recognition and redress can provide.

33. The Special Rapporteur would like to point out that implementing all of the above-mentioned measures does not necessarily guarantee that true reconciliation will occur. An essential component of the process also involves shifting attitudes on a personal and societal level, which the Special Rapporteur fully acknowledges is not an easy task. She discusses particular concerns in that regard in the following section. It should also be noted that, in 2014, the Expert Mechanism on the Rights of Indigenous Peoples continued its study entitled “Access to justice in the promotion and protection of the rights of indigenous peoples — restorative justice, indigenous juridical systems and access to justice for indigenous women, children and youth, and persons with disabilities” (see A/HRC/EMRIP/2014/3/Rev.1), including a discussion on restorative justice and provides further comments on the issue.

#### **D. Ongoing negative attitudes towards and distorted perceptions of indigenous peoples**

34. Linked with reconciliation yet to be completed and preventing the full enjoyment of the rights of indigenous peoples are the ongoing negative perceptions of indigenous peoples among the broader societies in which they live, including within governments. As noted further below, the Special Rapporteur observes that there is a range of such attitudes towards indigenous peoples, from those that are outwardly prejudicial, to those that ignore or undervalue indigenous peoples' distinct identities and ways of life, to those that fail to understand the reasons for protecting indigenous rights. One or more of those attitudes may be present at any time. Each has effects both on a State's efforts to respond to indigenous peoples' concerns and on indigenous peoples themselves, potentially resulting in negative self-image or the suppression of indigenous identities.

35. Ongoing discrimination against indigenous peoples has its roots in the perceived superiority of the colonial population and its descendants, perceptions that were historically accompanied by laws and policies aimed at suppressing or eliminating indigenous identity and assimilating indigenous peoples into the dominant culture. In many countries, constitutional provisions and laws contained expressly racist language and barred indigenous peoples from carrying out a range of their own activities, such as performing cultural and religious ceremonies, and from participating in the life of the State, such as through voting or owning land. Some of the most notorious examples of such policies were those that overtly aimed at eliminating or "breeding out" aboriginal identity by removing indigenous children from their families and communities and placing them in non-indigenous environments, and by forbidding them to speak their own languages or practise their cultural traditions.

36. Racist laws and policies of that kind have almost entirely been eliminated around the world and are no longer tolerated. However, it has to be noted that, to date, the legal frameworks in some countries continue to officially refer to indigenous peoples as primitive tribal groups, subhumans or creatures. In most countries where indigenous peoples live, there have been many advances in furthering the rights of indigenous peoples, safeguarding their distinct cultures and ways of life and recognizing and combating the injustices that they still endure. Nevertheless, the laws and policies of the past have left in their wake continued discriminatory attitudes that distort perceptions of indigenous peoples and hinder their ability to thrive as distinct communities with their cultures, traditions and way of life intact. Those attitudes are evident at the individual, societal and institutional levels and can be perpetuated by public figures, the media and popular culture, everyday language and imagery, and even by children's schoolbooks.

37. One kind of negative attitude involves discrimination, prejudice and the stereotyping of indigenous peoples. This can take many different forms, including the perception that indigenous peoples' cultures and traditions are backward, primitive or underdeveloped, or that they suffer from widespread and entrenched social problems, such as alcoholism or violence against women. Such attitudes can be accompanied by the perception that indigenous peoples are incapable of managing their own affairs, or simply that the State can do it better, resulting in paternalistic laws and policies that limit or remove indigenous peoples' control over decisions relating to their own affairs, including their governmental or judicial systems.

38. Alternatively, indigenous peoples all but disappear from public awareness and discourse and are rendered invisible to the mainstream in the countries in which they live, their contributions to the history and the present-day social and cultural make-up of those countries unknown or not valued. This is especially evident in countries with a small number of indigenous peoples or where they live in rural and isolated areas and interaction

with the mainstream society is minimal. Such invisibility hampers the ability of indigenous peoples to access national communications or the media, and to have their voices heard in decision-making centres, and can result in non-indigenous people speaking for them or making decisions on their behalf or in spite of them.

39. Other kinds of distorted views about indigenous peoples demonstrate a lack of understanding of why and how indigenous peoples' rights should be protected. Certainly, there are still many among the non-indigenous population who hold the view that indigenous peoples should just join the mainstream, or that they should "get over" their pasts and "move on". In that connection, indigenous peoples may be viewed as receiving special entitlements and privileges not enjoyed by the rest of the population, resulting in feelings of resentment among the broader society. Even if those views may not be outwardly pernicious, they can inhibit the development of differentiated rights protection and affirmative action measures that are needed for remedying ongoing situations of marginalization and ensuring that indigenous peoples can survive as distinct peoples.

40. Finally, the Special Rapporteur has also seen examples of indigenous peoples' interests being viewed as standing in opposition to those of the mainstream. This is especially true in the context of natural resource development. Rather than focusing attention on addressing the concerns raised by indigenous peoples in the context of specific projects, public figures and others instead portray indigenous peoples as "blocking" projects that could bring economic benefits to the country as a whole, or as having some ideological or categorical opposition to natural resource development. In those situations, rather than the interests of the State and the broader society being considered as encompassing indigenous peoples' interests, indigenous peoples are perceived as posing an impediment to national interests. Of course, such perceptions add to a climate that is not conducive to governmental and public support for the promotion of the rights of indigenous peoples.

41. The United Nations Declaration on the Rights of Indigenous Peoples, in various articles, promotes as one of its central themes the elimination of discrimination against indigenous peoples. In particular, article 15 provides that "States shall take effective measures, in consultation and cooperation with the indigenous peoples concerned, to combat prejudice and eliminate discrimination and to promote tolerance, understanding and good relations among indigenous peoples and all other segments of society". Shifting attitudes and entrenched perceptions is no easy task, but it can be assisted to a great extent by increasing indigenous peoples' participation in decision-making, through widespread education and awareness-raising programmes and, perhaps obviously, by governments themselves demonstrating a commitment to the implementation of indigenous peoples' rights. The Special Rapporteur notes that the United Nations system can contribute to these efforts.

## **E. Social and economic conditions**

42. The nearly universal disadvantageous social and economic conditions of indigenous peoples as compared to the majority of the population in the societies in which they live present barriers to the full exercise of their human rights. Unless indigenous peoples enjoy certain minimum conditions of well-being, they will be unable to truly thrive with their rights intact. According to many different indicators, indigenous peoples fare worse than their non-indigenous counterparts in terms of their development, including with regard to levels of poverty, education, health, unemployment, housing conditions, clean water and sanitation.

43. Certainly, a number of countries in which indigenous peoples live face enormous developmental challenges and indigenous peoples may be one group among many within a

country that experiences difficulties in that regard. Nevertheless, indigenous peoples face distinct challenges, and measures to address social and economic disparities must be differentiated from measures targeting other disadvantaged groups.

44. First of all, it is necessary to understand the linkages between indigenous peoples' current disadvantaged situations and their history of being denied self-determination land and resource rights, and related rights essential to their economic and social development. In fact, development around the world has historically taken place and still takes place today at the expense of indigenous peoples; it has often been the case that indigenous peoples' lands and resources have been taken, to their detriment and to the benefit of the development of others. Responses aimed at bettering the social and economic situation of indigenous peoples must take that history into account and attempt to restore to indigenous peoples what has been lost, including sufficient land to ensure a basis for economic development, and the means to exercise their self-determination over their development. Indeed, numerous studies have shown that increasing indigenous peoples' control over their internal decision-making results in better economic growth outcomes.

45. An additional factor is that indigenous peoples often live in rural and isolated areas, which complicates the delivery of programmes and services designed to respond to their social and economic concerns. This, of course, is not an issue that can or should be resolved by moving indigenous peoples to urban areas as some countries have attempted to do, which could result in a violation of a number of their human rights. Rather, measures must be put in place to ensure that indigenous peoples can enjoy the same social and economic rights as other segments of the population, without having to sacrifice important aspects of their cultures and ways of life, which include their attachment to their traditional lands.

46. Furthermore, given their unique cultures and ways of life, it must also be noted that social and economic development for indigenous peoples may be different than for other sectors of the population. Responses aimed at addressing ongoing problems must take into account special factors, including indigenous peoples' languages, traditions and ways of doing things. This is fundamental to the success of any relevant measures. One way to ensure the accommodation of indigenous peoples' cultures is by including them in the design and development of programming. In that connection, throughout the United Nations Declaration on the Rights of Indigenous Peoples, reference is made to the need for indigenous peoples to develop their own priorities for development and to be consulted and included in the process of crafting State programmes.

47. The Special Rapporteur acknowledges that improving the social and economic conditions of indigenous peoples may be one of the most difficult problems for States to address. In her first report to the General Assembly, which will be presented in October 2014, she will focus on the issue of development, discuss the post-2015 development agenda and provide some views on sustainable development for indigenous peoples. Furthermore, as discussed in more detail below, throughout her mandate she hopes to pay special attention to issues related to the social, cultural, economic and environmental rights of indigenous peoples.

#### **IV. Preliminary comments on the Special Rapporteur's vision for the mandate**

48. In accordance with her mandate from the Human Rights Council, the Special Rapporteur intends to carry out her work within those areas generally targeted by special procedures mandate holders, i.e.: the promotion of good practices, country assessments, communications concerning alleged human rights violations and thematic studies. While carrying out work in those areas, she will coordinate her activities with the two other

United Nations mechanisms with a specific mandate concerning indigenous peoples, as well as with the treaty bodies and regional human rights systems. In all of that work, the Special Rapporteur intends to follow up and reinforce the observations and recommendations made by her predecessors.

49. In the present global context, where the international community is in the process of defining the post-2015 development agenda, the Special Rapporteur sees the importance of monitoring how indigenous peoples' rights to, among other things, development, lands, territories and resources and culture are going to be considered in that global effort. She is aware how the human rights-based approach to development and human rights mainstreaming are still quite marginal in the overall global and national development agendas. That reality is reflected in how indigenous peoples have been generally sidelined in the design, targets, indicators and implementation of the Millennium Development Goals.

50. Closely related to the development agenda are the global and regional multilateral, plurilateral and bilateral investment and trade treaties and agreements entered into by States in which indigenous peoples are found. Many of those treaties and agreements have direct implications for how lands, territories, resources and traditional knowledge systems of indigenous peoples are regarded and used. In the past, some indigenous peoples have engaged in the negotiations of the Agreement on Trade-Related Aspects of Intellectual Property Rights of the World Trade Organization because of the implications for their rights to their traditional knowledge, such as their knowledge and use of medicinal plants. Some agreements which allow for the liberalization and deregulation of existing laws and policies, and have the effect of undermining existing human rights, social and environmental standards, can have detrimental effects on indigenous peoples. Much more needs to be done to understand fully how such treaties and agreements can undermine or reinforce indigenous peoples' rights and how they shape the trajectories of national economic development plans.

51. With the worsening environmental crisis and the increased efforts of the international community to deal with it, the Special Rapporteur recognizes the need to analyse the impacts of the crisis on indigenous peoples and ensure that measures to mitigate the impacts do not lead to further marginalization of indigenous peoples and violations of their rights. She intends to examine how the human rights of indigenous peoples are affected by the environmental situation and how decisions, policies and programmes under multilateral environmental agreements take into account indigenous peoples' rights, issues and contributions in addressing this problem.

52. Clearly, existing and future economic investment and trade agreements and treaties, as well as conventions on the environment and on culture, have a direct impact on the economic, social, environmental and cultural rights of indigenous peoples. There are numerous issues that merit thematic attention. Nevertheless, in order to maximize the impact of her investigations, the Special Rapporteur intends to focus her efforts over the next three years of her mandate on issues surrounding economic, social, cultural and environmental rights of indigenous peoples, which could include, but are not limited to, the following:

- Poverty, inequality and development issues facing indigenous peoples, including their right to determine their own development visions and strategies, and how those issues should be addressed in the processes of defining sustainable development goals and the post-2015 development agenda;
- The health situation of indigenous peoples, including issues of access to culturally appropriate health services and traditional medicine and the role of indigenous health-related knowledge, innovations and healing practices in that regard;

- Issues related to the right to education of indigenous peoples, especially bilingual and intercultural education and access to appropriate and culturally sensitive educational services;
- Measures to protect and promote indigenous cultural heritage and traditional knowledge, including developments in conventions and standard-setting processes related to the protection of traditional knowledge and respect for the right to culture and the equitable sharing of benefits which accrue from the use of indigenous peoples' knowledge, innovations and practices;
- Economic and social rights and other human rights issues regarding indigenous women and children in various settings, such as migration, trafficking of women and girls, violent conflicts, the informal economy, child labour, etc.;
- The impacts of policies and programmes of international and regional financial institutions, multilateral and bilateral investment and trade agreements and foreign aid on indigenous peoples, especially in relation to development projects affecting indigenous peoples, including good practices of such cooperation;
- The impact of policies, programmes, decisions under legally binding multilateral environmental agreements<sup>4</sup> on indigenous peoples, particularly with regard to how their rights enshrined in the Declaration on the Rights of Indigenous Peoples, International Labour Organization Convention No. 169 (1989) and other related human rights instruments are being protected, respected and fulfilled in the implementation of those Conventions at the national level.

53. While the previous mandate holders have integrated a focus on women and children areas into their works, including during country visits, as required under the mandates established by the Human Rights Council, women and children have never been the focus of a thematic report. The present Special Rapporteur considers that it is time to rectify that. She recognizes the need to coordinate closely with other special procedures mandate holders, especially those dealing with issues of women and children, as well as with treaty bodies such as the Committee on the Elimination of Discrimination against Women and the Committee on the Rights of the Child.

54. A crucial element for the success of the Special Rapporteur's mandate will be assessments of the situation of indigenous peoples in specific countries. To the extent that time and resources are limited, such visits will have to be prepared carefully for maximum results. During the first year of her mandate, the Special Rapporteur hopes to carry out country visits within each of the regions. She notes that the previous Special Rapporteurs, in addition to visits to northern countries such as the Nordic countries, the United States and Canada, have carried out numerous visits to the Latin American region. The Special Rapporteur acknowledges that this is due in large part to the openness of countries within the Latin American region to visits by the Special Rapporteur to look into issues related to indigenous peoples. She hopes that countries in other regions, especially in Asia and Africa, will demonstrate a similar openness during the course of her mandate. The Special Rapporteur also envisions that visits to specific countries could feed in to her thematic studies.

55. The mandate of the Special Rapporteur relies on establishing fluid communications with indigenous organizations and receiving communications from individuals and peoples regarding their human rights conditions. She has already written several communications to

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<sup>4</sup> Among others, the United Nations Framework Convention on Climate Change, the Convention on Biological Diversity, the United Nations Convention to Combat Desertification and the Convention on International Trade in Endangered Species of Wild Fauna and Flora.

governments concerning issues brought to her attention. She would like to recall that the Human Rights Council has urged to States cooperate with, and assist, the special procedures in the performance of their tasks and to provide all information in a timely manner, as well as to respond to communications transmitted to them by the special procedures without undue delay (resolution 5/2, para. 2). To the extent possible within the restrictions of available resources, the Special Rapporteur would also like to continue the practice initiated by the previous Special Rapporteur of carrying out on-site visits to examine in depth particular cases of allegations of violations of human rights brought to her attention.

56. As noted above, in her work, the Special Rapporteur hopes to contribute to the operationalization of the rights of indigenous peoples through: raising awareness about those rights of indigenous peoples; helping to develop indicators against which to assess progress; identifying good practices; helping to find common ground between the positions of States and indigenous peoples; and providing guidance in the interpretation of rights. In connection with the barriers identified in section III above regarding ongoing discriminatory attitudes towards indigenous peoples on the part of the mainstream society, the Special Rapporteur foresees that a major component of her work will be awareness-raising among the broader public about the rights and concerns of indigenous peoples.

## V. Conclusions

57. **At both the international and domestic levels, there is a strong legal and policy foundation upon which to move forward with the implementation of indigenous peoples' rights, and there have been many advances in that regard.**

58. **Nevertheless, there are still numerous obstacles preventing indigenous peoples from fully enjoying their human rights, found to some extent in all countries where indigenous peoples are living.**

59. **One barrier to the implementation of the international human rights standards concerning indigenous peoples relates to the application of the concept of "indigenous peoples" in relation to certain groups.**

60. **By failing to recognize groups as indigenous peoples, States and other actors avoid applying the international standards and protection mechanisms that are most appropriate to address the kinds of human rights concerns that these groups face in common with groups that are generally identified as indigenous around the world.**

61. **There is a need to employ a flexible approach that takes into account the core attributes that distinguish indigenous peoples from minority groups or other local communities. That approach focuses on the rights at stake and asks whether the international framework with respect to the rights of indigenous peoples proves useful in addressing the issues and concerns faced by the group in question.**

62. **A second barrier involves difficulties of States in the operationalization of indigenous peoples' rights. Those difficulties relate to a lack of awareness about the rights and standards; difficulties in identifying practical steps for implementation; and conflicting interpretations of the content of rights.**

63. **With respect to the difficulties involved in identifying practical steps for implementation, it is important that States, together with indigenous peoples, carry out strategic planning, develop monitoring mechanisms and indicators, and identify what has worked and try to replicate successful experiences.**

64. A third barrier to the full and effective realization of the rights of indigenous peoples is steps that have not yet been taken towards reconciliation with indigenous peoples and redress for past violations of their human rights.

65. There is no one path or fast track towards reconciliation, and the history and context of each country will necessarily make the response vary. However, the process generally includes acknowledging a history of wrongdoing, taking affirmative steps to provide redress for and to remedy the ongoing manifestations of past harm, and implementing measures to ensure the non-recurrence of violations.

66. Linked with reconciliation yet to be completed, a fourth barrier to the full enjoyment of the rights of indigenous peoples is the ongoing negative perceptions of indigenous peoples among the broader societies in which they live, including within governments.

67. Such negative perceptions include those that are discriminatory, prejudicial or stereotypical towards indigenous peoples; those that render indigenous peoples invisible to the mainstream in the countries in which they live, making their contributions to the history and to the present-day social and cultural make-up of those countries unknown or not valued; those that demonstrate a lack of understanding about why and how indigenous peoples' rights should be protected; and those that portray indigenous peoples' interests as standing in opposition to those of the mainstream.

68. Finally, the nearly universal disadvantageous social and economic conditions of indigenous peoples as compared to the economic and social conditions of the majority societies in which they live present a fifth barrier to the full exercise of their human rights. Unless indigenous peoples enjoy certain minimum conditions of well-being, they will be unable to truly thrive with their rights intact.

69. While the Special Rapporteur fully acknowledges the difficulties in confronting and overcoming the continuing problems, she hopes to be able to make headway in tackling some of those obstacles during the course of her mandate.

70. Furthermore, the Special Rapporteur intends to carry out her work within those areas generally targeted by special procedures mandate holders, i.e.: the promotion of good practices, country assessments, communications concerning alleged human rights violations and thematic studies.

71. While there are numerous issues that merit thematic attention, the Special Rapporteur intends to focus her efforts over the next three years of her mandate on issues surrounding economic, social, cultural and environmental rights of indigenous peoples.

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