



# General Assembly

Distr.: General  
13 August 2012

Original: English

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## Sixty-seventh session

Item 67 (a) of the provisional agenda\*

### Rights of indigenous peoples

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### Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the report of the Special Rapporteur on the rights of indigenous peoples, James Anaya, submitted in accordance with Human Rights Council resolution 18/8.

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\* A/67/150.



## **Report of the Special Rapporteur on the rights of indigenous peoples**

### *Summary*

The present report is submitted to the General Assembly by the Special Rapporteur on the rights of indigenous peoples pursuant to Human Rights Council resolution 18/8. In his report, the Special Rapporteur provides a summary of his activities since his previous report to the General Assembly (A/66/288).

He also provides comments on the need to harmonize the myriad activities within the United Nations system which affect indigenous peoples. Specific United Nations processes and programmes reviewed include those relating to the United Nations Educational, Scientific and Cultural Organization; the Food and Agriculture Organization of the United Nations; the World Intellectual Property Organization; the Convention on Biological Diversity; the United Nations Framework Convention on Climate Change; the United Nations Conference on Sustainable Development; the World Bank Group; and programmes aimed at reducing emissions from deforestation and forest degradation.

The Special Rapporteur notes that the United Nations system has done important work to promote the rights of indigenous peoples. However, greater efforts are needed to maximize action throughout the United Nations system to promote the rights of indigenous peoples and to ensure that all actions within the system which affect indigenous peoples are in harmony with their rights, particularly their rights as affirmed by the United Nations Declaration on the Rights of Indigenous Peoples. The Special Rapporteur makes a series of recommendations to this end.

## **I. Introduction**

1. The present report is submitted to the General Assembly by the Special Rapporteur on the rights of indigenous peoples pursuant to Human Rights Council resolution 18/8. In the report the Special Rapporteur provides a summary of his activities in the period since his previous report to the General Assembly (A/66/288), and comments on the need to harmonize the myriad activities within the United Nations system which affect indigenous peoples.

2. The Special Rapporteur acknowledges with gratitude the assistance provided by the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the support project for the Special Rapporteur on the rights of indigenous peoples at the University of Arizona College of Law. That assistance has been indispensable to his work, including the preparation of the present report. He also expresses thanks to the many indigenous peoples, States, United Nations bodies and agencies and non-governmental organizations that have cooperated with him in the implementation of his mandate.

## **II. Summary of activities**

### **A. Coordination with international mechanisms and bodies**

3. In accordance with his mandate from the Human Rights Council, as set out in resolution 15/14, to develop a regular cooperative dialogue with all relevant actors, the Special Rapporteur has continued to coordinate his work with the Permanent Forum on Indigenous Issues and the Expert Mechanism on the Rights of Indigenous Peoples, the two other United Nations bodies with specific mandates focusing on indigenous peoples, as well as with other United Nations institutions.

4. An especially important part of the coordination with the Permanent Forum and the Expert Mechanism is the practice of holding parallel meetings with indigenous peoples and organizations during the regular sessions of those bodies. At recent sessions of both the Permanent Forum and the Expert Mechanism, the Special Rapporteur held individual meetings with some 40 indigenous groups, which presented information on specific cases of concern. Face-to-face meetings afford an important opportunity to discuss issues directly with affected groups, bearing in mind the many cases involving threats to the rights of indigenous peoples around the world and the limited time and resources available to the Special Rapporteur to travel to all places of interest.

5. The Special Rapporteur also continues to participate in the annual sessions of the Permanent Forum and the Expert Mechanism. In addition to making statements at the sessions of those bodies, the Special Rapporteur contributes to their analysis of thematic issues. In January 2012, he provided comments during an international expert group meeting on combating violence against indigenous women and girls. In addition, he discussed with members of the Expert Mechanism work on the issue of the extractive industries, a thematic issue to which he is devoting attention and which the Expert Mechanism has also examined over the past year.

## **B. Areas of work**

6. The Special Rapporteur would like to bring to the attention of the General Assembly the activities he has carried out in fulfilment of his mandate in four areas of work: promoting good practices; responding to cases of alleged human rights violations; country reports; and thematic studies.

### **1. Promotion of good practices**

7. The Special Rapporteur has continued to promote good practices for implementing, as well as strengthening, protection for the rights of indigenous peoples at both the international and national levels. A significant aspect of his thematic work on the issue of the extractive industries is aimed at promoting good practices by States and business enterprises and he has held numerous meetings in this context.

8. In January 2012, the Special Rapporteur, together with members of the Expert Mechanism and the Permanent Forum, participated in a two-day meeting to discuss the high-level plenary meeting of the General Assembly, to be known as the World Conference on Indigenous Peoples, which will be held in 2014. In his remarks at the opening of the meeting, the Special Rapporteur noted that the World Conference provided an opportunity, first, for contributing to the development of measures for the direct participation of indigenous peoples in United Nations meetings; second, for advancing greater and more concerted efforts within the United Nations system to promote the rights of indigenous peoples; third, for promoting action at the national and local levels to secure the realization of the rights of indigenous peoples; and fourth, for celebrating indigenous peoples and their contributions worldwide.

9. In addition, the Special Rapporteur visited Peru and Brazil in March and April 2012, respectively. He participated in discussions with indigenous leaders and Government officials on the development of mechanisms for consultation with indigenous peoples and the attempt to clarify the practical dimensions of the principle of free, prior and informed consent. In Peru, he took part in discussions on a new regulation to supplement an existing law on consultation with indigenous peoples. In Brazil, he participated in a conference convened by the Government to launch discussions with indigenous leaders on the development of a new consultation law or regulation.

10. The Special Rapporteur has also been collaborating with the United Nations Development Programme (UNDP) to produce a resource guide on the rights of indigenous peoples for UNDP staff and other development practitioners working on indigenous issues.

### **2. Cases of allegations of human rights violations**

11. The Special Rapporteur receives many allegations of violations of the rights of indigenous peoples in specific situations and often responds by communicating his concerns about the allegations to the relevant Governments. In some cases, he has conducted on-site visits to examine the situation and issued reports with observations and recommendations. In March 2012, he travelled to Costa Rica and met indigenous leaders and Government officials to follow up on his visit in 2011

and his subsequent report examining the situation of indigenous communities that could be affected by a hydroelectric project (A/HRC/18/35/Add.8).

12. In connection with the examination of specific cases, the communications reports of the special procedures contain the full texts of letters sent to and replies received from Governments concerning cases of alleged violations of the human rights of indigenous peoples (A/HRC/19/44 and A/HRC/20/30). Over the past year, the Special Rapporteur has sent communications on situations in Australia, Bangladesh, Bolivia (Plurinational State of), Brazil, Canada, Chile, China, Costa Rica, Ethiopia, Finland, France, Guatemala, Indonesia, Israel, Malaysia, Mexico, Panama, Peru, the Philippines, Thailand and the United States of America. Some of those communications were sent jointly with other special procedures mandate holders. The Special Rapporteur is grateful for the numerous responses to these letters from Governments and hopes that outstanding replies are forthcoming.

13. The Special Rapporteur has sought to follow up on the numerous communications he has received, in many cases issuing detailed observations with recommendations on those situations. Those observations are included as follow-up letters in the communications reports of the special procedures. In almost all the situations about which he has written observations, the Governments involved have responded substantively, allowing for an important dialogue on the subject. The issues touched upon by the Special Rapporteur in his observations include extractive and development projects involving natural resources that are taking place on the territories of indigenous peoples, including mining and hydroelectric projects; threats to the sacred places of indigenous peoples or to areas of cultural significance to them, owing to competing interests on those same lands; removal of indigenous peoples from their traditional lands and territories; and the development of national laws and policies that might result in negative impacts on the lives of indigenous peoples.

14. The Special Rapporteur has also, on occasion, issued statements in the media or made other public statements regarding situations of immediate concern in some countries. Since his previous report to the General Assembly, he has issued public statements concerning protests by indigenous peoples over the militarization of indigenous territories in Cauca, Colombia; a proposed road construction project through the Isiboro-Sécure National Park and Indigenous Territory in the Plurinational State of Bolivia; proposals made by members of the parliament of Norway to repeal key laws and policies on the rights of the Sami people; the socioeconomic conditions faced by members of the Attawapiskat First Nation in Canada; and the impact on the rights of indigenous peoples of large-scale agro-industrial development projects in South-East Asia.

### **3. Country assessments**

15. Since beginning his mandate, the Special Rapporteur has issued reports on the human rights situation of indigenous peoples in specific countries, following visits to those countries. Those reports have included conclusions and recommendations aimed at strengthening good practices, identifying areas of concern and improving the human rights conditions of indigenous peoples in the countries visited. Since his last report to the General Assembly, the Special Rapporteur has visited Argentina and the United States and his reports on the situation of indigenous peoples in those countries will be issued as addenda to his annual report, which will be presented to

the Human Rights Council at its twenty-first session, in September 2012. The Special Rapporteur made a public presentation of his report on the situation of indigenous peoples in Argentina by means of a videoconference, with the cooperation of the United Nations country team and the Government of Argentina, in what he considers to be a good practice. He hopes to be able to replicate this practice following other country visits.

16. In August and September 2012, the Special Rapporteur will visit El Salvador and Namibia respectively. He is very grateful for the excellent cooperation of the Governments of those two countries in planning his visits. The Special Rapporteur hopes that his outstanding requests for visits to other countries will also be considered favourably.

#### **4. Thematic issues**

17. The Special Rapporteur has continued to examine recurring issues of interest and concern to indigenous peoples worldwide. In his annual report to the Human Rights Council at its twenty-first session, the Special Rapporteur has provided comments on the issue of violence against indigenous women, emphasizing the need for a holistic approach to combating that violence (A/HRC/21/47). In the same report, he has also provided an update on his ongoing thematic study on the issue of the extractive industries.

18. In connection with his study on the extractive industries, the Special Rapporteur has addressed some of the issues that have arisen during his consultations over the past year with indigenous peoples, business enterprises, States and non-governmental organizations. In particular, he noted that a focus on the rights implicated in the context of a specific extractive or development project is an indispensable starting point for discussions involving extractive industries operating in or near indigenous lands. In this connection, he noted that consultation and standards of free, prior and informed consent are best conceptualized as safeguards against measures that may affect the rights of indigenous peoples.

19. The Special Rapporteur also suggested that the “protect, respect and remedy” framework, which is incorporated into the Guiding Principles on Business and Human Rights, should be applied to advance the specific rights of indigenous peoples in the same way as it is applied to advance human rights more generally. Lastly, the Special Rapporteur noted that there is a fundamental problem with the current model of natural resource extraction, in which plans are developed with little or no involvement of the affected indigenous community or peoples concerned and in which the corporation is both in control and the primary beneficiary of the extractive operation. He suggested that a new model more conducive to the self-determination of indigenous peoples is needed, which he will examine in more detail in a future report.

20. In section III below, the Special Rapporteur examines another thematic issue that has been of recurring concern in his work; namely, the lack of conformity with existing international standards on indigenous rights, which is often seen in the wide range of activities within the United Nations system that affect indigenous peoples.

### **III. The need to harmonize activities affecting indigenous peoples within the United Nations system**

#### **A. The wide range of activities within the United Nations system that affect indigenous peoples**

21. Numerous institutions, agencies and programmes within the United Nations system are undertaking activities and making decisions that affect indigenous peoples. On a daily basis, multiple institutions within the system undertake hundreds of activities and manage millions of dollars within programmes that have a direct or indirect impact on indigenous peoples. In addition to the effects of those specific activities, United Nations institutions are developing and implementing various policies or guidelines for their work related to indigenous peoples.

22. Furthermore, a number of processes are in place within the United Nations system to build on existing treaty regimes, particularly in the area of climate change and environmental protection; to develop new instruments, such as the instruments being discussed within the World Intellectual Property Organization (WIPO) concerning traditional knowledge and cultural expressions; and to develop and execute new programmes or platforms of interaction, such as the upcoming World Conference on Indigenous Peoples.

23. United Nations institutions and specialized agencies have played key roles in the development of international standards related to indigenous peoples. The International Labour Organization was the first international organization to promote a set of international norms and policies specifically regarding groups identified as indigenous, with its adoption of Convention No. 107 (1957) concerning the protection and integration of indigenous and other tribal or semi-tribal populations in independent countries. The subsequent Convention No. 169 (1989) concerning indigenous and tribal peoples in independent countries marked a momentous step in the consolidation of the contemporary international regime on indigenous peoples, which has been reflected in the development of other international instruments, programmes and policies. The current principal set of standards on indigenous rights, of course, is found in the United Nations Declaration on the Rights of Indigenous Peoples, adopted by the General Assembly on 13 September 2007 (resolution 61/295).

24. United Nations agencies and institutions have played an important role in operationalizing the standards enshrined in the Declaration and other relevant human rights instruments and in mainstreaming indigenous rights throughout the United Nations system. In his work, the Special Rapporteur has come across numerous noteworthy programmes that have had a significant positive impact on promoting the rights of indigenous peoples. At the country level, for example, the United Nations Children's Fund (UNICEF) has a multitude of activities targeted at indigenous peoples in areas such as culturally sensitive health care, bilingual education and disaggregated data collection. The International Fund for Agricultural Development (IFAD) has developed the Indigenous Peoples Assistance Facility to provide small grants for projects and foster a policy on engagement with indigenous peoples. OHCHR works directly with indigenous peoples at the country level, often playing a crucial role in calming situations of potential conflict involving

indigenous peoples. The Special Rapporteur takes particular note of the important work of the OHCHR regional and country offices in Latin America in this regard.

25. However, the Special Rapporteur finds that there is still much work to be done to orient the programmes and staff within the United Nations system to respond effectively to the concerns of indigenous peoples in accordance with their internationally recognized rights. In addition, concerns are raised on a consistent basis by indigenous peoples and their representatives that decisions made within United Nations processes for the development of new multilateral treaties and other instruments, or for establishing new programmatic initiatives, could have the effect of undercutting or revoking the gains that have been made at the international level.

## **B. United Nations Declaration on the Rights of Indigenous Peoples: the principal benchmark for United Nations action affecting indigenous peoples**

26. In the preamble to the Declaration on the Rights of Indigenous Peoples, the General Assembly emphasizes that the United Nations has an important and continuing role in promoting and protecting the rights of indigenous peoples. In view of this special role, the Declaration provides, in articles 41 and 42, that the organs and specialized agencies of the United Nations system and other intergovernmental organizations should contribute to the realization of the provisions in the Declaration through financial and technical assistance; that ways of ensuring the participation of indigenous peoples on issues affecting them should be established; and that the United Nations, its bodies and agencies and Member States should promote respect for and application of the Declaration as well as follow-up on its effectiveness.

27. Although the Permanent Forum on Indigenous Issues is specifically mentioned in article 42 of the Declaration, the mandate to promote respect for the Declaration clearly applies throughout the United Nations system and in particular to United Nations institutions that in some way touch upon indigenous issues.

28. Having been adopted by the General Assembly, the Declaration sets the standards that are to be applied by the various components of the United Nations system in relation to indigenous issues, taking into account the pre-eminence of the General Assembly in defining the overarching normative parameters of the system, in accordance with the Charter of the United Nations. Through the Declaration, the General Assembly directs the organs and agencies of the United Nations, under the mandatory terms of articles 41 and 42, to promote the implementation of the operative provisions of the Declaration. That mandate necessarily includes the lesser requirement of conduct in compliance with the Declaration.

29. In recent years, some United Nations institutions have adopted new policies, programmes or guidelines, or amended existing ones, regarding indigenous peoples in ways that are generally — but not in all respects — consistent with the principles and rights affirmed in the Declaration. These include, among others, the UNDP policy of engagement with indigenous peoples and the guidelines on indigenous peoples' issues developed by the United Nations Development Group, which are designed to assist the United Nations system to mainstream and integrate indigenous peoples' issues into processes for operational activities and programmes at the



country level and establish a broad framework for implementing a human rights-based and culturally sensitive approach to development for and with indigenous peoples.

30. In addition, the United Nations Inter-Agency Support Group on Indigenous Issues, which is composed of a wide range of agencies, funds, programmes and intergovernmental organizations, adopted a statement at its annual meeting in 2007 in which it pledged to advance the spirit and letter of the Declaration and ensure that the Declaration becomes a “living document” throughout the work of the members of the Group. The members of the Group also agreed that they would review their policies and other instruments regarding indigenous peoples, so that all policies, programmes, projects, other instruments and activities are consistent with the Declaration (E/C.19/2007/2).

31. The Special Rapporteur would like to point out the central role that the United Nations Permanent Forum on Indigenous Issues has taken in orienting United Nations institutions and agencies with respect to the rights of indigenous peoples, under its mandate from the Economic and Social Council to provide expert advice and recommendations to programmes, funds and agencies of the United Nations through the Council; and to raise awareness and promote the integration and coordination of activities relating to indigenous issues within the United Nations system (Council resolution 2000/22). In this connection, the Special Rapporteur believes that it would be valuable for the Permanent Forum to undertake a comprehensive review of the work of international institutions that deal with issues relating to indigenous peoples, both at the international and country levels, to assess the extent to which their programming conforms to the standards expressed in the Declaration on the Rights of Indigenous Peoples. This review could perhaps be facilitated by assigning specific members of the Permanent Forum to the various institutions or programmes within the United Nations system and would supplement the work that the Permanent Forum has already carried out in this regard.

32. In any event, the Special Rapporteur would like to take advantage of the unique opportunity that he has in reporting to the General Assembly, to bring the attention of Member States to some of the current programmes and processes within the United Nations system that are of particular interest to indigenous peoples. The following examples are by no means exhaustive, and the Special Rapporteur expects to provide further observations on these and other United Nations activities throughout the remainder of his mandate, especially in his assessment of specific country situations, where appropriate.

## **C. Specific programmes and processes within the United Nations system of particular interest to indigenous peoples**

### **1. United Nations Educational, Scientific and Cultural Organization**

#### *World Heritage Convention*

33. A recurring issue that has come to the attention of the Special Rapporteur relates to the impact on indigenous peoples of the United Nations Educational, Scientific and Cultural Organization (UNESCO) World Heritage sites. This issue has arisen in the context of the Special Rapporteur’s communications with Governments regarding specific allegations of human rights violations, as well as in the context of

his reports examining the situation of indigenous peoples in particular countries.<sup>1</sup> Indigenous peoples have expressed concerns over their lack of participation in the nomination, declaration and management of World Heritage sites, as well as concerns about the negative impact these sites have had on their substantive rights, especially their rights to lands and resources. The Permanent Forum and the Expert Mechanism have both raised concerns in this connection in the course of their work.<sup>2</sup>

34. The exact number of World Heritage sites that are within or near the traditional territories of indigenous peoples, or that otherwise affect them, is not certain and the World Heritage Committee has apparently never undertaken a comprehensive review of this, but the indications are that there are dozens of such sites.

35. In the meantime, there is still no specific policy or procedure which ensures that indigenous peoples can participate in the nomination and management of these sites. The Operational Guidelines for Implementation of the World Heritage Convention, which set out the procedure for the inscription of properties on the World Heritage list and the protection and conservation of sites, are silent on the issue of participation by indigenous peoples. The guidelines provide only that States parties to the Convention are encouraged to ensure the participation of a wide variety of stakeholders in the identification, nomination and protection of World Heritage properties.

36. Furthermore, States are not specifically required to provide any information on the indigenous peoples and local communities living in or around a site they nominate for World Heritage designation, or review the kind of impact a site might have on the rights of these groups. In this connection, the templates provided in the operational guidelines for nominating sites do not contain fields requiring States to describe the potential impact a site might have on indigenous peoples or to provide information about whether affected peoples have been asked about and agree with the nomination, although States are asked to indicate the major categories of land ownership, including traditional or customary ownership.

37. At its thirty-fifth session, in July 2011, the World Heritage Committee took an important step in adopting decision 35 COM 12E, in which States parties are encouraged to involve indigenous peoples and local communities in decision-making, monitoring and evaluation of the state of conservation of World Heritage sites and to respect the rights of indigenous peoples when nominating, managing and reporting on World Heritage sites in the territories of indigenous peoples. However, until amendments are made to the operational guidelines, these proposals may not fully take root. It is worth noting also that in 2001, the World Heritage Committee rejected proposals put forward by indigenous peoples to establish a council of experts of indigenous peoples, which was to act as an advisory body to the Committee.

38. Other significant developments have taken place in cooperation with the advisory bodies to the World Heritage Committee, which play key roles in the declaration of sites. In 2011 the Permanent Forum on Indigenous Issues noted and welcomed the initiative of the Committee and its three advisory bodies, the International Union for Conservation of Nature (IUCN), the International Council

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<sup>1</sup> See, for instance, A/HRC/21/47/Add.2, para. 50.

<sup>2</sup> See, for instance, E/2010/43-E/C.19/2010/15, para. 131 and A/HRC/18/42, annex, para. 38.

on Monuments and Sites and the International Centre for the Study of the Preservation and Restoration of Cultural Property, to review current procedures and capacity to ensure free, prior and informed consent and the protection of the livelihoods and tangible and intangible heritage of indigenous peoples (E/2011/43-E/C.19/2011/14, para. 41). In addition, in its resolution 4.048, adopted at its fourth session in 2008, the IUCN World Conservation Congress resolved to apply the requirements of the Declaration on the Rights of Indigenous Peoples to all of its programmes and operations and called on Governments to work with indigenous peoples' organizations to ensure that protected areas which affect or may affect the lands, territories and other resources of indigenous peoples are not established without their free, prior and informed consent and to ensure due recognition of their rights in existing protected areas.

39. In October 2011, the Special Rapporteur met with representatives of UNESCO programmes that are relevant to indigenous peoples. He observed during the meeting a willingness to improve the World Heritage nominations procedure related to indigenous communities and to explore methods for doing so. However, UNESCO representatives raised the issue of the limitations of their technical, human and financial resources for carrying out consultations with all affected indigenous peoples for all sites that have been nominated, as well as the political challenges they often face in this regard, including a lack of cooperation by Governments.

40. Nonetheless, it is worth noting that the Special Rapporteur has heard of positive examples of participation by indigenous peoples in the declaration and management of World Heritage sites, which demonstrate that these challenges can be overcome, at least in certain contexts. In one example, he learned about the designation of the Laponian area in northern Sweden as a World Heritage site, which the Sami people actively supported. He also notes as an example of good practice, the designation of Taos Pueblo in the United States as a World Heritage site, which was proposed by the Taos people themselves. In the view of the Special Rapporteur, proposals for the declaration of World Heritage sites that directly affect indigenous peoples should come from those peoples, something that the States parties to the World Heritage Convention and United Nations agencies should promote.

#### *UNESCO policy on indigenous peoples*

41. A potential tool for addressing concerns regarding the declaration and management of World Heritage sites lies in the anticipated, but not as yet developed, UNESCO policy on indigenous peoples. In October 2011, the Special Rapporteur and members of the Permanent Forum and the Expert Mechanism participated in a meeting at the headquarters of UNESCO in Paris, at which the organization launched its work to develop a policy on indigenous peoples. In a statement at the launch the Special Rapporteur emphasized that UNESCO programming, just as that of other United Nations agencies which touch upon the interests of indigenous peoples, must at a minimum be consistent with the relevant international standards, as well as with applicable national laws and policies.

42. Ideally, however, UNESCO programming would do more than avoid harm to indigenous peoples, but would actively support their rights, as it already has in numerous instances and through numerous programmes. The Special Rapporteur

believes that a UNESCO policy could assist greatly in supporting the rights of indigenous peoples in three principal ways: first, by assisting UNESCO to reflect on the effects of its existing programming on indigenous peoples, as part of an evaluative process; second, by assisting UNESCO in its strategic planning for programmes which affect indigenous peoples, incorporating the objective of protecting the rights of indigenous peoples into programmatic work; and third, by providing UNESCO with practical guidelines for consultation with indigenous peoples in relation to UNESCO programmes and activities. The Special Rapporteur will watch with interest the development of a UNESCO policy on indigenous peoples and expresses his willingness to provide input into this process if it would be considered useful.

## **2. Food and Agriculture Organization of the United Nations**

43. Numerous United Nations agencies create guidelines for their programmatic work or to advise States, civil society or others in relation to various issues of concern, often with implications for the operationalization of internationally recognized human rights standards related to indigenous peoples. In the context of some of these procedures, concern has been expressed that they give States, United Nations agencies and others the opportunity to renegotiate standards which have already been agreed upon and are in place.

44. Such was the issue raised this year in relation to the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security developed by the Food and Agriculture Organization of the United Nations (FAO) and adopted by the Committee on World Food Security on 11 May 2012. The development of the Guidelines was initiated in 2009 and included some 10 consultations with Governments, civil society, the private sector, academia and United Nations agencies, among others. The Guidelines are expressly voluntary (guideline 2.1) but at the same time have potentially far-reaching implications, as they may be used by all countries and regions at all stages of economic development and for the governance of all forms of tenure (guideline 2.4).

45. Both substantive and procedural complaints have been made concerning the Guidelines. In particular, concern has been raised by a number of indigenous peoples and organizations that certain provisions fall below already agreed upon standards with respect to rights to lands and resources, which are core rights for indigenous peoples. It has been pointed out, for example, that with respect to evictions of indigenous peoples from their traditional lands, the Guidelines do not establish the free, prior and informed consent of the affected indigenous peoples as a precondition of such removal, as required in article 10 of the Declaration on the Rights of Indigenous Peoples, instead providing only that indigenous peoples and other communities with customary land tenure systems should not be forcibly evicted from their ancestral lands (guideline 9.5).

46. Also, with respect to land restitution, under section 14, the Guidelines call for restitution of lands taken from any persons, where appropriate, and in the case of indigenous peoples specifically, they state that restitution should be addressed in the national context and in accordance with national legislation. This is viewed as being much weaker and more ambiguous than the standards set out in article 28 of the Declaration, which state clearly that indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, fair compensation

for the lands, territories and resources which they have traditionally owned, occupied or used and which have been taken, occupied, used or damaged without their free, prior and informed consent.

47. In the view of the Special Rapporteur, the Guidelines could be improved upon by taking more fully into account the special standards and considerations that apply to indigenous peoples. The Special Rapporteur has consistently argued against restrictive interpretations of texts that bear upon human rights, preferring to adopt broad and progressive understandings of written instruments when possible and also to encourage States and other actors always to implement guidelines and policies concerning indigenous peoples in accordance with the spirit and terms of the Declaration.

48. It is worth noting that, in the past, FAO has made important strides in its recognition of indigenous rights, particularly through the development of its policy on indigenous and tribal peoples of 2010. That policy affirms, among its core objectives for engagement with indigenous peoples, that when there is a direct impact on or relation to indigenous peoples' issues, FAO will follow the provisions of the Declaration on the Rights of Indigenous Peoples that relate to free, prior and informed consent.

### **3. World Intellectual Property Organization**

49. The World Intellectual Property Organization (WIPO) is a United Nations specialized agency that advances the protection of intellectual property globally. The involvement of indigenous peoples at WIPO has been focused on ensuring that adequate measures are developed to protect their genetic resources, traditional cultural expressions (music, art, design, names, symbols, handicrafts and the like) and traditional knowledge (acquired and accumulated by indigenous peoples over time) against misuse and misappropriation, as well as to share equitably in the benefits from the commercialization of these assets.

50. The WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, established in 2000, provides a forum in which member States can discuss intellectual property issues which arise in relation to traditional knowledge, traditional cultural expressions, genetic resources and benefit-sharing. In 2009, the WIPO General Assembly authorized the Committee to undertake negotiations, with the intention of reaching an agreement on the text of an international instrument (or instruments) that would effectively protect traditional knowledge, traditional cultural expressions and genetic resources within existing intellectual property regimes.

51. Key issues for indigenous peoples, which have been discussed in the context of the negotiations, relate to whether the text of the instruments will incorporate the recognition that indigenous peoples are the holders of rights to traditional knowledge and traditional cultural expressions and whether the instrument(s) will affirm the obligation of States to obtain the free, prior and informed consent of indigenous peoples in relation to the appropriation of traditional knowledge and cultural expressions. Representatives of indigenous peoples suggest that some progress has been made on these questions. However, there are outstanding issues regarding the forms of traditional knowledge or cultural expressions which might be protected by the instruments to be developed.

52. Certain fundamental aspects of the negotiations likewise remain unresolved. It is yet to be determined whether they will result in three distinct instruments on genetic resources, traditional knowledge and traditional cultural expressions, or if there will be one instrument addressing all three areas. Similarly, there is yet to be agreement as to the nature of the instrument(s), chiefly whether it or they will be legally binding. In July 2012, the Committee concluded a session on the most recent draft text of an international legal instrument on the protection of traditional cultural expressions, which is to be transmitted as a “work in progress” to the WIPO General Assembly in October 2012. Texts on genetic resources and traditional knowledge have also previously been transmitted to the General Assembly for consideration.

53. In the past decade, the Committee has made concerted efforts to improve the participation of indigenous peoples and local community representatives in its work, including a fast-track accreditation procedure for observers, many of whom represent indigenous and local communities. Furthermore, prior to each session of the Committee, indigenous peoples and local community representatives participate in a pre-session panel financed by WIPO. In 2005, WIPO created the Voluntary Fund for Accredited Indigenous and Local Communities, which facilitates the attendance of indigenous peoples at meetings.

54. Nonetheless, indigenous peoples raise concerns regarding their participation in the Committee process. Specifically, under current WIPO rules of procedure, indigenous peoples have observer status, whereby they can make proposals during negotiations, but those proposals require the endorsement of at least one State in order to be considered. In practical terms, this requirement at times results in textual proposals made by indigenous peoples not being included in drafts, or put forward in ways that do not reflect their original proposals.

#### **4. Convention on Biological Diversity**

55. The Convention on Biological Diversity was adopted in 1992 with the goals of conserving biological diversity, promoting the sustainable use of biodiversity and guaranteeing the equitable sharing of benefits derived from the use of genetic resources — all of which are key issues affecting indigenous peoples, especially in relation to their lands, resources and traditional knowledge.

56. Specific reference to indigenous peoples is made in article 8 (j) of the Convention, in accordance with which States parties commit to preserving and maintaining the knowledge, innovations and practices of indigenous and local communities which are relevant for the conservation and sustainable use of biological diversity. The article also expressly refers to the participation of indigenous peoples in this connection, noting that States should promote the sustainable use of biological diversity “with the approval and involvement of the holders of such knowledge” and “encourage the equitable sharing of the benefits arising from the utilization of such knowledge”. Article 10 (c) of the Convention, furthermore, calls on States to protect and encourage the use of biological resources in accordance with traditional cultural practices which support conservation or sustainable use.

57. Within this framework, indigenous peoples have participated in sessions of the Conference of the Parties to the Convention and in meetings of the Ad Hoc Open-ended Intersessional Working Group on Article 8 (j) and Related Provisions of the Convention on Biological Diversity, which was established to advance a programme

of work for implementation of that article. In carrying out its mandate, the Working Group has sought to improve the role and participation of indigenous representatives in its work, developing resolutions and guidelines related to indigenous peoples. In 1993, the International Indigenous Forum on Biodiversity was established to facilitate indigenous participation in negotiations and dialogue within the framework of article 8 (j). Importantly, the Working Group has established a voluntary fund to provide financial support for indigenous peoples to participate in meetings related to the Convention. However, during recent meetings of the Working Group, indigenous peoples have highlighted issues regarding their full and effective participation throughout the processes of the Convention. Specifically, the Forum emphasized the need for increased monetary support for the voluntary fund.

58. A recent major development related to the Convention is the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization, which was adopted in 2010. The Nagoya Protocol was developed, in large part, as a response to concerns regarding the provisions of the Convention on access and sharing of benefits. Indigenous peoples have expressed concerns at the lack of adequate participation in the development of the Nagoya Protocol, although these will not be addressed in detail here. In addition, representatives of indigenous peoples have expressed concerns over the substantive standards contained in the Protocol, which have been viewed as weak in terms of the specific protections afforded to indigenous peoples, although some positive developments have also been highlighted. It is worth mentioning that in its preamble the Nagoya Protocol “notes” the Declaration on the Rights of Indigenous Peoples.

59. With respect to provisions regarding the traditional knowledge of indigenous peoples, the Nagoya Protocol states, importantly, that States parties to the Protocol “shall take the legislative, administrative or policy measures” necessary to ensure that benefits arising from the utilization of traditional knowledge associated with genetic resources are shared in a fair and equitable way with indigenous and local communities (article 5.5). The article further states that such sharing of benefits shall take place on mutually agreed terms. Additionally, under article 7, parties are to take measures to ensure that traditional knowledge associated with genetic resources held by indigenous and local communities is accessed with their prior and informed consent, or approval and involvement. These articles are viewed as containing positive aspects in that they indicate an implicit recognition of indigenous peoples as the holders of rights to their traditional knowledge and also require that prior and informed consent be obtained in relation to access to that knowledge. However, the qualifier “where appropriate” in both articles, and the condition “in accordance with domestic law” under article 7, has been met with criticism by indigenous peoples, especially in some countries where domestic laws are weak in this regard.

60. Provisions of the Nagoya Protocol regarding genetic resources have been slightly more problematic in relation to the rights of indigenous peoples. In particular, the Protocol states that parties shall take measures, again with the qualifier “as appropriate”, to ensure that benefits arising from the utilization of genetic resources held by indigenous and local communities, in accordance with domestic legislation on the rights of these communities, are equitably shared (article 5.2). As regards the sharing of benefits in relation to the use of genetic resources, the Protocol similarly requires that the parties take measures to ensure that the prior

and informed consent, or approval and involvement of indigenous and local communities be obtained, but adds “where they have the established right to grant access to such resources” (article 6.2). Concern has been expressed that the reference to established rights in accordance with domestic legislation in these articles could be interpreted to suggest that the rights of indigenous peoples to genetic resources can only be established by domestic law, not international law.

61. In any case, the Nagoya Protocol certainly provides some measure of protection for indigenous peoples against the misappropriation of genetic resources and ratification of the Protocol is moving forward. Current discussions are focused on, among other issues, ensuring indigenous participation and the incorporation of customary procedures within the “access and benefit-sharing clearing house” established under article 14, which will serve as the place for sharing information related to access and benefit-sharing by parties to the Protocol. Indigenous peoples are also participating in discussions to develop measures to establish and strengthen mechanisms to address non-compliance at the domestic level. The Special Rapporteur will watch with interest to see how this process develops and how the provisions of the Nagoya Protocol are actually implemented, with the hopeful expectation that they will be implemented in harmony with the Declaration on the Rights of Indigenous Peoples.

#### **5. United Nations Framework Convention on Climate Change**

62. Indigenous peoples typically depend heavily on the natural resources in their traditional territories and, as a result, are directly affected by environmental degradation. Being among those most affected by climate change, indigenous peoples have for years been demanding greater protection of their human rights in the context of international discussions on climate change and for their effective participation in those discussions, in accordance with the principles of the Declaration on the Rights of Indigenous Peoples.

63. Central to international efforts to tackle climate change is the United Nations Framework Convention on Climate Change, which was opened for signature, along with the other so-called Rio Conventions (the United Nations Convention on Biological Diversity and the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa) during the United Nations Conference on Environment and Development, also known as the Earth Summit, in Rio de Janeiro, Brazil, in June 1992. During the third Conference of the Parties to the Framework Convention on Climate Change in 1997, and following extensive debates, the Kyoto Protocol was adopted, by which a number of industrialized countries committed themselves to decreasing their greenhouse gas emissions in accordance with legally binding targets.

64. Over the past decade or so, representatives of indigenous peoples have been active in meetings related to the Convention, typically participating in the annual sessions of the Conference of the Parties to the Convention. During the discussions at these meetings, they have advocated for the development of a human rights-based approach to climate change and respect for the rights enshrined in the Declaration on the Rights of Indigenous Peoples. They have also lobbied for the establishment of an expert body to provide technical and advisory assistance on issues affecting



indigenous peoples to the Conference of the Parties and its subsidiary bodies in the context of negotiations.

65. With respect to participation in processes related to the Framework Convention on Climate Change, indigenous peoples' organizations can apply for observer status to participate in sessions of the bodies of the Convention. However, an issue of continuing importance to indigenous peoples is the creation of modalities for their participation in negotiations on the processes related to the Convention. In this connection, the Permanent Forum on Indigenous Issues has called upon the States parties to the Convention to develop mechanisms to promote the participation of indigenous peoples in all aspects of the international dialogue on climate change (E/2011/43-E/C.19/2011/14, para. 21). In addition, the International Indigenous Peoples Forum on Climate Change exists as a joint indigenous caucus to spearhead efforts to influence decisions within the climate change regime.

## **6. United Nations Conference on Sustainable Development**

66. A related process in which indigenous peoples have been active is the United Nations Conference on Sustainable Development, which was held from 20 to 22 June 2012 in Rio de Janeiro and was attended by heads of State, international institutions, non-governmental organizations and other relevant stakeholders. The conference marked the twentieth anniversary of the adoption of the three environmental conventions mentioned in paragraph 63 above at the United Nations Conference on Environment and Development, held in Rio de Janeiro in 1992. Also adopted at that conference was Agenda 21, a plan of action addressing various issues related to environmental protection, including economic and social development, conservation and resource management and strengthening the role of "major groups", a designation that includes indigenous peoples. The objective of the United Nations Conference on Sustainable Development was to build on commitments made at the United Nations Conference on Environment and Development in 1992 and to adopt clear and practical measures which would support and advance sustainable development.

67. In its resolution 64/236 calling for the United Nations Conference on Sustainable Development, the General Assembly encouraged participation of all "major groups" in all stages of the preparatory process and provided for their formal role in that process and in the conference itself. As one of the major groups, indigenous peoples have engaged in discussions with United Nations actors and Member States in both formal and informal settings, contributing to the final outcome document, known as "The future we want", contained in General Assembly resolution 66/288. In a submission during the consultations on the outcome document, indigenous peoples from Latin America and the Caribbean, Asia, Africa and North America called for the Declaration on the Rights of Indigenous Peoples to be a principle framework for the realization of sustainable development. The outcome document specifically recognizes the importance of the Declaration in the context of global, regional, national and subnational implementation of sustainable development strategies.

68. In spite of this recognition, the final text of the document was considered to be largely uninspiring and a disappointment to indigenous peoples for its failure to integrate a human rights approach adequately into environmental protection. For example, while the final text recognizes the importance of strong and effective legal

and regulatory frameworks, policies and practices for the mining sector, including effective safeguards that reduce social and environmental impacts, as well as conserving biodiversity and ecosystems, it does not make any specific mention of the effect of mining activities on human rights generally or the rights of indigenous peoples in particular. The relative lack of focus on human rights in the outcome document was viewed by indigenous peoples as especially disappointing, considering that international, regional and national courts and human rights bodies are increasingly acknowledging environmental damage as a source of human rights violations and have established that States have a responsibility for environmental protection in the context of respect for human rights.

## **7. Reducing emissions from deforestation and forest degradation programmes**

69. Proposals for the establishment of programmes to reduce emissions from deforestation and forest degradation have arisen out of discussions at the international level regarding climate change, especially in the context of the Framework Convention on Climate Change. These programmes were created to address the significant increase in greenhouse gas emissions caused by the destruction of forests. They are designed to support countries, especially developing countries, in their efforts to decrease emissions from deforestation and other forms of forest degradation, in addition to conserving forests and sustainably managing forest carbon stocks.

70. Given the high number of indigenous peoples living in forested areas and the potentially far-reaching effects of such initiatives, indigenous peoples have been active in efforts to ensure that their rights are safeguarded as specific projects to reduce emissions from deforestation and forest degradation are designed and implemented. In this regard, in its decision 2/CP.13, adopted at its thirteenth session in December 2007, the Conference of the Parties to the Framework Convention on Climate Change affirmed the urgent need to take further meaningful action to reduce emissions from deforestation and forest degradation in developing countries, while also recognizing that the needs of local and indigenous communities should be addressed when action is taken to reduce those emissions.

71. There are currently two principle initiatives aimed at reducing emissions from deforestation and forest degradation: (a) the World Bank Forest Carbon Partnership Facility and the associated Forest Investment Programme, launched in 2007 and (b) the United Nations Collaborative Programme on Reducing Emissions from Deforestation and Forest Degradation in Developing Countries, launched in 2008 by UNDP, the United Nations Environment Programme and FAO. Both the Forest Carbon Partnership Facility and the Collaborative Programme have developed various initiatives for dialogue with indigenous peoples in the context of programmes aimed at reducing emissions from deforestation and forest degradation.

72. Indigenous peoples say that they were not adequately involved in the initial design of these initiatives and continue to call for greater participation in the development and implementation of such programming at all levels. Specifically, they have lobbied to ensure that indigenous peoples are consulted at all stages of the planning and implementation of projects aimed at reducing emissions from deforestation and forest degradation and that they are represented in the governance structures of such projects.

73. Indigenous peoples have also raised, and continue to raise, a number of substantive and procedural concerns about these processes. Among their principal concerns, indigenous peoples have emphasized the need to ensure that any rights they have over lands where activities to reduce emissions from deforestation and forest degradation are to take place, are secured; that indigenous peoples share equitably in the distribution of benefits related to those activities; and that broader structural issues driving deforestation be addressed concurrently with such initiatives.

## 8. World Bank Group

74. A significant number of World Bank projects affect indigenous peoples, including projects involving agriculture and rural development, energy and mining, environment, education and health. The Forest Carbon Partnership Facility and the Forest Investment Programme mentioned above also clearly have potential effects on the rights of indigenous peoples. The World Bank was the first multilateral development bank to establish a policy on indigenous peoples in 1982 in its operational manual statement No. 2.34 on tribal people in projects financed by the Bank. A new and revised policy on indigenous peoples was adopted in 1991, which recognized the importance of protecting the ancestral lands of indigenous peoples. That policy also referred to the need to ensure the informed participation of indigenous peoples in decision-making regarding development projects, as well as the need to prepare a development plan for any project affecting indigenous peoples.

75. The current operational policy on indigenous peoples, which was endorsed by the Board of Executive Directors of the World Bank in 2005, builds on the previous policy, adding the requirement that the broad community support of indigenous peoples be sought through a process of free, prior and informed consultation before a project affecting indigenous peoples may be carried out. This standard has been met with criticism by indigenous peoples for years, who consider it to be a lesser standard than the standard on free, prior and informed consent contained in the Declaration on the Rights of Indigenous Peoples. It is worth noting, however, that the Declaration was adopted after the World Bank had already adopted its current operational policy.

76. In 2011, the World Bank issued an internal learning review of implementation of its operational policy on indigenous peoples.<sup>3</sup> The review found that between July 2005 and June 2008, 132 projects triggered the policy, i.e., about 12 per cent of the total number of all projects approved by the World Bank during that period. The report highlighted as principal concerns the weak compliance regarding the protection or promotion of rights to lands and resources and the establishment of a grievance mechanism. It contained several recommendations for improvements in implementation of the operational policy on indigenous peoples, including the need for bank staff to improve their knowledge of the policy; increased attention to be paid to the land and resource rights of indigenous peoples; better operationalization of the free, prior and informed consultation standards; and a need for improvement in the preparation of social assessments and action plans in relation to specific projects.

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<sup>3</sup> World Bank Operational Policy and Country Services, *Implementation of the World Bank's Indigenous Peoples Policy: a Learning Review* (Washington, D.C., August 2011).

77. The World Bank is currently carrying out a review of all its safeguard policies, both environmental and social, including its policy on indigenous peoples. This review may be an opportunity to bring the policies of the Bank in line with the provisions of the Declaration on the Rights of Indigenous Peoples. At the same time, however, indigenous peoples fear that the review process will result in weakened standards regarding their rights. Indigenous peoples' and non-governmental organizations have urged the Bank to bring its policy on indigenous peoples in line with the Declaration and raised concerns that numerous projects and programmes supported by the Bank continue to have a negative impact on indigenous peoples. Indigenous peoples have also emphasized the need for their adequate participation in the review process and have expressed concern over delays in carrying out consultations in the context of the review process. The World Bank has stated its intention of releasing an "approach paper" in September or October 2012, with proposals for amendments to the safeguard policies. The Special Rapporteur will be watching with close attention to see how this process unfolds.

78. In what the Special Rapporteur considers a positive development regarding the rights of indigenous peoples, the International Financial Corporation, the private sector arm of the World Bank Group, has reviewed its performance standard on environmental and social sustainability relating to indigenous peoples and revised it to include recognition of the need to seek the free, prior and informed consent of indigenous communities in certain circumstances. Those circumstances include situations where a project is expected to result in adverse impacts to lands under customary use or ownership, when it will result in the relocation of indigenous peoples from their traditional lands and territories, or when it may significantly impact on the "critical cultural heritage" of indigenous peoples. The Special Rapporteur provided extensive input during the review process. He notes that the World Bank could look to it for guidance during the upcoming review of its operational policy.

#### **IV. Conclusions and recommendations**

**79. The Special Rapporteur is grateful for the opportunity to continue his work in accordance with his mandate under Human Rights Council resolution 15/14 and expresses his thanks to all those who have supported and continue to support his mandate. He is further grateful for the opportunity to report to the General Assembly on his work and to offer comments on the various activities within the United Nations system which affect indigenous peoples. The following conclusions and recommendations relate to those activities.**

**80. A wide range of institutions and processes exist within the United Nations system, which affect indigenous peoples and which have an important role to play in the promotion of their human rights. The activities of various agencies, funds, programmes and human rights bodies and mechanisms, in addition to the mechanisms with mandates specific to indigenous peoples (the Permanent Forum on Indigenous Issues, the Expert Mechanism on the Rights of Indigenous Peoples and the Special Rapporteur on the rights of indigenous peoples), touch upon indigenous issues.**

**81. Relevant processes within the United Nations system include those which aim to build on existing treaty regimes, particularly in the area of climate**

change and environmental protection; develop new instruments, such as those being discussed within the World Intellectual Property Organization concerning traditional knowledge and cultural expressions; and develop and execute new programmes or platforms of interaction, such as the upcoming World Conference on Indigenous Peoples.

82. The Declaration on the Rights of Indigenous Peoples, which was adopted by the General Assembly in 2007, calls upon the various components of the United Nations system to contribute to and promote the full realization of the rights affirmed in the Declaration (articles 41 and 42). Given this mandate from the General Assembly, the Declaration defines the minimum standards for any activity within the United Nations system which touches upon the concerns of indigenous peoples, in addition to being a stimulus for affirmative measures to promote their rights.

83. A number of institutions and processes within the United Nations system have done important work to promote the rights of indigenous peoples. However, greater efforts need to be made to maximize action throughout the United Nations system to promote those rights and ensure that all actions within the system which affect indigenous peoples are in harmony with their rights, particularly as affirmed by the Declaration on the Rights of Indigenous Peoples.

84. The agencies, funds, programmes and intergovernmental organizations of the United Nations system should develop or further pursue initiatives within their respective programme areas which are aimed at promoting the rights of indigenous peoples, in accordance with the Declaration. Furthermore, in all instances they should insure that the design and execution of their various activities and programmes are consistent with and reinforce the Declaration.

85. To this end, United Nations institutions should take specific steps to ensure awareness among their directors and staff of the Declaration and its provisions and to ensure that the Declaration is a key reference in any decision-making or programming affecting indigenous peoples at all levels of operation. Furthermore, in their budgeting, agencies should ensure that appropriate funding is set aside for activities which promote implementation of the Declaration, as well as ensuring that budgeted activities do not conflict with its provisions.

86. Operational policies or guidelines relating to indigenous peoples, such as those of FAO and the World Bank Group, should be reformed as necessary, or interpreted to ensure compliance with relevant international standards as set forth in the Declaration, applicable treaties and other sources. Other institutions within the United Nations system should develop, as appropriate, guidelines or policy directives to promote and ensure respect for the rights of indigenous peoples.

87. In addition, agencies, funds, programmes and intergovernmental organizations of the United Nations system should consult with indigenous peoples, in accordance with the same standards of consultation that apply to States under the Declaration, in the development and execution of activities or policies which may affect the rights or interests of indigenous peoples. Specific consultative procedures should be established in this regard.

88. The United Nations Inter-Agency Support Group on Indigenous Issues has an important role to play in implementing the recommendations set out above, building upon initiatives it has already taken in this regard.

89. Processes within the United Nations system for the development of new multilateral treaties or other instruments, or for the development of new programmes or conferences, should be consistent with international standards concerning the rights of indigenous peoples, both in relation to their participation in these processes and in terms of substantive outcomes.

90. The right of indigenous peoples to participate in decisions affecting them, as articulated in the Declaration and other international sources, should therefore be respected fully in the setting of international standards or other processes which affect their rights or interests.

91. Additionally, the outcomes of these processes should reinforce the rights of indigenous peoples as affirmed in the Declaration. In no instance should a new international treaty or other instrument, or the outcome document of a conference, fall below or undermine the standards set forth in the Declaration or established in other international sources.

92. As for existing treaties or other normative instruments, including agency guidelines and policies, they should be interpreted and implemented in a way that is consistent with the Declaration on the Rights of Indigenous Peoples, whether or not the specific texts of these instruments reflect language which exactly matches the terms of the Declaration, unless the wording clearly does not allow for such an interpretation. If the wording of a text is such that it cannot be applied consistently with the Declaration, it should be amended or reformed.

93. The Special Rapporteur considers it pertinent to make special mention of the upcoming World Conference on Indigenous Peoples, which will be held in 2014 as a high-level plenary meeting of the General Assembly. Being of obvious interest to indigenous peoples, the conference should allow for full and adequate participation by indigenous peoples, in accordance with the relevant provisions of the Declaration.

94. The Special Rapporteur is aware that, at the time of this writing, the modalities of participation in the World Conference are being determined. In this connection, he urges flexibility and innovation to ensure indigenous participation in the meeting, in accordance with the standards of participation which the General Assembly itself affirmed when it adopted the Declaration on the Rights of Indigenous Peoples. In addition, the outcomes of the World Conference should reinforce, and in no way undermine or fall below, the standards of the Declaration.

95. A coordinated effort should be made to develop the capacities and skills of indigenous peoples to ensure that they are able to participate effectively in international processes which affect their rights and to engage effectively in consultations with United Nations institutions in the elaboration, implementation and evaluation of programmes affecting them. Some initiatives have been taken in this regard, but it is apparent to the Special Rapporteur that more capacity-building opportunities for indigenous peoples are required. Initiatives for such capacity-building could be advanced by the Inter-Agency Support Group on Indigenous Issues.