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**ANNUAL REPORT OF THE UNITED NATIONS HIGH COMMISSIONER
FOR HUMAN RIGHTS AND REPORTS OF THE OFFICE OF THE
HIGH COMMISSIONER AND THE SECRETARY-GENERAL**

The rights of indigenous peoples

Report of the United Nations High Commissioner for Human Rights*

* Late submission.

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I. INTRODUCTION

1. The Human Rights Council, in its decision 2/102, requested the United Nations High Commissioner for Human Rights to continue with the fulfilment of her activities, in accordance with all previous decisions adopted by the Commission on Human Rights and to update the relevant reports and studies. On the issue of the rights of indigenous peoples, an interim report (A/HRC/9/11) was submitted, in which the main activities undertaken by the Office of the United Nations High Commissioner for Human Rights (OHCHR) to promote and protect the rights of indigenous peoples were outlined.

2. The present document is a final report supplementing the interim report, and contains a review of relevant developments in the rights of indigenous peoples, including specific references to the United Nations Declaration on the Rights of Indigenous Peoples, arising out of the work of the treaty bodies, special procedures and OHCHR field presences from 2007 to 2008. The report is intended to contribute to the implementation of article 42 of the Declaration, which called on the United Nations, its bodies, including the Permanent Forum on Indigenous Issues, and specialized agencies, including at the country level, and States to promote respect for and full application of the provisions of the Declaration and to follow up on its effectiveness.

3. In the second section of the report, a review of the work of treaty bodies and special procedures is presented through the most regularly observed issues, including good practices and challenges, relating to the rights of indigenous peoples.¹ The third section presents relevant activities conducted by the Council, in particular the reports of the High Commissioner on safe drinking water and climate change. In the fourth section, the report presents some good practices by OHCHR field presences to advance the rights of indigenous peoples at the national and regional levels.

4. In the recommendations, the High Commissioner invites the Council to consider the nature of the OHCHR annual report on the rights of indigenous peoples and to consider grouping all reports on the rights of indigenous peoples to be submitted to the Council at one session of the year.

II. REVIEW OF RELEVANT DEVELOPMENTS ARISING OUT OF THE WORK OF THE TREATY BODIES AND SPECIAL PROCEDURES

A. Treaty bodies

5. The issues most affecting indigenous peoples regularly addressed by treaty bodies in their review of State reports include land, poverty, education and health, participation and consultation, the question of access to justice, census data and self-identification as well as civil status registration.

¹ The Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people and the Expert Mechanism on the Rights of Indigenous Peoples will submit their own reports to the Human Rights Council.

6. In relation to land, the Committee on the Elimination of Racial Discrimination addressed the issue in its review of a number of countries (see CERD/C/CAN/CO/18, CERD/C/IND/CO/19, CERD/C/FJI/CO/17, CERD/C/NIC/CO/14 and CERD/C/ECU/CO/19). Land issues also come up in the review of State party reports by the Human Rights Committee (see CCPR/C/PAN/CO/3) and the Committee on Economic, Social and Cultural Rights (see E/C.12/FIN/CO/5, E/C.12/PRY/CO/3 and E/C.12/BOL/CO/2). The land-related issues raised by the above-mentioned committees highlight the need for demarcation and land title for the ancestral land and territories of indigenous peoples. In situations where land claims have to be settled, treaty bodies have repeatedly encouraged negotiations with indigenous communities while guaranteeing protection against forced eviction and avoiding any restriction on progressive development of their rights.

7. On several occasions, the correlation between poverty and indigenous origins was observed by treaty bodies. More specifically, the question of access to education and health remains a concern in most countries under review. The Committee on the Elimination of Racial Discrimination noted with satisfaction the adoption of the regional autonomous education system plan by Nicaragua, but recommended that it take action to reduce the high rate of illiteracy among indigenous peoples. With regard to health, the Committee welcomed the General Health Act, as it enables the autonomous region to define its own indigenous health-care model, but recommended that efforts be made to guarantee the right to public health, medical care, social security and social services, with special attention to reduce maternal mortality (CERD/C/NIC/CO/14). The Committee was also pleased to note the introduction of a system of bilingual education in Ecuador, providing instruction to indigenous children in Spanish and in their own languages. It recommended the strengthening of legal arrangements underpinning indigenous institutional structures and the allocation of the necessary resources (CERD/C/ECU/CO/19).

8. On these issues, special attention to indigenous women and children has been paid by the Committee on the Elimination of Discrimination against Women (see CEDAW/CO/COL/CO/6, CEDAW/NIC/CO/6, CEDAW/C/BRA/CO/6, CEDAW/C/PER/CO/6 and CEDAW/C/SUR/CO/3) and the Committee on the Rights of the Child (CRC/C/CHL/CO/3, CRC/C/HND/CO/3, CRC/C/SUR/CO/2, CRC/C/KEN/CO/2, CRC/C/MYS/CO/1, CRC/C/VEN/CO/2 and CRC/C/TLS/CO/1). The recognition and protection of reproductive health and rights of indigenous women have been pointed out as a central challenge for indigenous women's health. In the area of education, the improvement of literacy standards of indigenous women and girls has been identified as an area of special need.

9. The need for disaggregated data in the national data system differentiating specifically indigenous peoples, including women and children, in order to address the situation of poverty faced by indigenous peoples, has been observed by the Committee on the Elimination of Racial Discrimination (CERD/C/ETH/CO/15), the Committee on the Elimination of Discrimination against Women (CEDAW/C/BRA/CO/6) and the Committee on the Rights of the Child (CRC/C/MYS/CO/1 and CRC/C/VEN/CO/2). In addition, the Committee on Migrant Workers observed the specific situation of indigenous migrants and recommended special measures for their protection (CMW/C/BOL/CO/1).

10. The questions of participation and consultation are other issues regularly observed by treaty bodies in relation to indigenous peoples. In the area of participation, the Committee on the

Elimination of Racial Discrimination (CERD/C/ECU/CO/19 and CERD/C/NIC/CO/14) and the Committee on the Elimination of Discrimination against Women (CEDAW/CO/COL/CO/6, CEDAW/C/PER/CO/6, CEDAW/C/SUR/CO/3 and CEDAW/C/NZL/CO/6) have both identified the challenge of ensuring the participation of indigenous peoples, especially indigenous women, in political and public affairs, decision-making positions in all fields and administration at all levels.

11. With regard to consultation, treaty bodies recommended that consultations be held, including to seek the free, prior and informed consent of indigenous peoples, in cases of activities carried out or planned in areas of spiritual and cultural significance to them. Treaty bodies also stressed the need for consultation prior to large-scale development projects (such as the establishment of national parks) in indigenous territories and before granting concessions for economic exploitation on disputed lands or any exploitation of natural resources in indigenous territories (see CERD/C/IND/CO/19, CERD/C/ETH/CO/15, CCPR/C/CHL/CO/5 and CCPR/C/PAN/CO/3).

12. The Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment has adopted preliminary guidelines for the development of national preventive mechanisms, to be established or designated by each State party within a year after the entry into force of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment or of its ratification or accession (CAT/OP/SWE/1). The guidelines specifically provide that the membership of such national mechanisms should be gender-balanced and have adequate representation of ethnic, minority and indigenous groups.

13. Another issue that appears frequently in reviews of State party reports is the question of access to justice. In addition to necessary measures to ensure access to justice without discrimination, the Committee on the Elimination of Racial Discrimination has recognized the importance of respect for and recognition of traditional systems of justice and their compatibility with national systems of justice (CERD/C/ECU/CO/19 and CERD/C/CAN/CO/18).

14. The Human Rights Committee, the Committee on the Elimination of Discrimination against Women and the Committee on the Elimination of Racial Discrimination pointed out that indigenous peoples face language obstacles in their access to justice. In the view of the committees (CCPR/C/CRI/CO/5, CERD/C/NIC/CO/14 and CEDAW/C/PER/CO/6), implementation of the right of indigenous peoples to use their languages in judicial proceedings remains a challenge in a number of countries.

15. The Human Rights Committee, in its concluding observations to Costa Rica (CCPR/C/CRI/CO/5), welcomed as a good practice in the area of access of justice the creation of a specialized position on indigenous issues at the Supreme Court as well as the setting up of a group of translators in the various indigenous languages spoken in the country. The distribution to judges of a note on consultation with indigenous peoples was also welcomed by the Committee.

16. The issues of census data and self-identification have been addressed by the Committee on Economic, Social and Cultural Rights (E/C.12/SLV/CO/2) and the Committee on the

Elimination of Racial Discrimination. The committees pointed out the need for conducting a national census of indigenous peoples and applying the principle of self-identification in census methodology. The Committee on the Elimination of Racial Discrimination also has the opinion that States parties, when considering the question of indigenous peoples at the national level, could define and further reflect on the concept of indigenous peoples in relation to its understanding in international law by taking into account the United Nations Declaration on the Rights of Indigenous Peoples, together with International Labour Organization (ILO) Convention 169 concerning the Rights of Indigenous and Tribal Peoples (CERD/C/ECU/CO/19, CERD/C/NIC/CO/14, CERD/C/FJI/CO/17 and CERD/C/USA/CO/6). The Committee has further noted the role of the Declaration as a normative reference by indicating that the Declaration could be used as a guide to interpret the State party's obligations under the Convention on the Elimination of all Forms of Racial Discrimination as far as it relates to indigenous peoples (see CERD/C/USA/CO/6).

17. Civil status registration is also an issue regularly mentioned by the Committee on the Rights of the Child, the Committee on the Elimination of Discrimination against Women and the Human Rights Committee. In their concluding observations (CRC/C/HND/CO/3, CEDAW/C/PER/CO/6 and CCPR/C/PAN/CO/3), the committees stressed that the immediate registration of births of all children, in particular from indigenous communities, is a priority. With regard to this issue, the Committee on Economic, Social and Cultural Rights, in its concluding observations to Paraguay (E/C.12/PRY/CO/3), welcomed the progress made in extending the coverage of civil status registration to indigenous communities. The Committee on the Elimination of Discrimination against Women pointed out the specific situation of women who cannot exercise their rights due to the fact that they do not have any documentation registering their birth.

18. With specific reference to article 30 of the Convention on the Rights of the Child,² the Committee on the Rights of the Child held, in 2003, a day of general discussion on the rights of indigenous children that identified many challenges for the safety and well-being of indigenous children. During the period under review, the Committee on the Rights of the Child worked further on drafting a general comment on the rights of indigenous children, and consulted with civil society, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, ILO and the United Nations Children's Fund (UNICEF). The general comment is expected to be adopted in 2009.

19. Finally, several treaty bodies have encouraged States parties to disseminate their reports of treaty bodies with recommendations (CCPR/C/CRI/CO/5, CCPR/C/BWA/CO/1, CCPR/C/PAN/CO/3, CRC/C/CHL/CO/3 and CAT/C/MEX/CO/4) in indigenous languages.

² Article 30 of the Convention on the Rights of the Child states that, in States in which ethnic, religious, or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion or to use his or her own language.

B. Special procedures

20. During the period 2007-2008, country and thematic special procedures mandate holders addressed the issues of traditional land, participation, consultation and poverty of indigenous peoples.

21. Traditional land is an issue that has been addressed by the Representative of the Secretary-General on the human rights of internally displaced persons (A/HRC/4/38/Add.3). The mandate holder identified several challenges faced by internally displaced indigenous peoples, such as ensuring the restitution of their lands, including registration of land titles, and preventing the use of indigenous reservations for military and other purposes. On the same issue, the Special Rapporteur on the right to food welcomed the recognition by Bolivia of traditional forms of land tenure and programmes for the restitution of lands of indigenous communities (A/HRC/4/30/Add.2). In this context, the mandate holder recommended that protection of indigenous community lands should be improved in the process of the agrarian reform programme and regularization of land titles (A/HRC/7/5/Add.2).

22. Land issues also appear in the implementation of the mandate of the Special Representative of the Secretary-General on the situation of human rights in Cambodia. In his 2007 report (A/HRC/4/36), he recommended that the sale of land and the granting of economic land and other concessions in areas occupied by indigenous communities be banned pending the registration of indigenous claims over traditional lands and the collective titling process; and that mechanisms be put in place to protect indigenous land pending the registration of collective title, and that the process of registration of collective title over indigenous land be finalized. In his report of 2008 (A/HRC/7/42), he further recommended that the Government protect the rights of indigenous persons and others who, due to illiteracy, customary practices or other reasons, are not familiar with the law or its procedures, the rules for making of economic transactions or the market economy.

23. The issues of participation and consultation have been addressed from the perspective of internally displaced indigenous peoples as well as in relation to housing. The Representative of the Secretary-General on the human rights of internally displaced persons recommended that consultations be undertaken and that participatory mechanisms be established to determine solutions and assistance for indigenous peoples in situations of internal displacement. In its report (A/HRC/7/7/Add.2), the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination also recommended that a mechanism of prior consultation under ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries be established. Lastly, the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living stated that indigenous participation, including by establishing national representative bodies, is essential in the decisions affecting them (A/HRC/4/18/Add.2).

24. The issue of poverty and indigenous peoples is also addressed by some mandate holders who recommend the adoption of targeted policies and programmes for indigenous peoples facing poverty. In his report (A/HRC/4/38/Add.3), the Representative of the Secretary-General on the human rights of internally displaced persons recommended that a differentiated approach be taken to assistance for persons and communities with specific needs, such as indigenous peoples.

The Special Rapporteur on adequate housing as a component of the right to an adequate standard of living recommended the adoption of a targeted indigenous housing strategy, including specific funding to be directed to vulnerable groups, such as indigenous peoples (A/HRC/4/18/Add.2 and A/HRC/7/16/Add.4).

25. In his report on the right to education of persons with disabilities (A/HRC/4/29), the Special Rapporteur on the right to education referred to multiple discrimination suffered by disabled persons who belong to certain identity and social groups, including indigenous peoples. In his report on the right to education in emergency situations (A/HRC/8/10), the Special Rapporteur also pointed out that, in times of emergency, inequality and discrimination increase for marginalized groups, such as women and girls, persons with disabilities, persons living with HIV/AIDS, ethnic minorities, and indigenous and migrant communities.

III. RELEVANT ACTIVITIES UNDERTAKEN BY THE HUMAN RIGHTS COUNCIL

26. In its decision 2/104, the Council requested the Office of the High Commissioner to conduct a detailed study on the scope and content of the relevant human rights obligations related to equitable access to safe drinking water and sanitation under international human rights instruments, taking into account the views of States and other stakeholders. The report of the High Commissioner submitted to the Council at its sixth session (A/HRC/6/3) includes reference to indigenous peoples. In the general context of principles of equality and non-discrimination, the High Commissioner points out that, in the case of indigenous peoples, guaranteeing their access to safe water might require action to secure their customary arrangements for managing water and the protection of their natural water resources, as provided for under ILO Convention No. 169 of 1989 on Indigenous and Tribal Peoples (A/HRC/6/3, para. 24).

27. In its resolution 7/23, the Council requested OHCHR to conduct a detailed analytical study of the relationship between climate change and human rights, based on contributions from States and other stakeholders. In chapter II of the report (A/HRC/10/61), OHCHR outlines various implications of climate change for human rights, including for specific groups, such as indigenous peoples. In this context, the implications of climate change for indigenous peoples, for example relocation and pressure on their traditional livelihoods and cultural identity, are highlighted. In addition, the normative framework relevant to the threats posed by climate change includes several rights and principles set out in the United Nations Declaration on the Rights of Indigenous Peoples.³

28. On 12 December 2008, the Council held a commemorative session on the occasion of the sixtieth anniversary of the Universal Declaration of Human Rights. During the session, a representative of indigenous peoples was invited to share with the plenary his thoughts and views on the anniversary of the Declaration and its significance for indigenous peoples.

³ General Assembly resolution 61/295.

IV. GOOD PRACTICES BY FIELD PRESENCES OF THE OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS

29. In the period 2007-2008, OHCHR field presences undertook activities to promote and protect the rights of indigenous peoples in various countries, in cooperation with Governments and indigenous peoples. The promotion of the United Nations Declaration on the Rights of Indigenous Peoples was a central element of these activities. Some good practices identified in countries in different regions are described below.

30. The country office in Colombia developed with the Ministries of Justice and of the Interior, in consultation with indigenous peoples, a guide on procedures for guaranteeing the right to be consulted prior to any exploration and exploitation of mineral and/or other natural resources on indigenous lands. The guide was developed in relation to the case of the U'wa indigenous peoples and will serve as a tool for the Government in conducting consultation processes and for indigenous peoples to claim their rights. Another good practice was the consultation conducted by the country office in Bolivia with indigenous peoples prior to the country visit of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people.

31. The human rights adviser in Ecuador provided expert advice to the Ministry of Justice on a draft law on indigenous justice and developed training modules on indigenous peoples' rights for the judiciary, among others. In the same area, the country office in Nepal produced a cartoon series to raise awareness of indigenous communities on their right to have access to justice. In Guatemala, the country office published a study on the access to justice for indigenous peoples from the perspectives of customary law and the official judicial system. Prepared for indigenous authorities and the judiciary, the study aims at determining the responses provided by both judicial systems to indigenous demands for access to justice.

32. The country office in Nepal implemented a three-month project to map the situation of indigenous peoples in order to develop its activities to promote and protect their rights. In Liberia, the human rights adviser conducted a similar activity by preparing a specific report on advancing the rights of indigenous peoples and minorities in Liberia, in which he described the establishment of a task force put together by the Government and the United Nations Mission in Liberia, with the aim of addressing the situation of indigenous peoples living in and working on rubber plantations.

33. In Cameroon, an associate expert was deployed as a focal point for indigenous peoples and minorities rights at the Centre for Human Rights and Democracy in Central Africa. As a result, a specific programme for indigenous peoples has been developed. The programme has focused on awareness-raising and capacity development activities, such as an open-door day on indigenous peoples' rights dedicated to the media, support for a regional information network for indigenous peoples, as well as the first ever celebration of the International Day of Indigenous Peoples, in cooperation with other United Nations agencies and the Government of Cameroon.

34. The dissemination of the United Nations Declaration on the Rights of Indigenous Peoples has been undertaken by several field presences. The country office in Nepal and the human rights adviser in Ecuador have had the Declaration published in indigenous languages. The regional office for Latin America and the Caribbean, in cooperation with the United Nations

Development Programme, UNICEF, the United Nations Population Fund, ILO, the Pan American Health Organization and the World Food Programme, organized a regional seminar for indigenous and governmental representatives on the content of the Declaration and its implementation. In Africa, the Centre for Human Rights and Democracy in Central Africa has included the Declaration in its capacity-building activities.

V. RECOMMENDATIONS

35. The High Commissioner recommends that she submit a single consolidated report on the rights of indigenous peoples annually, containing information on relevant developments of human rights bodies and mechanisms and activities undertaken by OHCHR at headquarters and in the field that contribute to the realization of the rights contained in the United Nations Declaration on the Rights of Indigenous Peoples, in accordance with its article 42. In this sense, OHCHR annual reports on the rights of indigenous peoples would be complementary to the reports submitted by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people and the Expert Mechanism on the Rights of Indigenous Peoples.

36. The High Commissioner also recommends that all reports on indigenous peoples, including those of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, the Expert Mechanism on the Rights of Indigenous Peoples and the High Commissioner, be grouped at one Council session in the year. This would facilitate the consideration of the issue by governmental delegations, collaboration between the Special Rapporteur and the Expert Mechanism and the participation of indigenous peoples' organizations in the work of the Council.
