



General Assembly

Distr.: General
8 July 2010

Original: English

Human Rights Council

Fifteenth session

Agenda items 2 and 3

Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

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

Report of the United Nations High Commissioner for Human Rights on the rights of indigenous peoples

Summary

The present report is submitted pursuant to resolution 12/13 of the Human Rights Council. It contains information on relevant developments of human rights bodies and mechanisms and outlines the activities undertaken by the Office of the High Commissioner at headquarters and in the field that contribute to the promotion and the full application of the provisions of the United Nations Declaration of the Rights of Indigenous Peoples, and follow-up the effectiveness of the Declaration. The report covers the period between January 2009 and May 2010.

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I. Introduction

1. In its resolution 12/13 concerning human rights and indigenous peoples, the Human Rights Council requested the High Commissioner for Human Rights to submit to the Council an annual report on the rights of indigenous peoples containing information on relevant developments of human rights bodies and mechanisms and activities undertaken by the Office of the High Commissioner at Headquarters and in the field that contribute to the promotion of and respect for, and the full application of, the provisions of the United Nations Declaration on the Rights of Indigenous Peoples, and follow-up the effectiveness of the Declaration.

2. The present report focuses particularly on some illustrative examples of the activities and the initiatives undertaken at headquarters and by field presences that contribute to the full application of the rights of indigenous peoples and presents an overview of the recent developments undertaken by the United Nations treaty bodies and the Human Rights Council special procedures and mechanisms including the universal periodic review.

II. Activities of the Office of the United Nations High Commissioner for Human Rights

3. During the period under review, the Office of the High Commissioner for Human Rights (OHCHR) continued to work for the promotion and the full application of the United Nations Declaration on the Rights of Indigenous Peoples. The rights of indigenous peoples have continued to be a priority issue for the High Commissioner, and indigenous issues figure prominently in her new Strategic Management Plan. The Declaration on the Rights of Indigenous Peoples is a shared tool and framework for action in this area.

4. The sections below illustrate some of the activities implemented by the Office in its effort to strengthen the promotion and implementation of the declaration. These do not aim to offer an exhaustive overview of the work of OHCHR on indigenous peoples' rights, but rather to provide some examples of the action taken at country, regional and headquarters levels. At a global level, the Office continued to service the Expert Mechanism on the Rights of Indigenous Peoples by, inter alia, supporting the preparation and organization of the Expert Mechanism's annual sessions and organizing technical workshops in 2009 and 2010 to contribute to its thematic studies. OHCHR produced a number of awareness-raising tools concerning the rights of indigenous peoples and related mechanisms. For example, it cooperated with the International Work Group for Indigenous Affairs to produce an awareness-raising video on the work of the Expert Mechanism, available on the Internet and as a DVD.

5. OHCHR also continued to manage the United Nations Voluntary Fund for Indigenous Populations to support the participation of indigenous organizations in the sessions of the Expert Mechanism and the Permanent Forum on Indigenous Issues, while also examining, as requested by the Human Rights Council, the practical implications of a possible extension of the mandate of the fund to cover sessions of the treaty bodies and Human Rights Council.

A. Country engagement

6. Activities carried out in relation to indigenous issues in the field included monitoring, support to legal reform, technical cooperation activities, capacity-building and awareness-raising. The Millennium Development Goals and the advocacy work and efforts

aimed at disseminating the outcomes and recommendations of all United Nations human rights mechanisms also offered entry points for field presences to engage in work on indigenous peoples' rights.

1. Monitoring activities and support for mechanisms

7. Several field presences monitored cases of violations of indigenous peoples' rights. OHCHR-Mexico followed several cases of violence against indigenous women, focusing specially on their right to land and natural resources, access to justice and the recognition of their own normative systems. When drafting a thematic report on the situation of human rights defenders, OHCHR-Mexico identified the specific challenges that indigenous human rights defenders were facing while undertaking their activities.

8. OHCHR-Colombia continued to pay close attention to the situation of indigenous peoples and several cases of killings of indigenous persons. In 2009, it monitored, at the request of the President of Colombia, the criminal investigations of the Attorney General regarding the killing of members of an indigenous community. It ensured the presence of the Office during the investigation and provided recommendations which were shared with relevant high officials and included the protection of survivors, witnesses and their families, as well as the immediate implementation of a safeguard plan for threatened indigenous peoples.

9. OHCHR-Nepal followed-up on several cases of ill-treatment of indigenous peoples by park authorities. It continued to monitor protests and rallies and facilitate dialogue between indigenous peoples and others concerned. In addition, the Office conducted a mission in Sankhuwasabha district to assess steps taken by the Government to meet its commitments and responsibilities to protect the rights of affected indigenous peoples in the implementation of a mega-hydroelectric project, and ensure that they participate in the decision-making concerning any project-related activities.

10. OHCHR-Cambodia has continued to monitor the impact of economic land concessions for agro-industrial purposes, such as rubber plantations, on indigenous peoples and small-scale farmers. Often concessions were granted on indigenous land without due regard to the rights of the affected community and, most importantly, without respecting the requirement to consult with indigenous communities and conduct an environmental and social impact assessment.

11. OHCHR field presences also consistently supported the work of special procedures mandate holders. In particular, the Regional Office for the Pacific provided substantive support for the preparation of the mission of Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people to Australia and included the resulting recommendations in its advocacy plan for Australia. The Regional Office also met with indigenous health workers prior to the visit of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health to collect information and provide meaningful advice in the preparation of the mission. The Regional Office for Central America and that for Southern Africa in Pretoria provided assistance to the missions of the Special Rapporteur on human rights and fundamental freedoms of indigenous people in his missions in Panama, Peru and Kenya, while the Human Rights Adviser in the Russian Federation provided assistance to the Special Rapporteur for the preparation of his visit there.

2. Technical cooperation activities and thematic work

12. OHCHR continued its work on a range of key themes pertaining to indigenous peoples. One such thematic initiative is the preparation of guidelines concerning indigenous peoples in isolation or in initial contact in the Amazon region and Gran Chaco. This work

was initiated further to a General Assembly recommendation made in the context of the Programme of Action for the Second International Decade of the World's Indigenous People in 2006, as well as subsequent recommendations by the Permanent Forum on Indigenous Issues.

13. In the last 18 months, the Office has taken a number of steps, in cooperation with the Institute for the Promotion of Social Studies (IPES) and the International Work Group for Indigenous Affairs with financial support from Spanish Development Cooperation (AECID), towards the completion of guidelines on the issue. It invited the seven Governments concerned to comment on the draft (the draft guidelines are contained in document A/HRC/EMRIP/2009/6) and organized a series of national consultations: in March 2010 in Ecuador and Colombia, in May 2010 in Paraguay and Brazil and in July 2010 in Bolivia, to which the relevant governmental ministries and departments, indigenous peoples, non-governmental organizations (NGOs), experts and representatives of the United Nations system were invited. These national consultations have allowed the Office to further elaborate the guidelines under three headings which clarify key concepts; set out the normative framework drawing on existing instruments, including the Declaration on the Rights of Indigenous Peoples and International Labour Organization (ILO) Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries of 1989 (which has been ratified by all the countries concerned) and case-law from the international and inter-American human rights systems; and propose a policy framework or action plan for consideration by Governments.

14. A final regional meeting will take place in August 2010 in the Plurinational State of Bolivia, under the auspices of the Government, to review the latest version of the guidelines and consider options for their implementation. It is planned that the guidelines, together with examples of best practice and publications on isolated and initially contacted indigenous peoples, will be finalized towards the end of 2010.

15. OHCHR-Mexico provided technical assistance to the Secretariat of Indigenous Peoples in the State of Michoacán regarding the preparation of a constitutional amendment aimed at protecting the rights of indigenous peoples to be considered by the local congress. It also advised on a local law related to the rights and culture of indigenous peoples which will accompany the constitutional reform, and assisted Mexico City's executive and legislative branches in a process to consult indigenous peoples living in the city on the drafting a local law on their rights. These activities seek to guarantee that legislation is accordance with international human rights standards, including the Declaration on the Rights of Indigenous Peoples.

16. Furthermore, OHCHR-Mexico has engaged with the national human rights institution and the National Institute for Statistics and Geography in a process of consolidating human rights indicators, which will be disaggregated by indigenous origin after a validation process. OHCHR-Mexico also offered its assistance to the Mexican Supreme Court to ensure that its rulings are consistent with international human rights standards regarding cases related, in particular, to the right to land and the right to be consulted.

17. OHCHR-Cambodia offered its assistance and legal advice to provincial and local authorities, indigenous communities and NGOs in order to protect communities' access to land and resources. It has worked with selected companies to encourage them to apply standards of the Declaration on the Rights of Indigenous Peoples, beyond mere respect of national law. For instance, prompted by the Office's legal advice, in 2009 one multinational company which had been granted a rubber concession conducted an additional, extensive environmental and social impact assessment, including an analysis on how the Declaration applied to its rubber plantation. It has since conducted consultations with the affected

indigenous community and designed projects to mitigate the impact of the plantation on peoples' livelihood and land.

18. In Nepal, the Durban Review Conference Follow-up Committee, established with the support of the OHCHR-Nepal, held a meeting with the country's Prime Minister in January 2010 and submitted a memorandum that includes the concerns of indigenous peoples and calls for the effective implementation of the ILO Convention No. 169 and the Declaration on the Rights of Indigenous Peoples. OHCHR-Nepal further followed-up with the Government on recommendations by the Committee on the Elimination of Racial Discrimination so as to ensure effective and meaningful participation of indigenous peoples in the ongoing constitution-making process.

19. In Cameroon, the OHCHR Regional Office for Central Africa provided advice to the Ministry of Social Affairs in the preparation of a draft law on the rights of marginalized populations, advocating for a dedicated law to recognize and protect the rights of indigenous peoples in Cameroon. The human rights and challenges faced by indigenous peoples in Cameroon were raised during the drafting of the United Nations Development Assistance Framework for Cameroon. The Office also made a technical contribution to the World Wide Fund for Nature (WWF) preparation of a negotiation strategy for formal agreements of joint management of the national park of Campo Ma'an in eastern Cameroon between local indigenous peoples and the local administration in April 2009.

20. The Human Rights Adviser in Ecuador, in close cooperation with the Ministry of Justice and Human Rights, has been working on the issue of coordination between ordinary and indigenous systems of justice with a view to preparing a draft law on the issue. It also developed training modules on indigenous justice addressed to police, military national institutions and justice officials and organized pilot training workshops to validate the contents of the modules.

21. In the same vein, OHCHR-Bolivia provided technical advice to the Ministry of Justice on legal pluralism and indigenous justice. It also jointly organized, with the Ministry of Autonomies, an international seminar on indigenous autonomy and its human rights implications. Both activities contributed to improving understanding and implementation of key reform proposals relating to indigenous peoples, including provisions of the new Constitution.

22. In the context of the project to contribute to the eradication of racism and ethnic and gender discrimination, particularly against indigenous women, OHCHR-Guatemala supported the design and launching of the second phase of the National Campaign for Coexistence in Cultural Diversity, entitled "Indigenous women have rights; we demand that they are met". It further disseminated, together with the Social Studies and Research Association (ASIES), recommendations contained in the OHCHR-ASIES study "Access to justice for indigenous peoples from a human rights-based approach: Perspectives from indigenous law and from the official justice system", particularly to representatives of the judiciary.

3. Capacity-building activities

23. OHCHR in Geneva has stepped up its efforts to encourage the use of the Declaration on the Rights of Indigenous Peoples in the work of national human rights institutions. In December 2009, it organized an expert meeting in Bangkok, bringing together selected national human rights institutions, indigenous representatives and human rights bodies resulting in concrete proposals that are now being followed up.

24. During the period under review, the Office continued to implement its indigenous fellowship programme (which has four linguistic components) and provided in-depth training sessions on the Declaration on the Rights of Indigenous Peoples to 23 indigenous

representatives from 15 countries, with the help of other United Nations agencies, including ILO, the United Nations Educational, Scientific and Cultural Organization (UNESCO), the United Nations Institute for Training and Research (UNITAR), the United Nations Development Programme (UNDP) and the World Intellectual Property Organization (WIPO). It also developed national fellowship programmes at the country level. In 2009, indigenous fellows from the programmes were posted with OHCHR-Guatemala and in Moscow, contributing to the work there on indigenous issues.

25. OHCHR, both at headquarters and through its field presences, continued to provide support for networking and capacity-building of indigenous communities. OHCHR has partnered with ILO to organize a series of workshops in cooperation with its Regional Office for Central Africa in the central African regions, with a view to promoting legislative and policy change on indigenous issues through the facilitation of dialogue between Governments and indigenous peoples.

26. In collaboration with UNDP, OHCHR-Mexico conducted several workshops on the implementation of the Declaration on the Rights of Indigenous Peoples which brought together representatives of different indigenous communities. The OHCHR Regional Office for Central America in Panama also provided support by co-sponsoring a regional seminar on the right to adequate housing and the prohibition of forced evictions, and a workshop for indigenous women in Panama to discuss challenges to the enjoyment of individual and collective rights and possible cooperation with regional and international human rights mechanisms. OHCHR-Nepal partnered with ILO to organize workshops on the rights of indigenous peoples focusing on conceptual clarity on the right to self-determination and the right to free, prior and informed consent.

27. In order to promote better understanding of the rights of indigenous peoples in the subregion, the Regional Office for South-East Asia in Bangkok, in cooperation with UNDP, organized two interactive regional dialogues focusing on the Declaration and bringing together relevant partners, including the United Nations resident coordinators and other United Nations representatives from the South-East Asia region, and civil society representatives to discuss challenges and best practices in implementing the provisions of the Declaration.

28. The Human Rights Adviser in the Russian Federation continued to build the capacity of indigenous peoples by facilitating training sessions in Moscow and Geneva on international and national human rights systems for eight representatives of indigenous communities from Russian Federation, under the auspices of the OHCHR Russian-speaking fellowship programme.

29. OHCHR-Cambodia has been advocating with development partners and national institutions better implementation of the national framework protecting indigenous land, including titling indigenous land.

30. In Cameroon, the OHCHR Regional Office for Central Africa continued its collaboration with indigenous peoples in the region. The Centre built the capacity of civil society organizations, providing technical expertise and advisory services to representatives of indigenous communities, international NGOs, Governments and United Nations system partners from Burundi, Cameroon, Central African Republic, Chad, Congo, the Democratic Republic of the Congo, Gabon and Rwanda. Representatives of local administrations, park authorities and local NGOs received training on the Declaration on the Rights of Indigenous Peoples and the principle of free, prior and informed consent and other human rights standards in April 2009.

31. A dialogue between the Batwa communities and local authorities was successfully established in Burundi, resulting in an increase in the enrolment rates of Batwa children in schools and improvements in their access to lands. The Human Rights Adviser for the Great

Lakes Region also continued to provide ongoing technical advice on the electoral process, including their political rights and participation, as well as their economic, social and cultural rights.

32. In addition, OHCHR Regional Office for Central America in Panama assisted United Nations country teams in their efforts to further integrate the promotion and protection of indigenous peoples into their work. It organized in Nicaragua a specific training for country team staff members on the United Nations Development Group Guidelines on Indigenous Peoples' Issues (in partnership with other United Nations agencies) and a training session for trainers on the right to food, focusing on indigenous peoples and Afro-descendants, for 27 staff from the country team in Panama.

33. Many OHCHR field presences facilitated the use of human rights treaty bodies. OHCHR-Cambodia has helped indigenous peoples and organizations to submit a parallel report to the Committee on the Elimination Racial Discrimination. The Committee's recommendations were translated into Khmer and the Office also supported related follow-up activities. OHCHR-Mexico helped a number of indigenous individuals and organizations draft communications to the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people.

34. By providing technical advice, the OHCHR Regional Office for Central America strengthened the capacity of indigenous communities and organizations to bring allegations of human rights violations to the attention of the Special Rapporteur and the inter-American system for the protection of human rights. OHCHR-Nepal provided an introduction to the universal periodic review process for a large number of indigenous peoples and ensured that indigenous peoples' issues were integrated in the national report by supporting consultations on indigenous issues at all levels. It also helped establish a Durban Review Conference follow-up committee – composed of marginalized groups including indigenous peoples – which prepared a separate stakeholders' submission to the universal periodic review.

4. Awareness-raising tools

35. Several field presences produced quality materials to raise awareness of the Declaration on the Rights of Indigenous Peoples, and promote better understanding thereof and contribute to the full application of its provisions. OHCHR-Mexico initiated a study on the rights of indigenous peoples to be consulted in the context of large-scale development projects. The study, undertaken in consultation with indigenous peoples, federal and local authorities, academics and United Nations agencies, aimed at identifying practical guidelines for the implementation in Mexico of the right to be consulted and should be made available at the end of 2010.

36. The Human Rights Adviser for the Great Lakes Region, together with the Office of the United Nations High Commissioner for Refugees (UNHCR), carried out an extensive study to identify stateless persons in Burundi. The study has helped to further raise awareness of the need to provide the Batwa community with national identification documents, thereby ensuring their enjoyment of civic and political rights and access to public services.

37. In order to disseminate information on the human rights of indigenous peoples, the OHCHR Regional Office for Central Africa continued to manage an Internet information network for more than 4,000 individuals, mainly indigenous leaders from Central Africa and other countries who receive and exchange information on indigenous and minority issues in the subregion. Information was circulated and shared on indigenous fellowships at OHCHR, local NGO initiatives for the promotion of indigenous rights, invitations to seminars, sharing of reports and calls for proposals. The Office also participated in the

second official celebration of the International Day of the World's Indigenous People in Cameroon on 9 August 2009.

38. The OHCHR Regional Office for Central America in Panama prepared training tools on the rights of indigenous peoples, including a comparison between the ILO Convention No. 169 and the Declaration on the Rights of Indigenous Peoples. The Human Rights Adviser in Ecuador supported the production of a number of publications to promote the rights of indigenous peoples, while OHCHR-Columbia published a guide on the right to free, prior and informed consent.

39. A number of field presences published the Declaration on the Rights of Indigenous Peoples in indigenous languages. OHCHR-Mexico translated the Declaration into nine indigenous languages in collaboration with UNDP and the National Commission for Development in Mexico. OHCHR-Cambodia supported the translation and publication of the Declaration into Khmer and OHCHR-Nepal translated the Declaration into nine languages. In 2009, the Office also widely disseminated its pocket-sized Nepali version of the Declaration. The Office of the Human Rights Adviser in the Russian Federation translated the Universal Declaration of Human Rights into some ten languages of indigenous peoples of the Federation.

B. Inter-agency programmes and activities

40. At the global level, OHCHR continued to participate in the Inter-Agency Support Group on Indigenous Issues. It participated in its annual meeting in September 2009 and made a substantial contribution to an inter-agency meeting called by the Secretariat of the Convention on Biological Diversity and the Working Group on Indicators of the International Indigenous Forum on Biodiversity, to discuss indicators of indigenous peoples' well-being and sustainable development, focusing on traditional knowledge. It was felt during the meeting that the existing work by OHCHR was of particular relevance to the work on indicators for indigenous peoples and that the structural process outcome approach developed by OHCHR could be used to identify indicators to help measure the implementation of the rights of indigenous peoples.

41. In May 2010, OHCHR established, with ILO and UNDP, the United Nations Indigenous Peoples Partnership (UNIPP) as a framework for the promotion and protection of the rights of indigenous peoples at the country level. A multi-donor trust fund will support global, regional and local initiatives and programmes devoted, inter alia, to promoting consultative and participatory mechanisms. OHCHR also continued its work with the United Nations Human Settlements Programme (UN-Habitat) under the United Nations Housing Rights Programme and contributed to a joint publication on urban indigenous peoples and migration.

42. At the country level, the OHCHR Regional Office in Central America in Panama led the work of an inter-agency working group on indigenous issues, composed of nine United Nations agencies. The working group undertook a series of activities, including two regional seminars on the Declaration on the Rights of Indigenous Peoples gathering human rights bodies and mechanisms, national human rights institutions and indigenous organizations from Central America and the Caribbean, a meeting of focal points on indigenous issues from 12 national human rights institutions of Latin America to discuss best practices and challenges in monitoring and implementing the Declaration, and the establishment of a regional consultative working group on indigenous peoples as a mechanism of consultation between indigenous peoples and United Nations agencies.

III. Human rights bodies and mechanisms

A. Expert Mechanism on the Rights of Indigenous Peoples

1. Studies and research-based advice

43. Pursuant to Human Rights Council resolution 9/7, the expert mechanism prepared a study on lessons learned and challenges to achieving the implementation of the right of indigenous peoples to education (A/HRC/12/33). The study encompasses (a) a human rights-based analysis of the scope and content of the right to education; (b) indigenous education systems and institutions; (c) lessons learned; (d) challenges and measures to achieve the implementation of the right of indigenous peoples to education; and (e) Expert Mechanism advice No. 1 on the right of indigenous peoples to education. It was submitted to the Council at its twelfth session together with the report of the mechanism's 2009 session, which contained proposals to the Council for its consideration and approval, in particular concerning a thematic study on indigenous peoples' right to participate in decision-making.

44. In its resolution 12/13, the Council requested the Expert Mechanism to carry out a study on indigenous peoples and the right to participate in decision-making, and to present a progress report to the Council at its fifteenth session and a final study to the eighteenth session. The expert mechanism has prepared an advanced version of the progress report to be discussed at its third session in July 2010. A large number of national human rights institutions, United Nations agencies and NGOs, as well as the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, provided substantive input to the progress report.

2. Other activities

45. The expert mechanism participated in various activities with a view to enhancing cooperation with and avoiding duplicating the work of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people and the Permanent Forum on Indigenous Issues, in accordance with paragraph 5 of Council resolution 6/36. The expert mechanism has participated actively in the eighth and ninth sessions of the Permanent Forum, while the Special Rapporteur and representatives of the Permanent Forum attended and contributed to the second and third annual sessions of the expert mechanism.

46. In addition, the expert mechanism participated in the International seminar of experts on Implementing Indigenous Peoples Rights on the role of the United Nations mechanisms with specific mandate regarding the rights of indigenous peoples, organized by the International Work Group for Indigenous Affairs and the Almaciga Intercultural Group in 2009, and the meeting of the three United Nations Mechanisms with a specific mandate to address indigenous issues and their secretariats, organized in January 2010 by OHCHR and the Secretariat of the Permanent Forum on Indigenous Issues.

47. The expert mechanism further made a substantial contribution to the work of the Permanent Forum by taking part in the two international expert group meetings organized by the Secretariat of the Permanent Forum, respectively on the role of the United Nations Permanent Forum on Indigenous Issues in the implementation of article 42 of the United Nations Declaration on the Rights of Indigenous Peoples (January 2009) and indigenous peoples – development with culture and identity – articles 3 and 32 of the United Nations Declaration on the Rights of Indigenous Peoples (January 2010).

B. Special procedures and treaty bodies

1. The Special Rapporteur on the situation of the human rights and fundamental freedoms of indigenous people

48. The Special Rapporteur on the situation of the human rights and fundamental freedoms of indigenous people has engaged in a range of activities within the terms of his mandate to monitor the human rights situation of indigenous peoples worldwide and improve their situations in accordance with the Declaration on the Rights of Indigenous Peoples and other relevant international instruments. These activities will be presented in more detail in his report to the fifteenth session of the Human Rights Council (A/HRC/15/37).

49. Overall, the Special Rapporteur has tried to develop work methods oriented towards a constructive dialogue with Governments, indigenous peoples, NGOs, relevant United Nations agencies and other actors, in order to address challenging issues and situations and build on advances already made.

50. The various activities that he has carried out in this spirit can be described as falling within four, interrelated spheres of activity: promoting good practices; thematic studies; country reports; and cases of alleged human rights violations. The Special Rapporteur has also sought to advance the endorsement of the Declaration by those States that did not vote for its adoption by the General Assembly in 2007.

51. Related to the promotion of good practices is the work of the Special Rapporteur in conducting or participating in studies on issues or themes that are of interest to indigenous peoples across borders and regions of the world. The Special Rapporteur further continued to contribute to the work of the Expert Mechanism on the Rights of Indigenous Peoples.

52. Additionally, the Special Rapporteur carried out visits to several countries for the purpose of developing reports to assess the human rights conditions of indigenous peoples in those countries, including visits to Australia, Chile, Colombia, the Russian Federation and, most recently, to the Sápmi region, the traditional territory of the Sami people, in the Nordic countries.

53. An ongoing aspect of the Special Rapporteur's work involves receiving and, in appropriate cases, acting upon information of alleged violations of the rights of indigenous peoples in specific situations provided to the Special Rapporteur by indigenous peoples and their organizations, NGOs and other sources. The Special Rapporteur also held separate meetings with indigenous representatives to receive communications during the annual sessions of the Expert Mechanism on the Rights of Indigenous Peoples.

54. The Special Rapporteur has made a concerted effort to engage constructively with Governments about credible information of alleged human rights violations in specific cases, carrying out on-site visits to examine particular cases, such as his visit to Peru in July 2009 to assess the tragic events around the Bagua incidents.

2. Other special procedures

55. During the period under review, several special rapporteurs have addressed the concerns of indigenous peoples as part of their regular activities. In his statement to the second session of the International Conference on Chemicals Management held in Geneva in May 2009, the Special Rapporteur on the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights highlighted that a rights-based approach to chemicals management must include the involvement of indigenous peoples (one of the vulnerable groups negatively impacted by

chemical products) in the design, implementation and monitoring of chemicals management strategies and policies affecting them.

56. In her mission report to the Lao People's Democratic Republic in November 2009 (A/HRC/13/40/Add.4), the Special Rapporteur on freedom of religion or belief focused on beliefs and customs of animists or ancestor worshippers, mainly of members of Lao hill indigenous tribes. While giving an overview of such beliefs and customs, the Special Rapporteur focused on the possible human rights implications of some harmful traditions and cruel practices by these indigenous tribes.

57. During his visit to Australia in November 2009, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health considered, *inter alia*, the issues related to access to health services of indigenous peoples. The Special Rapporteur assessed the impact of poor socio-economic conditions and neglect and under-resourcing on the enjoyment of the right to health of indigenous peoples. He also considered educational attainment, access to basic amenities, health workforce and political participation, and recent Government initiatives concerning indigenous welfare.

58. The Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context addressed the situation of adequate housing of indigenous peoples in some of the countries she visited. In Canada, she addressed the issue of access to land of indigenous peoples and the situation of indigenous women at risk of exploitation by landlords and gangs. In the United States of America, she expressed her concerns about the dire housing situation faced by some Native American tribes. In her follow-up report to country recommendations, she addressed the issue of access to adequate housing and to land of indigenous peoples in Mexico, as well as the situation of indigenous women in rural areas in Peru. Likewise, in another follow-up report to country recommendations (A/HRC/13/20/Add.2), the Special Rapporteur addressed the issue of access to land, water and natural resources of indigenous peoples, and the titling of indigenous lands, in Brazil and Cambodia. Indigenous issues were also examined in her thematic work; the Special Rapporteur's report on climate change and the right to adequate housing stressed that adaptation assistance must be tailored to ensure that its benefits reach indigenous peoples.

59. The Special Rapporteur on the right to food has made specific references to the rights of indigenous peoples, in particular in relation to access and use of land. In June 2009, he proposed eleven minimum human rights principles applicable to large-scale land acquisitions or leases, one of which is specifically devoted to indigenous peoples (see A/HRC/13/33/Add.2). It provides that "under international law, indigenous peoples have been granted specific forms of protection of their rights to land. States shall consult and cooperate in good faith with the indigenous peoples concerned in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources". During his missions to Guatemala, Nicaragua and Brazil in September and October 2009, the Special Rapporteur paid particular attention to the rights of indigenous people. In each case, he made specific recommendations to the State party concerned to strengthen the protection of indigenous people's access to land. The Rapporteur has also undertaken a study on the access to land and the right to food, which will be published in his report to the sixty-fifth session of the General Assembly. He intends to devote a section of this report to indigenous peoples.

60. During his visit to Paraguay in 2009 (see A/HRC/14/25/Add.2), the Special Rapporteur on the right to education closely examined the situation of education of indigenous peoples and focused, in particular, on the illiteracy rate of indigenous peoples.

61. Special procedure mandate holders have also addressed the situation of indigenous peoples by sending communications to Governments based on allegations of human rights violations brought to their attention by various sources. From January 2009 to April 2010, 36 communications dealing with indigenous rights were sent by 15 mandate holders to 36 countries in Africa, Asia, Latin America and North America.

3. Activities of treaty bodies

62. The Committee on the Elimination of Racial Discrimination continued to pay particular attention to the situation of indigenous peoples in its early warning and urgent action procedure, general recommendations and its consideration of the reports by State parties.

63. During the period under review, concluding observations and recommendations concerning the rights of indigenous peoples were addressed to 14 State parties to the Convention. The Committee also issued letters of concerns regarding the situation of indigenous peoples in 12 countries under its early warning and urgent action procedure.

64. It further issued its general recommendation No. 32 on the meaning and scope of special measures in the International Convention on the Elimination of All Forms of Racial Discrimination, clarifying that “special measures should not be confused with specific rights pertaining to certain categories of person or community, such as[...] the rights of indigenous peoples [...]. Such rights are permanent rights, recognized as such in human rights instruments, including those adopted in the context of the United Nations and its agencies”.

65. During its review of States parties’ periodic reports, the Committee regretted the lack of information from a number of State parties on the ethnic and linguistic make-up of the population, including indigenous peoples, which would enable both the Committee and the State party to better assess the implementation of the Convention at the national level. It also recommended that States concerned provide disaggregated statistical information regarding access to education, health and public services and emphasized that data was necessary to ensure the application of adequate legislation to ensure equal enjoyment of economic, social and cultural rights by indigenous peoples.

66. In particular, the Committee reiterated its recommendation that State parties take steps to give adequate recognition to native languages and seek strategies with a view to introducing bilingual education. It further recommended that State parties concerned ensure the effective protection with regard to recruitment and conditions of employment of workers belonging to indigenous peoples.

67. In its concluding observations to one State party, it recommended that the State concerned redouble its efforts to ensure that all births among indigenous peoples are registered and that those registered are provided with personal identity documents. It also encouraged the State party to bring civil status registration centres closer to the communities where indigenous peoples live.

68. On several occasions, the Committee expressed great concern about the lack of consultation of indigenous peoples prior to land concessions and noted that the rights of indigenous peoples to own, develop, control and exploit their lands and resources were not guaranteed. It drew the State parties’ attention to general recommendation No. 23 on the rights of indigenous peoples which, inter alia, calls upon State parties to recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources. The Committee further encouraged corporate business entities when engaging in economic land concessions to take into consideration their corporate social responsibility as it relates to the rights and well-being of local populations.

69. The Committee reiterated its concern regarding a number of displacements of indigenous peoples from their traditional lands. It recommended to one State party to take the necessary measure to accelerate the process of restitution of ancestral lands to the indigenous peoples and to put in place a mechanism tasked with the recognition of indigenous peoples' rights to lands and natural resources. It further encouraged another State party to continue negotiations with relevant ministries on the establishment of a new preparatory body in charge of reaching a solution in a land use dispute affecting indigenous peoples.

70. While noting efforts of some State parties to conduct consultations with affected indigenous communities, the Committee further recommended that, when taking legislative or administrative decisions which may affect the rights and interests of indigenous peoples, the State parties endeavour to consult and obtain their informed consent. In its concluding observation to one State party, the Committee recommended that the State party adopt and implement in a concerted manner legislation which regulated the rights to prior consultation in order to ensure that all prior consultations were undertaken in a manner which respected the free and informed consent of the affected community.

71. The Committee also deplored the non-existence of specific legislative framework to guarantee the realization of the collective rights of indigenous peoples. It urged the State parties concerned to ensure legal acknowledgement of the collective rights of indigenous peoples to own and use their lands and resources according to customary laws and traditional land-tenure system and to participate in the exploitation, management and conservation of the associated natural resources.

72. In its observations to one State party, the Committee welcomed a draft law on the consultation and participation of indigenous peoples which sought to guarantee that the free, prior and informed consent of indigenous peoples would be taken into account on infrastructure projects that might affect their rights and encouraged State parties to adopt specific laws in consultation with indigenous peoples through their representatives in a number of observations to other State parties.

73. The Committee on Economic, Social and Cultural Rights adopted two general comments during 2009 which are of particular relevance for advancing the rights of indigenous peoples. In its general comment No. 20 on non-discrimination in the enjoyment of economic, social and cultural rights, the Committee recalled that it has consistently raised concern over formal and substantive discrimination across a wide range of Covenant rights against indigenous peoples and ethnic minorities among others. It urged State parties to take concrete and targeted measures to eliminate discrimination and further called upon State parties to ensure that individuals and groups of individuals, who may be distinguished by one or more of the prohibited grounds, should be ensured the right to participate in decision-making processes over the selection of such measures. States parties should regularly assess whether the measures chosen are effective in practice.

74. The Committee further referred to the provisions of the Declaration on the Rights of Indigenous Peoples in its general comment No. 21 on the right of everyone to take part in cultural life. It urged States parties to take measures to guarantee that the exercise of the right to take part in cultural life takes due account of the values of cultural life, which may be strongly communal or which can only be expressed and enjoyed as a community by indigenous peoples. The Committee clarified that the strong communal dimension of indigenous peoples' cultural life is indispensable to their existence, well-being and full development, and includes the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired. Indigenous peoples' cultural values and rights associated with their ancestral lands and their relationship with nature should be regarded with respect and protected, in order to prevent the degradation of their

particular way of life, including their means of subsistence, the loss of their natural resources and, ultimately, their cultural identity.

75. The general comment also underlines that States parties must take measures to recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources, and, where they have been otherwise inhabited or used without their free and informed consent, take steps to return these lands and territories. Indigenous peoples have the right to act collectively to ensure respect for their right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literature, designs, sports and traditional games, and visual and performing arts.

76. The Committee further clarified that States parties should respect the principle of free, prior and informed consent of indigenous peoples in all matters covered by their specific rights. In particular, States parties should obtain their free and informed prior consent when the preservation of their cultural resources, especially those associated with their way of life and cultural expression, are at risk.

77. In its consideration of reports by State parties, the Committee expressed concerns about the adverse effects of the exploitation of natural resources, particularly mining operations and oil exploration in indigenous territories, which were carried out in violation of the rights of indigenous peoples with regard to their ancestral lands and natural resources and recommended to State parties concerned to protect the cultural identity and ancestral lands of the indigenous peoples affected and ensure that forest concessions do not deprive indigenous peoples of their enjoyment of their economic, social and cultural rights.

78. The Committee further deplored the persisting inequalities and social injustice faced by indigenous peoples in a number of countries, in particular in accessing employment and education and recommended that State parties concerned take specific measures to protect the rights of indigenous peoples.

79. Based on its review of State parties' reports, the Committee on the Rights of the Child has observed that, in implementing their obligations under the Convention, many States parties give insufficient attention to the rights of indigenous children and to the promotion of their development. It subsequently adopted in 2009 a general comment No. 11 on indigenous children and their rights under the Convention. General comment No. 12 on the right of the child to be heard also addresses indigenous issues.

80. General comment No. 11 underscores the importance of the child to be registered, to bilingual education, to health, to the enjoyment of culture, religion and language, and to participation. It highlights the need for data collection to be disaggregated to enable possible discrimination to be identified and urges State parties to ensure that indigenous children have access to culturally appropriate services in areas of health, nutrition, education, recreation and sports, social services, housing, sanitation and juvenile justice.

81. The general comment also calls upon State parties to adopt special measures in order to guarantee the effective exercise of the rights of indigenous children. State parties are required to consult the indigenous community as regards legislation, policies and indigenous children and give them an opportunity to participate in the process on how the best interests of indigenous children in general can be decided in a culturally sensitive way. Such consultation should, to the extent possible, include meaningful participation of indigenous children.

82. General comment No. 12 on the right of the child to be heard also address the rights of indigenous children. It calls upon State parties to make efforts to recognize the right to

expression of views for indigenous children and other children who do not speak the majority language. As regards the implementation of children's rights in general, the Committee reiterated its broad understanding of children's participation. It recalled the need to establish procedures not only for individual children and clearly defined groups of children, but also for groups of children, such as indigenous children, who are affected directly or indirectly by social, economic or cultural conditions of living in their society. The Committee also continued to address the enjoyment of rights of indigenous children as part of its periodic review of State party reports.

83. During the period under review, the Human Rights Committee deplored the absence of recognition of the existence of indigenous peoples in a number of countries. It requested one State party to carry out a study regarding minorities and indigenous communities in the State party and adopt specific legislation and special measures to protect, preserve and promote their cultural heritage and traditional way of life. It also recommended that the State party consult indigenous communities before establishing game reserves, granting licences for hunting, or other projects on ancestral or disputed lands. In its observations to another State party, the Committee requested the State party concerned to take steps to ensure that the indigenous community are protected against discrimination and are provided with effective remedies in that regard.

84. The Committee remained concerned about the fact that indigenous peoples are not sufficiently consulted in decision-making process with respect to issues affecting their rights in a number of countries. It recommended that the State parties concerned increase their efforts for an effective consultation with indigenous peoples in decision-making in all areas having an impact on their rights. It further recommended to one State party to establish an adequately resourced national indigenous representative body.

85. With regards to land issues, the Committee encouraged State parties to ensure the fair and expeditious resolutions of claims concerning land and resources made by the indigenous peoples concerned by introducing appropriate legislation in consultation with indigenous peoples. It also addressed the issue of forced eviction of indigenous peoples from their ancestral lands for reasons having to do with control over natural resources and recommended to the State party concerned to provide for a legal cadastral survey of indigenous community property.

86. The Committee on the Elimination of Discrimination against Women and the Committee against Torture also addressed the situation of indigenous peoples while examining periodic reports.

C. The universal periodic review

87. Issues concerning indigenous peoples were frequently raised in the context of the universal periodic review, including in reviews concerning Belize, Bolivia (Plurinational State of), Cambodia, Cameroon, Canada, Chile, Congo, El Salvador, Fiji, Guyana, Kenya, Laos People's Democratic Republic, Malaysia, Mexico, New Zealand, Nicaragua, Nigeria, Norway, Russian Federation, , Sweden, Viet Nam and Uruguay.

88. Recommendations concerned, inter alia, indigenous communities forcibly removed from their land and the need to ensure effective consultation with indigenous communities before granting licenses for economic exploitation. Furthermore, the need to adopt measures to eradicate impunity for human rights violations, particularly against indigenous women was highlighted in certain contexts, and a number of recommendations pointed to the need to strengthen efforts to implement indigenous peoples' rights in such areas as housing, right to food, access to education, health care and legal assistance. In a number of cases, the Declaration on the Rights of Indigenous Peoples was explicitly invoked, as was

the need to implement the recommendations of treaty bodies and the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people.

IV. Conclusions and recommendations

89. During the period under review, OHCHR further strengthened its work to advance the rights of indigenous peoples at the country level and increased efforts to clarify concepts contained in the United Nations Declaration on the Rights of Indigenous Peoples. Through its fellowship programme and various activities with United Nations country teams, Governments and civil society, OHCHR also built capacity amongst indigenous communities and others involved.

90. Furthermore, OHCHR promoted cooperation and coordination within the United Nations system and between the three mandates devoted to indigenous issues: the Expert Mechanism on the Rights of Indigenous Peoples, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people and the Permanent Forum on Indigenous Issues. Synergies between mandates have also been enhanced by the fact that the present report and the reports of the Special Rapporteur and of the Expert Mechanism have all been submitted to the same session of the Human Rights Council.

91. In addition to the important work of the mechanisms devoted to the rights of indigenous peoples, human rights treaty bodies and the universal periodic review process has frequently highlighted gaps and recommended measures to advance the rights of indigenous peoples in line with the Declaration on the Rights of Indigenous Peoples. Some proposed initiatives that are currently being considered, such as the proposed expansion of the mandate of the Voluntary Fund for Indigenous Populations, could further enhance the visibility of indigenous issues in the context of the Human Rights Council and treaty bodies.

92. The Declaration on the Rights of Indigenous Peoples has confirmed its place as the United Nations' key tool in advancing the rights of indigenous peoples, and support for this landmark instrument is widening. During the period under review, OHCHR and various human rights mechanisms have pursued a broad range of activities to help Member States, indigenous peoples and others concerned to make sure that the principles of the Declaration are reflected in laws, policies and practices.
