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### PROMOTION AND PROTECTION OF ALL HUMAN RIGHTS, CIVIL, POLITICAL, ECONOMIC, SOCIAL AND CULTURAL RIGHTS, INCLUDING THE RIGHT TO DEVELOPMENT

#### **Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, S. James Anaya\***

##### **Summary**

The present report is submitted in accordance with Human Rights Council resolution 6/12, and is the first report of Professor S. James Anaya in his capacity as Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people. The resolution requires the Special Rapporteur, *inter alia*, to promote the United Nations Declaration on the Rights of Indigenous Peoples and other international instruments relevant to the advancement of the rights of indigenous peoples. On this basis, the Special Rapporteur provides an analysis of the Declaration, in the context of other international instruments specifically regarding indigenous peoples and human rights instruments of general applicability. Reflecting the common international body of opinion regarding the rights of indigenous peoples, the Declaration elaborates on general human standards as they apply to the specific context of indigenous peoples, with a particular emphasis on the remedial measures required to address the historical contemporary denial of their rights. The last section of the report analyses the different measures required to implement and make operative the rights affirmed in the Declaration, a process which involves a joint effort by States, the United Nations system, indigenous peoples and relevant civil society actors.

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\* The present report was submitted after the deadline due to the tight time frame between the appointment of the Special Rapporteur and the deadline for the submission of the report.

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## Introduction

1. The mandate of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people was originally established by the Commission on Human Rights in 2001 (by resolution 2001/57), and subsequently extended by the Commission (resolution 2004/62), the General Assembly (resolution 60/251) and the Human Rights Council (resolution 5/1). On 28 September 2007, the Human Rights Council decided to renew the mandate of the Special Rapporteur for an additional period of three years, reframing the Commission's original resolution (resolution 6/12).

2. On 28 March 2008, at its seventh session, the Council decided to appoint Professor S. James Anaya, from the United States of America as the new mandate-holder. After fulfilling the formal requirements set forth in the Code of Conduct for Special Procedures' Mandate Holders of the Human Rights Council (resolution 5/2, para. 5), Professor Anaya assumed his mandate on 1 May 2008.

3. This document presents the Special Rapporteur's first report to the Council, in which he wishes to provide a number of reflections concerning the operationalization of the human rights norms affirmed in the United Nations Declaration on the Rights of Indigenous Peoples and other relevant international instruments. The report consists of four parts. Section I provides a brief description of the activities undertaken by the Special Rapporteur from 1 May to 1 August 2008, including a general plan of proposed activities for the coming year. Section II presents an overview of the Special Rapporteur's mandate in accordance with resolution 6/12 and in relation to the Declaration. Section III provides an analysis of the Declaration within the context of other instruments and sources of human rights norms concerning the rights of indigenous peoples. An assessment of the different mechanisms required for promoting the implementation of the Declaration is provided in the last section.

4. Addendum 1 to the present report contains a summary of communications sent to Governments and replies received, as well as observations by the Special Rapporteur. Addendum 2 is the report of the former mandate-holder, Professor Rodolfo Stavenhagen, on his official mission to Bolivia from 25 November to 7 December 2007.<sup>1</sup>

5. The Special Rapporteur wishes to gratefully acknowledge the trust he has received from the Human Rights Council to carry out his duties, and wishes to thank the Office of the High Commissioner for Human Rights (OHCHR) and its staff for their committed assistance, as well as to the individual experts that have assisted in the preparation of this report. He also wishes to acknowledge the institutional support provided to the mandate of the Special Rapporteur by the University of Arizona Indigenous Peoples Law and Policy Program. Finally, the Special Rapporteur would like to express his deep gratitude and admiration for the work of

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<sup>1</sup> A preliminary note with the main findings of the former Special Rapporteur's mission to Bolivia was presented to the Council during its sixth session (A/HRC/6/15/Add.2).

the former mandate-holder, Professor Rodolfo Stavenhagen. The Special Rapporteur will aim to carry out his work with a view to providing continuity to the achievements and following up on the challenges of the last seven years with a deep sense of humility and purpose.

## **I. SUMMARY OF ACTIVITIES**

### **A. Activities carried out by the Special Rapporteur**

6. Since the Special Rapporteur assumed his mandate on 1 May 2008, he has engaged in an initial dialogue with representatives of several Governments, indigenous peoples' organizations, and non-governmental organizations (NGOs), as well as with individual experts and members of the United Nations secretariat and bodies, including the Permanent Forum on Indigenous Issues and the Expert Mechanism on the Rights of Indigenous Peoples, and with representatives of specialized agencies, including the United Nations Development Programme (UNDP), the International Labour Organization (ILO) and the World Bank.

7. Following the initiative of the President of the Constitutional Assembly of Ecuador and of various indigenous organizations, and as part of the programme of technical assistance by UNDP in the country, the Special Rapporteur visited Ecuador from 28 to 29 May 2008, with a view to contributing to the ongoing debates in the country regarding the process of constitutional review. During his working visit, the Special Rapporteur had the opportunity to engage in a constructive dialogue with members of the Constitutional Assembly, experts, and representatives of indigenous organizations and of the Confederation of Indigenous Nationalities of Ecuador (CONAIE). The Special Rapporteur submitted a number of observations to the Government regarding some of the issues raised during his working visit, in light of the relevant international norms (see A/HRC/9/9/Add.1).

### **B. Future activities**

8. From 14 to 25 August 2008, the Special Rapporteur will undertake an official visit to Brazil, within the framework of the Government's open invitation to United Nations special procedures and at the request of several indigenous organizations. In addition, the Special Rapporteur is currently engaged in a dialogue with the Government of Nepal concerning the possibility of conducting an official mission to the country in the upcoming months, as well as with other Governments, including those of the Russian Federation, Indonesia and the Republic of the Congo.

9. Following a recommendation of the Permanent Forum, the Special Rapporteur, together with the Special Rapporteur on violence against women, its causes and consequences, will participate in an Asia-Pacific regional NGO consultation on "Violence against indigenous women in Asia-Pacific". The consultation is being organized by the Asia Pacific Forum on Women, Law and Development and will be held in New Delhi on 15 and 16 October 2008.

10. With a view to improving the effectiveness of and coordination between the existing bodies within the United Nations system with specific mandates on the rights of indigenous peoples, the Special Rapporteur is assisting with the organization of a working meeting with

members of the Permanent Forum and of the Expert Mechanism on the Rights of Indigenous Peoples. The meeting is being organized by the International Work Group on Indigenous Affairs and the Almáciga Intercultural Work Group and will take place in Madrid in February 2009.

11. The Special Rapporteur is determined to engage all relevant actors in a constructive dialogue on pressing issues of concern to indigenous peoples, including transnational companies. Building on other initiatives in this regard, including a forthcoming OHCHR expert seminar and a request by the Permanent Forum for a study on transnational corporations and other business enterprises, the Special Rapporteur is planning to participate in a technical meeting regarding experiences, best practices and potential models for the resolution of conflicts arising from commercial natural resource extraction on indigenous territories. The meeting, which will promote a dialogue between Governments, indigenous peoples' NGOs and transnational companies, is being organized by the UNESCO Centre of Catalunya and Kreddha (the International Peace Council for States, Peoples and Minorities), and is anticipated to take place in September 2009 in Sitges, Spain.

12. As observed by the former Special Rapporteur, the recognition of indigenous legal systems and their harmonization with State legal orders is another matter that presents complex challenges that must be met in order to secure the full enjoyment of the human rights of indigenous peoples.<sup>2</sup> In order to assist and promote practical initiatives to meet these challenges, the Special Rapporteur plans to form a research partnership on plural legal orders with the International Council on Human Rights Policy. This will involve a consultative research process with a cross-section of actors to review existing jurisdictional arrangements, examine best practices and develop action-oriented proposals for the effective recognition of indigenous legal systems.

13. Finally, drawing on the experiences of the former Special Rapporteur and other special procedures mandate-holders, the Special Rapporteur is developing working methods to enhance the effectiveness of his handling of the numerous communications he receives alleging violations of the human rights of indigenous peoples. These working methods will demonstrate responsiveness to indigenous peoples whose human rights allegedly are being violated, providing them a meaningful conduit to have their legitimate concerns appropriately addressed; identify and assess root or systemic causes of human rights violations, and not just the immediate manifestations of underlying problems; and engage States and other actors concerned in a constructive dialogue to advance solutions to problem situations, building on relevant progress and good practices already achieved.

## **II. SCOPE OF THE MANDATE OF THE SPECIAL RAPPORTEUR**

14. The Commission on Human Rights, in its resolution 2001/57, established the mandate of the Special Rapporteur with the authority, inter alia, to "gather, request, receive and exchange information and communications from all relevant sources" concerning human rights violations

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<sup>2</sup> E/CN.4/2004/80.

against “indigenous people themselves and their communities and organizations”, and to “formulate recommendations and proposals … to prevent and remedy” such violations (para. 1). The Special Rapporteur was further invited to “take into account a gender perspective” and pay special attention to the situation of indigenous women and children (paras. 2-3).

15. In its resolution 6/12, the Council expanded the Commission’s original resolution, adding directives for the Special Rapporteur to work cooperatively with States, indigenous peoples, United Nations and regional bodies, and non-governmental organizations, and to pay particular attention to both the obstacles preventing full enjoyment of indigenous peoples’ human rights and to best practices in overcoming these obstacles. Significantly, resolution 6/12 further directs the Special Rapporteur to “promote the United Nations Declaration on the Rights of Indigenous Peoples and international instruments relevant to the advancement of the rights of indigenous peoples, where appropriate” (para. 1 (g)), thus providing the Special Rapporteur’s activities with a clear normative framework.

16. In recasting the original mandate, the Council underlined the role of the Special Rapporteur in promoting and facilitating a dialogue with Governments, indigenous peoples and other stakeholders to find effective ways to fully realize the rights of indigenous peoples which are affirmed in the Declaration and other international sources, in the spirit of respect, cooperation and mutual understanding that underpins the Declaration.

17. One of the Special Rapporteur’s main tasks in performing this role is to contribute to a better understanding, by the Council and all parties involved, of the legal, political, economic and institutional implications of the international recognition of the rights of indigenous peoples. With this objective in mind, the Special Rapporteur’s initial report aims at relating the Declaration on the Rights of Indigenous Peoples, the most recent and authoritative statement on the rights of these peoples as recognized internationally, to the larger body of relevant international human rights norms and instruments; and at examining ways in which the Declaration can be fully operationalized and put into practice.

### **III. THE DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES AND THE LARGER BODY OF RELEVANT INTERNATIONAL SOURCES**

18. During the last three decades, the demands for recognition of indigenous peoples across the world have led to the gradual emergence of a common body of opinion regarding the content of the rights of these peoples on the basis of long-standing principles of international human rights law and policy. This common normative understanding has been promoted by international and regional standard-setting processes; by the practice of international human rights bodies, mechanisms and specialized agencies; and by a significant number of international conferences and expert meetings. The emergence of this common understanding has further been reflected in and supported by widespread State practice and constitutional, legislative and institutional reforms at the domestic level. The Declaration on the Rights of Indigenous Peoples is the most important of these developments globally, encapsulating as it does the widely shared understanding about the rights of indigenous peoples that has been building over decades on a foundation of previously existing sources of international human rights law.

19. This section provides a brief synthesis of the sources and general content of existing international standards that affirm and promote the rights of indigenous peoples. These sources include, in addition to the Declaration, international instruments not specific to indigenous peoples and human rights norms of general applicability, especially as applied by authoritative human rights bodies and mechanisms when addressing indigenous issues, and the International Labour Organization conventions concerning indigenous peoples.<sup>3</sup>

#### **A. Instruments not specific to indigenous peoples and human rights norms of general applicability**

20. To be sure, indigenous individuals and peoples hold the same rights that are recognized to all individuals and peoples. Article 1 of the Declaration explicitly restates this basic principle, by affirming that “indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law”. From this perspective, all general human rights principles and norms apply equally to indigenous peoples, and are to be interpreted and applied with regard to the specific historical, cultural, social and economic circumstances of these peoples.

21. This approach has long been taken by international bodies and mechanisms in their authoritative interpretation of universal or regional instruments and human rights norms of general applicability. United Nations treaty bodies have significantly contributed to the common normative understanding of the rights of indigenous peoples in their application of the human rights treaties to which they respectively are attached. They have done so through evaluation of State party reports, complaint procedures, or issuance of interpretive comments or recommendations.

22. Since the late 1980s, the Human Rights Committee has taken a leading role in developing a body of jurisprudence concerning the rights of indigenous peoples under several provisions of the International Covenant on Civil and Political Rights (ICCPR), including the rights to privacy and to family, and, especially, the rights of persons belonging to ethnic, religious or linguistic minorities. The Committee’s general comment No. 23 (1994) on article 27 of ICCPR advances a broad interpretation of the international norm of cultural integrity in the context of indigenous peoples, understanding that norm to encompass all aspects of indigenous culture including rights

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<sup>3</sup> An initial survey of the international and domestic standards regarding the rights of indigenous peoples was provided by the first report of the Special Rapporteur to the Commission on Human Rights. E/CN.4/2002/97, paras. 6-33. This survey was subsequently supplemented by the Special Rapporteur, with a particular emphasis on processes of domestic legal and constitutional reform, judicial decisions, and the practice of international human rights bodies. See E/CN.4/2006/78, paras. 7-13.

to lands and resources.<sup>4</sup> Acting under the reporting procedure, the Human Rights Committee has further considered aspects of indigenous political participation, self-government and autonomy within the framework of the self-determination clause of article 1 of the Covenant.

23. The Committee on the Elimination of Racial Discrimination (CERD) has contributed to promoting an understanding of the human rights obligations of States parties to the International Convention on the Elimination of All Forms of Racial Discrimination with regard to indigenous peoples. In 1997, the Committee adopted its general recommendation No. 23 on indigenous peoples, interpreting the norm of non-discrimination to protect aspects of indigenous cultural identity and language, economic and social development, effective participation, and rights over lands, territories and resources. Subsequent general recommendations of the Committee have addressed sexual and gender-based discrimination against indigenous women and discrimination of indigenous peoples in their administration of justice, including denial of their indigenous legal systems.<sup>5</sup> Based on these interpretations of the Convention, CERD has played an increasingly active role in combating various forms of discrimination against indigenous peoples in its examination of the reports of States parties to the Convention. Most of the specific country situations that have been dealt with or are currently being monitored by CERD under its early warning/urgent action procedure are related to indigenous communities and peoples.

24. The Committee on Economic, Social and Cultural Rights has similarly identified specific normative implications for indigenous peoples of several of the rights affirmed in the International Covenant on Economic, Social and Cultural Rights. These include the rights to adequate housing, including legal protection against forced evictions;<sup>6</sup> to adequate food;<sup>7</sup> to education without discrimination;<sup>8</sup> to the highest attainable standard of health;<sup>9</sup> to water;<sup>10</sup> and to benefit from scientific, literary or artistic production.<sup>11</sup>

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<sup>4</sup> Paras. 24-25.

<sup>5</sup> General recommendation No. 25 (2000), para. 2; general recommendation No. 31, paras. 27, 36, 41.

<sup>6</sup> General comment No. 7, para. 10.

<sup>7</sup> General comment No.12, para. 13.

<sup>8</sup> General comment No. 13, para. 50.

<sup>9</sup> General comment No. 14, paras. 12 (b) and 27.

<sup>10</sup> General comment No. 15, paras. 7 and 16.

<sup>11</sup> General comment No. 17 (2006), paras. 9, 32, 45, and 18.b.iii.

25. Articles 29 and 30 of the Convention on the Rights of the Child address specifically the rights of indigenous children to their own cultures, religions and languages. On the basis of these and other provisions of the Convention, the Committee on the Rights of the Child has devoted considerable attention to the specific needs and circumstances of indigenous children in its review of the application of the Convention.<sup>12</sup> The Committee against Torture, the Committee on the Elimination of Discrimination against Women (CEDAW), and the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families have also paid specific attention to the situation of indigenous persons in their periodic examination of States' implementation of the respective conventions. CEDAW has further addressed the special circumstances faced by indigenous women in its general recommendation No. 24 (1999) on women and health.<sup>13</sup>

26. In addition to the activities of the United Nations human rights mechanisms, provisions directly related to the human rights of indigenous peoples have been included in the declarations and programmatic statements emanating from United Nations issue-specific world conferences in the last several years. Notably, in the Vienna Declaration and Programme of Action, the World Conference on Human Rights called upon States to "take concerted positive steps to ensure respect for all human rights and fundamental freedoms of indigenous people, on the basis of equality and non-discrimination" and "recognize the value and diversity of their distinct identities, cultures and social organization".<sup>14</sup>

27. Indigenous peoples' contribution to cultural diversity and intangible heritage worldwide has been acknowledged in instruments recently adopted by the United Nations Educational, Cultural and Scientific Organization (UNESCO).<sup>15</sup> In addition, principles derived from indigenous peoples' rights in connection with lands, territories and resources have been incorporated into a number of international environmental instruments.<sup>16</sup> This includes the provisions of article 8 (j) of the Convention on Biological Diversity, affirming indigenous peoples' rights to their traditional knowledge, which has led to a specific follow-up mechanism

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<sup>12</sup> See in particular the recommendations of the Day of General Discussion on the rights of indigenous children, 3 October 2003.

<sup>13</sup> Para. 6.

<sup>14</sup> Para. 20.

<sup>15</sup> UNESCO Declaration on Cultural Diversity (2001), art. 4; Convention for the Safeguarding of the Intangible Cultural Heritage (2003), sixth preambular paragraph.

<sup>16</sup> United Nations non-legally binding authoritative statement of principles for a global consensus on the management, conservation and sustainable development of all types of forests (1992), paras. 2, 5-6, 12; United Nations Framework Convention on Climate Change (1992), art. 3; United Nations Convention to combat desertification in those countries experiencing serious droughts and/or desertification, particularly in Africa (1994), art. 10.2.e.

that involves indigenous peoples. Indigenous peoples' concerns are also at the centre of the ongoing discussions at the World Intellectual Property Organization regarding the protection of traditional knowledge, genetic resources and traditional cultural expressions.

28. At the regional level, the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights have played a path-breaking role in developing a distinct body of jurisprudence concerning the rights of indigenous peoples in the Americas, with an important normative effect in other regions. These bodies have interpreted the American Declaration of the Rights and Duties of Man and the American Convention on Human Rights in a way that takes account of the specific circumstances of indigenous peoples and tribal communities, affirming for them the right to life, including a dignified collective existence;<sup>17</sup> the right of property over lands, territories and natural resources,<sup>18</sup> including the rights to consultation and consent;<sup>19</sup> and the right to political participation in accordance with their cultural patterns.<sup>20</sup> A special commitment towards the promotion and protection of the rights of indigenous peoples is additionally reflected in article 9 of the Inter-American Charter of the Organization of American States (2001).

29. In 2000, the African Commission on Human and Peoples' Rights decided to establish a working group on indigenous peoples/communities as part of its system of thematic special procedures. The first thematic report produced by the Working Group interpreted several of the provisions of the African Charter on Human and Peoples' Rights, as well as the Commission's jurisprudence, in consistency with the internationally prevailing understanding of the rights of indigenous peoples.<sup>21</sup> Since then, the Working Group has continued its activities regarding indigenous issues, including undertaking a number of country visits.

30. The practice of international bodies and mechanisms in recent decades has significantly contributed to building an understanding of the rights of indigenous peoples on the basis of general human rights norms and a wide array of international instruments. The authoritative interpretation of these norms has contributed to the gradual crystallization of a universal

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<sup>17</sup> I/A HR Court, *Masacre de Plan de Sánchez* (Guatemala), Series C (No. 105) (2004).

<sup>18</sup> I/A HR Court, *Awas Tingni Mayagna (Sumo) Indigenous Community v. Nicaragua*, Series C (No. 79) (2001); *Moiwana Community v. Surinam*, Series C (No. 124) (2005); *Yakye Axa Indigenous Community v. Paraguay*, Series C (No. 125) (2005); *Sawhoyamaxa Indigenous Community v. Paraguay*, Series C (No. 146) (2006).

<sup>19</sup> I/A HR Court, *Yatama v. Nicaragua*, Series C (No. 127) (2005).

<sup>20</sup> I/A HR Court, *Saramaka People v. Suriname*, Series C (No. 172) (2007).

<sup>21</sup> *Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities*, adopted by the African Commission on Human and Peoples' Rights at its 28th ordinary session (2005).

common understanding of the minimum content of the rights of these peoples as a matter of international law and policy. This common understanding has been further reflected in, strengthened and elaborated by the adoption of international instruments that are specifically focused on the rights of indigenous peoples.

## **B. The International Labour Organization conventions**

31. The ILO was historically the first international organization to promote specific international norms and policies regarding indigenous peoples. Following earlier initiatives, the ILO adopted the Convention concerning the protection and integration of indigenous and other tribal or semi-tribal populations in independent countries (No. 107) in 1957. Although it is somewhat a reflection of the paternalistic and assimilation-oriented assumptions of the time, the protective thrust of the Convention nevertheless contributed to signalling the need for international attention and cooperation with regard to indigenous peoples.

32. In the mid-1980s the International Labour Conference decided to revise Convention No. 107 in the form of a new instrument, resulting in the adoption of the Convention concerning indigenous and tribal peoples in independent countries (No. 169) in 1989. This decision reflected the evolving normative understanding concerning the rights of indigenous peoples which at that time was being generated, especially by discussions within the United Nations, to develop an indigenous rights declaration. A momentous step in the consolidation of the contemporary international regime on indigenous peoples, Convention No. 169 provides significant recognition of indigenous peoples' collective rights in key areas, including cultural integrity; consultation and participation; self-government and autonomy; land, territory and resource rights; and non-discrimination in the social and economic spheres. The norms embodied in the Convention have been subsequently developed through the interpretive practice of the ILO supervisory bodies, notably the Committee of Experts and the Governing Body's tripartite committees acting under article 24 of the ILO Constitution.

33. Most States of Latin America as well as some States from other regions have ratified Convention No. 169, with a total of 19 ratifications thus far. Despite the relatively small number of ratifications from outside the Western Hemisphere, the general normative underpinning and specific human rights principles of the Convention have acted and still act as a powerful catalyst for the consolidation at the international level of the common normative understanding regarding the rights of indigenous peoples. This is reflected in numerous processes of constitutional, legal and institutional reform at the domestic level - including in States that are not formally part of the Convention - as well as in the development of other international instruments, programmes and policies.

## **C. The character and general content of the Declaration**

34. While influenced by discussions within the United Nations around the initiative to develop an indigenous rights declaration, the development of Convention No. 169 in 1989 contributed in turn to the process that led finally to the adoption of the United Nations Declaration on 13 September 2007. The protracted negotiations that stretched over two and a half decades and ended with the adoption of the Declaration engaged States, indigenous peoples and independent experts in an extended multilateral discussion that was central to the emergence, internationally, of a common body of opinion on the rights of indigenous peoples.

35. The Declaration was adopted by General Assembly resolution 61/295 by an overwhelming majority of Member States, with 143 voting in favour, 4 against and 11 abstaining. While the explanatory statements of the four States that voted against adoption of the Declaration (Australia, Canada, New Zealand, and United States of America) showed disagreement with the wording of specific articles or concerns with the process of adoption, they also expressed a general acceptance of the core principles and values advanced by the Declaration.

36. The basic normative justification of the Declaration is stated in the sixth preambular paragraph, which acknowledges that “indigenous peoples have suffered from historic injustices as a result of, inter alia, their colonization and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests”. The Declaration’s preamble thus stresses the essentially remedial purpose of the instrument. Far from affirming special rights per se, the Declaration aims at repairing the ongoing consequences of the historical denial of the right to self-determination and other basic human rights affirmed in international instruments of general applicability.

37. The Declaration affirms in its article 3 the right of indigenous peoples to self-determination, in terms that restate the common provisions of article 1 of the two 1966 International Covenants. Reflecting the state of contemporary international law in relation to this principle as well as the demands of indigenous peoples themselves, the affirmation of self-determination in the Declaration is deemed compatible with the principle of territorial integrality and political unity of States.<sup>22</sup>

38. On this grounding, the Declaration provides a detailed list of rights that constitute “the minimum standards for the survival, dignity and well-being of indigenous peoples of the world” (art. 43). The Declaration reaffirms basic individual rights to equality and non-discrimination, life and personal integrity and freedom, and nationality and access to justice; and it calls for special attention to specific rights and needs of indigenous elders, women, youth, children and persons with disabilities.<sup>23</sup> At the same time, the Declaration affirms rights of a collective character in relation to self-government and autonomous political, legal, social and cultural institutions; cultural integrity, including cultural and spiritual objects, languages and other cultural expressions; lands, territories and natural resources; social services and development; treaties, agreements and other constructive arrangements; and cross-border cooperation.

39. Together with affirming the aspects of self-determination related to maintaining spheres of autonomy, the Declaration also reflects the common understanding that indigenous peoples’ self-determination at the same time involves a participatory engagement and interaction with the larger societal structures in the countries in which they live. In this connection, the Declaration

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<sup>22</sup> Art. 46 (1).

<sup>23</sup> Art. 22 (1).

affirms indigenous peoples' right "to participate fully, if they so choose, in the political, economic, social and cultural life of the State",<sup>24</sup> and to be consulted in relation to decisions affecting them, with the objective of obtaining their prior, free and informed consent.<sup>25</sup>

40. The Declaration does not affirm or create special rights separate from the fundamental human rights that are deemed of universal application, but rather elaborates upon these fundamental rights in the specific cultural, historical, social and economic circumstances of indigenous peoples. These include the basic norms of equality and non-discrimination, as well as other generally applicable human rights in areas such as culture, health or property, which are recognized in other international instruments and are universally applicable.

41. Albeit clearly not binding in the same way that a treaty is, the Declaration relates to already existing human rights obligations of States, as demonstrated by the work of United Nations treaty bodies and other human rights mechanisms, and hence can be seen as embodying to some extent general principles of international law. In addition, insofar as they connect with a pattern of consistent international and State practice, some aspects of the provisions of the Declaration can also be considered as a reflection of norms of customary international law.<sup>26</sup> In any event, as a resolution adopted by the General Assembly with the approval of an overwhelming majority of Member States, the Declaration represents a commitment on the part of the United Nations and Member States to its provisions, within the framework of the obligations established by the United Nations Charter to promote and protect human rights on a non-discriminatory basis.

42. While the adoption of the Declaration marks the height of decades of standard-setting regarding the rights of indigenous peoples, it is also important to note that the Organization of American States continues to be involved in the process of developing an American declaration of the rights of indigenous peoples. As was the case during the drafting of the United Nations Declaration, indigenous peoples are actively involved in the search for a common consensus with States regarding this instrument.

43. The United Nations Declaration reflects the existing international consensus regarding the individual and collective rights of indigenous peoples in a way that is coherent with, and expands

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<sup>24</sup> Art. 5. See also art. 18 (affirming the right to participate in "the decision-making in matters which would affect their rights").

<sup>25</sup> Art. 19 ("States shall consult and cooperate in good faith with the indigenous peoples concerned ... in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them"). For an analysis of the principle of free, prior and informed consent, see observations concerning Ecuador (A/HRC/9/9/Add.1).

<sup>26</sup> See S. James Anaya and Siegfried Wiessner, "OP-ED: The UN Declaration on the Rights of Indigenous Peoples: Towards Re-empowerment", *Jurist* (3 October 2007).

upon, the provisions of ILO Convention No. 169, as well as with other developments, including the interpretations of other human rights instruments by international bodies and mechanisms. As the most authoritative expression of this consensus, the Declaration provides a framework of action towards the full protection and implementation of these rights.

#### **IV. MECHANISMS TO OPERATIONALIZE THE RIGHTS AFFIRMED IN THE DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES**

##### **A. States**

44. The seventh preambular paragraph of the Declaration emphasizes the “urgent need to respect and promote the inherent rights of indigenous peoples”. Like any other human rights instrument does, the Declaration confers a pivotal role to State actors in the promotion and protection of the rights affirmed therein. The central role of the State is further reinforced by the essentially reparative orientation of the instrument, which requires States to take affirmative measures to attack the systemic problems that indigenous peoples face in the enjoyment of their human rights in ways that are consistent with their specific cultural characteristics and their own expressed wishes.

##### **The call for positive or special measures**

45. The Declaration requires that “States, in consultation and cooperation with indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration” (art. 38). This general mandate is further elaborated on in other provisions, with specific affirmative measures required from States in connection with almost all the rights affirmed in the Declaration.

46. The kind of State action required to operationalize the rights affirmed in the Declaration thus entails an ambitious programme of legal and policy reform, institutional action and reparations for past wrongs, involving a myriad of State actors within their respective spheres of competence. The former chair of the Working Group on Indigenous Populations, Ms. Erica-Irene Daes, described this process as “belated State-building”, a process “through which indigenous peoples are able to join with all the other peoples that make up the State on mutually-agreed upon and just terms, after many years of isolation and exclusion”.<sup>27</sup> This spirit of cooperation and mutual understanding between States and indigenous peoples is a theme throughout the Declaration, including in the provision which underlines the value of historical and modern treaties or compacts as mechanisms to advance relations of cooperation between indigenous peoples and States (art. 37).

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<sup>27</sup> Erica-Irene A. Daes, “Some Considerations on the Right of Indigenous Peoples to Self-Determination”, 3 *Transn'l L. & Contemp. Probs.* 1, 9 (1993).

47. The positive or special measures required to operationalize the Declaration need to reach the existing local institutional arrangements and policy frameworks, which in some cases may have to be reformed to accommodate the particular needs of indigenous peoples, as underlined in the Declaration. Depending on the local context, specific policies, programmes and institutions may be required to promote the concerted action of government agencies regarding indigenous peoples. In those countries where they already exist, their terms of reference and goals should be framed by rights and principles affirmed in the Declaration.

48. As part of the general activities under its six mandated areas (economic and social development, culture, environment, education, health and human rights), the sessions of the Permanent Forum and expert meetings organized by its secretariat have produced an important body of specific recommendations that can be a useful tool for States in the planning and implementation of the measures required to operationalize the Declaration. Particularly tailored to State policies are, for instance, the Permanent Forum's recommendations on the establishment of "comprehensive national indigenous education policies".<sup>28</sup>

49. Together with the call for specific State action, articles 4 and 39 of the Declaration jointly call upon States to provide financial and technical support for the operation of indigenous self-governance institutions, without prejudice to the support provided through international cooperation. The need for such support naturally follows from the effective recognition of indigenous peoples' self-governing or autonomous systems which necessarily connect to the wider political and institutional structures of the countries in which these peoples live. In addition, this State support helps empower indigenous peoples in their autonomous management and provision of social services, such as in the area of education, which also contributes to the fulfilment of the States' general obligations with regard to the economic, social and cultural rights of citizens.

### **Legal reform and judicial action**

50. Implementing the Declaration will normally require or may be facilitated by the adoption of new laws or the amendment of existing legislation at the domestic level, as envisaged by article 38 of the Declaration which calls for appropriate "legislative measures". Also normally required will be new regulatory frameworks, which in most countries are still lacking or are insufficient. It is important to note that the legal and institutional transformations required by the Declaration are usually not sufficiently addressed solely by enacting specific "indigenous laws", as many States have done, but rather will normally also involve the transformation of broader legal structures in key areas.

51. This is true, for instance, in relation to the provisions of the Declaration regarding indigenous peoples' rights to "autonomy or self-government in matters relating to their internal and local affairs" (art. 4) and to "maintain and strengthen their distinct political, legal, economic, social and cultural institutions" (art. 5), including in the administration of justice (arts. 34-35).

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<sup>28</sup> E/2004/43/E/C.19/2004/23, para. 19.

Indigenous systems of autonomy or self-government carry a number of implications for broader State governance that have not been fully acknowledged in most countries, where indigenous autonomy or self-government still operates de facto and without the proper legal guarantees. The same holds true in relation to indigenous rights over their lands, territories and natural resources, as affirmed in articles 26 to 28 and related provisions of the Declaration. While these rights are generally recognized in many countries, their realization implies a whole package of legal and administrative transformations, particularly regarding property and natural resources law and administration.

52. In November 2007, Bolivia adopted a law to give full legal effect to the provisions of the Declaration in domestic law.<sup>29</sup> Similar initiatives have been introduced in the legislative bodies of other countries. The Bolivian law represents an important initiative insofar as it signals the commitment of the State to implement the Declaration. However, such measures alone should not be seen as sufficient to fully operationalize the rights affirmed in the Declaration in the multiple specific areas in which government regulation and administration touch indigenous peoples' concerns.

53. In a number of cases, the recognition of indigenous peoples and their rights as mandated by the Declaration may require changes of a constitutional nature. Based on this understanding, the Declaration has already been used as a normative reference in recent or ongoing constitutional revision processes, such as in Bolivia, Ecuador and Nepal.

54. Domestic courts also play a key role in operationalizing the rights of indigenous peoples as affirmed in international standards. Domestic courts should endeavour to conform their decisions to the Declaration in cases concerning indigenous peoples. Even if not empowered to directly apply the Declaration, domestic courts may and should use the Declaration as an interpretive guide in applying provisions of domestic law. A good practice in this regard is the recent decision of the Supreme Court of Belize in the case of *Maya villages v. Attorney General*, a case in which the Court used the Declaration and other international sources to guide its interpretation of the Constitution of Belize to uphold the rights of Maya villages over their traditional land.<sup>30</sup>

55. Legal recognition and judicial action are only potential preconditions for operationalizing the indigenous peoples' rights under the Declaration at the local level. The former Special Rapporteur noted that recent processes of constitutional and legal reform in various countries have not necessarily led to actual changes in the daily lives of indigenous peoples, and an "implementation gap" continues to exist between "legislation and the day-to-day reality".<sup>31</sup>

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<sup>29</sup> Ley N° 3760, Gaceta Oficial N° 3039 (7 de noviembre de 2007).

<sup>30</sup> *Manuel Coy et al. v. The Attorney General of Belize et al.*, Supreme Court of Belize, Claims No. 171 and 172 (19 October 2007).

<sup>31</sup> E/CN.4/2006/78, para. 5.

Bridging this gap requires the concerted, goal-oriented action of a myriad of governmental actors within the scope of their respective fields of competence, and involves a mixture of political will, technical capacity, and financial commitment.

### **Mainstreaming and awareness-raising**

56. While the operationalization of the Declaration requires State action in the form of policies, programmes, institutions and legal reforms that are specific to indigenous peoples, the principles and rights set forth in the Declaration should be mainstreamed into the different operative sectors of government, and should be taken into consideration in the wider policy-making processes and in the establishment of programmatic priorities.

57. This is particularly important in areas, emphasized in the Declaration, in which the realization of indigenous peoples' rights is inextricably connected to general State policies, such as in the areas of education, culture, or health, and in State development strategies and plans. In this regard, the Permanent Forum and United Nations agencies such as ILO and UNDP have played a leading role in cooperating with States in mainstreaming the rights of indigenous peoples into national poverty reduction strategies aimed at meeting the Millennium Development Goals.<sup>32</sup>

58. In order to effectively mainstream the Declaration into general State policies and to promote the legal and institutional changes required to operationalize it, Governments should ensure that the different actors involved are aware of the Declaration and sufficiently understand its provisions. Accordingly, States should make efforts to raise awareness and provide technical training to government officials, members of the legislative branch and of national human rights institutions, judicial authorities and all other relevant actors, including civil society and indigenous peoples themselves.

59. The Special Rapporteur fully acknowledges the serious technical difficulties, as well as the economic, social, and political obstacles, that States encounter in undertaking the kind of systemic action and reforms required to fully and effectively respect the rights of indigenous peoples and to reverse the long-standing patterns of abuse and discrimination that they face. In the light of such difficulties, the United Nations system has considered that the situation of indigenous peoples is a matter of global concern and of urgent priority, and is deemed to play an important role in supporting State action towards the implementation of the Declaration.

### **B. The United Nations system**

60. In its twentieth preambular paragraph, the Declaration emphasizes that "the United Nations has an important and continuing role in promoting and protecting the rights of indigenous peoples". The United Nations special role had previously been affirmed by the

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<sup>32</sup> E/2005/43-E/C.19/2005/9, paras. 17-21.

General Assembly with the solemn proclamation of the International Year of the World's Indigenous People in 1993,<sup>33</sup> and subsequently, with the proclamation of the First Decade of the World's Indigenous Peoples (1994-2004)<sup>34</sup> and the Second Decade and plan of action.<sup>35</sup>

61. In view of this special role, the Declaration in article 41 explicitly calls upon the organs and specialized agencies of the United Nations system “to contribute to the full realization” of the Declaration, including, *inter alia*, through the mobilization of “financial cooperation and technical assistance”. Article 42 further underlines the role of United Nations bodies and specialized agencies, calling on them to “promote respect for and full applications of the provisions” of the Declaration and provide “follow-up” for its effective application. This is a joint task that pertains specially to United Nations human rights bodies and mechanisms, including but not limited to those with a particular mandate regarding the rights of indigenous peoples, as well as to the various United Nations programmes which in some way touch upon indigenous issues.

### **Human rights bodies and mechanisms**

62. As seen, United Nations human rights mechanisms and bodies have played a crucial role in promoting and protecting the rights of indigenous peoples, while contributing to the development of a common normative understanding concerning the minimum content of these rights. Currently the most authoritative expression of this common understanding, the Declaration on the Rights of Indigenous Peoples constitutes an important tool in the regular promotional and protective activities of these bodies within their respective mandates and normative frames of reference.

63. The recently inaugurated mechanism of the Universal Periodic Review (UPR) of the Human Rights Council is an important tool in promoting the rights affirmed in the Declaration. Given the complementary and interrelated character of international human rights law, as well as the existing and developing jurisprudence on various human rights treaties by international bodies and mechanisms, it is clear that the provisions of the Declaration should factor into the interpretation of States' international human rights obligations and the evaluation of the positive developments and challenges faced when implementing them. It is foreseeable that, as the Declaration is gradually mainstreamed and operationalized in the practice of both States and human rights bodies and mechanisms, it will become entrenched in the UPR process, contributing to defining the human rights obligations of the States under review and guiding the recommendations of the Human Rights Council's Working Group on the Universal Periodic Review with regard to indigenous peoples.

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<sup>33</sup> General Assembly resolution 45/164.

<sup>34</sup> General Assembly resolution 48/163.

<sup>35</sup> General Assembly resolution 59/174.

64. The normative effect of the Declaration is not limited to the United Nations human rights system, but also influences as it should the action of regional human rights bodies. In the past, the text of the draft United Nations declaration was used by the Inter-American Commission on Human Rights as evidence of the content of indigenous rights under general principles of international law.<sup>36</sup> In its decision in *Saramaka People v. Suriname*, the Inter-American Court referred to the Declaration, in relation to the American Convention on Human Rights, to uphold and define grounds for the rights of indigenous and tribal peoples over the natural resources existing within their territories.<sup>37</sup> The Declaration may be expected to have a similar normative impact within the African and European human rights systems when indigenous issues in connection with relevant treaties are addressed.

### **United Nations mechanisms that specifically concern indigenous peoples**

65. Within the United Nations system, existing mechanisms with mandates specifically regarding indigenous peoples include: the United Nations Permanent Forum on Indigenous Issues; the Expert Mechanism on the Rights of Indigenous Peoples, and the mandate of the Special Rapporteur. These mechanisms have special roles in promoting the operationalization of the Declaration.

66. Article 42 of the Declaration expressly mentions the Permanent Forum on Indigenous Issues as having a responsibility to promote full implementation of the Declaration. As a subsidiary body of the Economic and Social Council, the Permanent Forum has in the Declaration an essential instrument for the fulfilment of its threefold mandate of providing “expert advice and recommendations on indigenous issues to the Council, as well as to programmes, funds and agencies of the United Nations”; of promoting “the integration and coordination of activities relating to indigenous issues within the United Nations system”; and of preparing and disseminating “information on indigenous issues”.<sup>38</sup>

67. In its first session after the Declaration was adopted, the Permanent Forum hailed the adoption of the Declaration and pledged “its commitment to making it a living document throughout its work”.<sup>39</sup> The Permanent Forum further affirmed the Declaration as its legal framework, and it has started to apply specific provisions thereof in formulating its own recommendations regarding its substantive mandated areas, as well as in the Forum’s work under

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<sup>36</sup> *Marie and Carrie Dann v. United States*, Report No. 75/02, Case 11.140 (2002), para. 118; *Maya Indigenous Communities of the Toledo District v. Belize*, Report No. 40/04, Case 12.053 (2004), para. 118.

<sup>37</sup> See para. 28 above.

<sup>38</sup> Economic and Social Council resolution 2000/22, para. 2.

<sup>39</sup> E/2008/43-E/C.19/2008/13, para. 128.

its thematic discussions and other priorities.<sup>40</sup> The Permanent Forum has furthermore started to look at States as direct partners in a “constructive dialogue” on the “achievements, challenges and future action required in relation to indigenous peoples’ issues in each country under the Declaration”.<sup>41</sup>

68. The preamble of Human Rights Council resolution 6/36 establishing the new Expert Mechanism on the Rights of Indigenous Peoples in December 2007 expressly refers to the Declaration.<sup>42</sup> This reference provides the Expert Mechanism with a clear normative frame of reference for the fulfilment of its mandate to provide the Council with “thematic expertise” on the rights of indigenous peoples, particularly through studies and research-based advice.<sup>43</sup> The studies to be undertaken by the Expert Mechanism will therefore be of key importance in operationalizing the rights affirmed in the Declaration and in mainstreaming them into the Council’s general activities on the promotion and protection of human rights.

69. The second mechanism of the Human Rights Council with a specific mandate on indigenous issues is the mandate of the Special Rapporteur, which, as discussed, entrusts the mandate-holder with the responsibility of promoting the Declaration and other relevant international instruments related to the rights of indigenous peoples. The Special Rapporteur fully acknowledges the need for close cooperation and partnership with the Permanent Forum and the Expert Mechanism with a view to working together in the important task of promoting the operationalization of the rights affirmed in the Declaration. The Special Rapporteur is sincerely committed to this task as part of his forthcoming activities.

### **Specialized agencies**

70. The specialized agencies and United Nations programmes and funds are explicitly considered by the Declaration as important actors for the implementation of the Declaration. The Declaration specifically calls for the engagement of the specialized agencies in the fields of “financial cooperation and technical assistance” (art. 41), and further calls upon the mainstreaming of Declaration into the agencies’ action at the local level (art. 42). In addition, the Declaration requires that the work of the agencies should ensure the “participation of indigenous peoples on issues affecting them” (art. 41).

71. As seen, the important role of specialized agencies in promoting the rights of indigenous peoples is underlined by the establishment of the Permanent Forum with a particulate mandate entrusted to it by the Economic and Social Council to interact with United Nations agencies in the mainstreaming of indigenous issues within the United Nations system. In 2001 the agencies

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<sup>40</sup> Ibid., para. 132.

<sup>41</sup> Ibid., para. 133.

<sup>42</sup> Second preambular paragraph.

<sup>43</sup> Para. 1.

established the Inter-Agency Support Group on Indigenous Issues, which acts as a clearing house coordinating the action of its different members to support the Permanent Forum's work. In recent years, some of the agencies members of the Group have adopted new policies, programmes or guidelines or amended existing ones regarding indigenous peoples in ways that are generally - but not necessarily fully - consistent with the principles and rights affirmed in the Declaration. These include, *inter alia*, the UNDP "Policy of Engagement" with indigenous peoples (2001), the World Bank Operational Policy and Bank Policy on Indigenous Peoples (OP/BP 4.10) (2005), and, at the regional level, the Inter-American Development Bank's Operational Policy on Indigenous Peoples (OP-765) (2006).

72. Once the Declaration was adopted, the Permanent Forum called upon the specialized agencies to "review their policies and programmes in order to comply with the provisions contained in the Declaration", with a particular emphasis on ensuring respect for the rights to self-determination and free, prior and informed consent.<sup>44</sup> An encouraging initiative in this regard is the adoption in February 2008 of the United Nations Development Group's Guidelines for Indigenous Peoples' Issues. These guidelines are intended to assist the United Nations system to mainstream the rights of indigenous peoples in operational activities and programmes at the country level. In addition, UN-Habitat and UNDP are currently engaging in the development of internal policies regarding indigenous peoples, within the framework of the Declaration.

73. The implications of the Declaration for the work of the specialized agencies were analysed by the former Special Rapporteur in his report on the human rights-based approach to development (A/HRC/6/15). He identified international agencies as distinct duty-bearers in this regard, calling upon them to "refrain from supporting programmes and projects which, either directly or indirectly, are or could be conducive to the violations of the rights of indigenous peoples" (para. 72). He further recommended that development cooperation partners should "ensure that their activities help strengthen dialogue and cooperative relations between indigenous peoples and the Governments of the countries in which those peoples live, identifying priority areas and the necessary resources to ensure the effective exercise" of their rights (para. 74).

### C. Indigenous peoples

74. The objective stated in the eighteenth preambular paragraph of the Declaration of enhancing "harmonious and cooperative relations between the State and indigenous peoples" involves indigenous communities, authorities and organizations as fundamental actors in realizing the rights affirmed in this instrument. The Declaration's affirmation of the right to self-determination and extension of that right into the different spheres of indigenous life requires positive engagement, in a spirit of partnership, by both States and indigenous peoples, without which the Declaration would never be effective.

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<sup>44</sup> E/2008/43-E/C.19/2008/13, para. 136.

75. Therefore, wide affirmation of the rights of indigenous peoples in the Declaration does not only create positive obligations for States, but also bestows important responsibilities upon the rights-holders themselves. This interaction between the affirmation of rights and the assumption of responsibilities is particularly crucial in areas in which the Declaration affirms for indigenous peoples a large degree of autonomy in managing their internal and local affairs.

76. Positive action by indigenous peoples themselves is by definition required for the exercise of their rights to maintain and develop institutions and mechanisms of self-governance. The Declaration simultaneously acknowledges the economic implications of indigenous self-government or autonomy, affirming indigenous peoples' rights to State financial and technical assistance and international cooperation in order to exercise their rights and fulfil their responsibilities in this regard (arts. 4 and 39).

77. Notably, indigenous peoples are called upon to exercise responsibilities for the preservation, exercise and development of their cultural heritage and expressions.<sup>45</sup> The Declaration further acknowledges indigenous peoples' inter-generational responsibilities, including environmental stewardship, with regard to their traditional lands, territories and resources (arts. 25 and 29).

78. In exercising their rights and responsibilities under the Declaration, indigenous peoples themselves should be guided by the normative tenets of the Declaration. Implementation of the Declaration will invariably require indigenous peoples' good faith, active participation in a spirit of mutual cooperation, when States consult as they must with indigenous peoples on matters affecting their rights with a view to obtaining their free, prior and informed consent. The objective for both parties in such consultations should be to reach a mutual agreement that builds harmonious partnerships.

79. The implementation of the Declaration by indigenous peoples may also require them to develop or revise their own institutions, traditions or customs through their own decision-making procedures. The Declaration recalls that the functioning of indigenous institutions should be "in accordance with international human rights standards" (art. 34) and calls for particular attention "to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities", including in the elimination of all forms of discrimination and violence against indigenous children and women (art. 22). With an appropriate understanding of these provisions, the Declaration is a powerful tool in the hands of indigenous peoples to mainstream human rights within their respective societies in ways that are respectful to their cultures and values.

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<sup>45</sup> Article 12 (1) (right to indigenous religious and spiritual traditions); article 13 (1) (right to their languages, literature and philosophies); article 31 (1) (right to their traditional knowledge and technologies).

#### **D. Civil society**

80. Finally, the kind of systemic changes required to operationalize the Declaration at the local level cannot be ultimately achieved without involvement of society at large and engagement of social sectors such as the educational system, the media, the arts, religious groups, and the business community, for example.

81. Societal involvement is prerequisite for eliminating entrenched discrimination and prejudices against indigenous peoples, particularly in the fields of education, culture and information. In this regard, the Declaration mandates that indigenous peoples' "cultures, traditions, histories and aspirations ... shall be appropriately reflected in education and public information" (art. 15, para. 1), which is further extended to "privately owned media" (art. 16, para. 2). The respect for indigenous peoples' cultural property and traditional knowledge further touches upon the activities of other societal actors, including churches, academic and research institutions, and museums.

82. In view of their impacts on the activities and daily life of indigenous peoples, local and transnational business enterprises also have an important responsibility to respect and promote the rights and principles of the Declaration. This is particularly relevant in relation to the guarantees set forth in article 32 of the Declaration regarding development or resource extraction projects affecting indigenous territories. In this connection, the Permanent Forum has called upon transnational corporations to respect the standards affirmed in the Declaration.<sup>46</sup>

83. In a similar vein, the Declaration should be promoted and respected by non-governmental development actors when their activities are related to indigenous peoples. As it does for State and international agencies, the Declaration not only provides NGOs with a set of clear programmatic priorities in their development activities affecting indigenous peoples, but also with a set of guidelines that should regulate the design and implementation of these activities.<sup>47</sup> In addition, the adoption of the Declaration should encourage the mainstreaming of the rights of indigenous peoples into the activities of international and national human rights NGOs.

84. In the recent past, a number of local and international NGOs have played a central role in specifically supporting indigenous peoples' demands and promoting the respect for their rights, for which they should be credited. They should be now seen as key actors in disseminating the content of the Declaration and in facilitating a constructive dialogue among States, indigenous peoples and other relevant stakeholders in order to promote its implementation. Some of these organizations are already engaged in such activities, which should be supported by States and the donor community at large.

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<sup>46</sup> E/2008/43-E/C.19/2008/13, para. 26.

<sup>47</sup> United Nations Development Group, Guidelines on Indigenous Peoples' Issues, February 2008.

## V. CONCLUSIONS

85. The United Nations Declaration on the Rights of Indigenous Peoples represents an authoritative common understanding, at the global level, of the minimum content of the rights of indigenous peoples, upon a foundation of various sources of international human rights law. The product of a protracted drafting process involving the demands voiced by indigenous peoples themselves, the Declaration reflects and builds upon human rights norms of general applicability, as interpreted and applied by United Nations and regional treaty bodies, as well as on the standards advanced by ILO Convention No. 169 and other relevant instruments and processes.

86. Accordingly, the Declaration does not attempt to bestow indigenous peoples with a set of special or new human rights, but rather provides a contextualized elaboration of general human rights principles and rights as they relate to the specific historical, cultural and social circumstances of indigenous peoples. The standards affirmed in the Declaration share an essentially remedial character, seeking to redress the systemic obstacles and discrimination that indigenous peoples have faced in their enjoyment of basic human rights. From this perspective, the standards of the Declaration connect to existing State obligations under other human rights instruments.

87. For the Declaration to be fully operative, States must pursue a range of affirmative, special measures that engage the various institutions of law-making and public administration. This involves a complex process of legal and institutional reform, judicial action, specific policies, and special reparations procedures. It is a process that requires States' full political engagement and financial commitment, and which is not free from obstacles and difficulties of all sorts.

88. The United Nations system, including human rights bodies and mechanisms, specialized agencies and mechanisms with indigenous-specific mandates (the Permanent Forum, the Expert Mechanism and the Special Rapporteur), plays a central role in promoting the implementation of the Declaration at the local level. The principles and rights affirmed in the Declaration constitute or add to the normative frameworks for the activities of United Nations human rights institutions, mechanisms and specialized agencies as they relate to indigenous peoples, including with regard to development cooperation targeted for the benefit of indigenous peoples and other activities that may in some way affect indigenous interests.

89. Because implementing the Declaration depends on the establishment of strong partnerships between States and indigenous peoples, in which both must assume responsibilities, indigenous peoples invariably are crucial actors in the operationalization

**of the Declaration. Most of the provisions of the Declaration, including the articles that elaborate on the elements of indigenous self-determination in the areas of self-government and autonomy, cultural integrity and social areas, require the active, good faith engagement of indigenous peoples with States and the broader political and societal structures.**

**90. Civil society actors, including the educational sector and the media, religious groups, non-governmental organizations and the private sector, further have roles in supporting the broad societal changes required to meet the challenges involved in making the United Nations Declaration a living reality.**

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