



Office of the United Nations High Commission for Human Rights

Contribution of OHCHR's Indigenous Peoples and Minorities Section Contribution to the Thirteen session of the UN Permanent Forum on Indigenous Issues

4 March 2014

Summary

The present submission of the United Nations High Commissioner for Human Rights (OHCHR) is prepared in the context of the thirteen session of the United Nations Permanent Forum on Indigenous Issues. The Office invites members of the Forum to take note of the recent report submitted to the Human Rights Council informing on relevant developments in human rights bodies and mechanisms and activities undertaken by the OHCHR that contribute to the realization of the provisions of the United Nations Declaration on the Rights of Indigenous Peoples (A/HRC/24/26). The recent reports by the Special Rapporteur on the rights of indigenous peoples are contained in documents A/68/317 and A/HRC/24/41. The report of the sixth session of the Expert Mechanism on the Rights of Indigenous Peoples can be found in document A/HRC/24/49 and its study on the access to justice in the promotion and protection of the rights of indigenous peoples is contained in document A/HRC/24/50. The present report provides information on follow-up to the Permanent Forum recommendations and also outlines the activities undertaken by the Office at headquarters and in the field that contribute to the goals and objectives of the Second International Decade of the World's Indigenous Peoples.

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I. Introduction

The present report provides information as requested by the Forum and should be read alongside other submissions relating to indigenous peoples submitted to the Human Rights Council, in particular the recent reports of the High Commissioner for Human Rights, the Special Rapporteur on the Rights of Indigenous Peoples and the Expert Mechanism on the Rights of Indigenous Peoples. It also outlines the activities undertaken by the Office at headquarters and in the field that contribute to the goals and objectives of the Second International Decade of the World's Indigenous Peoples.

II. Activities to support the implementation of the UN Declaration on the Rights of Indigenous Peoples at country level

OHCHR continued to strengthen joint activities to promote the rights of indigenous peoples at the country level. In particular, the integration of indigenous peoples' rights in the work of UN was advanced through the UN Indigenous Peoples Partnership Programme (UNIPP), a joint initiative between the OHCHR, the International Labour Organization (ILO), the United Nations Population Fund (UNFPA), the UN Development Program (UNDP) and the UN Children's Fund (UNICEF). In its capacity as the Co-Chair of the Policy Board and lead agency in several projects in the field, OHCHR supported new legislative and other initiatives, building on the recommendations of the Special Rapporteur on the Rights of Indigenous Peoples and other human rights mechanisms. Since its launch in May 2011, the Partnership has initiated a number of activities in six countries: Bolivia, Cameroon, Central African Republic, Republic of Congo, Nepal and Nicaragua, as well as one regional project in South-East Asia with initial funding from the Governments of Denmark, Finland and Ireland. UNIPP-supported projects have raised the visibility of indigenous issues and increased government awareness, with several government development programmes taking these issues into account for the first time.

For example, in Nepal, OHCHR conducted a training workshop for the United Nations Country Team and bilateral donors in September 2013 to enhance coordination and integration of the rights of indigenous peoples in policies and programmes, with particular focus on gender issues. As an outcome of the meeting, collaboration was established to work towards finalization of the National Action Plan on the Indigenous People's Rights achieving one of the outcomes of the UNDAF.

The Office also conducted a training workshop for civil society in partnership with the Office of the Resident Coordinator and the ILO in Nepal to discuss the rights of indigenous peoples and the importance of participatory mechanism to facilitate the participation of indigenous peoples in decision-making processes related to the new constitutional drafting body. The workshop contributed to enhancing dialogue with the Ministry of Federal Affairs and Local Development and the National Foundation for Development of Indigenous Nationalities (NFDIN), affiliated body to the Ministry and benefited from the participation of the National Human Rights Commission.

OHCHR also further its engagement in national legislative and policy reform processes and continued to provide technical advice and expertise on the right of indigenous peoples to governmental entities. In June 2013, the Office briefed members of parliament in Cameroun in the context of legislative developments concerning the management of forests with the view to ensuring that the standards of the UN Declaration on the rights of indigenous peoples were taken into account in these processes. In collaboration with UNICEF, UNDP, and UNFPA, the Office organized a training session for indigenous peoples in the Republic of Congo in July 2013 to discuss the implementation of the national Law on the rights of indigenous populations and review the draft implementing decrees.

The Office in Paraguay provided technical assistance on how to implement de Inter-American Court judicial decisions on ancestral land restitution and land claims. The Office furthermore supported in situ technical assistance for a week through public conferences and high-level meetings, including by making concrete recommendations to

the draft law on consultation presented by the Ombudsman. This has resulted in a study to be published in 2014 reflecting the discussions held, main conclusions and recommendations for action, including legislative and policy reforms.

OHCHR further strengthened its thematic work on key human rights challenges faced by indigenous peoples. For example, to advance indigenous peoples' access to justice, the Office supported strategic litigation at the country level. OHCHR in Guatemala has been implementing a technical training program in strategic litigation in human rights for indigenous peoples, including indigenous women, to organizations and authorities of indigenous peoples, teachers and university students (mostly indigenous) that includes advice and support to organizations in the implementation of their legal claims. OHCHR has also been provided technical assistance to the Support Network on Strategic Litigation for indigenous organizations working on cases of indigenous peoples' rights, including on indigenous women's rights.

OHCHR also contributed to awareness raising and capacity building in the area of business and human rights. OHCHR in Cambodia targeted civil society organizations, government, community representatives and business actors to support their increased understanding of concepts in the United Nations Guiding Principles on Business and Human Rights and their application in the Cambodian context and assisted with the development of a picture book on business and human rights for indigenous communities, focusing on adequate consultation and compensation.

In addition, OHCHR continued to provide practical guidance on the integration of a gender perspective in national processes related to indigenous peoples. For example, the Regional Office for Central America contributed to strengthening indigenous women's networks and capacity-building activities. The Regional Office in Chile further advocated for the inclusion of indigenous women in negotiation process related to legislation on consultation and participation.

III. Experiences of facilitation of dialogue between indigenous peoples and governments at national and international levels

OHCHR carried out a number of activities as part of its efforts to facilitate dialogue between indigenous peoples and governments in a number of countries. For instance, the Regional Office for Central America together with the UN Resident Coordinator supported the consultation process initiated by the Government of Costa Rica with indigenous peoples affected by the El Diquis hydroelectric project. As a follow-up to the recommendation of the Special Rapporteur on the Rights of Indigenous Peoples, dialogue focused on several issues ranging from the protection of indigenous territories to governance and right to consultation. At the request of the government of Panama, the regional Office and the UN resident Coordinator also facilitated the negotiation with indigenous peoples affected by a legislative proposal to regulate mining and hydroelectric development in indigenous territories. The role of the Office was crucial in creating an atmosphere of mutual trust which allowed for a constructive dialogue between the different actors and resulted in a text subsequently approved by the Parliament.

The Office in Columbia also facilitated a dialogue since 2012 between the Indigenous National Organization (ONIC) and the government on a series of issues related mainly to the right to indigenous autonomy and self-government which resulted in the conclusion of an agreement in October 2013. The Office is currently acting, together with the UN Resident Coordinator, as a guarantor of this agreement.

The Office has also played an active role in efforts to raise the profile of indigenous peoples in the context of the Human Rights Council by organizing, during the twenty-fourth session of the Human Rights Council in September 2013, a Human Rights Council panel on indigenous peoples' issues, devoted to the World Conference on Indigenous Peoples. In its role as Secretariat of the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP), OHCHR also organized an expert seminar on access to justice in the promotion and protection of the rights of indigenous peoples in cooperation with the Columbia University Institute for the Study of Human Rights and the International Center

for Transitional Justice. The main objective of the seminar was to obtain additional substantive input to the thematic study of the Expert Mechanism on access to justice in the promotion and protection of the rights of indigenous peoples, which was adopted by EMRIP at its sixth session. OHCHR also facilitated EMRIP's participation in coordination meetings with the UN Permanent Forum on Indigenous Issues and the Special Rapporteur on the Rights of Indigenous Peoples, which took place in January and July 2013 and addressed the World Conference on Indigenous Peoples, the implementation of the UN Declaration on the Rights of Indigenous Peoples, and the integration of indigenous peoples' issues in the Post-2015 development agenda

OHCHR continued to service the mandate of the UN Special Rapporteur on the Rights of Indigenous Peoples. The Special Rapporteur on the rights of indigenous peoples has continued to carry out work within the four main areas of his mandate: thematic studies, communications regarding allegations of human rights violation, country assessments, and the promotion of good practices. With respect to thematic studies, the Special Rapporteur has given special attention to extractive industries in or near indigenous lands and territories. In September 2013, the Special Rapporteur presented his report to the Human Rights Council, which builds upon previous reports that addressed human rights concerns of indigenous peoples relating to extractive industries (A/HRC/24/41). In the report, the Special Rapporteur sets forth a series of observations and recommendations regarding models of natural resource development; the obligations of States and the responsibilities of companies; consultation processes and the principle of free, prior and informed consent; conditions for achieving and maintaining agreements regarding natural resource extraction affecting indigenous peoples. In his annual report to the General Assembly (A/68/317), the Special Rapporteur provided an overview of his activities since beginning his mandate, in addition to identifying work methods and lessons learned, as well as both positive experiences and challenges in his work. The report also addressed factors that debilitate commitment to and action by States and other actors to implement the United Nations Declaration on the Rights of Indigenous Peoples.

As in previous years, the Special Rapporteur's examination of specific cases of alleged human rights violations has resulted in letters of allegation or urgent appeal letters being issued to Governments regarding those situations, as well as follow-up observations and recommendations in some cases. The full text of these communications and replies sent to the governments are available in the joint communications reports periodically released by UN special procedures mandate holders (A/HRC/22/67, A/HRC/23/51 and A/HRC/24/21) and in the separate communications report of the Special Rapporteur (A/HRC/24/41/Add.4). In 2013, the Special Rapporteur sent communications on situations in Argentina, Bangladesh, Botswana, Brazil, Cameroon, Canada, Chile, Colombia, Costa Rica, Honduras, Ethiopia, Guatemala, India, Israel, Kenya, Nicaragua, Philippines, Suriname, Tanzania, the United States of America, and Venezuela (Bolivarian Republic of). The Special Rapporteur also sent a letter regarding various issues affecting indigenous peoples in Colombia, in follow up to his 2009 report on the situation of indigenous peoples in that country. On occasion, the Special Rapporteur has also issued public statements about situations of immediate concern.

Regarding country assessments, in March 2013, the Special Rapporteur participated in a consultation meeting in Kuala Lumpur, Malaysia dealing with the situation of indigenous peoples in Asia. Representatives of indigenous peoples from Bangladesh, Cambodia, India, Indonesia, Japan, Malaysia, Myanmar, Nepal, Philippines, Thailand and Viet Nam participated. In July 2013, the Special Rapporteur made public his report that provides an overview of the main issues raised during the consultation and through information received, including concerns related to lands, territories and resources and extractive activities; conflict, peace and physical security in indigenous territories; and other human rights issues affecting Asia's indigenous peoples (A/HRC/24/41/Add.3). In 2013, the Special Rapporteur released two reports based on visits conducted in 2012. In June 2013, the Special Rapporteur made public his report on the situation of the indigenous peoples in El Salvador (A/HRC/24/41/Add.2) and in Namibia (A/HRC/24/41/Add.1). Also in 2013, the Special Rapporteur also conducted official visits to Panama, Canada and Peru and his reports on those visits are forthcoming.

Finally, the Special Rapporteur has continued to engage in activities to advance legal, administrative and programmatic reforms at the international and the national levels in accordance with the United Nations Declaration on the Rights of Indigenous Peoples and other relevant international instruments. In 2013, this included efforts with the World Bank, as well as with the Governments of Peru, Mexico, and Chile. He also facilitated a workshop hosted by the African Commission on Human and Peoples Rights regarding implementation of the Commission's report regarding the Endorois indigenous people in Kenya.

IV. Support to participatory mechanisms and participation of indigenous peoples' representatives in decision-making processes

The Office continued to manage the United Nations Voluntary Fund for Indigenous Peoples to support the participation of indigenous peoples' communities and organizations in the sessions of the Permanent Forum on Indigenous Issues, the Expert Mechanism on the Rights of Indigenous Peoples, the Human Rights Council, including its Universal Periodic Review process, and Treaty Bodies. The UN Voluntary Fund for Indigenous Peoples is administered by the Secretary-General assisted by a Board of Trustees. The mandate of the Board is to advise the Secretary-General, represented by the High Commissioner for Human Rights, on the use of funds, through the Office of the High Commissioner for Human Rights.

The current Board is composed of five indigenous persons with relevant experience on indigenous issues, who serve in their personal capacity. The current Board members appointed by the Secretary-General for the period 1 January 2012 – 31 December 2014 are: Mr. Kenneth Deer (Canada), Mr. Shankar Limbu (Nepal), Ms. Dalee Sambo Dorough (United States of America), Mr. Legborsi Saro Pyagbara (Nigeria) and Ms. Joenia Batista de Carvalho (Brazil). In September 2012, the General Assembly expanded the mandate of the UN Voluntary Fund for Indigenous Peoples to include support for indigenous peoples to participate in the World Conference on Indigenous Peoples, including in the preparatory process.

The Board of Trustees held its 26th session in February 2013. In addition, the Board held three additional annual intersession meetings. In 2013, a total of 73 travel grants were awarded for representatives of indigenous communities and organizations to participate in the sessions of the Permanent Forum on Indigenous Issues, the Expert Mechanism on the Rights of Indigenous Peoples, the sessions of the Human Rights Council and its Universal Periodic Review process, as well as sessions of the Human Rights Committee, the Committee on the Elimination of Racial Discrimination, the Committee on the Elimination of Discrimination against Women and the Committee on the Rights of Persons with Disabilities. Direct participation of indigenous peoples from all the world's regions, and in particular of indigenous women and youth, in the work of these mechanisms ensured that indigenous peoples' human rights concerns were channelled in the appropriate bodies.

The strengthening of the participation and the voice of indigenous peoples in matters that directly affect them is also at the heart of concrete advances made through the United Nations-Indigenous Peoples Partnership (UNIPP). OHCHR has been co-chairing the Policy Board of UNIPP and worked closely with the indigenous experts of the Board to ensure that United Nations entities involved not only combine their respective efforts and expertise but also work in true partnership with States and, crucially, with indigenous peoples. UNIPP country programmes are not merely about indigenous peoples, but also designed and implemented with their participation. Projects in Bolivia, Cameroon, Central African Republic, Republic of Congo, Nepal and Nicaragua, as well as in South-East Asia, have been designed with the participation and in consultation with indigenous peoples and governments, as well as civil society forging effective strategic partnerships, which are essential to ensure sustainability and adherence to international standards relevant to indigenous peoples at the country level.

UNIPP enhanced more inclusive working methods, with indigenous peoples as key partners and has also contributed to capacity-building and to the establishment of inclusive dialogue and consultative mechanisms between governments and indigenous

peoples in several projects in the field including Bolivia, Nicaragua, Nepal, Congo, South East Asia and Cameroun. UNIPP has also prompted United Nations partners to come together coherently, guided by the principles set forth in the United Nations Declaration on the Rights of Indigenous Peoples and ILO Convention No. 169 (1989) concerning Indigenous and Tribal Peoples. The full progress report on UNIPP status of implementation is available at the MPTF Office Gateway.

OHCHR has also played an active role in the efforts to raise the profile of indigenous peoples in the context of the Human Rights Council, including through its support to the Expert Mechanism on the Rights of Indigenous Peoples and by organizing, during the twenty-fourth session of the Human Rights Council in September 2013, a Human Rights Council panel on the World Conference on the Rights of Indigenous Peoples.

Furthermore, OHCHR provided support to the members of the Expert Mechanism in their engagement with activities associated with their work throughout the year, including attendance at the African Commission on Human and Peoples' Rights; the consultation by UNESCO about engagement with indigenous peoples; the Forum on Business and Human Rights, and preliminary meetings associated with the organization of the World Conference on Indigenous Peoples. Through such contributions, the Expert Mechanism helped to enhance the visibility of indigenous peoples' rights in these forums, in particular their right to participate in decision-making.

In addition, OHCHR further develop participatory mechanisms at the country or regional level to allow for meaningful participation of indigenous peoples in decision-making. For example, the Regional Office for Central America established in 2010 an Indigenous Regional Consultative Mechanism composed of 15 members from Costa Rica, El Salvador, Honduras, Nicaragua and Panamá representing various indigenous groups. The Consultative Mechanism serves as an advisory body to the Regional Office to ensure integration of indigenous peoples' issues in processes for operational activities and programmes at the country level and respect for the principle of free, prior and informed consent. The Mechanism actively contributed to the elaboration of a study on the human

rights situation of indigenous peoples in Central America and participated in the Office's plan of action related to indigenous peoples.

V. Support of capacity-building programmes for indigenous peoples

The OHCHR Indigenous Fellowship Programme makes an important contribution to building up community capacity to defend their human rights, and is a concrete means for promoting understanding of the provisions of the UN Declaration on the Rights of Indigenous Peoples and other human rights standards and mechanisms.

Through its Indigenous Fellowship Programmes in 2013, OHCHR contributed to build the knowledge and capacity of 26 indigenous persons, including 13 indigenous women, representing 20 different countries. The fellows were trained on the effective use of international human rights mechanisms and also actively contributed to the sixth session of the Expert Mechanism on the Rights of Indigenous Peoples. In addition, the understanding of indigenous fellows about instruments and mechanisms specifically dealing with the human rights of women was increased through a session and discussion dedicated to women and gender issues. A Senior Indigenous Fellow, Ms. Rosalee Gonzalez, a Xicana-Kickapoo from the USA, also contributed to the activities of the Office on indigenous issues during four months in 2013.

Additionally, OHCHR supported the deployment of four indigenous fellows in its country or regional Offices in Ecuador, Panama, the Russian Federation and South Africa. These national or regional fellowships proposed on-the-job experience to fellows who already undertook the Geneva based training, thus furthering their knowledge in a more practical way. Indigenous human rights defenders have therefore increased awareness and are better equipped to make a more effective use of international human rights instruments and mechanisms to advocate for and protect the rights of their communities. Alliances enabling cross-fertilization and sharing of experiences have been built among the participants. OHCHR staff members have increased their awareness on the issues at stake in the indigenous communities represented in the training programme.

During the Second International Decade, the OHCHR further strengthened its capacity-building programme for indigenous representatives. A Russian language version of the Indigenous Fellowship Programme was created in 2005 in addition to the already existing English, Spanish and French components of the training programme. From 2005 to 2013, a total of 199 indigenous persons participated in the Indigenous Fellowship Programme. Since its launch in 1997 until 2013, 270 indigenous representatives benefited from the OHCHR Fellowship Programme.

Furthermore, the UN Voluntary Fund on Indigenous Peoples offered continued orientation and training for beneficiaries. For example, the Fund organized in cooperation with Indigenous Peoples' Center for Documentation, Research and Information DoCip, four human rights training modules in four languages, in Geneva and New York, to increase the capacity of grantees and other indigenous representatives to effectively and constructively participate in indigenous and human rights mechanisms. Moreover, linkages between the grantees of the Fund and OHCHR field presences have been promoted with the aim of facilitating the integration of indigenous issues in the work of the Office and exploring cooperation opportunities including for follow-up activities in relation to the implementation of the recommendations formulated by the Human Rights Council, its UPR mechanism, the Special Procedures and human rights treaty bodies and the national-level implementation of the Declaration on the Rights of Indigenous Peoples.

VI. Guidelines on engagement with indigenous peoples

OHCHR continued to support the role of parliamentarians in the protection of the rights of indigenous peoples. The Office has jointly authored *The United Nations Handbook for Parliamentarians: Implementing the United Nations Declaration on the Rights of Indigenous Peoples*, together with UNDP, the International Fund for Agricultural Development (IFAD), the Inter-Parliamentary Union and the Secretariat of the Permanent Forum on Indigenous Issues. The handbook aims to be a practical instrument to enable

parliamentarians around the world to better understand indigenous peoples' rights and to provide practical ideas for the implementation of the Declaration.

There are an increasing number of national human rights institutions (NHRIs) working on indigenous peoples' issues. Through wide-ranging consultations, OHCHR, together with the Asia Pacific Forum on National Human Rights Institutions (APF), completed a joint Manual entitled *The United Nations Declaration on the Rights of Indigenous Peoples: A Manual for National Human Rights Institutions*, to help to strengthen NHRI engagement and initiatives focusing on the human rights of indigenous peoples. The Manual introduces the background and context of the Declaration and focuses on measures which NHRIs can take at the national and international level to protect and promote indigenous peoples' rights. The Guide also presents good practices from different NHRIs to illustrate effective ways of implementing the Declaration. The Manual builds on positive practices, such as the National Inquiry Report on the Land Rights of Indigenous Peoples issues by the National Human Rights Commission of Malaysia (SUHAKAM) in 2013.

OHCHR further developed its close engagement with National Human Rights Institutions on indigenous issues. This engagement has included regional actors, including at a workshop the Office organized with the Federal Ombudsman of the Russian Federation in Khanti-Mansiysk in Siberia to explore the role of international standards, norms and mechanisms with regard to business engagement with indigenous peoples. Furthermore, the Regional Office for Central America has also developed an action plan to assist the NHRI to enable the full implementation of the internal monitoring mechanism, more specifically to ensure that cases are successfully registered and followed-up.

OHCHR is also working on a guidance tool for its field presences on consultation with indigenous peoples to ensure a better, shared understanding of the scope, requirements and implications of indigenous peoples' right to consultation. The tool aims to strengthen country-level capacities for implementation of indigenous peoples' right to consultation. In May 2013, the Office organized a regional seminar in Peru to share and discuss the

content of the guidance note with indigenous representatives and staff from OHCHR and other relevant United Nations agencies.

The year 2013 saw the start of recognition and of the practical application by international human rights mechanisms and national governments of guidelines on indigenous peoples in voluntary isolation and initial contact in the Amazon Basin and El Chaco issued by OHCHR in May 2012. The ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR), when examining to the application of Convention 169, requested the Government of Paraguay to provide information on the effect given to the guidelines for the protection of isolated indigenous peoples and for initial contact in the Eastern region of Paraguay. In September 2013, CERD examined the periodic report of Venezuela and urged the State to increase the protection afforded to the indigenous peoples living in the Amazon and to take into account the guidelines on the protection of indigenous peoples in voluntary isolation and initial contact in the Amazon Basin, El Chaco and the Eastern Region of Paraguay. OHCHR Guidelines have also been used as a reference to address the situation of conflict-affected indigenous peoples living in isolation in Ecuador.

VII. Contribution to the post-2015 development agenda

OHCHR has produced a key official report on the Post-2015 Agenda: *Who will be accountable? Human Rights and the Post-2015 Agenda* (2013), which emphasizes the importance and impact of advocacy on human rights, including on equality and non-discrimination. The need to include the excluded, including indigenous peoples has shifted the debate on the Post-2015 agenda, but this will need to be built on in the negotiations of the new agenda and in a strong accountability framework. The work of the OHCHR is currently focused on ensuring that human rights, including the standards of equality and non-discrimination, underpin the new agenda to correct the failings of the past. This will require disaggregation at all levels- including disaggregation to reflect indigenous peoples' identity as well as other prohibited grounds, and it will also require

adding additional targets and indicators to better reflect the perspectives of indigenous peoples on development.

VIII. Conclusions

Tangible progress has been made in realizing the objectives of the Second Decade of the World's Indigenous Peoples. The OHCHR will continue to follow-up on requests for technical cooperation from Governments and other key stakeholders ranging from Parliamentarians to national human rights institutions, and provide thematic expertise and technical assistance regarding the development or strengthening of national legislation on the rights of indigenous peoples. The OHCHR Indigenous Fellowship Programme also makes an important contribution to building up community capacity to defend human rights and is a concrete means for promoting understanding of the provisions of the United Nations Declaration on the Rights of Indigenous Peoples. Capacity-building and awareness-raising activities organized by field presences are also on the increase and OHCHR will continue to strengthen its inter-agency cooperation, including through the UN Indigenous Peoples Partnership.