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Indigenous Peoples and the United Nations Human Rights System

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CONTENTS

	<i>Page</i>
ACRONYMS AND ABBREVIATIONS	IV
INTRODUCTION	1
<i>Chapters</i>	
I. INDIGENOUS PEOPLES' RIGHTS	4
A. The United Nations Declaration on the Rights of Indigenous Peoples	4
B. ILO Convention concerning Indigenous and Tribal Peoples in Independent Countries, 1989 (No. 169)	9
C. Regional and domestic application of the rights of indigenous peoples	9
II. INTERNATIONAL INSTITUTIONAL INFRASTRUCTURE	11
A. United Nations human rights system	11
B. Bringing human rights issues to the United Nations	23
III. OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS	27
A. United Nations High Commissioner for Human Rights.....	27
B. Office of the United Nations High Commissioner for Human Rights.....	27
C. Cooperation at the United Nations on indigenous peoples' issues.....	30
IV. REGIONAL HUMAN RIGHTS SYSTEMS	33
A. African Commission on Human and Peoples' Rights	33
B. Organization of American States	34
C. Council of Europe and European Court of Human Rights...	35
V. OTHER UNITED NATIONS AGENCIES AND INTERNATIONAL BODIES WORKING ON INDIGENOUS PEOPLES' ISSUES	36
Further reading	41

Acronyms and abbreviations

ASEAN	Association of Southeast Asian Nations
FAO	Food and Agriculture Organization of the United Nations
IFAD	International Fund for Agricultural Development
ILO	International Labour Organization
OAS	Organization of American States
OHCHR	Office of the United Nations High Commissioner for Human Rights
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNFPA	United Nations Population Fund
UN-Habitat	United Nations Human Settlement Programme
UNICEF	United Nations Children's Fund
UNITAR	United Nations Institute for Training and Research
UN-Women	United Nations Entity for Gender Equality and the Empowerment of Women
UPR	universal periodic review
WHO	World Health Organization
WIPO	World Intellectual Property Organization

INTRODUCTION

The rights of indigenous peoples have, over the past three decades, become an important component of international law and policy, as a result of a movement driven by indigenous peoples, civil society, international mechanisms and States at the domestic, regional and international levels. The United Nations human rights system—its mechanisms, laws and policies—have been at the heart of these developments with bodies such as the United Nations Working Group on Indigenous Populations playing a groundbreaking role, which is continued by the Human Rights Council and its mechanisms, in cooperation with other key actors, including the United Nations Permanent Forum on Indigenous Issues.

One of its main achievements was the General Assembly's adoption in 2007 of the United Nations Declaration on the Rights of Indigenous Peoples, which, by 2010, was supported by the vast majority of United Nations Member States and opposed by none. It was the result of decades of negotiation between States and indigenous peoples, coming together in a spirit of partnership to endorse the Indigenous Declaration. It applies human rights to indigenous peoples and their specific situations, thereby helping to reverse their historical exclusion from the international legal system.

International activity on indigenous peoples' issues has been expanding also in regional human rights bodies, such as the African and inter-American human rights systems, and into international law and policy areas as diverse as the environment (including climate change), intellectual property and trade.

This Fact Sheet provides a reader-friendly overview of the United Nations human rights system and the rights of indigenous peoples. It is designed to give readers:

- A summary of indigenous peoples' rights;
- An overview of the international human rights bodies and mechanisms in relation to indigenous peoples;
- A description of the activities of the Office of the United Nations High Commissioner for Human Rights (OHCHR) related to indigenous peoples;
- A brief summary of relevant regional human rights systems as they engage with indigenous peoples and protect their human rights; and
- A summary of some United Nations agencies, beyond the human rights framework, engaged in indigenous peoples' issues.

The Fact Sheet also refers to further sources of information.

Who are indigenous peoples?

Indigenous peoples live on all continents, from the Arctic to the Pacific, via Asia, Africa and the Americas. There is no singularly authoritative definition of indigenous peoples under international law and policy, and the Indigenous Declaration does not set out any definition. In fact, its articles 9 and 33 state that indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned, and that they have the right to determine their own identity. The International Labour Organization's (ILO) Convention concerning Indigenous and Tribal Peoples in Independent Countries (No. 169) distinguishes between tribal and indigenous peoples as follows, highlighting also the importance of self-identification:

1. ... (a) Tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations;

(b) Peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization or the establishment of present State boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.

2. Self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply.

...

Despite the lack of an authoritative definition, there are criteria that help to define indigenous peoples. The main one is the criterion of self-identification and those proposed by José Martínez Cobo in his "Study of the problem of discrimination against indigenous populations",¹ which include:

- Historical continuity with pre-invasion and/or pre-colonial societies that developed on their territories;
- Distinctiveness;
- Non-dominance; and
- A determination to preserve, develop and transmit to future genera-

¹ E/CN.4/Sub.2/1986/7 and Add. 1-4.

tions their ancestral territories and identity as peoples in accordance with their own cultural patterns, social institutions and legal system.

The United Nations Permanent Forum on Indigenous Peoples has stressed, in addition to the above:

- A strong link to territories and surrounding natural resources;
- Distinct social, economic or political systems; and
- Distinct language, culture and beliefs.

Many indigenous peoples populated areas before the arrival of others and often retain distinct cultural and political characteristics, including autonomous political and legal structures, as well as a common experience of domination by others, especially non-indigenous groups, and a strong historical and ongoing connection to their lands, territories and resources, including when they practise nomadic lifestyles. While the legal status of indigenous peoples is distinct from that of minorities, they are often, though not always, in the minority in the States in which they reside. Minorities and indigenous peoples have some similar rights under international law, although the United Nations Declaration on the Rights of Indigenous Peoples is arguably more comprehensive than international legal instruments associated with minorities.

I. INDIGENOUS PEOPLES' RIGHTS

Indigenous peoples' rights under international law have evolved from existing international law, including human rights treaties, to address the specific circumstances facing indigenous peoples as well as their priorities, such as rights to their lands, territories and resources, and self-determination.

Unfortunately, many indigenous peoples continue to face a range of human rights issues. In fact, the implementation of their rights is far from perfect. Some of the most difficult human rights challenges for indigenous peoples stem from pressures on their lands, territories and resources as a result of activities associated with development and the extraction of resources. Their cultures continue to be threatened, and the protection and promotion of their rights resisted.

Indigenous peoples have had unprecedented access to, and participated fully in, human rights legal and policy processes at the international level, reflecting their influence on international decisions affecting them. This is discussed in more detail below.

A. The United Nations Declaration on the Rights of Indigenous Peoples

The United Nations Declaration on the Rights of Indigenous Peoples was adopted by the United Nations General Assembly on 13 September 2007 with 144 votes in favour, 11 abstentions and four States against (Australia, Canada, New Zealand and the United States of America). Since then, a number of States have changed their position, including the four which voted against but have now endorsed the Declaration.

The Declaration is the most comprehensive instrument detailing the rights of indigenous peoples in international law and policy, containing minimum standards for the recognition, protection and promotion of these rights. While not uniformly or consistently implemented, the Declaration regularly guides States and indigenous peoples in developing law and policy that have an impact on indigenous peoples, including in devising means to best address the claims made by indigenous peoples. Some of the most important substantive rights contained in the Declaration and under international law and policy more broadly are outlined below.

Self-determination

The United Nations General Assembly has, through the adoption of the Declaration, affirmed that indigenous peoples have the right to self-determination and, hence, the right to freely determine their political status and

freely pursue their economic, social and cultural development. Article 3 of the Declaration mirrors common article 1 of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

Indigenous peoples see self-determination as a central right recognized at the international level. The implementation of the right to self-determination also complements the implementation of other rights.

All rights in the Declaration are indivisible and interrelated, and the right to self-determination is no exception. It colours all other rights, which should be read in the light of indigenous peoples' self-determination, such as the right to culture, which can include indigenous peoples' autonomy over cultural matters.

In relation to indigenous peoples' right to autonomy or self-government, article 4 states: "indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions." Related to their right to autonomy, indigenous peoples have the right, under article 34 of the Declaration, to "promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs"

The right to self-determination is closely related to indigenous peoples' political rights. These include their right to participate in decision-making in matters that would affect their rights and States' duties to consult and cooperate with them to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them. In both cases, and consistent with their right to self-determination, indigenous peoples have the right to participate through their own representative institutions (see art. 18).

The United Nations Expert Mechanism on the Rights of Indigenous Peoples undertook a detailed study of indigenous peoples and the right to participate in decision-making from 2009 to 2011 and the Special Rapporteur on the rights of indigenous peoples has focused on indigenous peoples' participation rights in reports on both thematic issues and country issues. The work of the Expert Mechanism and the Special Rapporteur reinforces the growing jurisprudence on the topic by, for example, the Human Rights Committee and the Inter-American Court and Commission on Human Rights. Consistent themes in this evolving understanding of indigenous peoples' participation

rights are that their consent must be sought for activities that have a significant impact on them and their lands, territories and resources.²

Rights to lands, territories and resources

The Declaration recognizes indigenous peoples' rights to their lands, territories and resources, including to those traditionally held by them but now controlled by others as a matter of fact and also of law. For many indigenous peoples, their relationship to their lands, territories and resources is a defining feature. The Inter-American Court of Human Rights has stressed:

The close ties of indigenous people with the land must be recognized and understood as the fundamental basis of their cultures, their spiritual life, their integrity, and their economic survival. For indigenous communities, relations to the land are not merely a matter of possession and production but a material and spiritual element which they must fully enjoy, even to preserve their cultural legacy and transmit it to future generations.³

Supported by developing and authoritative interpretations of existing human rights law by United Nations human rights treaty bodies and regional human rights mechanisms, article 26 (1) of the Declaration acknowledges, in general terms, indigenous peoples' right to the lands, territories and resources they have traditionally owned, occupied or otherwise used and article 26 (2) refers to the lands, territories and resources that they possess under indigenous customary conceptions of "ownership". Article 26 (3) requires States to give legal recognition and protection to these lands, territories and resources. Article 27 requires States to establish and implement processes recognizing and adjudicating indigenous peoples' rights in relation to their lands, territories and resources.

Economic, social and cultural rights

The provisions of the Declaration and ILO Convention No. 169 are consistent with interpretations of economic, social and cultural rights by the Human Rights Committee and the Committee on Economic, Social and Cultural Rights.⁴ Like the International Covenant on Economic, Social and Cultural

² Expert Mechanism on the Rights of Indigenous Peoples, advice No. 2: indigenous peoples and the right to participate in decision-making (A/HRC/18/42, annex).

³ *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Judgement of 31 August 2001, Series C, No. 79, para. 149.

⁴ See, for example, Human Rights Committee, general comment No. 23 (1994) on the rights of minorities and Committee on Economic, Social and Cultural Rights, general comment No. 21 (2009) on the right of everyone to take part in cultural life. Note, also, Inter-American Court of Human Rights, *Case of the Plan de Sanchez Massacre v. Guatemala*, Series C, No. 116, Judgement of 19 November 2004.

Rights, the Declaration and ILO Convention No. 169 affirm indigenous peoples' rights to health, education, employment, housing, sanitation, social security and an adequate standard of living. The Declaration's article 3 is of particular importance, articulating their right to freely determine their economic, social and cultural development.

To the outside world, and oftentimes also within indigenous communities, indigenous peoples' cultural distinctiveness is considered to be one of their defining features. Giving expression to the right to cultural equality, the Declaration contains numerous provisions to protect against discriminatory and adverse treatment on cultural grounds as well as positive measures to support indigenous peoples' cultures. These include their right not to be subjected to assimilation or destruction of their culture; the right to practise and revitalize their cultural traditions and customs, to teach their cultural mores, and to the repatriation of human remains; and the right to "maintain, control, protect and develop" their cultural heritage, traditional knowledge and traditional cultural expressions. Given the centrality of culture to many indigenous peoples' identity, the Declaration also recognizes the right of indigenous individuals to belong to an indigenous community or nation in accordance with their community or nation's traditions and customs.

Collective rights

Indigenous peoples' rights are, by definition, collective rights. In other words, they are vested in indigenous individuals that organize themselves as peoples.

While also including rights of individuals, the extent of recognition of collective rights in the Declaration is groundbreaking. Prior to the Declaration, the international human rights system had been slow to endorse the concept of rights vested in groups, with the exception of the right to self-determination. It had been generally perceived that individuals' rights would be sufficient to ensure adequate protection and promotion of rights with a collective dimension, such as the right to culture.⁵ However, with the adoption of the Declaration, the international community clearly affirms that indigenous peoples require recognition of their collective rights as peoples to enable them to enjoy human rights.

⁵ For example, see article 27 of the International Covenant on Civil and Political Rights, which refers to "persons belonging to ... minorities".

Equality and non-discrimination

Equality and non-discrimination are significant objectives of, and underpin, both the Declaration and ILO Convention No. 169 on Indigenous and Tribal Peoples. Indeed, the Declaration's articles 1 and 2 articulate the right of indigenous peoples, as a collective or as individuals, to all human rights. Indigenous peoples and individuals are:

free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.

The recognition of their rights overall is fully justified from an equality and non-discrimination perspective, taking into account the discrimination they have experienced historically as peoples and individuals. An equality and non-discrimination approach also supports the recognition of their collective rights to their lands, territories and resources as being equivalent to the rights of non-indigenous individuals to their property, as the Inter-American Court of Human Rights has found.⁶

Rights in relation to treaties, agreements and other constructive arrangements between indigenous peoples and States

The Declaration also uniquely provides for indigenous peoples' right to "the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors and to have States honour and respect such treaties, agreements and other constructive arrangements." This reference reflects the growing international focus on such documents.⁷

The status of the Declaration under international law

While the United Nations Declaration on the Rights of Indigenous Peoples, as a declaration, is not a formally binding treaty, it contains rights and freedoms, such as self-determination and non-discrimination, set out in binding international human rights treaty law, of which some may be considered customary international law. It reflects a global consensus on indigenous peoples' rights. Moreover, according to the Office of Legal Affairs of the United Nations Secretariat, "a 'declaration' is a solemn instrument resorted to only in very rare cases relating to matters of major and lasting importance

⁶ *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua*; *Case of the Sawhoyamaya Indigenous Community v. Paraguay*, Series C, No. 146, Judgement of 29 March 2006.

⁷ See also "Study on treaties, agreements and other constructive arrangements between States and indigenous populations" (E/CN.4/Sub.2/1999/20).

where maximum compliance is expected”.⁸ The United Nations Declaration on the Rights of Indigenous Peoples is such a declaration deserving of the utmost respect. This is confirmed by the words used in its first preambular paragraph, according to which the General Assembly, in adopting it, was “guided by the purposes and principles of the Charter of the United Nations, and good faith in the **fulfilment of the obligations assumed by States in accordance with the Charter**” (emphasis added). Moreover, on the International Day of the World’s Indigenous People in 2008, the United Nations Secretary-General stated:

The Declaration is a visionary step towards addressing the human rights of indigenous peoples. It sets out a framework on which States can build or re-build their relationships with indigenous peoples. The result of more than two decades of negotiations, it provides a momentous opportunity for States and indigenous peoples to strengthen their relationships, promote reconciliation, and ensure that the past is not repeated.

B. ILO Convention concerning Indigenous and Tribal Peoples in Independent Countries, 1989 (No. 169)

ILO Convention No. 169 and its predecessor, ILO Convention concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries, 1957 (No. 107), are the only conventions specifically dealing with indigenous peoples rights. Convention No. 169 is fundamentally concerned with non-discrimination.⁹ While ultimately not as comprehensive as the Declaration, it covers indigenous peoples’ rights to development, customary laws, lands, territories and resources, employment, education and health. Moreover, it signalled, at the time of its adoption in 1989, a greater international responsiveness to indigenous peoples’ demands for greater control over their way of life and institutions. At the time of writing, ILO Convention No. 169 had been ratified by 22 countries, mainly in Latin America.

C. Regional and domestic application of the rights of indigenous peoples

Over the past decade, legal developments at regional level have contributed much to the evolution of international jurisprudence as it relates to indigenous peoples. The above-mentioned decisions of the Inter-American Court of Hu-

⁸ Report of the Commission on Human Rights on its eighteenth session (E/3616/Rev.1), para. 105.

⁹ For more information, see ILO, *Indigenous and Tribal Peoples’ Rights in Practice: A Guide to ILO Convention No. 169* (Geneva, 2009) and www.ilo.org/indigenous/Conventions/no169/lang-en/index.htm (accessed 4 June 2013).

man Rights and the decision of the African Commission on Human and Peoples' Rights in the *Endorois* case confirm that indigenous peoples' rights to their lands, territories and resources, as well as the principle of their free, prior and informed consent, are part of the corpus of binding human rights law.¹⁰

The rights of indigenous peoples are also increasingly being formally incorporated into domestic legal systems. Courts, too, have been instrumental in the application of the rights of indigenous peoples articulated at the international level in domestic cases.¹¹ More broadly, and oftentimes with the involvement of national human rights institutions, governmental policy affecting indigenous peoples increasingly takes into account their rights under international human rights law.

¹⁰ *Centre for Minority Rights Development (Kenya) and Minority Rights Group International (on behalf of Endorois Welfare Council) v. Kenya*, communication No. 276/03 (25 November 2009). See also chapter IV, section B, below. For more analysis, see Luis Rodríguez Pinero, "The inter-American system and the UN Declaration on the Rights of Indigenous Peoples: Mutual reinforcement" in *Reflections on the UN Declaration on the Rights of Indigenous Peoples*, Stephen Allen and Alexandra Xanthaki, eds. (Oxford, Hart, 2011).

¹¹ See, for example, *Aurelio Cal et al. v. Attorney General of Belize* (Supreme Court of Belize, 2007).

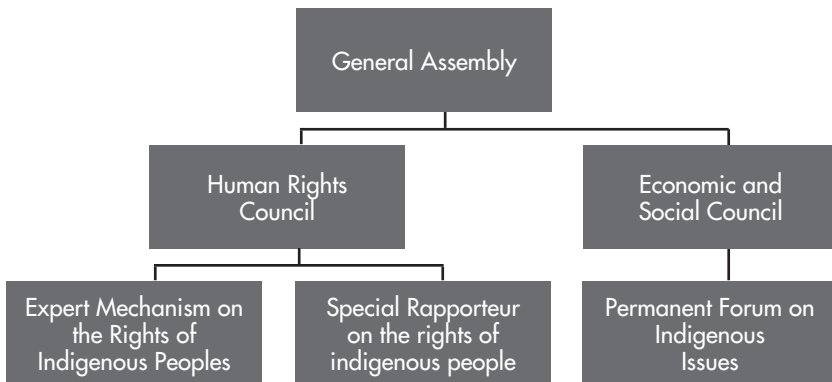
II. INTERNATIONAL INSTITUTIONAL INFRASTRUCTURE

A. United Nations human rights system

The United Nations human rights system has two main components: the Charter-based bodies and the treaty-based bodies. The former are so called because they derive their authority from the Charter of the United Nations, its constituting document. The latter are so called because they are established by specific human rights treaties, such as the International Covenant on Civil and Political Rights, which provides for the establishment of the Human Rights Committee.

Both the Charter-based bodies and the treaty bodies devoted to human rights are serviced by the Office of the United Nations High Commissioner for Human Rights (OHCHR), which is discussed in chapter III.

1. Charter-based bodies



Economic and Social Council

The Economic and Social Council is one of six principal bodies established under the Charter of the United Nations.¹² Its mandate includes human rights and, until 2006, it was the parent body of the Commission on Human Rights. When the Human Rights Council replaced the Commission in 2006,

¹² The others are the General Assembly, the Security Council, the International Court of Justice, the Trusteeship Council and the Secretariat.

it was placed under the direct authority of the General Assembly rather than the Economic and Social Council.

The Economic and Social Council continues to play an important role in indigenous peoples' issues, not least because it is the parent body of, and is advised by, the United Nations Permanent Forum on Indigenous Issues, from which it receives an annual report.

Permanent Forum on Indigenous Issues

The Permanent Forum was established by Economic and Social Council resolution 2000/22, in response to demands from indigenous peoples for a high-level body that could promote dialogue and cooperation among Member States, United Nations agencies and indigenous peoples. It is mandated to advise the Economic and Social Council in relation to economic and social development, culture, the environment, education, health and human rights, and to:

- Provide expert advice and recommendations on indigenous issues to the Council, as well as to programmes, funds and agencies of the United Nations, through the Council;
- Raise awareness and promote the integration and coordination of activities related to indigenous issues within the United Nations system; and
- Prepare and disseminate information on indigenous issues.

The Permanent Forum has 16 members, who serve in their personal capacity for a three-year term and may be re-elected or reappointed for one additional term. Eight of the members are nominated by States and elected by the Economic and Social Council, based on the five regional groupings normally used at the United Nations (Africa; Asia; Eastern Europe; Latin America and the Caribbean; and Western Europe and other States). The other eight are nominated directly by indigenous organizations and are appointed by the President of the Economic and Social Council. They represent seven sociocultural regions to give broad representation to the world's indigenous peoples: Africa; Asia; Central and South America and the Caribbean; the Arctic; Central and Eastern Europe, the Russian Federation, Central Asia and Transcaucasia; North America; and the Pacific—with one additional rotating seat among the first three.

The Permanent Forum met for the first time in 2002. During its annual two-week sessions, it reviews and assesses the work of the United Nations system related to indigenous peoples and their rights. It considers issues in relation to

its mandate, including human rights. It also identifies a specific theme as the overall framework for its sessions, alternating with a review every other year.

Since the adoption of the Declaration in 2007, the Permanent Forum has focused on the implementation of the Declaration and carries out its mandate keeping this in mind. In recent years, the Forum has held comprehensive dialogues with specific United Nations agencies, programmes and funds on their policies and programmes to achieve the objectives of the Declaration, with a view to providing States and indigenous peoples, as well as its own members, an opportunity to raise questions. The Forum also focuses attention on a specific region each year, as a means of highlighting the situation of the indigenous peoples in that region and the challenges they face.

A key element of its work is the studies that its members carry out on specific matters of concern to indigenous peoples, for example in relation to climate change, forests, shifting cultivation, law and policy, violence against indigenous women and girls, constitutional processes, and so on. These studies form the basis for the substantive discussions at the annual sessions, and help the members identify the key areas for the Forum's recommendations to States, United Nations agencies and other partners. In more recent years the Permanent Forum has also conducted country visits. Each year it also organizes expert seminars and workshops on emerging issues of importance to indigenous peoples, which inform and enrich its annual sessions.

Its annual session in New York are widely attended by Member States, indigenous peoples' representatives and organizations/institutions, indigenous parliamentarians, United Nations agencies, funds and programmes, non-State actors and others—who all participate as observers. By providing a space for indigenous peoples and Member States to share good practices and learn from diverse experiences in responding to the challenge of better realizing the rights and aspirations of indigenous peoples, the Forum has established itself as an important venue for addressing current and emerging issues affecting indigenous peoples.

The Permanent Forum is recognized as one of the key global gatherings on indigenous peoples' issues, drawing on the United Nations convening power to facilitate cooperation and dialogue among its different partners.

Human Rights Council

The Human Rights Council is an intergovernmental body within the United Nations system. It is made up of 47 States and is responsible for the promotion and protection of all human rights around the globe.

Many of the thematic and country issues it addresses are relevant to the rights of indigenous peoples. The Human Rights Council also focuses specifically on indigenous peoples' rights, usually during its September session, when it:

- Conducts an interactive dialogue with the Expert Mechanism on the Rights of Indigenous Peoples and the Special Rapporteur on the rights of indigenous peoples;
- Holds a panel discussion on specific indigenous peoples' issues; and
- Adopts its annual resolution on indigenous peoples and human rights, which usually mandates the Expert Mechanism to consider specific issues, decides the theme of the annual panel on indigenous peoples' issues within the Human Rights Council, and acknowledges the reports of the Expert Mechanism and the Special Rapporteur and other indigenous-related activities.

The Human Rights Council also considers the annual report of OHCHR in relation to indigenous peoples.

The Human Rights Council addresses the implementation of human rights in a number of ways, including through its complaints procedure and universal periodic review, outlined in more detail below. It is also advised by its subsidiary expert body, the Advisory Committee.

Indigenous peoples' participation in the United Nations human rights system

Indigenous peoples have acquired, for non-State actors, unprecedented access to the United Nations human rights system and especially those bodies that focus on indigenous peoples' issues, such as the Permanent Forum and the Expert Mechanism. The practice of enabling them to participate in some of the United Nations human rights bodies and mechanisms as indigenous peoples' organizations, without the usually necessary accreditation with the Economic and Social Council, began with the Working Group on Indigenous Populations.

The extent of their participation in the United Nations is reflected at the annual sessions of the Permanent Forum and the Expert Mechanism, which literally hundreds of indigenous individuals attend. During those sessions, they also have the opportunity to meet the Special Rapporteur in person to explain the specific human rights issues they are facing.

Following a recommendation by the Expert Mechanism, the Human Rights Council requested the Secretary-General in 2011 to prepare a document "on ways and means of promoting participation at the United Nations of recognized indigenous peoples' representatives on issues affecting them, given that they are not always organized as non-governmental organizations, and on how such participation might be structured" (resolution 18/8).

Expert Mechanism on the Rights of Indigenous Peoples

The Expert Mechanism on the Rights of Indigenous Peoples was established in 2007 by the Human Rights Council,¹³ of which it is a subsidiary body.

It comprises five experts on the rights of indigenous peoples, usually one from each of the world's five geopolitical regions, with indigenous origin a relevant factor in their appointment, in accordance with resolution 6/36.

The mandate of the Expert Mechanism is to provide the Human Rights Council with thematic expertise, mainly in the form of studies and research, on the rights of indigenous peoples as directed by the Council. The Expert Mechanism may also make proposals to the Council for its consideration and approval, within the scope of its work as set out by the Council.

The Expert Mechanism's first study examined lessons learned and challenges to achieve the implementation of the right of indigenous peoples to education (A/HRC/12/33) and was finalized in 2009. Its second study, undertaken over two years, examined indigenous peoples and the right to participation in decision-making (A/HRC/18/42). The Expert Mechanism studied the role of languages and culture in the promotion and protection of the rights and identity of indigenous peoples (A/HRC/21/53) in 2011–2012 and indigenous peoples' access to justice in 2012–2013. Each study is presented to the Human Rights Council and, from 2011 onwards, is the subject of an interactive dialogue between the Council and the Expert Mechanism during one of the Council's sessions.

Each study includes advice which outlines the Expert Mechanism's key findings related to the human right under study in the indigenous context.

The Expert Mechanism is a key body within the United Nations human rights structure in Geneva and provides a space for indigenous peoples to raise thematic human rights issues, related to the specific study undertaken by the Expert Mechanism each year. Like the former Working Group on Indigenous Populations, the rules governing participation in its annual sessions are relatively open, so that indigenous peoples' organizations and individuals can usually attend if they have successfully applied for accreditation. Hundreds of representatives of indigenous peoples' organizations, indigenous individuals and non-governmental organizations attend the annual sessions.

More information, including documentation associated with the Expert Mechanism, is available from www.ohchr.org/EN/Issues/IPeoples/EMRIP/Pages/EMRIPIndex.aspx (accessed 4 June 2013).

¹³ Human Rights Council resolution 6/36.

Special Rapporteur on the rights of indigenous peoples

The Special Rapporteur on the rights of indigenous peoples is a so-called special procedure of the Human Rights Council. The mandate of the Special Rapporteur was established in 2001 by the Commission on Human Rights and continued by the Human Rights Council in 2007.¹⁴ The Special Rapporteur reports to the Human Rights Council each year.

The Special Rapporteur on the rights of indigenous peoples, *inter alia*:¹⁵

- Examines ways and means of overcoming existing obstacles to the full and effective protection of the rights of indigenous peoples, in conformity with his/her mandate, and identifies, exchanges and promotes best practices;
- Gathers, requests, receives and exchanges information and communications from all relevant sources, including Governments, indigenous peoples and their communities and organizations, on alleged violations of the rights of indigenous peoples;
- Formulates recommendations and proposals on appropriate measures and activities to prevent and remedy violations of the rights of indigenous peoples; and
- Works in close cooperation and coordination with other special procedures and subsidiary organs of the Council, in particular with the Expert Mechanism on the Rights of Indigenous Peoples, relevant United Nations bodies, the treaty bodies and regional human rights organizations.

In fulfilling this mandate, the Special Rapporteur assesses the situation of indigenous peoples in specific countries; carries out thematic studies; communicates with Governments, indigenous peoples and others concerning allegations of violations of indigenous peoples' rights; and promotes good practices for the protection of these rights. The Special Rapporteur also reports annually to the Human Rights Council on particular human rights issues involving indigenous peoples and coordinates work with the Permanent Forum on Indigenous Issues and the Expert Mechanism on the Rights of Indigenous Peoples.

Information about the Special Rapporteur on the rights of indigenous peoples is available from www.ohchr.org/EN/Issues/IPeoples/SRIndigenousPeoples/Pages/SRIPeoplesIndex.aspx (accessed 4 June 2013).

¹⁴ Rodolfo Stavenhagen (Mexico) held the mandate between 2001 and 2008 and James Anaya (United States) has held it since 2008.

¹⁵ Resolution 15/14.

Coordination between the United Nations bodies mandated to focus on indigenous peoples

The Expert Mechanism on the Rights of Indigenous Peoples, the Permanent Forum on Indigenous Issues and the Special Rapporteur on the rights of indigenous peoples meet annually to coordinate their activities and share information. Representatives of the Permanent Forum usually attend the annual session of the Expert Mechanism and vice versa. As mentioned above, the Special Rapporteur attends the annual sessions of both the Permanent Forum and the Expert Mechanism. The Human Rights Council requests the Permanent Forum, the Expert Mechanism and the Special Rapporteur to carry out their tasks in a coordinated manner.¹⁶

The mandates of the Expert Mechanism, the Special Rapporteur and the Permanent Forum can be seen as complementary. The Expert Mechanism undertakes thematic studies. The Special Rapporteur undertakes country visits, addresses specific cases of alleged human rights violations through communications with Governments or others and, in addition, undertakes or contributes to thematic studies. The Permanent Forum focuses on advice and coordination on indigenous issues within the United Nations and raises awareness about such issues.

Special procedures

Special procedures refer to mechanisms established by the Human Rights Council (and its predecessor, the Commission on Human Rights). They “examine, advise and report on” human rights themes and on the human rights situation in specific countries and territories.

A number of special procedures, which include independent experts and working groups, address issues of importance to indigenous peoples, such as housing, cultural rights, education, poverty, the right to food, health, minorities, water and internal displacement.

For more information about the Human Rights Council’s special procedures, see:

- www.ohchr.org/EN/HRBodies/SP/Pages/Welcomepage.aspx (accessed 4 June 2013)
- OHCHR, *Working with the United Nations Human Rights Programme: A Handbook for Civil Society* (Geneva, 2008)

¹⁶ Resolution 18/8.

Historical overview of indigenous peoples, their rights and the United Nations bodies and mechanisms

Indigenous peoples have been bringing claims to the international level for almost a century. In the 1920s, on separate occasions, Haudenosaunee Chief Deskaheh, representative of the Iroquois people in Ontario (Canada), and T.W. Ratana, Maori from Aotearoa/New Zealand, approached the League of Nations to voice their concerns as representatives of indigenous peoples to an international body, without tangible result. Similarly, in 1948, a Bolivian initiative in the United Nations to create a sub-commission to study the social problems of aboriginal populations was not implemented.

The International Labour Organization (ILO) was the first international body and the only body associated with the United Nations predecessor, the League of Nations, to take action on indigenous issues. In 1953 it published a study on indigenous peoples and in 1957 it adopted Convention No. 107 concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries, the first international and globally focused treaty to specifically address indigenous peoples' rights. It was revised in 1989, when ILO adopted Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries, eliminating some of the assimilationist and paternalist tenor of Convention No. 107.

A turning point in indigenous peoples' rights at the international level came in the 1970s, when the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities recommended that a comprehensive study of discrimination against indigenous populations should be undertaken. In 1971, José R. Martínez Cobo was appointed to suggest national and international measures for eliminating such discrimination and between 1981 and 1984 he presented his groundbreaking study to the Sub-Commission.

Another milestone, contributing to the momentum gathering in the United Nations human rights system on indigenous peoples' issues, was the 1977 International NGO Conference on Discrimination against Indigenous Peoples in the Americas, where indigenous peoples called for their inclusion.

Activity at the international level led to the Economic and Social Council's establishment of the Working Group on Indigenous Populations in 1982 as a subsidiary body of the Sub-Commission. This Working Group became a primary venue for the international indigenous peoples' movement to meet and advance their collective global agendas. It was responsible for the early drafts of what would become the United Nations Declaration on the Rights of Indigenous Peoples.

In 1995 the former Commission on Human Rights established an open-ended intersessional working group to consider the draft declaration on the rights of indigenous peoples as submitted by the Sub-Commission. Made up of States and with the participation of indigenous individuals and representatives, together with non-State actors and academia, this open-ended working group met each year until 2006, when the Chair proposed a draft declaration to the Human Rights Council. The Council adopted that draft in June of that same year and submitted it to the General Assembly, which adopted the Declaration in 2007.

2. United Nations human rights treaties and their treaty bodies

United Nations human rights treaty bodies, which monitor the implementation of the international human rights treaties, have been addressing human rights issues facing indigenous peoples since the 1970s. They do so by:

- Reviewing State reports on States' measures to implement the human rights treaties and providing observations in relation to them;
- Reviewing communications from individuals; and
- In general comments on specific human rights, which explain their interpretation of human rights.

For more information about the human rights treaty bodies, see OHCHR Fact Sheet 30: *The United Nations Human Rights Treaty System*.

International Covenant on Civil and Political Rights and the Human Rights Committee

The International Covenant on Civil and Political Rights protects rights that are important to indigenous peoples, such as the right to self-determination (art. 1) and the rights of persons belonging to minorities to enjoy their own culture, to profess and practise their own religion or to use their own language (art. 27).

Over the decades, the Human Rights Committee has rendered decisions and issued concluding observations under both its individual complaints and State reporting procedures that elaborate on indigenous peoples' rights. Importantly, the Human Rights Committee has understood the right to culture of persons belonging to minorities to encompass indigenous peoples' rights in relation to their customary activities, their lands, territories and resources, and their right to participate in political decisions that affect their cultural rights. In one decision relating to ancestral burial grounds, it interpreted other rights in the Covenant—namely the right to family—as understood by the society in question, stating that “cultural traditions should be taken into account when defining the term ‘family’ in a specific situation”.¹⁷ As a result, “family” was interpreted to include the relationship between the indigenous complainants and their ancestral burial grounds.

The Human Rights Committee has found that the right to self-determination is also relevant when interpreting article 27. Thus, in one of its concluding observations, it applied article 1 in relation to aboriginal rights, requiring the

¹⁷ Communication No. 549/1993, *Hopu and Bessert v. France*, views of 29 July 1997, para. 10.3.

State concerned to give indigenous peoples “greater influence in decision-making affecting their natural environment and their means of subsistence as well as their own culture.”¹⁸

International Covenant on Economic, Social and Cultural Rights and the Committee on Economic, Social and Cultural Rights

The International Covenant on Economic, Social and Cultural Rights, like the International Covenant on Civil and Political Rights, includes the right to self-determination in article 1, which the Committee on Economic, Social and Cultural Rights has similarly applied in the indigenous peoples’ context. Many of the Covenant’s rights related to employment, family, health, food, education and especially culture are relevant to situations faced by indigenous peoples, and the Committee has applied them to call for the recognition of indigenous peoples’ communally held land rights, under its State review process. The Committee’s general comment No. 7 (1997) on the right to adequate housing: forced evictions recognizes that indigenous peoples suffer disproportionately from forced eviction.

Its general comment No. 21 (2009) on the right of everyone to take part in cultural life sets out its overarching approach to its interpretation of this right as expressed in article 15 of the Covenant. It explicitly draws upon the Indigenous Declaration and includes a section devoted to indigenous peoples’ cultural rights. In it, the Committee emphasizes the communal aspects of indigenous peoples’ cultural lives and the importance of their ancestral lands and nature to indigenous cultures. Accordingly, it notes that:

States parties must therefore take measures to recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources, and, where they have been otherwise inhabited or used without their free and informed consent, take steps to return these lands and territories.

Moreover, the Committee refers to the core obligation to:

allow and encourage the participation of persons belonging to ... indigenous peoples ... in the design and implementation of laws and policies that affect them. In particular, States parties should obtain their free and informed prior consent when the preservation of their cultural resources, especially those associated with their way of life and cultural expression, are at risk.

¹⁸ CCPR/C/USA/CO/3.

In addition, its general comment No. 17 (2005) on the right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he or she is the author clarifies that the right extends to indigenous peoples' knowledge, innovations and practices. It sets out States' obligations to adopt measures to ensure "the effective protection of the interests of indigenous peoples relating to their productions, which are often expressions of their cultural heritage and traditional knowledge."

International Convention on the Elimination of All Forms of Racial Discrimination and the Committee on the Elimination of Racial Discrimination

The International Convention on the Elimination of All Forms of Racial Discrimination is focused, as its title suggests, on the elimination of racial discrimination. Over the past 15 years especially, its Committee has addressed a number of indigenous peoples' issues, from around the globe, through that lens. Its approach is reflected in its general recommendation XXIII (1997) on indigenous peoples, which calls on States, inter alia, to:

- Ensure indigenous peoples have equal rights in respect of effective participation in public life and that no decisions directly relating to their rights and interests are taken without their informed consent; and
- Recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources and, where they have been deprived of their lands and territories traditionally owned or otherwise inhabited or used without their free and informed consent, to take steps to return those lands and territories. Only when this is for factual reasons not possible, the right to restitution should be substituted by the right to just, fair and prompt compensation. Such compensation should as far as possible take the form of lands and territories.

Convention on the Rights of the Child and the Committee on the Rights of the Child

The Convention on the Rights of the Child is the only global United Nations human rights treaty to specifically mention indigenous children. Emulating article 27 of the International Covenant on Civil and Political Rights, its article 30 states:

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other

members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

In addition, under article 29 (1), the education of a child shall be directed to preparing the child for responsible life in "friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin."

In its recommendations on indigenous children specifically, the Committee on the Rights of the Child has drawn on the Indigenous Declaration and ILO Convention No. 169, and declared that the right to enjoy one's culture "may consist of a way of life which is closely associated with territory and the use of its resources."¹⁹ In its general comment No. 11 (2009) on indigenous children and their rights under the Convention, the Committee urges States to adopt a "rights-based approach to indigenous children based on the Convention and other relevant international standards, such as ILO Convention No. 169 and the United Nations Declaration on the Rights of Indigenous Peoples"; notes the collective element of indigenous peoples' cultures; and the calls for consultation with indigenous communities and children in relation to special measures through legislation and policies for the protection of indigenous children.

Convention against Torture and the Committee against Torture

The Committee's general comment No. 2 (2008) on the implementation of article 2 by States parties underlines their obligation to take measures to prevent torture and ill-treatment, especially to protect individuals and groups made vulnerable by discrimination or marginalization. It states that:

The protection of certain minority or marginalized individuals or populations especially at risk of torture is a part of the obligation to prevent torture or ill-treatment. States parties must ensure that, insofar as the obligations arising under the Convention are concerned, their laws are in practice applied to all persons, regardless of race, colour, ethnicity, age, religious belief or affiliation, political or other opinion, national or social origin, gender, sexual orientation, transgender identity, mental or other disability, health status, economic or indigenous status, reason for which the person is detained, including persons accused of political offences or terrorist acts, asylum seekers, refugees or others under international protection, or any other status or adverse distinction.

¹⁹ "Day of general discussion on the rights of indigenous children: recommendations" (3 October 2003).

B. Bringing human rights issues to the United Nations

As the above description of the United Nations human rights institutional structure relevant to indigenous peoples indicates, some of these mechanisms have the mandate and the capacity to respond to specific allegations of human rights violations brought by victims and/or their representatives; others do not.

In strategizing how to seek the best response from the United Nations human rights system to specific violations or concerns, it is important to consider whether the mechanism has a mandate to consider such allegations and what scope it has to respond.

For comprehensive information about the various complaints mechanisms available, see *Working with the United Nations Human Rights Programme: A Handbook for Civil Society*.

1. Human Rights Council

The Human Rights Council considers issues relevant to indigenous peoples throughout the year as part of its broader human rights agenda. As mentioned above, it focuses on indigenous peoples' issues during its interactive dialogue with the Special Rapporteur on the rights of indigenous peoples and the Expert Mechanism on the Rights of Indigenous Peoples, and during its annual panel discussion on human rights issues facing indigenous peoples. Indigenous peoples' organizations and other stakeholders may speak on the Council's various agenda items, including in relation to its interactive dialogue with the Special Rapporteur and the Expert Mechanism.

In addition, indigenous peoples' representatives and other non-State actors usually participate in the informal negotiations on the text of the annual Human Rights Council's resolution on indigenous peoples. This resolution is important for a number of reasons; for instance, it usually stipulates the topic for the study by the Expert Mechanism each year, as well as for the annual panel discussion.

Universal periodic review

The Human Rights Council's universal periodic review (UPR) is a unique mechanism for reviewing States' compliance with human rights. It was established in 2006. Through its Working Group on the Universal Periodic Review, the Human Rights Council reviews the human rights record of each United Nations Member State every four and a half years. Indigenous peoples and other non-State actors can participate by submitting information which is considered for inclusion in a report from "other stakeholders". This

is one of three reports on the basis of which the review will be undertaken. (The other two are the national report from the State itself and a report on relevant information contained in the reports of independent human rights experts such as special procedures and human rights treaty bodies.) From the second cycle onwards, the review will focus on the implementation of the recommendations from the previous cycles. Representatives of organizations accredited to the Human Rights Council can also attend the relevant session of the Working Group and lobby States to include issues of importance to them in the recommendations to the State under consideration. However, non-governmental organizations cannot take the floor during these sessions.

More information about the universal periodic review, including technical guidelines for stakeholders' submissions, is available from www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx (accessed 4 June 2013).

Human Rights Council complaint mechanism

The Human Rights Council has its own confidential complaint mechanism to address "consistent patterns of gross and reliably attested violations of human rights and fundamental freedoms".

More information about this complaint mechanism is available from www.ohchr.org/EN/HRBodies/HRC/ComplaintProcedure/Pages/HRCComplaintProcedureIndex.aspx (accessed 4 June 2013).

2. Human Rights treaty bodies

State reporting

States that have ratified a human rights treaty are under an obligation to report to its treaty body how it is implementing the rights set out in the treaty. The treaty body reviews these State reports and makes observations, and, if appropriate, raises human rights concerns and suggests action to remedy them.

Non-State actors such as indigenous individuals can participate in the reporting process and raise human rights concerns in a number of ways, including by providing so-called alternative reports to the treaty bodies or committees outlining their concerns.

The Committee on the Elimination of Racial Discrimination's early warning and urgent action procedure

The Committee on the Elimination of Racial Discrimination has an early warning and urgent action procedure, designed to enable it to respond quickly to

situations requiring urgent attention. It can be invoked by non-State actors by communicating directly with the Committee about the situation, highlighting why it requires expedited attention from the Committee and why the situation allegedly violates the Convention. The Committee has responded to a number of situations facing indigenous peoples.

Information, including guidelines, about its early warning and urgent action procedure is available from <http://www2.ohchr.org/english/bodies/cerd/early-warning.htm> (accessed 4 June 2013).

Communications to treaty bodies

Whether an individual can bring a communication to a treaty body will depend on whether the State in question has consented to the communication procedure in relation to that treaty body.²⁰ For example, the State in question must have ratified the first Optional Protocol to the International Covenant on Civil and Political Rights before an individual can raise allegations of violations of the rights contained in the Covenant.

3. Special Rapporteur on the rights of indigenous peoples

The Special Rapporteur on the rights of indigenous peoples can receive communications on allegations of specific human rights concerns. Raising such allegations with the Special Rapporteur has special advantages. For instance, he or she can respond quickly, if the situation warrants a response and he or she has the requisite capacity, and there is no need for the complainant to exhaust domestic avenues for redress first. The communications sent by the Special Rapporteur are, in general, of two types: urgent appeals, in the event of imminent danger of violation; and allegation letters, in situations in which the violation has already occurred or the situation is less urgent. The Special Rapporteur's response is most commonly to initiate a dialogue about the issue with the Government concerned (A/HRC/18/35/Add.1).

4. Expert Mechanism on the Rights of Indigenous Peoples

The Expert Mechanism on the Rights of Indigenous Peoples can consider, and usually calls for, submissions from indigenous peoples in relation to the specific study it is undertaking. The annual session of the Expert Mechanism in Geneva each year, which is open to indigenous individuals and their organizations, and to non-governmental bodies, provides an opportunity for them to participate in discussions on indigenous peoples' issues.

²⁰ For more information, see OHCHR Fact Sheet No. 7, *Individual Complaint Procedures under the United Nations Human Rights Treaties*.

5. Permanent Forum on Indigenous Issues

Although its mandate goes beyond human rights, the Permanent Forum considers issues involving human rights and has an interactive dialogue devoted to human rights during its annual sessions, in which the Special Rapporteur and the Expert Mechanism both actively participate. Since the adoption of the Declaration, the interactive dialogue has provided an opportunity to consider progress towards its implementation. Importantly, the Permanent Forum can provide advice to the United Nations more generally, including all its agencies, on how best to advance the implementation of indigenous peoples' rights. It has also undertaken visits to assess the situation of indigenous peoples in specific countries.

Indigenous peoples can contribute to the Permanent Forum in a number of ways, especially through oral and written interventions during its annual session, usually held in May each year in New York, and directly to the members of the Permanent Forum themselves.

6. ILO monitoring mechanisms

ILO monitors State compliance with ILO conventions in a number of ways. Firstly, its Committee of Experts on the Application of Conventions and Recommendations reviews States' reports in relation to ILO conventions, including ILO Conventions Nos. 107 and 169. This Committee of Experts can either send a direct request to a State or make observations regarding a specific situation. The tripartite Conference Committee on the Application of Standards discusses the report of the Committee of Experts and a number of country-specific cases, for which the States concerned are asked to appear for questions. The report of the Conference Committee is then discussed and adopted by the International Labour Conference. Secondly, the ILO Governing Body can receive petitions (called representations) from employers' or workers' organizations. These can be sent to either the Committee on Freedom of Association or a Governing Body tripartite committee that can seek information from the Government concerned and draw up a report with recommendations to be followed up by the Committee of Experts or by a commission of inquiry. Thirdly, a member State, a delegate to the International Labour Conference or the Governing Body can file complaints against a State for non-compliance with a convention it has ratified.

III. OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS

A. United Nations High Commissioner for Human Rights

The High Commissioner for Human Rights is the United Nations principal human rights officer. His or her mandate includes empowering individuals and assisting States to uphold human rights. The High Commissioner is supported by the Office of the United Nations High Commissioner for Human Rights (OHCHR).

B. Office of the United Nations High Commissioner for Human Rights

OHCHR is also part of the United Nations Secretariat, established under the Charter of the United Nations. In its secretariat role, it assists the Human Rights Council and associated bodies and mechanisms, including the Expert Mechanism on the Rights of Indigenous Peoples and the Special Rapporteur on the rights of indigenous peoples.

1. OHCHR Indigenous Peoples and Minorities Section

The OHCHR Indigenous Peoples and Minorities Section, located in the Rule of Law, Equality and Non-discrimination Branch of the Research and Right to Development Division, provides particular expertise on indigenous peoples' rights. It supports the High Commissioner and OHCHR as a whole in relation to its broader activities that relate to indigenous peoples. It is also the secretariat of the Expert Mechanism on the Rights of Indigenous Peoples. Support to the Special Rapporteur is provided by the OHCHR Special Procedures Branch.

The Indigenous Peoples and Minorities Section seeks to empower indigenous peoples in the protection and promotion of their rights. It coordinates a fellowship for indigenous individuals and supports the Voluntary Fund for Indigenous Populations, both of which are outlined below.

Moreover, the Section provides legal and policy advice in relation to the rights of indigenous peoples, including to States seeking to enact laws to implement such rights and to national human rights institutions. OHCHR, including the Indigenous Peoples and Minorities Section, has established close relationships with national human rights institutions around the world to promote the implementation of the rights of indigenous peoples, including as a result of consultations in different regions.

OHCHR and national human rights institutions

OHCHR has been working with national human rights institutions from around the world on guidelines for such institutions on the implementation of the United Nations Declaration on the Rights of Indigenous Peoples. For more information, see www.ohchr.org/EN/Issues/IPeoples/Pages/Seminars.aspx (accessed 4 June 2013).

Handbook for Parliamentarians on the Declaration on the Rights of Indigenous Peoples

In November 2010, the Inter-Parliamentary Union (IPU) in cooperation with OHCHR and the Government of Mexico organized an international conference entitled "Promoting inclusive parliaments: The representation of minorities and indigenous peoples in parliament". Afterwards, OHCHR along with the secretariat of the Permanent Forum, IPU, the United Nations Development Fund (UNDP) and the International Fund for Agricultural Development (IFAD) decided to collaborate to produce a handbook for parliamentarians on the Indigenous Declaration. The Handbook seeks to raise awareness of indigenous peoples' rights among parliamentarians and to underscore the important role parliamentarians have to play in implementing the Declaration. It seeks to promote the participation of indigenous peoples in parliamentary processes, including law-making, budget and oversight decisions.

The Handbook also aspires to build a platform for dialogue, discussion and participation among parliamentarians in the lead-up to the World Conference on Indigenous Peoples in 2014.

More information on the Indigenous Peoples and Minorities Section, including its newsletter, can be found here: www.ohchr.org/EN/Issues/IPeoples/Pages/IndigenousPeoplesIndex.aspx.

The High Commissioner presents an annual report on the rights of indigenous peoples to the Human Rights Council to outline the recent developments related to indigenous peoples within OHCHR and under human rights bodies and mechanisms.

2. Indigenous peoples and OHCHR in the field

Various regional and country offices of OHCHR promote and protect indigenous peoples' rights, in line with the United Nations Declaration and guided by the United Nations Development Group's Guidelines on Indigenous Peoples' Issues (2009). Examples include work in Guatemala on joint strategies with indigenous peoples to protect access to their territories and resources and on a training programme for strategic human rights litigation for indigenous peoples' rights. OHCHR has made significant contributions to the development of national and local laws to promote the rights of indigenous peoples in a number of regions.²¹

3. Studies and seminars

The United Nations human rights system has commissioned and conducted a number of seminars and studies on human rights issues facing indigenous peoples, oftentimes associated with relevant studies by mandated experts. Such studies and seminars are usually facilitated by OHCHR. Some examples are the expert seminar on indigenous peoples' permanent sovereignty over natural resources and their relationship to land, and expert seminars on treaties, agreements and other constructive arrangements with States.

More information on OHCHR-organized or sponsored seminars and workshops on indigenous peoples' human rights issues is available from www.ohchr.org/EN/Issues/IPeoples/Pages/Seminars.aspx (accessed 4 June 2013).

4. Voluntary Fund for Indigenous Populations

Established in 1985, the Voluntary Fund for Indigenous Populations helped to finance the participation of representatives of indigenous communities and organizations in the deliberations of the Working Group on Indigenous Populations and then the Working Group on the Draft Declaration, with voluntary contributions it received from governments, non-governmental organizations and other private or public entities. It expanded in 2001 to facilitate indigenous peoples' attendance at the Permanent Forum on Indigenous Issues, in 2008 to facilitate attendance at the Expert Mechanism on the Rights of Indigenous Peoples, and again in 2010 and 2012 to cover their participation in the Human Rights Council, the human rights treaty bodies and the 2014 World Conference on Indigenous Peoples.

²¹ See "Report of the United Nations High Commissioner for Human Rights on the rights of indigenous peoples" (A/HRC/21/23).

Information about the Voluntary Fund and how to apply is available from www.ohchr.org/EN/Issues/IPeoples/IPeoplesFund/Pages/IPeoplesFundIndex.aspx (accessed 4 June 2013).

5. Indigenous Fellowship Programme

The Indigenous Fellowship Programme was established in 1997 in the context of the first Decade of the World's Indigenous People. It provides indigenous fellows with knowledge of the United Nations standards and mechanisms dealing with human rights in general and indigenous peoples' issues in particular, with the ultimate objective of assisting indigenous peoples to protect and promote their rights. The Programme consists of up to 5 weeks of training in Geneva, and is conducted in English, French, Spanish and Russian. The Spanish and Russian programmes also include preparatory training organized with university partners.

More than 100 indigenous men and women from 46 countries have taken part in the Fellowship Programme and they, in turn, have provided human rights training to many more in their communities.

A senior indigenous fellowship was launched in 2011 and provides first-hand experience of working within the OHCHR Indigenous Peoples and Minorities Section.

More information about the Fellowship Programme is available from www.ohchr.org/EN/Issues/IPeoples/Pages/Fellowship.aspx (accessed 4 June 2013).

C. Cooperation at the United Nations on indigenous peoples' issues

The Inter-Agency Support Group on Indigenous Peoples' Issues is the United Nations coordinating body on indigenous peoples' issues. It meets annually to coordinate related activities among United Nations entities, including OHCHR, in consultation with the Permanent Forum on Indigenous Issues especially. In addition, the Permanent Forum considers annual reports from United Nations agencies on their engagement in indigenous peoples' issues and makes recommendations to them in relation to their work on indigenous issues.

The annual reports of the United Nations agencies to the Permanent Forum provide up-to-date information on their activities in relation to indigenous peoples. They are available from the Permanent Forum's website: <http://social.un.org/index/IndigenousPeoples.aspx> (accessed 4 June 2013).

1. United Nations Indigenous Peoples' Partnership

The United Nations launched the Partnership in 2011, after it was initially established by the International Labour Organization, OHCHR and UNDP in 2010. The United Nations Children's Fund (UNICEF) and the United Nations Population Fund (UNFPA) joined the Partnership in 2011. Established to promote and protect the rights of indigenous peoples, to strengthen their institutions and ability to participate in governance and policy processes, the Partnership functions through a multi-partner trust fund to primarily support United Nations programmes at the country level in partnership with indigenous peoples. It also supports regional and global initiatives. Its thematic priorities are: legislative review and reform; access to justice and strengthening of indigenous customary law and justice systems; access to land and ancestral territories; the impact of extractive industries on indigenous peoples; the right to education and health, and the rights of indigenous women, children and youth.

For more information on the Partnership, see <http://www2.ohchr.org/english/issues/indigenous/index.htm> (accessed 4 June 2013).

2. Decades of the World's Indigenous People

In 1993 the General Assembly proclaimed 1994–2003 the first Decade of the World's Indigenous People, following the International Year of the World's Indigenous People of 1993. The Second International Decade of the World's Indigenous People was proclaimed in 2005. Its primary goal is to further strengthen international cooperation for the solution of problems faced by indigenous people in such areas as culture, education, health, human rights, the environment and social and economic development, by means of action-oriented programmes and specific projects, increased technical assistance and relevant standard-setting activities.

The Secretary-General, in his Programme of Action for the Second Decade (A/60/270), also set out several objectives, for example, the "inclusion of indigenous peoples in the design, implementation and evaluation of international, regional and national processes regarding laws, policies, resources, programmes and projects" and "promoting full and effective participation of indigenous peoples in decisions which directly or indirectly affect their lifestyles, traditional lands and territories, their cultural integrity as indigenous peoples with collective rights or any other aspect of their lives, considering the principle of free, prior and informed consent".

A trust fund was established for projects promoting the objectives of the Decade. It is managed by the Permanent Forum. The trust fund provides small

grants to indigenous organizations to contribute to their work. It receives voluntary contributions from donors and Member States. Details about the trust fund are available from <http://social.un.org/index/IndigenousPeoples.aspx> (accessed 4 June 2013).

3. International Day of the World's Indigenous People: 9 August

In 1994, the General Assembly proclaimed 9 August International Day of the World's Indigenous People. The date marks the first day of the first meeting of the Working Group on Indigenous Populations in 1982.

It is celebrated each year and is usually accompanied by high-level commemorations and activities, including within OHCHR, at United Nations headquarters in New York, organized by the Permanent Forum, and by United Nations agencies. Increasingly, 9 August is commemorated in different countries, and helps to draw attention to and raise awareness of the situation of indigenous peoples around the world.

4. World Conference on Indigenous Peoples in 2014

In 2010, the General Assembly decided that it would hold a high-level plenary meeting, to be known as the World Conference on Indigenous Peoples, in 2014, at the end of the Second International Decade of the World's Indigenous People, to share perspectives and best practices on the realization of the rights of indigenous peoples, including to pursue the objectives of the United Nations Declaration on the Rights of Indigenous Peoples.

IV. REGIONAL HUMAN RIGHTS SYSTEMS

The African, inter-American and European human rights systems are important for the promotion and protection of human rights at the international level. Given the attention they have devoted to indigenous peoples' rights, the African and Inter-American systems are profiled here. There are also new regional initiatives, such as the Intergovernmental Commission on Human Rights of the Association of Southeast Asian Nations (ASEAN), which held its first meeting on the ASEAN Human Rights Declaration in January 2012.

A. African Commission on Human and Peoples' Rights

The African Commission on Human and Peoples' Rights reviews State reports, undertakes missions in response to allegations of massive and serious human rights violations, and also receives communications in relation to allegations of violations of human and peoples' rights, provided local remedies have been exhausted first. It was established by the African Charter on Human and Peoples' Rights to promote and protect human and peoples' rights in Africa and to interpret the Charter. As mentioned earlier, it has developed groundbreaking jurisprudence on the rights of indigenous peoples, especially in relation to their cultural rights and their rights to lands, territories and resources.

For information on how to submit a communication to the African Commission on Human and Peoples' Rights, see www.achpr.org/communications/guidelines/ (accessed 4 June 2013).

Working Group on Indigenous Populations/Communities in Africa

In 2000, the African Commission on Human and Peoples' Rights established the Working Group on Indigenous Populations/Communities in Africa. Its activities include country visits to review indigenous peoples' issues, the publication of jurisprudence on indigenous peoples' rights in Africa and awareness-raising.

More information on the Working Group on Indigenous Populations/Communities in Africa is available from www.achpr.org/mechanisms/indigenous-populations/ (accessed 4 June 2013).

B. Organization of American States

1. Draft American declaration on the rights of indigenous peoples

The Organization of American States (OAS) is currently drafting an inter-American declaration on the rights of indigenous peoples.

Information about the draft inter-American declaration is available from www.oas.org/en/topics/indigenous_peoples.asp (accessed 4 June 2013).

2. Inter-American Commission on Human Rights

The Inter-American Commission on Human Rights has decided on a number of petitions alleging violations of the human rights of indigenous individuals and peoples under the American Declaration on Human Rights and the American Convention on Human Rights. (The Convention applies only to States that have ratified it; the Declaration is applicable to all OAS member States.) In these decisions the Inter-American Commission has upheld, for example, indigenous peoples' rights to their lands, territories and resources.

More information about the Inter-American Commission on Human Rights is available from www.oas.org/en/iachr/mandate/what.asp (accessed 4 June 2013).

3. Inter-American Court of Human Rights

The Inter-American Court of Human Rights is the judicial organ of the OAS human rights system. It can hear petitions about alleged State violations of the American Convention on Human Rights if the State has accepted the Court's jurisdiction by ratifying the American Convention. The Court has decided a number of significant cases elaborating on the rights of indigenous peoples, including that indigenous peoples' rights to property extend to States' duties to protect their traditional land tenure.²²

Case law from the Inter-American Court of Human Rights is available from www.corteidh.or.cr/index.php/jurisprudencia (accessed 4 June 2013).

For a summary of relevant jurisprudence from the inter-American system, see Inter-American Commission on Human Rights, "Indigenous and tribal peoples' rights over their ancestral lands and natural resources: Norms and jurisprudence of the Inter-American human rights system" (OEA/Ser.L/V/II., Doc. 56/09).

²² *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua.*

C. Council of Europe and European Court of Human Rights

While the Council of Europe has no specific standards or mechanisms devoted to indigenous peoples, the Convention for the Protection of Human Rights and Fundamental Freedoms contains relevant legally binding human rights standards, including on non-discrimination and the right to respect for private and family life, and the European Court of Human Rights has developed some jurisprudence concerning indigenous peoples. Furthermore, the monitoring bodies of the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages have addressed human rights concerns of indigenous peoples during their country visits and in their findings.

V. OTHER UNITED NATIONS AGENCIES AND INTERNATIONAL BODIES WORKING ON INDIGENOUS PEOPLES' ISSUES

Below is a non-exhaustive sample of the United Nations agencies' work on indigenous peoples with details about where to find more information in relation to those activities.

Up-to-date information about the work of United Nations agencies is also included in their reports to the Permanent Forum on Indigenous Issues and is available from <http://social.un.org/index/IndigenousPeoples.aspx> (accessed 4 June 2013).

Convention on Biological Diversity

The Convention on Biological Diversity requires its contracting parties, as far as possible and as appropriate, and subject to national legislation, to

respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices (art. 8 (j)).

Its governing body, the Conference of the Parties, established the Working Group on Article 8 (j), in relation to indigenous and local communities' traditional knowledge. More information about this Working Group is available from www.cbd.int/traditional/.

In 2010 the Conference of the Parties adopted the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity. A fact sheet on the Nagoya Protocol is available from www.cbd.int/abs/doc/protocol/factsheets/all-factsheets-en.pdf (accessed 4 June 2013).

Food and Agriculture Organization of the United Nations

The Food and Agriculture Organization of the United Nations (FAO) adopted its Policy on Indigenous and Tribal Peoples in 2010, based on the United Nations Declaration on the Rights of Indigenous Peoples. It works in a number of areas that are important to indigenous peoples, such as food security, land rights, natural resources and biodiversity.

More information about FAO policies and activities in relation to indigenous peoples is available from its website (www.fao.org).

International Fund for Agricultural Development

IFAD sponsors many activities for indigenous peoples, with more than 22 per cent of its annual lending having been devoted to supporting initiatives for indigenous peoples since 2003. It also administers the Indigenous Peoples Assistance Facility, which provides small grants for indigenous peoples' micro projects that strengthen their culture, identity, knowledge, natural resources, and intellectual-property and human rights.

More information about its activities in support of indigenous peoples is available from www.ifad.org/english/indigenous/index.htm.

International Labour Organization

In addition to monitoring ILO Conventions Nos. 107 and 169, ILO is engaged in specific activities for the promotion and protection of indigenous peoples' rights and interests, for example, under the auspices of its PRO 169 initiative, which promotes indigenous peoples' rights and development regionally and nationally.

More information on ILO activities related to indigenous peoples is available from www.ilo.org/indigenous/lang-en/index.htm.

United Nations Development Programme

As the United Nations lead agency for development, UNDP has a number of programmes and initiatives focused on indigenous peoples and operates under a policy of engagement with them.

More information on UNDP activities related to indigenous peoples, as well as its policy of engagement, is available from www.undp.org/content/undp/en/home/ourwork/partners/civil_society_organizations/empowering_indigenous_peoples/ (accessed 4 June 2013).

United Nations Environment Programme

The United Nations Environment Programme (UNEP) is the principal United Nations environmental body and helps governments to address global, regional and national environmental challenges.

Information about UNEP activities in relation to indigenous peoples is available from www.unep.org/civil-society/MajorGroups/Indigenous

PeoplesandtheirCommunities/tabid/52201/Default.aspx (accessed 4 June 2013).

As in 1992 during the United Nations Conference on Environment and Development, which produced the Rio Declaration on Environment and Development and Agenda 21—the United Nations action plan on sustainable development—indigenous peoples' issues were a significant subject of discussion at the United Nations Conference on Sustainable Development ("Rio+20") in 2012.

For more information, see <http://sustainabledevelopment.un.org/index.php?menu=165> (accessed 4 June 2013).

United Nations Educational, Scientific and Cultural Organization

The United Nations Educational, Scientific and Cultural Organization (UNESCO) is engaged in thematic work in areas of considerable importance to indigenous peoples, such as tangible and intangible property; endangered languages; cultural and linguistic diversity in education; local and indigenous knowledge systems and cultural mapping.

More information about the work of UNESCO in relation to indigenous peoples is available from http://portal.unesco.org/culture/en/ev.php-URL_ID=35393&URL_DO=DO_TOPIC&URL_SECTION=201.html (accessed 4 June 2013).

United Nations Framework Convention on Climate Change and associated instruments

Indigenous peoples have a vital interest in the development of international climate change policy and associated legal instruments, not least because they may be especially affected by climate change.²³ Indigenous peoples have sought to influence negotiations on international agreements related to climate change and, in particular, also in relation to policy and international law to reduce the impact of deforestation and environmental degradation.

More information is available from <http://unfccc.int>.

²³ "Study on the extent to which climate change policies and projects adhere to the standards set forth in the United Nations Declaration on the Rights of Indigenous Peoples" (E/C.19/2010/7).

United Nations Human Settlement Programme

The United Nations Human Settlement Programme (UN-Habitat) focuses on human settlements and shelter for all. It has frequently focused on indigenous peoples' specific issues, such as urban indigenous peoples and migration.

More information is available from the UN-Habitat website (www.unhabitat.org).

United Nations Institute for Training and Research

The United Nations Institute for Training and Research (UNITAR) runs an annual training programme to enhance the conflict prevention and peacemaking capacities of indigenous peoples' representatives.

More information is available from www.unitar.org/pmcp/training-for-indigenous-representatives (accessed 4 June 2013).

United Nations Entity for Gender Equality and the Empowerment of Women

The United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women) provides support to indigenous women in a number of ways, including by promoting their participation in decision-making.

More information about the work of UN-Women is available from its website (www.unwomen.org).

United Nations Population Fund

UNFPA has devoted considerable attention to indigenous peoples' sexual and reproductive health, population and development, and gender.

For more information, see its 15-page brochure *UNFPA Work on Indigenous Issues*. Available from www.unfpa.org/public/home/publications/pid/7943 (accessed 4 June 2013).

United Nations Children's Fund

UNICEF has described its agenda in relation to indigenous peoples' rights as including the design of a strategy that reinforces a human rights-based approach to development in favour of the rights of indigenous peoples (E/C.19/2011/7). It has also been instrumental in the design of general recommendation No. 11 (2009) of the Committee on the Rights of the Child on indigenous children, mentioned above.

More information about UNICEF work is available from its website (www.unicef.org).

World Health Organization

The World Health Organization (WHO) has been involved in promoting indigenous peoples' health globally and at the country and community level. In addition, its governing body, the World Health Assembly, has passed a number of resolutions in support of health initiatives for indigenous peoples.²⁴

More information about the work of WHO in relation to indigenous peoples is available from www.who.int/hr/activities/indigenous/en/ (accessed 4 June 2013).

World Intellectual Property Organization

The Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore of the World Intellectual Property Organization (WIPO) is finalizing an international draft policy and principles for the effective protection of traditional knowledge and traditional cultural expressions/expressions of folklore and to address the intellectual property aspects of access to and benefit-sharing in genetic resources. Indigenous peoples' representatives have participated in the negotiations.

More information about WIPO activities in relation to traditional knowledge, traditional cultural expressions and genetic resources is available from www.wipo.int/tk/en/.

A number of WIPO initiatives are relevant to the protection of indigenous peoples' folklore, including the Model Provisions for National Laws on the Protection of Expressions of Folklore against Illicit Exploitation and Other Prejudicial Actions (1982), issued jointly with UNESCO and available from www.wipo.int/wipolex/en/text.jsp?file_id=184668 (accessed 4 June 2013).

World Bank

The World Bank's operational policy and bank procedure on indigenous peoples 4.10 (OP/BP 4.10) sets out a procedure for assessing the effects of a project on indigenous peoples and preparing plans where necessary in relation to projects affecting indigenous peoples.

²⁴ See, for example, its resolution 54.16 of 22 May 2001 on the International Decade of the World's Indigenous People.

More information about the World Bank and indigenous peoples is available from its website (www.worldbank.org).

The International Finance Corporation is the private sector lending branch of the World Bank Group. It has recently revised its "Performance Standard 7" in relation to indigenous peoples. Consequently, companies to which it lends are required to obtain the free, prior and informed consent of indigenous peoples in some circumstances.

Further reading

Further information about indigenous peoples, their rights and the United Nations human rights system can be found here:

- OHCHR, *Working with the United Nations Human Rights Programme: A Handbook for Civil Society* (2008). Available from www.ohchr.org/EN/AboutUs/CivilSociety/Pages/Handbook.aspx (accessed 4 June 2013)
- Permanent Forum on Indigenous Peoples, library of relevant United Nations materials: <http://social.un.org/index/IndigenousPeoples/LibraryDocuments.aspx> (accessed 4 June 2013)
- United Nations Development Group, *Guidelines on Indigenous Peoples' Issues* (2009). Available from www.ohchr.org/Documents/Publications/UNDG_training_16EN.pdf (accessed 4 June 2013)

Human Rights Fact Sheets*

- No. 35 The Right to Water
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- No. 25 Forced Evictions and Human Rights
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- No. 18 Minority Rights (Rev. 1)
- No. 17 The Committee against Torture
- No. 16 The Committee on Economic, Social and Cultural Rights (Rev. 1)
- No. 15 Civil and Political Rights: The Human Rights Committee (Rev. 1)
- No. 14 Contemporary Forms of Slavery
- No. 13 International Humanitarian Law and Human Rights
- No. 12 The Committee on the Elimination of Racial Discrimination
- No. 11 Extrajudicial, Summary or Arbitrary Executions (Rev. 1)

* Fact sheets Nos. 1, 5 and 8 are no longer issued. All fact sheets are available online from www.ohchr.org.

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- No. 10 The Rights of the Child (Rev. 1)
 - No. 9 Indigenous Peoples and the United Nations Human Rights System (Rev.2)
 - No. 7 Individual Complaint Procedures under the United Nations Human Rights Treaties (Rev.2)
 - No. 6 Enforced or Involuntary Disappearances (Rev.3)
 - No. 4 Combating Torture (Rev. 1)
 - No. 3 Advisory Services and Technical Cooperation in the Field of Human Rights (Rev. 1)
 - No. 2 The International Bill of Human Rights (Rev. 1)

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