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Follow up to the WCIP including the review of the Mandate of the Expert Mechanism
on the Rights of Indigenous Peoples

**STATEMENT OF THE UN SPECIAL RAPPORTEUR ON THE RIGHTS OF
INDIGENOUS PEOPLES**

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First let me thank the EMRIP and the Secretariat of the OHCHR for inviting me to attend this year's session and to speak on the various agenda items. After the historic World Conference on Indigenous Peoples (WCIP) held last year, this year's session is a good opportunity to visit the Outcome Document and see which among the commitments agreed to are moving or have great potentials of being implemented at the national and global levels. This document was adopted by consensus by UN member-states at the 69th Session of the UN General Assembly in September 22, 2014.

It is almost going to be a year since its adoption and this is an opportune time to see the trends as far as its implementation is moving. One other reason for revisiting this historic document is that this year, 2015, the UN is going to adopt the Sustainable Development Goals. The contributions and operationalization of the WCIP Outcome Document will be very important in ensuring that indigenous peoples will not be left behind in the implementation of these SDGs.

I have been engaged with the indigenous peoples' processes leading up to the Alta Conference, the WCIP itself, and the various meetings held after the WCIP was over. These included the Expert Group Meeting of the UNPFII on the Optional Protocol held in January this year, the meeting organized by the University of Arizona, and the meeting of indigenous peoples held here in Geneva in February. I also had the opportunity to speak with various indigenous peoples organizations and networks in various parts of the world to get their views on how the WCIP Outcome Document can be effectively implemented. In the past months, I had some meetings with various State representatives where we discussed the WCIP Outcome Document. Among those who I had a chance to speak with on this issue are the Permanent Representatives of the US, Australia, New Zealand and Mexico, as well as the Deputy PR of Canada and the representative of the Government of Guatemala. When I was in Oslo early this year, I met with the Minister of State of Norway where we also talked of the same issue.

The views I have gathered are diverse but there is a common view that the capacities of the UN mechanisms (UNPFII, EMRIP, UNSRRIP) to be able to monitor and provide advise on how the UN Declaration on the Rights of Indigenous Peoples and the WCIP Outcome Document have to be enhanced. This is the broader context which will define how the mandate of the EMRIP will be reviewed and improved. It has been reiterated several times that the complementarity of the 3 mechanisms should be sustained and duplication should be avoided. There is simply too much to do to ensure that the rights of indigenous peoples contained in the UN Declaration on the Rights of Indigenous Peoples and the ILO Convention No. 169 are protected, respected and fulfilled. Human rights violations and impunity are the daily experiences of many indigenous peoples on a daily basis and these should not be allowed to persist. If the mandate of the EMRIP is enhanced for it to be able to do its monitoring role in a better fashion this will help States and indigenous peoples in upholding their respective roles as duty bearers and rights-holders.

There are three other points which I would like highlight. First, I think that one of the most important points is the commitment by States to develop National Action Plans. Paragraph 8 of the WCIP Outcome Document (A/69/2) states, *“We commit ourselves to cooperating with indigenous peoples, through their own representative institutions, to develop and implement national action plans, strategies and other measures, where relevant, to achieve the ends of the Declaration”*. What we are looking for are steps taken to effectively implement the UN Declaration and these can be seen and felt more at the national level. Obstacles and challenges faced in the implementation of the Declaration should be analyzed and addressed in a national action plan. It is my hope that through the years States will come to the UN General Assembly or at the UN Human Rights Council to report on what they have done to implement this commitment.

Secondly, the commitment to make a system-wide action plan (SWAP). This is in Paragraph 31 which states, *“ 31. We request the Secretary-General, in consultation and cooperation with indigenous peoples, the Inter-Agency Support Group on Indigenous Peoples and Member States, to begin the development, within existing resources, of a system-wide action plan to ensure a coherent approach in achieving the ends of the Declaration and to report to the General Assembly at its seventieth session, through the Economic and Social Council, on progress made...”* This commitment is important for indigenous peoples because the UN system is composed of different bodies, programmes, funds and specialized agencies whose legal instruments, policies, guidelines, strategies and projects have diverse impacts on indigenous peoples. There are those which have developed guidelines and policies on indigenous peoples. The UN Development Group (UNDG) has its own guidelines on indigenous peoples' issues.

Coherence and consistency is an important principle which is being requested of the UN system. The human-rights based approach to development (HRBA) has been agreed upon as a key principle to be applied across the board by various UN bodies, funds, agencies and programmes. The UN Declaration on the Rights of Indigenous

Peoples and the ILO Convention No. 169 (for those who ratified this), are the main foundational frameworks which should be applied in relation to development programmes and projects affecting indigenous peoples. So the SWAP should reaffirm that these two instruments will be the underlying framework in any policy and program they do with indigenous peoples.

There are many concrete examples of such kinds of inconsistency which need to be addressed. The most recent example which I was just apprised of was what happened at the recent meeting of the World Heritage Commission of the UNESCO in Bonn. From the reports I got, there were huge debates whether human rights is even a framework that should be used when designations of world heritage sites are done. There were even questions raised on who are indigenous peoples and suggestions that local communities be the concept used instead of indigenous peoples. How can a UN agency which is the main body dealing with questions of culture and cultural rights allow such backsliding in terms of the application of the human rights based approach? Many World Heritage sites are found in indigenous peoples' territories and if these are designated as such. The right thing to do before such processes are finalized is to first get the free, prior and informed consent of indigenous peoples and to develop clear agreements with indigenous peoples concerned what will be their roles in sustaining such sites, what support will they get in terms of policies and technical assistance and what benefits will accrue to them.

It is important that the governing bodies or councils and the senior management of these various bodies, programmes, agencies and funds, move towards institutionalizing their policies, guidelines and contributions in implementing the UN Declaration on the Rights of Indigenous Peoples. Article 42 of the UN Declaration says, *"The United Nations, its bodies, including the Permanent Forum on Indigenous Issues, and specialized agencies, including at the country level, and States shall promote respect for and full application of the provisions of this Declaration and follow up the effectiveness of this Declaration"*.

Many positive changes in the UN system in relation to the implementation of the UN Declaration happened because there are staff persons within the institutions who are passionate and committed to indigenous issues. However, when they leave there is no guarantee that the persons who will take over will have the same commitment. Therefore it is important to achieve a level of institutionalization. I often cite the example of the International Fund on Agricultural Development (IFAD) which created its own Policy on Engagement with Indigenous Peoples. Afterwards it established the Indigenous Peoples' Forum which meets every two years and in these meetings the representatives of indigenous peoples will have the chance to speak before the Governing Council and also with Senior Management of IFAD. In addition, to ensure that there is consistent application of their policy on indigenous peoples and the decisions reached at the Indigenous Peoples' Forum. The IFAD has in place a quality assurance system which reviews country and thematic projects and programmes to check whether indigenous peoples issues are addressed,

particularly in countries where indigenous peoples live. I believe this is a good practice which should be emulated and should be taken into account in a system-wide action plan.

The third point is how the issue of development, impacts on indigenous peoples rights to land, territories and resources, (Paragraph 20, 21, 22, 23)¹the crucial role of obtaining free, prior and informed consent and how traditional knowledge systems are further strengthened to promote sustainable and equitable development. In the midst of serious, multiple economic and environment crises facing the world today, indigenous peoples visions and practices in promoting their own self-determined development processes should be reinforced.

This is precisely why indigenous peoples have been consistently engaged with the processes related to the Post-2015 Development Agenda and formulation of SDGS. While there is a big disappointment because the Goals and Targets of the SDGs hardly mention indigenous peoples, I am still hoping that when the indicators on how to measure progress of the implementation of SDGs are made, indicators which can show progress for indigenous peoples will be included. Without data disaggregation the situation of indigenous peoples will not be made visible. It can also happen that an SDG goal can be achieved for the general population but at the expense of indigenous peoples. This already happened with the MDGs. In some countries where extreme poverty was cut by half, indigenous peoples ended up being displaced and being even poorer. Subsidies were provided to the dominant population to encroach on indigenous peoples lands to produce monocrop plantations which benefitted the settlers but displaced indigenous peoples. Such

¹ Paragraph 20. *“We recognize commitments made by States, with regard to the United Nations Declaration on the Rights of Indigenous Peoples, to consult and cooperate in good faith with indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources”.*

Paragraph 21. *“We also recognize commitment made by State, with regard to the Declaration, to establish at the national level, in conjunction with the indigenous peoples concerned, fair, independent, impartial, open and transparent processes to acknowledge, advance and adjudicate the rights of indigenous peoples pertaining to lands, territories and resources.”*

Paragraph 22. *“We recognize traditional knowledge, innovations and practices of indigenous peoples and local communities make an important contribution to the conservation and sustainable use of biodiversity...”*

Paragraph 23. *“We intend to work with indigenous peoples to address the impact or potential impact on them of major development projects, including those involving activities of extractive industries, including with the aim of managing risks appropriately.”*

situations where indigenous peoples fall between the cracks should be avoided at all costs.

Again it cannot be stressed enough, that before any large-scale extractive or infrastructure projects are brought into indigenous peoples territories, it is an imperative that they are consulted and their free, prior and informed consent is obtained. In this way risks of high-impact conflicts will be prevented. This is why the implementation on how the Voluntary Guiding Principles on Transnational Corporations and other Business Enterprises at the national level has to be done. National Action Plans to implement the Guiding Principles should be developed and if there are elements of these plans directly related to indigenous peoples, these can be included in the NAPs for the implementation of the WCIP Outcome Document.

I was just here in Geneva the other week during the First Session of the “Open-Ended Intergovernmental Working Group on Transnational Corporations and other business enterprises with respect to Human Rights. “. This is the body tasked to elaborate on a legally-binding treaty to regulate behaviors of TNCs and other business enterprises. I was invited to make the opening keynote address.

My full statement on this can be found on my website, unsr.vtaulicorpuz.org, I stated in this statement *“The adoption by the Human Rights Council Resolution 26/9, establishing this Working Group represents a significant development. The United Nations responded to calls from around the world, including the persistent appeals of indigenous peoples, to strengthen the architecture of international human rights law in order to adapt further to the challenges posed by corporate-related human rights abuses. While the global economic trends are increasingly characterized by dominance of corporations, their role extends beyond the capacities of any one national system to effectively regulate their operations. The issues are stake are global, and so should be the response.”*

I acknowledged that the move towards establishing a legally binding treaty should build upon the gains achieved in the discussions and implementation of the Guiding Principles on Business and Human Rights. These are complementary efforts to get transnational corporations to respect human rights and for States to enhance their capacities to provide remedies when human rights are infringed. For indigenous peoples who experience the worst kinds of human rights violations and impunity through the operations of transnational corporations and other business enterprises, it is to their interest to fight for stronger instruments which will address these.

In closing, I would like to state that indigenous peoples are not only suffering from problems brought about by the daily violations of their basic individual and collective human rights. They also are contributing and even can contribute more significantly to the problems which the world is facing. There are now more evidences coming up in terms of the direct links of respecting human rights of indigenous peoples and the increased chances of mitigating climate change, for

example. The World Resources Institute (WRI) and the Rights and Resources Initiative (RRI) did a research to look into how countries which respect human rights of indigenous peoples to own and manage their own forests are able to decrease their greenhouse gas emissions. The results show that in some countries where indigenous peoples' rights to their traditional territories are respected, the forests in these territories are able to sequester more carbon dioxide than in forests under the control of governments such as national protected areas. Data in Brazil show that in areas where indigenous lands are protected their forests sequester carbon 11 times more than government protected forests. The same is the case in Mexico (6 times) Guatemala (35 times) , among others.

I spoke at the International Scientific Conference on "Our Common Future under Climate Change" (CFCC 15) in a panel on "Indigenous and non-indigenous science in collaboration for our Common Future". This is organized by the International Council for Science (ICSU) and it was held in Paris a week ago in preparation for the 21st Conference of Parties of the UN Framework Convention on Climate Change. There were more than 2,000 scientists in this event. The presentations in this panel affirmed that indigenous peoples' knowledge systems do contribute to solving climate change mitigation and enhancing capacities for adaptation.

My main message for today is that indigenous peoples capacities to contribute in solving some of the world's problems can be further enhanced if their collective and individual human rights are respected, protected and fulfilled by States. The effective implementation of the WCIP Outcome Document will contribute in enhancing these capacities and it is important to monitor how these commitments are being implemented. I look forward to seeing national action plans developed and implemented and also to see a system-wide action plan released by the UN system. Thank you for inviting me to speak and I look forward to more discussions of this kind.

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