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1. EDITORIAL

At its September 2009 session the Human Rights Council reviewed the reports from the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP), from the Special Rapporteur on the Human Rights and Fundamental Freedoms of Indigenous People (SRIP), and from the High Commissioner for Human Rights regarding indigenous issues. The HRC also established the schedule of work on indigenous issues as follows: the EMRIP will hold its third session from 12 to 16 July 2010, and in September 2010 will submit a progress report on its study regarding « indigenous peoples and the right to participate in decision-making », to be followed in September 2011 by its final study on this subject. The involved parties are called to send, before the 26th of February 2010, all the relevant information to the Office of the High Commissioner for Human Rights.

The HRC also requested the Office of the High Commissioner to present, in September 2010, the practical implications of extending the mandate of the Voluntary Fund for Indigenous Populations in order to permit funding delegates’ participation in the sessions of the HRC and of the Treaty Bodies. It has also decided to introduce staggered terms for the EMRIP membership, in order to secure continuity in its functioning.

In presenting his second report to the HRC, the SRIP specified that he envisions identifying models of legal, administrative and programmatic reforms that would precisely allow to implement the standards of the Declaration on the Rights of Indigenous Peoples (the Declaration) and of other international instruments – models that would be applicable in various contexts. He also wishes to bring a practical perspective to the EMRIP’s study on participation in decision-making. In doing so, he continues to follow the path of complementarity with other UN processes working for indigenous peoples’ rights.

The ILO team on Convention 169 on Indigenous and Tribal Peoples is also moving in this direction. As the Declaration and ILO 169 constitute two systems of mutually-reinforcing norms, the ILO Pro 169 team just published “Indigenous and Tribal Peoples : A Guide to ILO Convention No.169,” presenting the practical experience, good practices and information collected over the years of implementing ILO 169. This detailed guide is available on the ILO website.

A historic milestone has been reached by the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC): the organisation’s 184 Member States have decided to initiate negotiations to draft an international legal instrument assuring the protection of traditional knowledge, genetic resources and traditional cultural expressions. This new mandate of the IGC will involve an intense intersessional process in 2010 and 2011, and the participation of the 220 NGOs accredited as observers – which, for the most part, represent indigenous peoples or local communities.

Finally, in line with the above, this issue of the Update concisely presents UNESCO’s four standard-setting instruments relevant to the recognition and protection of indigenous cultures.

* * *

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2. HUMAN RIGHTS COUNCIL

The four sessions of the Human Rights Council that took place since September 2008 have witnessed increasing participation by IPs' representatives, even though the conditions for this participation still need improvement. The new Special Rapporteur on IPs, James Anaya, presented his first and second annual reports, and the Expert Mechanism on the Rights of IPs, the reports on its first and second sessions. We publish here our summary of the interventions mentioning IPs and their issues at each one of these four sessions of the Council. Please note that consideration of UPR final documents by the HRC is to be included, when relevant for IPs, in our annual summaries on the UPR processes, the first of which was published in Update 85-86.

Ninth Session – Geneva, 8-23 September 2008

Item 3 – Protection and promotion of all human rights

Interactive Dialogue with the Special Rapporteur on the situation of human rights and fundamental freedoms of IPs

The new Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people (SRIP), James Anaya, stresses that the UN Declaration on the Rights of Indigenous Peoples (the Declaration) provides his mandate with a clear normative frame of reference, and the Human Rights Council (HRC) resolution 6/12 requests him to promote it. He therefore focuses his first report on the Declaration, which elaborates upon basic human rights principles in the specific context of indigenous peoples (IPs), is fundamentally remedial, and calls on States and the international community to take affirmative measures to implement IPs' rights. The report also tries to identify the kind of measures by States, the UN system, IPs, civil society and the private sector, needed to operationalize the Declaration. Turning to his activities, the SRIP acknowledges the fruitful collaboration with the Government of Ecuador about treatment of IPs' rights in the drafting of the new Constitution, which is now one of the most advanced with regard to indigenous rights. As to communications sent to governments (see Addendum 1), the SRIP underscores that despite the adoption of the Declaration and of progressive legislation in many countries, there is little change in IPs' lives. Recent and ongoing serious violations often derive from the lack of recognition of IPs' land and resources rights and from lack of effective consultation. Resulting social protests lead to criminalization and further oppression. This highlights the need for concerted action to make operative the existing international protections. The SRIP expresses his commitment to facilitating dialogue between IPs, governments, and other relevant actors (the PHILIPPINES welcomes this), with a view to prevent such problems from arising or escalating.

Speakers acknowledge the new SRIP and express appreciation for his report (BOLIVIA, NEPAL, GUATEMALA, RUSSIAN FEDERATION, INDONESIA, IRAN, ECUADOR, CHINA, CANADA, GEORGIA, KENYA, NEW ZEALAND) and its focus on the Declaration (MEXICO, PERU, NORWAY, FINLAND, NIGERIA, BOTSWANA, CHILE, DENMARK, NZHRC), as well as continuing support for his mandate (MEXICO, DENMARK, NORWAY, CHINA, FINLAND, BOTSWANA, CANADA, KENYA, CHILE).

MEXICO informs on its various activities to implement and follow-up on rights affirmed in the Declaration, and acknowledges remaining challenges, such as state recognition of indigenous internal governance, IPs' access to bilingual intercultural compulsory education, and effective use of indigenous languages in public processes. Mexico enquires on how to generate a new dialogue and cooperation relationship between States and IPs, the UN system and regional mechanisms, based on the Declaration; as well as on the contribution of an intercultural approach, and on the role of international mechanisms such as the HRC, in such a dialogue.

GUATEMALA suggests the SRIP to follow up on his predecessor's report on implementation of his recommendations. Guatemala also expresses agreement with the SRIP's working methods on alleged violations of IPs' human rights, and welcomes emphasis on the respective roles of, and constructive cooperation among, States, the UN system, regional organizations, civil society and the private sector in the implementation of the Declaration.

COLOMBIA is well aware of the need to protect IPs' rights, has a very progressive legislation, and has maintained a good level of response to the SRIP’s communications. It highlights its efforts to help the communities most vulnerable to violence, and to pursue the process of assignation of reserve lands (resguardos) to indigenous communities, in compliance with constitutional provisions and ILO Convention 169.

ECUADOR acknowledges the SRIP's recommendations, namely in the formulation of policies on indigenous rights. Its Constitution includes such elements as multiculturalism, multilingualism and the constitutional recognition of indigenous administration of justice. The State now faces the challenges to ensure full recognition and protection of Ecuadorian IPs’ rights, such as rights to ancestral lands, to traditional knowledge and practices, to customary justice, to language, social security, and political participation.
BOLIVIA expresses disappointment that the report on the SRIP's visit in 2007 (A/HRC/9/9/Add.2) is not presented at this session, and highlights incorporation, in its new Constitution, of the rights affirmed in the Declaration. Bolivia is also including indigenous rights as a cross-cutting issue in all public policies, and addressing issues identified as major problems facing IPs, such as forced labor and captivity of indigenous communities, where the Government faces strong resistance by landowners; access to land and recognition of ancestral territories through demarcation and titling, also facing strong opposition and entrenched corruption; environmental contamination, through compliance and enforcement of environmental standards, as well as realization of IPs' rights to consultation and compensation as included in ILO Convention 169. Discrimination and violence against persons of indigenous descent has been increasing, promoted by opposition groups.

BRAZIL acknowledges the SRIP's visit in August 2008, following a request by indigenous leaders, recognizes his disposition to engage in dialogue with all parties, stands ready to facilitate him with any necessary information, and expects his report to represent a meaningful and constructive assessment of the situation of IPs' human rights in Brazil, of structural causes of violations, and of good experiences. Brazil informs on the historical process of indigenous land demarcation and on the current situation, where a specific legal framework, well-defined technical procedures and partnership among state agencies, NGOs and indigenous communities have brought increased speed, legitimacy, consistency and timeliness to the demarcation process. However, much remains to be done with regard to IPs' rights, in particular with regard to education, health and environmental management.

PERU shares the SRIP's evaluation of the steps to be taken by States together with IPs and civil society to implement the Declaration. It is working to turn the Declaration into a mechanism for redress and a basis for improving the situation of IPs, and expresses its commitment to respond to the pending communications by the SRIP, while drawing attention to its presentation to the CERD on August 6, 2009, about the issue of oil concessions and related conflicts.

CHILE recognizes criticisms to the State's action regarding the situation of IPs. In spite of improvement of IPs' living conditions, public policies still lack coherence. Unsatisfied demands lead to use of violence and the perception that the Government only acts through the police. Achievements of the last years include ratification of ILO Convention 169; various legislative and policy measures; proposed measures to mainstream multiculturalism in the political system, State's institutions and development programmes. Full participation of IPs, the media and Chile's citizens will be necessary to build a multicultural society and fight discrimination.

CANADA asks whether and how the SRIP would promote issues such as violence against women; good governance, healthy communities and economic development; and indigenous children in custody or care.

ALGERIA agrees that the right of IPs to self-determination enshrined in the Declaration must be compatible with the States' territorial integrity and political unity, and objects to the Declaration becoming part of the basis for the Universal Periodic Review (UPR), as it is not considered in HRC Resolution 5/1. The Kenyan Constitution review has shown the Government's commitment to alleviating the effects of historical injustices related to land and natural resources faced by vulnerable groups. KENYA reports on implementation of the recommendations by the SRIP upon his 2006 visit.

BOTSWANA agrees that the implementation of the Declaration is not free from obstacles and requests good faith from all actors. Botswana will respond to the SRIP about alleged violence against San people (see A/HRC/9/9/Add.1, para. 78) upon conclusions of relevant investigations.

Acknowledging IPs' unique contribution to the development of human society and their increasing vulnerability due to inadequate recognition of their rights, CHINA welcomes the adoption of the Declaration, which implementation requires joint efforts from all parties.

NEPAL reports on ensuring participation and political representation of indigenous nationalities through its democratizing process, and stresses the important representation of indigenous groups in its Constituent Assembly, its ratification of ILO Convention 169 and the invitation issued to the SRIP. Empowerment of IPs remains one of the Government's priority, as exemplified by institutional developments aimed at ensuring IPs' development, access to resources and participation to decision-making; programmes targeted at IPs for promotion of traditional knowledge and skills and socio-economic development; and promotion of education in indigenous languages and access to tertiary education.

THE PHILIPPINES reports on measures taken to implement IPs' rights, going beyond the provisions of the Declaration, and has learnt that IPs should be given a stake in national development and democratic governance. Rights-holders also have responsibilities – as the SRIP mentions in his report.

INDONESIA enquires on closer cooperation between the UN human rights system and WIPO, in view of its growing emphasis on ownership of cultural heritage and traditional knowledge.

NEW ZEALAND expresses concern about global decline of indigenous languages, affecting IPs' transmission of cultural identity and enjoyment of human rights. New Zealand seeks clarification on the SRIP's selection of issues for future work, and enquires on inclusion of indigenous languages, building on the PFII 2008 expert
meeting, and providing a human rights approach of indigenous language decline. New Zealand would stand ready to support such work. New Zealand also asks how the SRIP will ensure a gender perspective in his work.

**Finland**, which sets IPs' rights among its current human rights priorities, welcomes and supports effective coordination between the Permanent Forum on Indigenous Issues (PFII), the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) and the SRIP (also **Canada, Philippines**). Finland enquires about the SRIP's plans to enhance coordination on IPs' rights within the UN system, to raise awareness on the Declaration and to promote cooperation between States and IPs. Finland reiterates its intention to solve the land issue questions in a manner that includes ratifying ILO Convention 169.

**Norway** enquires on the current status of the SRIP's recommendation that the OHCHR and UNDP conduct studies of good practices and prepare a manual on the human rights-based approach to development as it relates to IPs.

**Denmark** underlines the need for dialogue on how the Council can best assist the SRIP in improving IPs' human rights situation and enquires upon the SRIP's priority issues for dialogue.

The **Russian Federation** underscores the States’ leading role in tackling indigenous issues. The provisions of the Declaration were implemented legally long ago, but state instruments on IPs' rights are still undergoing improvement. The Russian Federation informs on educational policy, financial instruments, budget allocations and state activities with regard to IPs’ sustainable development. Highlighting that discrimination could jeopardize IPs' culture and historical identity, **Georgia** enquires about the SRIP's future coordination with the CERD.

**Iran** enquires about the various aspects of IPs' contribution to cultural diversity and intangible heritage worldwide and asks how the international community may witness the full realization of IPs' human rights.

The **New Zealand Human Rights Commission** (NZHRC) underscores the necessity of developing strong partnership between IPs and States for the implementation of the Declaration, welcomes its adoption by the General Assembly (GA) and arranged for its translation and publication in the Maori language, as well as its promotion among the Maori.

**CCIA-WCC** inform on legislative decrees passed by the Peruvian Government to implement the Free Trade Agreement with the USA, some of which violate IPs' rights, particularly to their land and territories, by weakening the legal protections against the sale, lease or cession of communal territories. In breach of Peru's obligation under ILO Convention 169, these decrees were presented without previous consultation of concerned indigenous communities, and threaten the 14 IPs living in voluntary isolation. In spite of thousands of indigenous protesters and of the Peruvian Parliament's repeal of those decrees, the Government is persisting and threatening to pursue indigenous leaders. CCIA-WCC call for the SRIP to visit Peru to assess the historical denial of IPs' rights, and help the Peruvian Government to effectively implement international and national standards protecting them.

**CCJ** welcome the analysis by the SRIP on the Declaration and ILO Convention 169, and underscore ongoing violations of IPs' human rights in Colombia. The Colombian State has worked against its own obligations under ILO Convention 169 to guarantee IPs' rights to live free of violence, to land, to natural resources, and to be consulted in matters affecting them, thus increasing the risk of forced displacement of entire peoples. CCJ therefore express concern over the abstention of Colombia in the vote on the Declaration at the GA, and over the objections Colombia made to articles 19, 30 and 32; they invite the SRIP to ensure that Colombia fully implement the Declaration, and HRC Member States to take the issue of IPs' rights in consideration during the upcoming UPR of Colombia.

**ICSA/IPNC** strongly object to the use of the term “indigenous people” in singular form, as “indigenous peoples” includes the universal application of the rights recognized to all peoples under international law. The Declaration does not extinguish the existing rights of IPs. The territorial integrity of States applies to the extent that they comply with their historical obligations towards IPs' right to self-determination. ICSA/IPNC reaffirm the international scope of the rights of many IPs in the western hemisphere.

Referring to the SRIP's communication of October 3, 2007 to China (see A/HRC/9/9/Add.1) on “alleged severe impact of resettlement programmes and forced evictions … in Tibetan areas of the People’s Republic of China,” **STP** draw attention to the issue of consent of the Tibetan nomads and their dire conditions in relocation camps. As China announced further relocation of Tibetan nomads, STP urge the SRIP to closely monitor this. Interrupting STP, **China** claims that Tibet is part of the People's Republic of China and the Tibetans one of its ethnic group. The **HRC Chair** responds that STP are actually quoting the SRIP's report, in conformity with the Council's rules. China agrees to drop its point of order if STP speaks within the agenda item, but insists that the Tibetans are not IPs. The Chair request the SRIP to respond to this in due course.

**James Anaya** reiterates his commitment to following a gender perspective by seeking out the voices of indigenous women themselves as to their concerns and priorities for action. On thematic research, he states his
interest in indigenous languages, in TNCs’ activities with particular focus on extractive activities in indigenous territories, and in recognition of indigenous legal systems, while insisting that his research work must complement the work of the EMRIP, which has a specific mandate for research. On cooperation with other UN bodies, he sees his role as focusing on specific situations where IPs’ rights are being threatened, and he intends to hold constructive dialogue and advance solutions based on best practices. To promote constructive dialogue between IPs, governments and others, it is necessary to ensure that IPs’ voices are heard and taken seriously, which requires building sensitivity to IPs’ concerns and establishing consultative procedures relevant to their cultures and decision-making institutions; he proposes to help opening or improving communication lines, and raising IPs’ concerns where they might have been overlooked. The HRC can help by encouraging States to be responsive to his communications and to allow flexibility and creativity in the search for solutions. Responding to China, the SRIP encourages a rights-based approach of particular issues or situations: IPs have common issues all over the world and he will be advancing on these issues from a human-rights perspective, as his predecessor did.

**Follow-up on the special session on the global food crisis**

**MEXICO** underlines the need to protect the right to food of the most vulnerable groups, including IPs.

**General Debate**

**ICSA/IPNC** underscore that the 1958 annexation of Alaska disregarded the international law principles that the right to self-determination can only be legitimately exercised by a peoples’ proper agents and authorities; that GA Resolution 2189 declared denial of the right to self-determination based upon racial discrimination a crime against humanity; and that the right to self-determination is crucial to the right to development.

**Annual discussion on the integration of a gender perspective in the HRC work, with focus on the special procedures**

As one of the panellists, **SRIP James Anaya** highlights the severe disadvantage that IPs face compared to others, particularly regarding political and socio-economic conditions, participation in decision making and access to justice and to culturally sensitive educational opportunities. Special attention must be paid to indigenous women, who face multiple forms of discrimination (also **CHILE**). The influence of colonization and globalisation has altered the balance of traditional gender roles in indigenous communities, resulting in barriers to indigenous women’s political and economic participation and greater risk for them to suffer from bad health and violence. Indigenous women occupying positions of leadership are targets of violence. In addition, imposed land and natural resources rights regimes based on individual land ownership tend to weaken indigenous women’s land and natural resources rights, which they may have as independent members of their community. In the area of education, lack of sensitivity to the needs of indigenous communities with regard to school accessibility and relevance of curricula may lead to higher drop out risk for indigenous girls. James Anaya states his intention to seek out and listen to the views of indigenous women themselves; to report on gender-specific forms and consequences of human rights violations, as well as on barriers in obtaining redress; and to request information on the needs of indigenous women so as to better assess the implications of laws and policies. He suggests for the Council to: continue promoting in all UN bodies awareness on gender perspectives and on the perspectives of indigenous women; seek to appoint indigenous women as special procedures mandate holders, in addition to ensuring gender balance among these positions; and focus through the UPR on the adoption and implementation of laws and policies that guarantee equal rights to women and address the particular challenges faced by indigenous women.

Answering to questions by **CANADA, NORWAY, SLOVENIA** and **CHILE**, **James Anaya** stresses that the impacts of oppression on IPs have particular effects on women and careful enquiry is needed that takes into account IPs’ own cultural patterns. This is best done by actively seeking out indigenous women themselves, and by having them participating in programmes that are intended both to benefit IPs generally and to benefit women generally. Answering to **NIGERIA** about situations in which religious or cultural practices may entail discrimination against women or girls, he calls for great sensitivity and suggests to promote change about these practices from within the cultures or communities where they arise. Experience shows that greater education opportunities and higher educational levels among people, including indigenous people and women, bring decrease in such practices.

**Tenth Session – Geneva, 2-27 March 2009**

**High Level Segment**

In her address, the **High Commissioner for Human Rights (HCHR), Navanethem Pillay**, mentions IPs among the most vulnerable to crises in global society.
The President of the UN General Assembly, H.E. Miguel D'Escoto Brockmann, mentions the adoption of the Declaration and the establishment of the EMRIP among HRC achievements.

Underscoring the fight of its armed forces against the Fuerzas Armadas Revolucionarias de Colombia (FARC), COLOMBIA highlights the recent killing, by the FARC, of members of an indigenous Awá community.

BOLIVIA informs on national policies on development and human rights, which, along with the new Constitution, will strengthen human rights, including IPs' rights.

BOTSWANA informs the HRC on its invitation to the SRIP and on preparation of consultations regarding the issue of the Basarwa people in the Central Kalahari Game Reserve.

While stressing the global importance of climate change and its devastating effects, the PHILIPPINES mentions the human rights of coastal communities and IPs, who depend on the oceans for their livelihood.

AUSTRALIA underlines its commitment to tackling past failures over the treatment of Australian IPs, and informs on progress and further commitments to improve their living conditions and to close gaps between indigenous and non-indigenous Australians.

DENMARK mentions IPs among its human rights priorities.

Addressing the impacts of the global economic and financial crises, IRAN urges for identification of the needs of vulnerable groups and individuals, including IPs.

**Item 2 - Annual report of the UN High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General**

HCHR Navanethem Pillay welcomes the increased engagement of the international community in combating discrimination against IPs. The OHCHR has taken a leading role in the promotion of the Declaration and has helped to launch the EMRIP.

Presenting OHCHR thematic reports, the Deputy HCHR, Kyung-wha Kang, introduces the HCHR report on the rights of IPs (A/HRC/10/51), and invites States to consider grouping the presentation of all reports on IPs' rights at one HRC session each year (MEXICO supports this).

BRAZIL welcomes the priorities set by the HCHR, including discrimination against IPs.

The Commission of the AFRICAN UNION commends the HCHR's engagement in the various areas of activities of the HRC, reflecting a new dynamic to strengthen cooperation and international solidarity, perceptible in particular in the fight against discrimination, namely towards indigenous populations.

MRAP recall the importance of collective human rights, alongside with individual human rights, and draw the HCHR's attention to the violations of fundamental rights of the Mapuche peoples in Chile and Argentina.

Recalling that IPs continue to face denial of their right to self-determination based on racial discrimination, while the HRC is unwilling to address this, ICSA/IPNC ask what the HCHR and her office can do to combat institutional racism that continues to marginalize IPs.

**Item 3 – Protection and promotion of all human rights**

**Special procedures reports**

The SR on adequate housing, Raquel Rolnik, reporting on a mission to Canada, informs on recommendations to address the situation of IPs in and off reserves through a specific housing strategy (also AI), and to refrain from any action threatening IPs' rights on indigenous land under claim until settlement is reached.

CAMBODIA informs on measures to address alleged land-grabbing and illegal sale of indigenous land reported by the SR on adequate housing, and claims to attach great importance to the social welfare of indigenous communities. The national report submitted in 2009 to the Committee on Economic, Social and Cultural Rights informs on ethnic minority development programmes, and on protection of indigenous communities' rights.

Responding to the SR on adequate housing, CANADA highlights its continued close work with Aboriginal communities in addressing housing needs; and regrets that the SR's report does not sufficiently take into account substantial investments targeting specific issues, including on-reserve housing.

Referring to the same report, AI underscore inadequate protection of IPs' land rights and the discrimination they face (particularly women), both in the delivery of services in their communities and in access to adequate housing in cities. AI strongly support the SR's recommendation that Canada make increased efforts to close social and economic gaps between indigenous and non-indigenous Canadians.

Commenting on the report by the SR on human rights defenders, NORWAY asks how the work of human rights defenders working on specific issues, namely indigenous rights, is reflected in the UPR process. AUSTRALIA

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1 See also Update 83-84, Editorial.
expresses particular concern over the fact that human rights defenders working on IPs’ rights continue to be subject to violations and attacks.

Responding to a joint communication by the SR on human rights defenders, the SR on the right to food and the SRIP expressing their concern over the death of members of indigenous communities due to land mines, Colombia stresses that its armed forces do not use land mines and that, since late 2007, the Awá indigenous community has been strongly affected by the actions of illegal armed groups, such as the FARC, that intensively and indiscriminately use land mines.

Commenting on the report by the Independent Expert on human rights and water & sanitation, the Commission on Human Rights of the Philippines underlines that IPs are often the guardians of water resources that benefit the broader community, but usually have less access to basic services than mainstream society.

**Panel discussion on the right to food**

Among the panellists, Andrea Carmen of IITC defines the right to food as a human right and, from IPs’ perspective, as a collective right based on their spiritual relationship with mother earth, on their lands and territories, environment and natural resources. Food sovereignty, as the right of peoples to define their own strategies for sustainable production, distribution and consumption of food, with respect for their own cultures and natural resources managing systems, is a precondition for food security. Articles 3, 24, 26, 29, 31, 32 and 37 of the Declaration are relevant to the right to food. Article 20, in addition, affirms IPs’ right to subsistence and development. According to the SR on the right to food, hunger and malnutrition are disproportionately higher among indigenous populations. The “Cultural indicators for food security, food sovereignty and sustainable development” (developed by IPs in partnership with IITC and FAO) allow to assess obstacles and threats, and develop solutions. Among obstacles identified are the lack of access to land and resources (acknowledged by CERD General Recommendation 23); imposed development, which threatens traditional subsistence areas; environmental contamination (as acknowledged by the SR on the right to food); Free Trade Agreements and food imports; and impacts of climate change – the most important threat to food security in the future. Agro fuel production tends to further deprive IPs from their lands, while deforestation, water diversion, introduction of GMO and high-chemical farming undermine their cultures, ecosystems and food security. Human rights must be integrated into the broad range of UN activities.

The European Union asks IITC what concrete national and international measures should be taken to guarantee meaningful participation of vulnerable groups when addressing food security issues.

The Conference of NGOs in Consultative Relationship with the UN (CONGO) present a declaration by its 2008 Civil Society Development Forum, underscoring current food crisis as a manifestation of failed sustainable development policies, and requesting governments to “enhance the use of local and indigenous agricultural knowledge, practices and inputs.”

**Item 5 – Human rights bodies and mechanisms**


The Chairperson-Rapporteur of the EMRIP, John Henriksen, presents the report on its first session (A/HRC/10/56), which discussed the Durban Review Conference outcome document, a study on implementation of IPs’ right to education, the scope of its mandate, methods of work and possible future thematic areas of focus, among which the Indigenous Caucus proposed the right to self-determination and the principle of free, prior and informed consent. The EMRIP must be perceived as useful to IPs and Member States alike, and this requires addressing issues that are fundamental to IPs (also IWGIA). Turning to the report’s proposals (all supported by Indonesia), he highlights the standing authorization contained in HRC resolution 6/36 for the EMRIP to meet annually for up to five days, and stresses the need for preparatory meetings (proposal 1, supported by the OIC). Proposal 2 contains inputs for the preparatory process of the Durban Review Conference. Proposal 3 focuses on the study on implementation of IPs’ right to education: governmental delegations emphasized the need to create greater awareness of options to implement this right at national level, while IPs highlighted that one of the greatest challenges is the continuing non-recognition by some States of IPs’ existence. Educational institutions sometimes represent a threat to indigenous languages and cultures, as IPs are not considered in the establishment of milestones and targets. Regrettably, only six Member States have submitted information relevant to this study (Australia and Canada express satisfaction at having participated). Proposal 4 calls for the mandate of the UN Voluntary Fund for Indigenous Populations to include the sessions of the EMRIP, HRC and Treaty Bodies (supported by the OIC). The Chairperson-Rapporteur also comments on the cooperation with the SRIP and PFII, and on the severe financial constraints that the EMRIP faces. The agenda of the second session includes a separate item on implementation of the Declaration (IWGIA commend this), which will focus on national and regional implementation and on provision of remedies for infringements of rights.
Proposals to the HRC by the EMRIP at its first session and follow-up

The HRC did not take action on these proposals at its 10th session. However, the second session of the EMRIP was held from 10-14 August 2009, with a pre-sessional meeting funded through state support (proposal 1). Proposal 2 was submitted to the Preparatory Committee of the Durban Review Conference and the EMRIP follows-up on this in the report of its second session (see also Update 85-86). As to the study on education (proposal 3), it was completed and presented at the HRC’s 12th session (see page 20 below). Proposal 4 is reiterated by the EMRIP in the report of its second session. Finally, coordination among the EMRIP, PFII and SRIP is taking place, as suggested in proposal 5.

Proposal 1: Organization of work

The EMRIP,
1. Proposes that the Council authorize the Expert Mechanism to meet for five working days in 2009 and to hold two days of preparatory meetings prior to its second session;
2. Invites participants to submit relevant written documentation to the Expert Mechanism.

Proposal 2: Durban Review Conference

The Expert Mechanism on the Rights of Indigenous Peoples,
1. Affirms its support for the Durban review process and welcomes the request from the HRC to contribute to the outcome of the Durban Review Conference;
2. Notes the achievements in the area of IPs’ rights since the 2001 Durban Conference and, in particular, the adoption of the UN Declaration on the Rights of Indigenous Peoples, the establishment of the mandate of the SRIP in 2001, the PFII, which held its first session in May 2002, and the creation of the EMRIP, which met from 1 to 3 October 2008;
3. Welcomes the positive steps taken by Governments to address the discrimination faced by IPs, including through the introduction of legislation and ratification of ILO Convention No. 169 on indigenous and tribal peoples in independent countries;
4. Recommends that the Durban Declaration and Programme of Action be revised to take into account the above-mentioned developments; in particular, the Durban Declaration and Programme of Action should acknowledge that the right of self-determination and the principle of free, prior and informed consent are now universally recognized through the adoption of the Declaration, making paragraph 24 of the Durban Declaration obsolete; the Expert Mechanism also recommends that these principles be included in the future outcome document, and proposes that paragraph 43 of the Durban Declaration be revised to take into account the recognition in the UN Declaration on the Rights of Indigenous Peoples of IPs’ rights to lands and resources;
5. Considers that the specific paragraphs in the Programme of Action relating to IPs remain relevant but is of the opinion that the UN Declaration on the Rights of Indigenous Peoples provides a new overarching context that orientates the action to be taken by States; it furthermore recommends that specific reference is made in the outcome document to implementation of the Declaration on the Rights of Indigenous Peoples by States and that particular attention be paid by the UN system and international and regional financial institutions to assisting States in the implementation of the provisions;
6. Proposes that the outcome document include a request to States to implement recommendations made by the Committee on the Elimination of Racial Discrimination in relation to IPs’ rights, and considers that specific reference needs to be made to the discrimination being encountered by IPs in maintaining their traditional occupations;
7. Also proposes that the Expert Mechanism continue to provide input during the preparatory phase for the Durban Review Conference to the HRC and the Preparatory Committee for the Durban Review, and requests that any proposals be taken into account;
8. Urges all future preparatory meetings to ensure indigenous participation;
9. Recommends that the Chairperson-Rapporteur of the Expert Mechanism be invited to participate in the Durban Review Conference in April 2009.

Proposal 3: Right of IPs to education

The EMRIP,
(…)
1. Requests the OHCHR to send out notifications to IPs organizations, Member States, relevant international and regional organizations, the SR on the right to education, relevant UN agencies, national human rights institutions and civil society organizations to submit, by February 2009, information pertaining to achieving the
implementation of the rights of IPs to education, including lessons learned, case studies, challenges and recommendations, which may be in the form of written reports or audio-visuals;
2. \textit{Invites} the OHCHR to provide inputs;
3. \textit{Invites} the SRIP and the PFII to contribute to the study;
4. \textit{Proposes} that the Council authorize a two-day technical workshop/review to facilitate the finalization of the above-mentioned study.

**Proposal 4: Participation of IPs**

\textit{The EMRIP,}

avec,
1. \textit{Proposes} that the HRC suggests to the General Assembly to broaden the mandate of the UN Voluntary Fund for Indigenous Populations to help IPs to participate in the sessions of the Council and the treaty bodies;
2. \textit{Encourages} the Board of Trustees to identify beneficiaries of the Fund who could effectively contribute to the thematic agenda of the Expert Mechanism.

**Proposal 5: Coordination with other UN bodies and mandates**

\textit{The EMRIP,}

avec,
1. \textit{Proposes} that the Chairperson-Rapporteur of the Expert Mechanism or a designated member thereof participate in the sessions of the PFII;
2. \textit{Invites} all relevant mandate-holders, in particular the SRIP and representatives of the PFII, to participate in the annual sessions of the Expert Mechanism.

Source: report A/HRC/10/56, Section II.
Lamenting that the UN has yet to recognize indigenous peoples and nations as such, despite adoption of the Declaration and establishment of the PFII and EMRIP, ICSA request the HRC to authorize the EMRIP to look into the consequences of Bolivia's new Constitution with regard to recognition of indigenous nations and of customary administration of justice. UEA inform that the Australian Ministry for education wants to favour English over the use of indigenous languages in school education for aboriginal children in the Northern Territory. The EMRIP provides unprecedented opportunities for UN Member States and IPs to work jointly for mainstreaming indigenous rights in the Council's work and operationalizing the Declaration. However, the EMRIP's success will also depend on contributions to its work by States' delegations, and on States' readiness to implement its recommendations. IWGIA call on the HRC and OHCHR to provide the EMRIP with adequate funding to properly carry out its mandate.

General Debate

FL informs on numerous reports by Amazonian indigenous communities of violations of their natural resources rights by private enterprises that appropriate and control access to natural resources by patents, thus denying the rights of anterior traditional knowledge and practices, and appropriating all the benefits issued from patented resources. FL urge States to take adequate effective measures to protect IPs from such spoliation of their knowledge and resources. SGI/PR/OIDEL/Civicus/EAFORD/IAW/Al-Hakim Foundation/ICCB/WSCF, addressing the World Programme for Human Rights Education and the Draft UN Declaration on Human Rights Education and Training, underscore the relevance of human rights education to the promotion of the rights of vulnerable groups, including IPs (also MEXICO).

Eleventh Session – Geneva, 2-18 June 2009

Item 2 – Annual report of the UN High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

CANADA welcomes Colombia's overall engagement with the OHCHR, but recalls ongoing challenges, in particular the effects of conflict on indigenous groups, women and children. ICSA/IHRAAM/PPSAWA commend the HCHR for calling upon States to address human rights issues, and highlight the issue of IPs' movements accused of being terrorists, when many of them promote their human rights and fundamental freedoms in a non-violent manner. It is well established that such issues as the right to self-determination and human rights violations can be raised as matters of international concern, beyond the principles of territorial integrity, political independence and the scope of domestic jurisdiction.

Item 3 – Promotion and protection of all human rights

Interactive Dialogue with Special Procedures

The SR on the right to education, Vernor Muñoz, referring to his 2007 visit to Malaysia, mentions IPs living in remote areas among those still lacking access to educational opportunities, and relates his recommendation to establish an entity for indigenous affairs within Malaysia's Ministry of Education, in coordination with IPs. Referring to his 2008 visit to Guatemala, he regrets that IPs' right to education is reduced to the issue of bilingual education, and very poorly implemented. His recommendations include stimulating and dignifying indigenous languages and cultures, in order to make visible the benefits of intercultural and bilingual education; and starting a literacy programme in indigenous languages for public officers.

The SR on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, addressing the impact of poverty on freedom of expression, highlights the growing digital divide, which increasingly refrain poor people from participating in national development and joining in the information society. Vulnerable groups in developed countries, such as IPs, are also victims of the digital divide. The Independent Expert on human rights and extreme poverty, Magdalena Sepúlveda Carmona, recalls her recommendation to improve access to Ecuador's cash transfer programme by its indigenous groups. The SR on the independence of judges and lawyers, Leandro Despouy, underscores the high levels of violence and poverty in Guatemala, even higher in indigenous and rural sectors.

Considering it a citizenship right, BRAZIL is promoting digital inclusion through creation of public infrastructures aimed at guaranteeing access to the Internet, including to isolated communities, such as indigenous tribes.
NORWAY underscores the importance of access to information for the right to freedom of opinion and expression, while IPs are among the vulnerable communities facing barriers when trying to exercise their right to speak out. Norway stresses the role of the media.

FINLAND stresses the increasingly important role of the private sector in the protection and promotion of human rights, particularly of local residents, such as IPs.

Focusing on the current crises, IMTA stress that mother earth has the capacity to feed all her children, but realization of the right to food requires States to address the destructive logic of market and the voracity of TNCs to control production and appropriate strategic resources mostly found in indigenous territories, while leaving the IPs deprived of their ancestral territories and resources. The Council's Advisory Committee should focus on studies that could provide valuable recommendations on the adverse impacts of the financial crisis on food sovereignty.

Annual discussion on women's human rights

CANADA/AUSTRALIA/NEW ZEALAND request specific recommendations regarding equal access to education for women and girls in indigenous communities, among other vulnerable situations.

General Debate

BOLIVIA objects to the late and inadequate submission of the report on the 2007 visit by the SRIP, which acknowledges the inclusion of the Declaration's provisions in the new Constitution, and of IPs' rights as a cross-cutting and priority theme in public policies. Bolivia is working to redress past injustices and discrimination, in spite of opposition by some groups that are exacerbating discrimination against IPs. Bolivia welcomes OHCHR's support in this struggle.

ICSA/PPSAWA object to the HRC Member States' lack of political will to address the right to self-determination, and recall that some IPs have been recognized by human rights mechanisms as entitled to exercise self-determination under international law.

Expressing concern over the discrimination and criminalization faced in Mexico by members of indigenous communities who call upon the Government to respect their human rights, Prodh report on the vulnerability of indigenous women in the Mexican criminal justice system; and on the growing tendency of the Government to criminalize, with grave consequences for the affected persons, the slightest signs of protest by communities harmed by acts of State's agents.

Item 4 – Human rights situations that require the Council’s attention

APDH/AAJ express strong concern over the persistence of serious and systematic human rights violations in Colombia, particularly affecting indigenous and Afro Colombian communities, due to the lack of an independent judiciary system.

CETIM report on the non-violent protest by IPs of the Peruvian Amazon region against legislative decrees favouring the Free Trade Agreement between Peru and the USA, which violate IPs' fundamental rights and ILO Convention 169. The Peruvian Government responded by using armed forces to dislodge the protesters, resulting in violence and deaths, including of indigenous persons; and by criminalizing indigenous leaders instead of entering into dialogue, as called for by IPs. Once again, such a crisis originates in exploitation of extractive resources without consultation of affected populations. CETIM makes recommendations for the Peruvian Government to address the situation, and for the HRC to action its mechanisms for human rights protection in order to ensure the respect of IPs' human rights in Peru.

Liberation address the situation of IPs in North-East India, where policies facilitate discrimination and exploitation, infrastructure projects (hydroelectric power plants) tend to harm IPs instead of benefiting them, and uncontrolled immigration of alien settlers is threatening the existence of IPs, leading them to take arms against the government. As a result, armed forces indulge in human rights violations, which are not denounced due to absence of civil society organisations and human rights commissions. Urgent action must be taken by the UN and international community.

FI/P/PR/DJP express concern over violent events ensuing from the April 2009 elections in West Papua, following increased presence of police troops with a previous record of gross human rights violations, and lack of protection afforded to the population during Indonesia's election process; as well as over routine and arbitrary detention and conviction of students who take to the streets with agreement of the authorities. The Indonesian Government must ensure that no violations of the human rights of indigenous Papuans will take place during the elections.
Item 5 – Human rights bodies and mechanisms

**CANADA** expresses concerns over the fact that the EMRIP's second session might take place before the Council examines and approves its proposed agenda – as this is in contradiction with HRC resolution 6/36. The HRC's new subsidiary bodies should undertake their activities in conformity with their mandate. Canada suggests that the second session of the EMRIP be postponed until the Council consider, at its 12th session, the report of the first session and its proposals for future work. The participation in the EMRIP work of IPs, States, UN agencies, civil society organisations and other interested parties, in a spirit of collaboration, is crucial to achieve outcomes enjoying the broadest consensus, while contributing to concrete improvement in IPs' lives.

Recalling the mandate of the EMRIP, which does not allow it to place items on its agenda or engage in studies that were not agreed to by States, the **USA** expresses concern that the provisional agenda for the EMRIP second session includes an item on the Declaration, its implementation and the issue of “adjudication, remedies, repatriation, redress and compensation”. Considering that such a theme will lead to divisiveness between States and IPs, the USA suggests either a discussion on this during the current HRC session to arrive at consensus, or the postponement of the EMRIP session until the Council takes action on this.

**Conectas** regret the limited opportunities for human rights organisations to meet with the HRC President during his visit to Brazil, and recall, among pending human rights issues, IPs' struggle to obtain justice.

Item 8 – Follow-up and implementation of the Vienna Declaration and Programme of Action

**ICSA** request a full study on the right to self-determination with the aim of creating a mechanism to address the denial of IPs' rights to self-determination and to free, prior and informed consent. ICSA further call on Peru to invite the SR on terrorism and the SR on transnational corporations, in order to distinguish between terrorism and IPs' right to protect their territories and natural resources against exploitation. ICSA also express diplomatic protest on the situation of Alaska and Hawai'i, where the peoples' rights under international law continue to be grossly violated; and address the situation of the Mohawk IPs on the Canadian border.

Item 9 – Racism, racial discrimination, xenophobia and related forms of intolerance, follow-up and implementation of the Durban Declaration and Programme of Action

**BRAZIL** stresses that the Durban Review Conference outcome document is balanced and further advances the Durban Declaration and Programme of Action, as it protects the victims of racism, including IPs.

Panel on Human Rights and Climate Change

The **Deputy HCHR Kyung-wha Kang**, while recalling the OHCHR study on human rights and climate change (A/HRC/10/61), mentions IPs, who often depend on natural resources for their livelihoods and inhabit fragile ecosystems, among those already marginalized and vulnerable groups who are also particularly exposed to climate change-related risks.

The **Director for Legal Affairs of the UN Framework Convention on Climate Change (UNFCCC) Secretariat, Feng Gao**, while referring to implications of climate change for the full enjoyment of human rights, particularly mentions that “it has also, in various settings, been noted that [climate change] can have implications for the rights of indigenous people”. Such concerns have been reflected in the negotiating text for the Copenhagen COP-15.

The **SR on adequate housing, Raquel Rolnik**, recalls that the special procedures have expressed concerns about the effects of climate change, and of mitigation measures, on IPs' lands and ways of life.

The **Managing Attorney at the Center for International Environmental Law (CIEL), Dalindyeb Shabalala**, highlights the cross-cutting issue of IPs' rights, recalling the disproportionate impacts that IPs are facing as a result of climate change, due to their special status and their reliance on biodiversity and environmental health. He stresses the additional framework provided by the Declaration. The issue of Reduced Emission from Deforestation and Degradation (REDD) hits at the intersection between indigenous rights, climate change, and corporate and governmental pressures to by-pass indigenous rights. A rights-based approach can ensure proper safeguards for IPs' rights, including their right to free, prior and informed consent.

**AUSTRALIA** recognizes that the impacts of climate change on human rights will be most acutely felt by population groups that are already vulnerable and with economically constrained capacity to adapt, such as the Torres Strait Islands IPs in Australia.

**FINLAND** raises the need to establish ways and means of ensuring IPs' participation on issues affecting them. The Arctic Council recently acknowledged the leading role that Arctic IPs are taking to use best available traditional and scientific knowledge to help understand and adapt to challenges related to climate change; and welcomed initiatives to build IPs' capacity in this regard.
Germany highlights that a human rights approach to climate change means careful consideration of interrelationships between climate change, mitigation measures and the full enjoyment of human rights, including of the segments of the population most vulnerable to climate change effects, such as IPs (also Uruguay, enquiring on special procedures' contributions in promoting such an approach). The OHCHR study on human rights and climate change presents the implications of climate change on specific groups, such as IPs (Slovenia).

Twelfth Session – Geneva, 14 September – 2 October 2009

Item 2 – Annual report of the UN High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

The HCHR Navanethem Pillay underscores the discrimination, exclusion and violence faced by IPs. She commends the inclusion of the Declaration's provisions in Bolivia's new Constitution, and Australia's endorsement of the Declaration, while calling on other States to follow these examples (Ecuador and APDH welcome this). She mentions IPs among those bearing the brunt of hostilities and violations of human rights in some of the current violent conflicts; and among the victims of attacks against peaceful opponents and critics of those in power.

Mexico focuses on the protection of the human rights of those most vulnerable, including IPs, in the fight against terrorism.

Cuba stresses the need to promote the rights of vulnerable groups, including IPs.

Condemning again the violent acts perpetrated against the indigenous Awa community by the FARC in February 2009, Colombia thanks the OHCHR for its support and acknowledgement of the State's efforts to address the situation, and the SRIP for strongly condemning these facts. Colombia reiterates its commitment to finalize the investigations and consider the OHCHR's recommendations; expresses hope that the SRIP's visit in July 2009 will contribute to protection and promotion of IPs; and recalls its endorsement of the Declaration's principles.

Ecuador informs that its new Constitution includes the essential elements of the Declaration. Acknowledging the OHCHR presence in the country, Bolivia stresses the long struggle to incorporate the Declaration in its Constitution, a first step in achieving life with dignity for IPs, and the challenge to implement IPs' rights in spite of strong opposition by economically powerful groups.

Bangladesh call for collective resolve to improve human rights globally and address discriminatory practices, namely against IPs.

The Philippines highlights its strong legislative and institutional mechanisms to protect and promote IPs' rights, even prior to the adoption of the Declaration.

CCJ draw the Council's attention to the recent (and second in 2009) massacre, whose perpetrators remain unidentified, of 12 members of the indigenous Awa community, demonstrating their total lack of protection in spite of early warnings about their situation by the Colombian ombudsman. This exemplifies that IPs' situation in Colombia remains critical.

General Debate

Bolivia informs on activities supported by its newly established Development Fund for IPs and Peasant Communities, in the areas of indigenous land registration, restitution of fundamental rights to the Chaco IPs, indigenous participation in educational planning and in tertiary education, promotion of non-discrimination in the State Armed Forces. However, opposition groups continue to use discrimination and racism against IPs, and to threaten the Government's efforts, in order to protect their own interests.

ICSA/PPSawa/IPNC/ICHR request the HCHR to specifically identify the link between the right to self-determination and other economic, social and cultural rights, as well as IPs' rights.

Item 3 – Promotion and protection of all human rights

Interactive dialogue with the SRIP

The Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya, presents his report to the Council (A/HRC/12/34). He agrees to the Council's directive to cooperate with the EMRIP and PFII, and participated, in February 2009, in a seminar on methods of coordination among the three mechanisms (see Add. 7). He informs on activities to monitor the human rights conditions of IPs worldwide and promote steps to improve these conditions, namely through promotion of good practices in advancing legal, administrative, and programmatic reforms at the domestic level to implement the standards of the Declaration and other relevant international instruments (Finland and Bolivia support this).
In the future, he foresees detailing models of reforms that can be applied in various contexts. As to thematic studies, which he is developing in complementarity to the EMRIP (the USA welcomes this), he focuses on the duty of States to consult with IPs on matters affecting them, with the aim to offer practical insight on the nature and possible implementation of this duty, and stresses the strong normative foundation of this duty on IPs' right to self-determination and related human rights, while calling for concerted effort to reverse the current pattern of inadequate compliance (AI welcomes this).

As to country visits, in Brazil (see Add. 2), IPs continue to face multiple impediments to the full enjoyment of their individual and collective human rights, in spite of important constitutional and legal protections (also Conectas). Nepal's expressions of resolve to advance IPs' rights are encouraging; however, human rights concerns regarding indigenous nationalities and their lack of adequate political participation remain (see Add. 3). Chile has made some progress towards compliance with the former SRIP's recommendations, but significant challenges remain in the areas of consultation, land and resource rights, and government's actions related to acts of protest by Mapuche people (see Add. 6).

Cases of alleged violations of IPs' human rights on which he received information and sent communications to Governments are reported in Addendum 1. Regarding the displacement threats to the Charco La Pava and surrounding Ngobe communities in Panama (see Add. 5), and the tragic clash between police forces and indigenous protesters in Bagua, Peru (see Add. 8), he calls on Panama and Peru to fully implement his recommendations, while recognizing positive steps taken since his visits. He further calls on Governments to respond to his requests of information, so that he can engage actively with them and other stakeholders.

Thanking the SRIP for his annual report are CHILE, PANAMA, the EUROPEAN UNION, AUSTRALIA, COLOMBIA, NEW ZEALAND, DENMARK, VENEZUELA, CANADA, FINLAND, MEXICO, ECUADOR, NEPAL, PERU, the RUSSIAN FEDERATION, CCC, FAIRA, IOIRD, the Canadian Human Rights Commission.

DENMARK, VENEZUELA, CANADA, NEPAL, NORWAY, MEXICO, BOLIVIA and Tonya Gonella Frichner express support for his work and mandate.

The EUROPEAN UNION, DENMARK, FINLAND, BOLIVIA, NEW ZEALAND, VENEZUELA, ECUADOR, CANADA, the USA, CHRP, AI commend the SRIP for his contribution to clarifying and enhancing the cooperation among the three UN mechanisms dealing with IPs' rights.

MEXICO informs on its constitutional guarantee of IPs' right to consultation, and on mechanisms to implement it with regard to development plans at all levels of government. Mexico states that domestic measures are consistent with its support to indigenous issues in international forums.

Acknowledging the collaboration and suggestions provided by the SRIP, PANAMA describes its efforts to resolve the issue of the Charco La Pava Ngobe community and other communities impacted by the AES Panama hydroelectric project, claiming this could serve as a best practice example for other similar situations. The Government held five meetings with representatives of both parties, and the Office of the Ombudsman to guarantee dialogue. A time limit was set to find a satisfactory solution. Discussions were marked by a climate of collaboration, and complaints were thoroughly investigated. On compensations and relocation, the Government instructed the company and IPs to start negotiations, and a draft agreement has been produced. IPs have stated that they are not against development but are requesting respect for their human rights and their dignity.

COLOMBIA underscores the importance of the SRIP's recent visit and informs on its efforts to advance IPs' education, healthcare, and access to basic services, in particular for the Wayuu communities in the Guajira region. Colombia also shares the SRIP's concerns over the vulnerability of indigenous communities to violence by illegal armed groups and commits to prosecute all perpetrators of violations against IPs' human rights in the country.

VENezuela calls for replication of the Ecuadorian experience in the constitutions and legislations of States interested to improve protection of their ancestral peoples. Venezuela informs that its Constitution recognises and protects IPs' rights to collective ownership of their lands, to maintain and develop their identity, to bilingual and intercultural education that respects their values and traditions, and to political participation.

Both the SRIP's and EMRIP's reports address IPs' rights to education and to consultation, and insist on the special treatment that must be granted to IPs in protection of their rights. ECUADOR stresses the role of ILO Convention 169 in strengthening national legislation and realizing IPs' right to consultation. Ecuador also thanks the SRIP for his support to the Constituent Assembly, and welcomes his acknowledgement of important provisions that affirm IPs' rights in the new Constitution, which recognises IPs' collective right to consultation, as a duty of the State to promote dialogue in good faith, in a free, prior and informed manner, and in a reasonable time span.

PERU thanks the SRIP for the presentation of his report on the June 2009 visit, which makes it clear that what happened in Bagua on June 5 was nothing even close to genocide or gross IPs' human rights violations. Further investigations by the Office of the Ombudsman confirmed these findings. The National Police acted in Bagua under the Government's obligation to uphold the rule of law and to protect public order, as well as the rights of all Peruvians. Peru agrees with the SRIP's assessment of the complexity of causes that led to these events, and
had established dialogue mechanisms much before June 5. The conclusions and recommendations of the SRIP provide useful guidance in this perspective. Peru then informs on further measures to facilitate dialogue between the Government and IPs' representatives in order to investigate the events occurred in Bagua, propose solutions to the legal norms IPs object to, improve mechanisms of consultation with IPs in accordance with ILO Convention 169, and design a national proposal of development for the Amazon region. Peru echoes the call by the SRIP to all parties to defend their positions in a peaceful manner and with respect for the human rights of all. Stressing the importance it grants to the SRIP 2007 visit report, in spite of delayed submission, BOLIVIA informs on recent reforms, responding to recommendations of the report, in the areas of development, incorporation of indigenous issues in the State's apparatus, indigenous land registration, promotion of indigenous languages and cultural values in the educational system, and prevention and elimination of all forms of discrimination.

BRAZIL welcomes the report by the SRIP on his August 2008 visit, and informs on the March 2009 landmark decision by the Federal Supreme Court on the Raposa Serra do Sol Indigenous Territory, which remains State-owned but reserved for the use of the IPs occupying those lands. The application of this decision, in spite of strong oppositions, strengthens the legal status of every other indigenous territory recognized by the Brazilian State. Brazil also stresses its advanced methodology to demarcate and register indigenous lands with full participation of IPs. It informs on its relevant legal provisions, complying with ILO Convention 169, on existing mechanisms for consultation with, and participation of IPs, and on several cases where indigenous mobilizations led to effective consultations. Brazil further reports on its actions and policies regarding the protection of IPs living in voluntary isolation, IPs' health and education, poverty reductions programmes, and the situation of the Guarani Kaiowa and Nhandeva IPs.

Thanking the SRIP for his visit in April 2009 and his readiness to maintain dialogue, CHILE recalls its UPR presentation of the current situation of IPs' rights and informs on recent legislative developments to regulate consultation procedures with IPs in accordance with ILO Convention 169, and with confidence-building principles set out by the SRIP. ILO Convention 169 came into force in Chile in September 2009 and legislative changes are being examined to ensure compliance through the necessary institutional reforms, mechanisms for IPs' political participation, and standards for land claims and allocations. Violent conflicts with Mapuche communities over land issues only concern a few indigenous communities. Chile expresses agreement with the SRIP's disapproval of the use of violence, and informs on efforts towards full realization of IPs' rights within the rule of law, as well as on prosecution and conviction of members of the national police who committed violence against indigenous communities. Reduction of the competency of military justice is also being examined.

CANADA appreciates the balanced approach with regard to the duty of States to consult with IPs on matters affecting them, and informs on statutory and legal basis of its obligations to consult, in some cases, with IPs, while committing to improve its practices through dialogue with IPs and other stakeholders. Canada calls for orientations on situations where, in spite of all efforts, consultations have reached an impasse.

The USA congratulates the SRIP for underlining the link between lack of consultation with IPs and conflict situations in some countries, and for taking a pragmatic approach in highlighting the importance of specific circumstances in shaping consultation procedures. The USA highlights the importance of consultation for confidence building – an essential element to the formulation of effective policies, and reports on its solicitation of tribal governments in this line.

Acknowledging the SRIP's visit and his report as opportunities for constructive dialogue, BOTSWANA wishes to offer a clearer perspective on its approach to human development programmes, by underscoring that all of Botswana's people are indigenous to the country – a position elaborated on by the African Commission on Human and Peoples' Rights.

NEPAL recalls its complex process of democratic change and highlights the important representation of indigenous nationalities in its Constituent Assembly, and its consideration of indigenous issues. Nepal recalls its Government's commitment to inclusiveness and to restructuring of the State along federal lines, its support to the adoption of the Declaration and its ratification of ILO Convention 169. Nepal then informs on current constitutional provisions on IPs' rights and on measures to implement basic education in mother tongues, to encourage tertiary education of indigenous students, and to enhance traditional skills and knowledge. Empowerment of IPs and their enhanced participation in decision-making remains among the priorities of the Government, and several measures are described in this line. Nepal also stresses policy measures to promote equality, justice and non-discrimination.

AUSTRALIA expresses appreciation for the SRIP's recent visit to Australia, and informs on elaboration of legislation, following extensive consultation with IPs, to ensure conformity of measures taken under the Northern Territory Emergency Response with Australia's Racial Discrimination Act. The Australian Human Rights Commission, and in particular the Aboriginal and Torres Straits Islander Social Justice Commissioner, have been invaluable in promoting indigenous rights.
**New Zealand** asks whether the SRIP's attendance to the PFII and EMRIP annual sessions has provided productive means for the specific concerns of IPs to be heard; and, with regard to the duty to consult, what sorts of decisions could affect IPs in a way not felt by others in a multicultural society.

**Sweden**, on behalf of the **European Union**, asks how cooperation could concretely be enhanced between the EMRIP, SRIP and PFII (also **New Zealand, Denmark**), and how to improve better understanding of the roles and functions of the three mechanisms, in particular among IPs. Sweden highlights the SRIP's calls to establish relevant procedures (also **Norway, Canada**), to make efforts to achieve consent from all engaged sides, to create a climate of confidence. The SRIP also note that IPs may need to revise their own institutions to facilitate consultation processes, and to ensure conformity with international human rights standards. Sweden asks what kind of confidence-building the SRIP would recommend to be introduced, and what pragmatic steps can be taken to overcome the challenges regarding indigenous representation in consultation processes.

**Finland** welcomes the SRIP's efforts to incorporate a gender perspective into his work and to pay special attention to indigenous children, and stresses the need to consult IPs and provide them with real opportunities to participate in the making of decisions that affect them, while hoping that the Saami mechanisms can provide a good example of this.

**Norway** highlights the fact that the duty to consult does not amount to a veto power (also the **USA**), and the need to carry out consultations in good faith, with the objective of achieving agreement. These elements are present in ILO Convention 169 article 6, and throughout the Declaration. Consultation procedures agreed upon by Norway and the Saami Parliament in Norway (Samediggi) have led to increased awareness on the duty to consult throughout the state apparatus. Norway then informs on measures to address the concerns reported by the SRIP on the new mineral act with regard to Saami interests outside of the Finnmark county.

With regard to the SRIP's very active role in investigating and reporting on specific situations faced by IPs, **Denmark** asks how he intends to organise follow-up to his visits while conducting new visits, and to address his increasing volume of work (also **FAIRA**). The focus on the States' duty to consult with IPs will certainly prove very useful to the proposed study by the EMRIP on IPs' right to participate in decision-making. Denmark enquires on exploration by the SRIP about the responsibilities of private companies to respect IPs' rights.

The **Russian Federation** repeats that it considers IPs' right to self-determination as a principle to be exercised in the framework of States, in close coordination between state bodies and through consultation with indigenous communities, and informs on its improvement of legislation and programmes to promote IPs' rights, and on development, together with **RAIPON**, of guidelines on protection of indigenous populations, which ensures compliance with IPs' rights.

**Tonya Gonella Frichner**, Vice-Chairperson of the PFII and indigenous expert member from **North America**, restates the suggestion by the North America Preparatory Meeting to the PF's 8th session that the SRIP conduct an investigation “on the human rights impacts of international borders on IPs, in particular those IPs whose lands and traditional territories are divided by international borders”, and highlights situations where IPs' rights are threatened by policies and control enforcement in the Mexican-USA and the USA-Canada borders. IPs from other regions have also consistently expressed their concerns about impacts of international borders on their rights.

The **Canadian Human Rights Commission** addresses disadvantages faced by Aboriginal peoples, in spite of recent efforts by the Canadian State. Among persistent concerns are child welfare and family service supports, the over-representation of Aboriginal peoples both as victims and offenders, and the number of missing and murdered Aboriginal women. The Canadian Human Rights Act has recently been amended to include persons living under the Indian Act, whose compliance with human rights principles should also be examined. Canada has yet to express support for the Declaration.

The **Commission on Human Rights of the Philippines** (CHRP) invites the SRIP to take note of the work of national human rights institutions (NHRIs), which can also play a role in confidence building for consultations processes. The Asia-Pacific Forum has started discussions on developing human rights obligations of non-state actors, including extractive industries. The CHRP suggests examination of human rights compliance of consultation processes imposed by international financial institutions. IPs must not only be considered as vulnerable groups, but also as rights holders and actors, in particular with regard to climate change and environmental issues. As IPs have been the guardians of our environment for ages, respecting them, their rights and cultures can only benefit the world community.

**CCJ** thank the SRIP for his recent visit to Colombia and underscore the State's failure to comply with the recommendations by the former SRIP after his 2004 visit. CCJ express particular concern over cases of sexual violence against indigenous women and girls, over the vulnerability of indigenous children, over the critical situation of the Awa peoples, and over the increasing militarization of indigenous territories. ILO requested review of Colombia's current procedure to consult with IPs, so as to comply with requirements under Convention 169. A new draft act is being elaborated, but the procedure proposed therein does not differ from the existing...
one. CCJ request the SRIP to urge Colombia to apply the Declaration, to adopt adequate measures to prevent violations of IPs' rights, to adjust to ILO Convention 169, and to consult with IPs.

Commenting on the SRIP's report on the Bagua events, AIDÉSEP, with support of FIDH, lament that the Peruvian Government continues to adopt measures that affect IPs' rights and might reopen the conflict. The creation, recommended by the SRIP, of an independent commission to objectively and impartially investigate the facts, with the participation of representatives from the international community, has been tainted by absence of international representatives, permanent misrepresentation of facts, and pressure on indigenous leaders. While consultation procedures complying with ILO Convention 169 are being discussed among all parties involved, the Peruvian Government continues to grant concessions and authorize highly damaging projects on indigenous territories without any consultation, and to take every opportunity to discredit the indigenous movement. AIDÉSEP demand that the Peruvian Government adopt the Act on consultation and participation of IPs, stop persecuting indigenous authorities, and respect IPs' free, prior and informed consent for any decision directly affecting their rights and interests.

Welcoming the report by the SRIP and his recommendations to Brazil, Conectas highlights extreme poverty, child mortality and violence that accentuate the gap between indigenous and non-indigenous Brazilians (with the Guarani-Kaiowa), aggravation of landowning conflicts (in Raposa Serra do Sol), and precarious health services (in Vale do Javari Indigenous Land). Brazil needs to guarantee the right of consultation according to ILO Convention 169, so that IPs can be part of decisions that affect them, including with regard to the effects of large-scale infrastructure projects. Brazil also needs to adopt infra-constitutional legislation to replace obsolete laws and to refrain the adoption of legislation that threatens the rights already recognized by the Constitution.

APDH draw attention to human rights violations perpetrated against peasant and indigenous communities in Argentina, while they defend their rights to life and to food, as a result of the activities of large-scale soy bean farms and of open-pit mining. The federal and States' Governments in Argentina are the ones responsible to protect indigenous and peasant communities from eviction and persecution.

IOIRD thank the SRIP for the focus on the duty to consult, also an international legal principle of Treaty-making.

FAIRA recall that despite adoption of the Declaration, killings and extreme physical violence against IPs have escalated while the exceptionally high rate of imprisonment of IPs and of deaths in custody represent a form of institutionalised violence against IPs worldwide. FAIRA thank the SRIP for his efforts to assist States in their endeavours to address IPs' rights.

On cooperation with the EMRIP and PFII, the SRIP reports on regular and deliberate contact to share information and coordinate work. He recalls arrangements during the EMRIP's second session for indigenous delegations to meet with him and discuss particular concerns or complaints, which the EMRIP has no mandate to address (BOLIVIA, ECUADOR and the USA welcomes this). He is also coordinating his own work with that of Treaty Bodies on matters of mutual concerns (answer to CANADA). Answering to DENMARK about the extent of lack of IPs' consultation by States, the SRIP insists on the many cases of flagrant disregard of the basics of consultation in virtually all countries, hence his urging to States to pay more attention to this. Answering to AUSTRALIA about ensuring the rights of indigenous women, children and persons with disabilities in consultation procedures, the SRIP calls for allowing IPs the space to organise themselves according to their own methods, and for acknowledging their tradition of caring for the interest of their children and disabled, while he stresses the increasing participation of indigenous women at the forefront of their communities and organisations. Finally, the SRIP pledges his commitment to do as best as he can, considering the information he receives, to ensure follow-up of cases already examined while taking on new cases, and calls upon States and IPs to respond to his requests in a timely and accurate manner. He also intends to address the volume of cases by continuing to focus on cross-cutting or emblematic themes or cases.

Interactive Dialogue with other Special Procedures

Presenting her report on bonded labour, the SR on contemporary forms of slavery, Gulnara Shahinian, underscores inadequate treatment of bonded labour by States, who mainly address it in relation with human trafficking, leaving aside most of the 12.3 million people worldwide victims of forced labour in other contexts, including within indigenous or minority populations.

The Independent Expert on human rights and international solidarity, Rudi Muhammad Rizki, recalls that in the multiple crises facing the globalized world, the hardest hit are the poor, and vulnerable groups, including IPs.

The Independent Expert on human rights obligations related to safe drinking water and sanitation, Catarina de Albuquerque, reporting on her country visit to Costa Rica in March 2009, underscores that in spite of Costa Rica's recognition of the access to water as an inalienable human right, and progress in increasing access to water and sanitation, members of vulnerable groups, including IPs, have a very limited access to safe water and sanitation.
The USA recognizes the vulnerability to forced labour of indigenous groups, and informs on its legislative tools to fight it. GHANA notes that bonded labour, also when involving indigenous communities, is mainly used by private individuals, and calls for greater attention to this problem, given the gravity of associated human rights violations. PAKISTAN, on behalf of the OIC, regrets that slavery continues in modern forms of exploitation of marginalized individuals and groups, such as IPs.

General Debate

Expressing concern over the protection of all Bolivian citizens, in particular native populations, ICSA suggest that the HRC mandate an impartial investigation to shed light on the current situation in Bolivia before it escalates. APDH call for fact-finding missions by the OIC and SRs to investigate the violations of economic, social and cultural rights of peasant and indigenous communities in Argentina, due to the dominant model based on agro industry, mining and export. Participatory policies to protect and strengthen peasant and indigenous communities, as well as democracy and food sovereignty, may be a way to overcome the food crisis. STP highlight that the Mapuche IPs continue to suffer from the persistent exploitation, supported by the Chilean State, of their land and resources without their free, prior and informed consent. There are currently 37 Mapuche political prisoners, detained for protesting against the illicit occupation of ancestral territory, but the State refuses to recognize them as such, and has not investigated the killings of several Mapuche protesters by military police. The Mapuche Nation advocates sustainable development as a cultural ethic practised for centuries.

Item 4 – Human rights situations that require the Council’s attention

CAPAJ recall the Human Rights Committee’s communication on oil exploitation in the Rio Corrientes (CCPR/C/95/D/1457/2006 of 6 April 2009) and the CERD urgent procedure of February 2009 to stop exploitation of underground water in the Andean community of Ancomarca. If both these measures had been applied everywhere in Peru, the tragedy occurred in Bagua could have been avoided. Fact-finding commissions must review the situations faced by IPs everywhere in Peru. ICSA/ICHR/IPNC protest against the denial of the right to self-determination of Alaska and Hawaii IPs through illegitimate referendums. The HRC must provide the proper mechanism and mandate to address violations of IPs’ right to self-determination; support a study on the right to self-determination; address violations of the right to self-determination based on the Charter and other relevant international human rights instruments in an open and transparent manner.

Item 5 – Human rights bodies and mechanisms

The Chairperson-Rapporteur of the EMRIP, Jannie Lasimbang, presents the report of its second session (A/HRC/12/32), which focused on the study on education (A/HRC/12/33) and on implementation of the Declaration at regional and national levels. She acknowledges the presence of the HCHR and her commitment to indigenous issues. Many delegations acknowledged the study on IPs’ right to education as helpful in the understanding of indigenous ways of learning, and in providing guidance on improvement of quality and culturally appropriate education for IPs. The EMRIP hopes that States will use the study and aim at achieving the aspirations it reflects. As to implementation of the Declaration, discussions made clear that the EMRIP does not intend to become a monitoring body, rather to use the Declaration to guide its work, in accordance with HRC resolution 6/36 and article 42 of the Declaration itself. Information received concerned efforts to implement the Declaration at national level. Reconciliation and increased effective participation of IPs in decision-making processes are crucial to implement the Declaration, and address the serious ongoing problems faced by IPs as a result of denial of their rights and freedoms. IPs stressed the comprehensive and complex nature of the Declaration, the need to interpret and implement it as a whole, and the necessity to translate and disseminate it. The EMRIP submits six proposals to the Council (NORWAY welcomes them): a thematic study on IPs’ right to participate in decision making, which is one of the priorities expressed by IPs (proposal 1, supported by the RUSSIAN FEDERATION, FINLAND, NORWAY, the USA, IWA/IITC/AILA, SC, II, and SER/KKSC/AIDESEP suggesting an intercultural approach and reference to the Declaration's and other instruments' relevant provisions); the crucial role of NHRIs in protecting IPs' rights (also NORWAY, AUSTRALIA) and the suggestion for States to establish specific national institutions on IPs' rights (proposal 2, supported by II); consideration of IPs' rights during the Council's sessions, through panel events and devoting special attention to the Declaration,
including in the UPR (proposal 3); extension of the mandate of the Voluntary Fund for Indigenous Populations to include sessions of the Council and Treaty Bodies (proposal 4, supported by Finland, IWA/IITC/AILA); follow-up on the Declaration's implementation in line with paragraph 73 of the Durban Review Conference outcome document (proposal 5, supported by IWA/IITC/AILA); and encouragement to UN specialized agencies to promote the Declaration (proposal 6).

Also welcome are the Council's consideration of reports by the SRIP and EMRIP in one of its session (also IWA/IITC/AILA, the Russian Federation, the USA); the continuation of the excellent cooperation with the PFII and the SRIP (also IWA/IITC/AILA); and building of cooperation with other UN agencies and Treaty Bodies. The EMRIP is encouraged by the very positive response from States and IPs to its work, but expresses concern over the limited resources available for its activities from the UN regular budget (also FAIRA, IWA/IITC/AILA), while acknowledging state support to its inter-sessional activities (also FAIRA, urging for more support, including to the Voluntary Fund for Indigenous Populations), and looking forward to pursue dialogue and cooperation towards implementation of IPs' rights.

Proposals to the HRC by the EMRIP at its second session and follow-up

Proposals 1, 3 (para. 3) and 4 are reflected in HRC Resolution 12/13 (see below on page 23). Proposal 6 was actually directed not to the HRC but to UN specialized agencies. Proposals 2, 3 (paras. 1 & 2) and 5 were commented upon during the debates but not otherwise reflected in Resolution 12/13.

Proposal 1: Thematic study on IPs' right to participate in decision-making

The EMRIP:

1. Refers to paragraph 3 of HRC resolution 9/7, in which the Council requested the Expert Mechanism to identify proposals and to suggest them by consensus to the Council, for its consideration in 2009;
2. Proposes that the HRC authorize the Expert Mechanism to prepare a study on IPs' right to participate in decision-making and to conclude it by 2012;
3. Proposes further that the HRC authorize the Expert Mechanism to prepare a preliminary working paper on this theme prior to its third session in 2010.

Proposal 2: Human rights institutions and mechanisms

The EMRIP:

1. Notes the important role of NHRIs and regional human rights mechanisms in protecting and promoting the rights of IPs and in implementing the UN Declaration on the Rights of Indigenous Peoples;
2. Encourages the establishment of regional human rights mechanisms with a mandate that includes the promotion and protection of the rights of IPs, and the strengthening of existing ones;
3. Proposes that the HRC encourage States to ensure that they have strong NHRIs and that these institutions have specific roles and activities to promote and protect the rights of IPs;
4. Proposes that the HRC encourage States to consider, in consultation and cooperation with IPs, the establishment of national institutions on the rights of IPs, mandated to promote and protect their rights in complete accordance with the Declaration.

Proposal 3: Consideration of IPs' rights during the HRC sessions

The EMRIP:

1. Proposes that the HRC consider organizing regular panel events devoted to the rights of IPs during its future sessions, with the participation of the Expert Mechanism, regional human rights mechanisms, national human rights institutions and other relevant experts. Such panel events could be devoted to specific themes, and they could include sessions on the follow-up of thematic studies prepared by the Expert Mechanism;
2. Encourages the HRC to continuously pay particular attention to the rights of IPs and to the UN Declaration on the Rights of Indigenous Peoples in its work, including in connection with the UPR, and proposes that the OHCHR prepare a compilation of the recommendations issued so far in the context of the UPR process with respect to IPs;
3. Proposes that the HRC ensure that the introduction of the reports related to IPs by the Expert Mechanism, the SRIP and the UN HCHR take place annually at the same session of the HRC and that these reports be grouped together in the agenda of the sessions, in order to enhance synergies and to facilitate participation of representatives of IPs.


The EMRIP:
Proposes that the HRC follow up further on the recommendation made by the Expert Mechanism at its first session to expand the mandate of the UN Voluntary Fund for Indigenous Populations to cover also the sessions of the HRC and those of human rights treaty bodies.

Proposal 5: Follow-up to the Durban Review Conference

The EMRIP:
1. Notes the Outcome Document of the Durban Review Conference, in particular its paragraph 73, which welcomes the adoption of the UN Declaration on the Rights of Indigenous Peoples and which urges States to take all necessary measures to implement the rights of IPs in accordance with international human rights instruments without discrimination;
2. Proposes to the HRC that it invite the Expert Mechanism to make proposals for the implementation of the UN Declaration on the Rights of Indigenous Peoples in line with the recommendation contained in paragraph 73 of the Durban Outcome Document.

Proposal 6: UN specialized agencies

The EMRIP:
1. Notes the work undertaken by the UN at the national and regional levels to promote respect for IPs’ rights;
2. Encourages the specialized agencies of the UN to consider ways and means of strengthening their activities and programmes in order to promote respect for and full application of the provisions of the UN Declaration on the Rights of Indigenous Peoples, in line with article 42 of the Declaration.

Source: report A/HRC/12/32, Section II.

Provisional Agenda for the Third Session of the EMRIP

1. Election of officers
2. Adoption of the agenda and organization of work
3. Study on indigenous peoples and the right to participate in decision-making
4. United Nations Declaration on the Rights of Indigenous Peoples
5. Proposals to be submitted to the Human Rights Council for its consideration and approval
6. Adoption of the report

MEXICO, ECUADOR, the RUSSIAN FEDERATION, FINLAND, VENEZUELA, COLOMBIA, FAIRA, AI and SC thank the EMRIP for its report. IWA/IITC/AILA welcome the focus on the Declaration, in line with the EMRIP’s important role to advise the HRC about application of its provisions.

James Anaya, DENMARK, NORWAY, VENEZUELA, MEXICO, the USA, PANAMA, FAIRA, SER/KKSC/AIDESEP commend the EMRIP’s work and the Experts’ commitment.

Welcoming and commenting on the study on the right to education are BRAZIL, FINLAND, VENEZUELA, MEXICO, the USA, SC, IOIRD, CAPAJ. NORWAY welcomes the Mechanism’s efforts to encourage UN mandates to contribute to this study and stresses the recommendation that States should pay attention to IPs’ right to education in the UPR and special procedures. AI and SER/KKSC/AIDESEP welcome the guidance that the study will provide to States and IPs for culturally relevant implementation of IPs’ right to education. IWA/IITC/AILA welcome the focus on the Declaration as a guide to apply the right to education.

VENEZUELA reiterates its commitment to IPs’ rights, and to States' historical debt that towards ancestral peoples. BRAZIL informs on its initiatives and activities in the area of indigenous education, with particular references to cultural relevances, increase in indigenous student enrolment, strengthening of IPs' consultation, participation and self-determination with regard to indigenous education, and facilitation of access to tertiary education. The USA appreciates the opportunity for States to review the draft agenda of the EMRIP’s next session at an early stage.

Recalling its 2008 Apology to Australia's IPs and its support to the Declaration, AUSTRALIA informs on relevant activities while reiterating its commitment to closing the gap between indigenous and non-indigenous Australian in health, education and employment areas. Australia is supporting the establishment, through a detailed and independent process led by IPs, of a National Indigenous Representative Body, in accordance with the Declaration's principles.

Underlining the major challenge of follow-up to the EMRIP studies (also FINLAND, calling for guidance and views by the EMRIP), DENMARK urges States and the OHCHR to ensure their dissemination to relevant authorities and officers; and the HRC, Special Procedures and Treaty Bodies to use these studies where relevant.
The **Russian Federation** notes that the EMRIP and SRIP both raise the issue of IPs' participation in decision making on issues affecting them. As to inclusion of indigenous issues in the UPR process, HRC Resolution 5/1 establishes that States themselves set their priorities when preparing their reports; however, indigenous issues can be raised in the interactive dialogue.

**CAPAJ** welcome the approach based on self-determination of the Expert Mechanism Advice n°1 [Annex to document A/HRC/12/33] and call, beyond the adoption of legal frameworks, for standards to make the use of indigenous languages compulsory in state administration, the judiciary, and the media; as well as for spaces where IPs can generate their own educational model, in accordance with their world view, and define educative contents relevant to their needs of self-development as peoples.

Underlining the inclusion, in the Expert Mechanism Advice n°1, of the Treaty right to education (also **IWA/IITC/AILA**, insisting on implementation based on IPs' understanding), **IOIRD** welcome the inclusion of Treaties as relevant international human rights instruments. Based on the study on education, IOIRD also warns that any limitation on fiscal allocations for education represent Treaty and basic human rights violations.

**IWA/IITC/AILA** (also **SC**) object to the very little speaking time available to indigenous peoples' and nations' representatives under the indigenous rights agenda items.

**ICSA/ICHR/IPNC** request that IPs be considered as peoples and nations by all UN mechanisms addressing their rights, and object to reducing application of IPs' rights, including those contained in international treaties pre-existent to the adoption of the Declaration. The obligations associated with education must include education on IPs' rights for governments' representatives in charge of implementing international law. ICSA/ICHR/IPNC express disagreement with the SRIP on the issue of IPs' veto power. They urge the EMRIP and SRIP to honour existing human rights obligations in reports.

**II** express concerns over continued human rights violations against IPs of Sindh (Pakistan).

**Liberation** highlight the threats faced by IPs in North-East India. As part of the Declaration's implementation, the Indian Government must initiate dialogue with them on the many issues of conflicts.

**SC** commend the HRC for the positive spirit in which it receives the EMRIP's report and proposals for future work. SC also commend Norway for engaging in dialogue with the SRIP, and regret Sweden's failure to do so. Highlighting the adoption of the Declaration, SC stress the need to address the new understanding of “peoples” as legal subject. The EMRIP should engage itself in this work.

Addressing IPs' right to free, prior and informed consent, **AI** underscores the critical importance of robust mechanisms of dialogue, dispute resolution processes and independent monitoring mechanisms; the need for full participation of IPs in establishing state processes for free, prior and informed consent; and the threats of unwanted development projects brought to indigenous communities by delays in land demarcation and titling processes. Finally, AI draw attention to non-compliance of Paraguay with IPs' rights, setting an unfortunate example for other countries under the Inter-American Court of Human Rights' jurisdiction.

**CSOP** recommend: that States' governments and multilateral bodies use the Kimberley Declaration and the Indigenous Peoples' Plan for Sustainable Development to assess their sustainable development plans and programmes; that IPs' traditional resource management practices be strengthened and integrated into national policies; a moratorium on World Bank funding for extractive industries; States and other responsible entities to provide redress and justice for displaced IPs; and support for IPs to participate in multilateral processes on sustainable development.

As governments speak of poverty while IPs speak of rights, **WPC** underline that a human rights approach to poverty is about the empowerment of the poor. IPs' rights have attained the status of customary international law and are therefore generally binding on States. IPs are over represented among the poorest both in developing and developed countries, and poverty alleviation must start from IPs' own definitions and indicators of poverty, and address access to decision-making at all levels.

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### Human Rights Council’s Resolution 12/13: Human rights and indigenous peoples

The Human Rights Council,

Bearing in mind that the General Assembly, in its resolution 59/174 of 20 December 2004, proclaimed the Second International Decade of the World’s Indigenous People,

Bearing in mind also General Assembly resolution 60/251 of 15 March 2006 and Council resolutions 5/1 on institution-building of the Council and 5/2 on the code of conduct for special procedures mandate holders of the Council, both of 18 June 2007,


Recalling also Council resolutions 6/12 of 28 September 2007, 6/36 of 14 December 2007 and 9/7 of 24 September 2008,
Recalling further the adoption of the United Nations Declaration on the Rights of Indigenous Peoples by the General Assembly in its resolution 61/295 of 13 September 2007,

1. Welcomes the report of the United Nations High Commissioner for Human Rights on indigenous issues (A/HRC/10/51), and requests the High Commissioner to present an annual report on the rights of indigenous peoples to the Council, containing information on relevant developments of human rights bodies and mechanisms and activities undertaken by the Office of the High Commissioner at Headquarters and in the field that contribute to the promotion of and respect for, and the full application of, the provisions of the UN Declaration on the Rights of Indigenous Peoples, and follow up the effectiveness of the Declaration;

2. Also welcomes the report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people (A/HRC/12/34);

3. Requests the Special Rapporteur to report on the implementation of his mandate to the General Assembly at its sixty-fifth session [2010];

4. Welcomes the first and second reports of the Expert Mechanism on the Rights of Indigenous Peoples (A/HRC/10/56 and A/HRC/12/32);

5. Also welcomes the successful completion of the study on lessons learned and challenges to achieve the implementation of the right of indigenous peoples to education (A/HRC/12/33), and strongly encourages States to disseminate it broadly and to take it into account when elaborating national plans and strategies;

6. Requests the Expert Mechanism, in accordance with its mandate, to carry out a study on indigenous peoples and the right to participate in decision-making, to present a progress report to the Council at its fifteenth session [September 2010], and a final study to the eighteenth session [September 2011];

7. Decides that the reports of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, the Expert Mechanism on the Rights of Indigenous Peoples and the High Commissioner will be considered by the Council at its annual September session and that the Expert Mechanism should hold its future annual sessions well in advance of that session, if possible in June;

8. Also decides to introduce staggered terms for the membership of the Expert Mechanism, considering the need to secure continuity in its functioning;

9. Requests the Office of the High Commissioner to prepare a detailed document outlining the practical implications of a change in mandate of the Voluntary Fund, in particular if it is expanded, the current working methods and resources of the Fund, and to present it to the Council at its fifteenth session [September 2010];

10. Requests the Special Rapporteur, the Permanent Forum on Indigenous Issues and the Expert Mechanism to continue to carry out their tasks in a coordinated manner;

11. Encourages those States that have not yet ratified or acceded to the Convention concerning Indigenous and Tribal Peoples in Independent Countries of the ILO (C169) to consider doing so, and to consider supporting the UN Declaration on the Rights of Indigenous Peoples;

12. Decides to continue consideration of this question at a future session, in conformity with its annual programme of work.

Adopted without a vote on October 1, 2009.

Call for contribution to the study on IPs and the Right to Participate in Decision-Making

The Expert Mechanism will prepare a draft progress report of the study on IPs and the Right to Participate in Decision-Making, to discuss it at its third session, from 12 to 16 July 2010, before submitting a final progress report to the Human Rights Council.

The OHCHR is kindly asking governments, IPs, NGOs, academics, UN mandate holders, UN agencies and institutions and any other relevant organizations to submit, by 26 February 2010, relevant information pertaining to indigenous peoples and the right to participate in decision-making. For this purpose, the experts have prepared an outline for providing information, which is available at http://www2.ohchr.org/english/issues/indigenous/contribution.htm or at doCip upon request.

Contributions can be sent electronically to expertmechanism@ohchr.org or by mail to the Office of the High Commissioner for Human Rights, CH-1211 Geneva 10, Switzerland. Please indicate whether the information provided can be made available on the OHCHR website.

Abbreviations

AAJ: American Association of Jurists
AI: Amnesty International

Published on December 22, 2009
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<thead>
<tr>
<th>Acronym</th>
<th>Full Name</th>
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<tr>
<td>AIDESEP</td>
<td>Interethnic Association for the Development of the Peruvian Rainforest</td>
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<td>AILA</td>
<td>American Indian Law Alliance</td>
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<td>APDH</td>
<td>Asamblea Permanente por los Derechos Humanos</td>
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<td>CAPAJ</td>
<td>Comisión Jurídica para el Autodesarrollo de los Pueblos Originarios Andinos</td>
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<td>CCIWCC</td>
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<td>CETIM</td>
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<td>CONEXAS</td>
<td>Conectas Dereitos Humanos – Conectas Human Rights</td>
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<td>CSOP</td>
<td>Commission to Study the Organization of Peace</td>
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<td>DJP</td>
<td>Dominicanos for Justice and Peace</td>
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<td>EAFORD</td>
<td>International organisation for the elimination of all forms of racial discrimination</td>
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<td>FAIRA</td>
<td>Foundation for Aboriginal and Islander Research Action</td>
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<td>FI</td>
<td>Franciscans International</td>
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<td>FIDH</td>
<td>International Federation for Human Rights</td>
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<td>IAW</td>
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<td>IHRAAM</td>
<td>International Human Rights Association of American Minorities</td>
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<td>II</td>
<td>Interfaith International</td>
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<td>IITC</td>
<td>International Indian Treaty Council</td>
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<td>Indian Movement “Tupaj Amaru”</td>
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<td>International Organisation of Indigenous Resource Development</td>
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<td>IPNC</td>
<td>Indigenous Peoples and Nations Coalition</td>
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<td>IWA</td>
<td>Indigenous World Association</td>
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<tr>
<td>IWGIA</td>
<td>International Work Group for Indigenous Affairs</td>
</tr>
<tr>
<td>KKSC</td>
<td>Kus Kura Sociedad Civil</td>
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<tr>
<td>MRAP</td>
<td>Mouvement contre le racisme et pour l'amiété entre les peuples</td>
</tr>
<tr>
<td>OIDEEL</td>
<td>International Organisation for the right to education and freedom of education</td>
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<tr>
<td>PPSAWA</td>
<td>Pan Pacific and South Asia Women's Association</td>
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<td>PR</td>
<td>Pax Romana</td>
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<td>PRODH</td>
<td>Centro de Derechos Humanos Prodh Miguel Agustín Pro Juárez, A.C.</td>
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<td>SC</td>
<td>Saami Council</td>
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<td>SER</td>
<td>Servicios del Pueblo Mixe</td>
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<td>SGI</td>
<td>Soka Gakkai International</td>
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<td>STP</td>
<td>Society for Threatened Peoples</td>
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<td>UEAS</td>
<td>Universala Esperanto-Asocio</td>
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<td>WPC</td>
<td>World Peace Council</td>
</tr>
<tr>
<td>WSCF</td>
<td>World Student Christian Federation</td>
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</table>
3. THE INTERNATIONAL LABOUR ORGANIZATION

The implementation process of the UN Declaration on the Rights of Indigenous Peoples, once adopted by the General Assembly in 2007, has become a crucial issue. Experiences generated so far in the context of ILO Convention 169 can be useful to inspire the further efforts to implement the Declaration. This article gives an overview of recent activities of ILO's Programme to promote ILO Convention 169 (PRO 169).

PRO 169: One Step at a Time

By: Chonchuirinmayo Luithui, intern PRO 169

The International Labour Organisation (ILO), since its formation, has contributed significantly in promoting the rights of indigenous peoples. As early as 1921, the ILO recognised the particular difficult situation of “native workers” in the overseas colonies of the European powers. The adoption of ILO’s Forced Labour Convention (No. 29) in 1930 was an outcome of this recognition. However, the evident need to create an instrument that specifically dealt with indigenous peoples resulted in the adoption of the ILO Convention on Indigenous and Tribal Populations 1957 (No. 107).

Convention No. 107 covers a wide range of issues including employment and occupation, right to land and education in indigenous languages. However, with the growing awareness and participation of indigenous peoples at the international level, the weaknesses of the Convention was felt, particular its “integrationist approach”.

Eventually, Convention No. 107 was revised by the ILO’s Indigenous and Tribal Peoples Convention (No. 169) in 1989. This Convention has been ratified by 20 countries till date. However, the importance of Convention No. 169 goes beyond the number of actual ratifications. Its provisions have influenced numerous policy documents, debates and legal decisions at the regional and international levels, as well as national legislation and policies. The Convention has played an important role in the peace processes in Guatemala and Nepal, where it was ratified as part of the peace agreements.

In 2007, the UN General Assembly adopted the UN Declaration on the Rights of the Indigenous Peoples. The adoption was the culmination of years of discussions and negotiations between governments and indigenous peoples and is a landmark achievement, which provides the international community with a common framework for the realization of indigenous peoples’ rights. The provisions in the Declaration and Convention No. 169 are compatible and mutually reinforcing. The Declaration covers all the areas of the provisions in Convention No. 169 and goes further to address a number of subjects which is not covered by the Convention.

However, the implementation process of the two instruments is largely the same, and experiences generated so far in the context of Convention No. 169 can thus to a certain degree serve to inspire the further efforts to implement the Declaration.

In order to commemorate the 20th Anniversary of Convention No. 169, the PRO 169 is publishing a comprehensive Guide to ILO Convention No. 169: “Indigenous Tribal Peoples Rights in Practice”. This is to share the experiences, good practices and lessons learnt over the last twenty years since the adoption of Convention No. 169. This publication – and a series of other resources – is available at the two websites that the ILO operates on indigenous issues: www.ilo.org/indigenous (general) and www.pro169.org (training materials).

Promotion and Implementation

The issue of indigenous peoples’ rights is an Office-wide concern within the ILO and the different Departments are working together for the promotion and implementation of the rights of indigenous peoples.

Under the ILO Constitution, the Member States are required to submit reports on the measures taken to give effect to the Conventions they have ratified and the ILO supervisory bodies provide comments to the countries concerned. In 2008, the ILO Committee of Experts on the Application of Conventions and Recommendations examined reports from Argentina, Brazil, Columbia, Guatemala, Honduras, Mexico, Norway, Paraguay and Peru. In addition, the ILO Conference Committee on the Application of Standards analysed the situation of Peru, during the 98th Conference of the ILO in June 2009. The comments provided by the supervisory bodies are available at: www.ilo.org/ilolex/ .

In addition, the ILO has a specialised global programme to promote and implement the rights of the indigenous peoples, namely the Programme to Promote ILO Convention No. 169 (PRO 169). The overall objective of
PRO 169 is that indigenous and tribal peoples’ rights are promoted and their socio-economic situation improved, in compliance with the principles of ILO Convention No. 169.

With the support of donors such as Denmark, Norway, Spain and the European Commission, PRO 169 has expanded its operations, giving support to governments and indigenous peoples to promote and implement the Convention. Projects in Bangladesh, Cambodia, Cameroon, Kenya, Namibia and Nepal are being undertaken and just recently, a regional programme has been launched in Latin America. PRO 169 is looking at a variety of entry points to undertake different activities including promotion of rights in general, economic empowerment, training and information dissemination; and it is working with different actors at international, national and community levels. Following are some highlights of recent PRO 169 activities at the country-level:

**Asia**

**Bangladesh:** PRO 169 has focussed its activities on national and regional consultations on Convention No. 107, information dissemination and translation of key documents into Bangla (the national language); training and capacity building through regional and international training programmes; research and documentation, including on national laws and policies regarding gender, discrimination and traditional occupations as they affect indigenous peoples in the country. A new national project in Bangladesh intends to focus primarily on strengthening the institutional capacity of the Government of Bangladesh and indigenous peoples to protect and promote their rights as guaranteed under international standards on indigenous peoples.

**Cambodia:** The country has not yet ratified Convention No. 169. However, through it mandate concerning fundamental labour standards (including Conventions on discrimination, child labour and forced labour), the ILO Cambodia is working on policy and development issues and employment generation for indigenous peoples, including traditional occupations. PRO 169 has been supporting the indigenous communities, NGOs and the Government of Cambodia to register indigenous communities as legal entities. Acquiring a legal title would help the indigenous people to establish a collective title over their land. The work of PRO 169 in Cambodia has resulted in the generation of data concerning the number of communities targeted for land registration. At least 133 indigenous communities, which will be targeted for registration in the provinces of Ratanakiri and Mondulkiri, have been included in the data base. Out of these, 50 communities are currently getting support from PRO 169, with financial support from DANIDA. Moreover, since April 2009, a specific Local Economic Development (LED) project is being implemented in three registered indigenous communities, with separate funding from the ILO Regional Office in Bangkok.

**Nepal:** A year after Nepal’s ratification of ILO Convention No. 169, PRO 169 has initiated a national programme called “Promotion of indigenous peoples’ rights in the constitution-making and state-reform process in Nepal”. The Project has the twin objective of supporting a) meaningful consultation and participation of indigenous councils/communities in the constitution-making process, and b) that key policy-making institutions integrate Convention No. 169 in the state-reform process. The project is supported by the Danish and Norwegian Embassies in Kathmandu.

**Africa**

Since 2006, PRO 169 has intensified its activities in Africa with the goal of raising the awareness of governments and other institutional actors, and civil society on issues related to the rights of indigenous peoples as defined by ILO Convention No. 169.

In collaboration with the Working Group on Indigenous Communities/Populations under the African Commission on Human and Peoples Rights (ACHPR), the ILO has also undertaken research on the situation of indigenous peoples in Africa. The research is being implemented by the University of Pretoria. The Overview Report resulting from this research was finalised and adopted by the ACHPR at its last session in May 2009 and will soon be published in four languages with the title: “The Overview Report of the Research Project by the ILO and the ACHPR on the Constitutional and Legislative Protection of the Rights of Indigenous Peoples in 24 African Countries”, 2009.

**Cameroon:** In Cameroon, a programme was launched in December 2006 to enhance the capacity of the stakeholders concerned by indigenous and tribal issues, and also to facilitate dialogue among them, so that the rights, needs and priorities of indigenous peoples are systematically taken into account. The project also aims to improve the mechanisms for their participation in processes that affect them. Through its successful experiences in Cameroon, PRO 169 plans to intensify its actions and expand to other countries and indigenous peoples in the Central African region in particular, and in Africa in general.

**Kenya:** PRO 169 has been working in partnership with indigenous peoples’ organizations in Kenya since 2001. The programme supported the Pastoralists, Hunter-Gatherers and Minorities Network (PHGMN) to participate in the constitutional review process in 2001. PRO 169 has also undertaken a study on the scope and
nature of child labour among Kenyan minorities and indigenous communities and organized a number of forums to discuss these issues.

In order to help address the issue of loss of cultural heritage, including traditional knowledge and occupations, the ILO has supported small-scale local economic initiatives in the Laikipia District of Kenya since 2007, targeting Maasai women and youth. The project is based on a partnership agreement with the Maasai Cultural Heritage Foundation (MCH) and the World Intellectual Property Organization (WIPO), which aims to assist the Laikipia Maasai in the protection, management, strengthening and promotion of their cultural heritage, for their own cultural and economic development.
4. THE WORLD INTELLECTUAL PROPERTY ORGANIZATION

In Update 76 (September 2007), a report was provided on the state of play as at that time in the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (the IGC). That report provided a summary of the key policy questions facing the IGC and highlighted main developments in the Committee’s work during its first eleven sessions. It also reported on initiatives to enhance the effective participation of indigenous and local communities in the work of the IGC and suggested some evaluation of whether or not this intellectual property forum can meet the needs of indigenous peoples. The IGC has since continued its work, and has recently been handed its strongest mandate yet. In this second article, a summary of the IGC’s work since September 2007 is provided, and the new mandate is described.

Intellectual property and the protection of traditional knowledge, genetic resources and traditional cultural expressions – the work of WIPO

by Wend Wendland, Director (a/g) and Head, Traditional Knowledge Division, World Intellectual Property Organization (WIPO), Geneva, Switzerland

Substantive work

The protection of traditional knowledge (TK) and traditional cultural expressions (TCEs) raises searching questions for the intellectual property (IP) system. There are divergent views on the best ways forward. These include whether to grant IP-type rights for traditional forms of innovation and creativity. This raises complex economic, cultural, legal and operational issues. TK often has no known “inventor” or “author”, and it may have ancient roots. TCEs are often shared among cultures, countries and communities and who “owns” a particular cultural expression may well be difficult to assess.

As reported on in the first article, the IGC’s substantive work was, by the 12th session of the IGC (February 2008), taking place on two related, parallel tracks: draft provisions for the protection of TK and TCEs and agreed “lists of issues” on TK and TCEs. The draft provisions had been the subject of commentary processes, and, at the request of the IGC, comments by participants on the lists of issues were first “collated” and then “factually extracted” for the 12th session.

The 12th session saw the opening of a third track, with a decision by the IGC to commission the WIPO Secretariat to prepare “gap analyses” related to TK and TCEs. These gap analyses would (i) describe what obligations, provisions and possibilities already exist at the international level to provide protection for TK and TCEs; (ii) describe what gaps exist at the international level, illustrating those gaps, to the extent possible, with specific examples; (iii) set out considerations relevant to determining whether those gaps need to be addressed; (iv) describe what options exist or might be developed to address any identified gaps, including legal and other options, whether at the international, regional or national level. The gap analyses were duly prepared, commented on and subsequently published by the Secretariat for consideration by the IGC at its 13th session (October 2008). However, from this point, much of the IGC’s time was taken up by discussion of procedural questions and the future mandate of the IGC.

Procedural matters

A question that had surfaced occasionally during many of the IGC’s substantive discussions had been what procedural steps and processes might best advance substantive work. At the 12th session, participants were formally invited to make proposals on proposed modalities and terms of reference for the establishment of inter-

All the WIPO documents, reports and other materials referred to in this article are available from the WIPO Secretariat and on the WIPO website at http://www.wipo.int/tk/en/index.html

Published on December 22, 2009
sessional mechanisms or processes. Such proposals were to be discussed at the 13th session (October 2008). Only the African Group made such a proposal\(^7\), and the 13th session saw a vigorous debate on this question. No decision was reached, however.

**Participation by indigenous and local communities**

The IGC has continued to strengthen mechanisms to ensure indigenous peoples and local communities have an effective voice. The period covered by this article saw the accreditation to the IGC of approximately 50 new non-governmental organizations as observers, bringing to well over 220 the number of observers accredited to the IGC, the majority representing indigenous and local communities or other holders of TK, TCEs and genetic resources (GRs). This period also saw the successful further implementation of the WIPO Voluntary Fund for Indigenous and Local Communities, which had sufficient funds to support the participation in the 12th, 13th and 14th (July 2009) sessions of all community representatives that were recommended by independent panels which included indigenous representation.

Meetings of an Indigenous Consultative Forum were facilitated, and throughout the sessions, indigenous delegations were provided with interpretation services and other logistical support, funded by WIPO, by doCip (the Indigenous Peoples’ Centre for Documentation, Research and Information). The WIPO Secretariat greatly appreciates this collaboration with doCip and indigenous participants in IGC sessions have reported their great satisfaction with doCip’s services.

This period also saw the inauguration of WIPO’s Indigenous IP Law Fellowship Program. The successful applicant for the Fellowship, selected from among 60 strong applicants, was Mr. Eliamani Isaya Laltaika, a Maasai from Tanzania. He took up his Fellowship at WIPO Headquarters in Geneva in August 2009.\(^8\)

Sign up for the new e-Newsletter and e-Updates of WIPO’s Traditional Knowledge Division, by sending an email to Grtkf@wipo.int

**The IGC’s mandate**

The IGC’s mandate, last renewed in September 2007 (See Update 76), was up for renewal again in September 2009. The mandate question was discussed extensively during the 13th and 14th sessions of the IGC, and participants were not able to reach agreement.

Agreement was, however, reached at the WIPO General Assembly in September 2009, during which the Organization’s 184 Member States reached consensus to launch negotiations to ensure the effective protection of TK, genetic resources (GRs) and TCEs through the development of an international legal instrument. This is an historic step forward.

The agreement reached by WIPO’s Member States gives the WIPO IGC its strongest mandate yet. Developing countries, in particular the African Group, argued strongly for the decision. Discussions among the members were intense, but a consensus decision was possible after flexibility was shown by all sides. The intensity of the discussion was a measure of the political significance of what is on the table: potentially, a major normative shift in the intellectual property system. WIPO Director General Francis Gurry said this “significant” decision gave the IGC “a robust and clear mandate over the next two years”. He called this a “real step forward”.

International legal instrument(s) could address pressing concerns such as the recognition of “traditional” forms of creativity and innovation as intellectual property. This would enable indigenous and local communities and their governments to have a say over the use of their TK and TCEs by third parties, making it possible, for example, to protect traditional remedies and indigenous art and music against misappropriation. A legal instrument could provide direction on issues such as what precisely is meant by TK and TCEs; who the rights holders would be and how competing claims by communities to similar TK and TCEs would be resolved; and, what rights and exceptions ought to apply.

While genetic resources are not IP as such, a new legal instrument could clarify the role of IP principles in facilitating access and benefit-sharing frameworks for genetic resources and in protecting these resources in cases of so-called “biopiracy”. Several countries already have national laws that govern these issues, but an

\(^7\) WIPO/GRTKF/IC/13/10.

international instrument could provide a mechanism for the protection of foreign TK, genetic resources and TCEs. For example, an indigenous community in country A would be able to safeguard its rights in country B.

The new mandate calls for “text-based negotiations” to build on the Committee’s work to date. It refers to three specific documents which, in addition to all the Committee’s other documents, should “constitute the basis of the Committee’s work on text-based negotiations”. These include the draft instruments for the protection of TCEs and TK referred to earlier. The document relevant to genetic resources outlines a list of options for continued work on the interface between the patent system and genetic resources.

Under the new mandate the IGC is to submit the texts of the international legal instrument (or instruments) to the WIPO General Assembly in September 2011. The Assembly would then decide on convening a Diplomatic Conference. If and when a Diplomatic Conference is convened on these matters, any instrument(s) adopted would become legally binding on those States which choose to ratify it/them. A full program of IGC meetings and inter-sessional work between now and September 2011 is stipulated in the mandate.

Revitalized by its new, robust mandate, the IGC meets again from December 7 to 11, 2009.


It may seem that WIPO’s work on IP and TK, TCEs and genetic resources only concerns the WIPO Intergovernmental Committee. It is, in fact, WIPO’s extensive capacity-building program that occupies most of the time of WIPO’s Traditional Knowledge Division! For example, WIPO offers indigenous communities hands-on training in cultural documentation and IP management. A pilot of this program was run successfully for the Maasai community of Laikipia (more information at http://www.wipo.int/pressroom/en/articles/2009/article_0030.html).

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9 WIPO documents WIPO/GRTKF/IC/9/4 and WIPO/GRTKF/IC/9/5.

10 WIPO document WIPO/GRTKF/IC/11/8(a).
5. UNESCO


Convention Concerning the Protection of the World Cultural and Natural Heritage (1972)

Also known as the World Heritage Convention, the Convention Concerning the Protection of the World Cultural and Natural Heritage was adopted by UNESCO’s General Conference at its 17th session in 1972 and entered into force on December 17, 1975. 186 States are currently parties to this Convention.

The text of this Convention does not contain any specific mention of indigenous peoples. It is, however, the legal instrument that establishes the World Heritage Committee and the World Heritage List, which are of relevance to IPs as World Heritage Sites might bear significance for them.

The World Heritage Centre was established in 1992 to serve as the dedicated Secretariat for the World Heritage Convention. Its website at http://whc.unesco.org contains further information on the Convention, its decision-making Committee, States Parties, and the World Heritage List, among other topics.

Paragraph 15 of the Programme of Action for the Second International Decade of the World’s Indigenous People states that “It is recommended that UNESCO should intensify efforts to promote and support the recovery of indigenous heritage and the oral tradition and ancient writings of indigenous peoples with a view to recognizing them as heritage of humanity under the framework of the Convention Concerning the Protection of the World Cultural and Natural Heritage and the Convention for the Safeguarding of the Intangible Cultural Heritage.”

Universal Declaration on Cultural Diversity (2001)

The Universal Declaration on Cultural Diversity was approved unanimously by UNESCO Member States at the 31st session of its General Conference, in 2001. As a Declaration, it is not legally binding on States.

It contains a specific reference to indigenous peoples in its article 4, entitled ‘Human rights as guarantees of cultural diversity’: “The defence of cultural diversity is an ethical imperative, inseparable from respect for human dignity. It implies a commitment to human rights and fundamental freedoms, in particular the rights of persons belonging to minorities and to those of indigenous peoples. No one may invoke cultural diversity to infringe upon human rights guaranteed by international law, nor limit their scope.”

The Action plan for the implementation of the Universal Declaration on Cultural Diversity also contains a specific mention of indigenous peoples in its article 14, which sets the objective of “Respecting and protecting traditional knowledge, in particular that of indigenous peoples; recognizing the contribution of traditional knowledge, particularly with regard to environmental protection and the management of natural resources, and fostering synergies between modern science and local knowledge.”

In paragraph 13 of the Programme of Action for the Second International Decade of the World’s Indigenous People, “All relevant actors are urged to implement the Action Plan of the United Nations Educational, Scientific and Cultural Organization (UNESCO) Universal Declaration on Cultural Diversity during the Second International Decade.”


Preambular paragraph 6 of the Convention contains a specific mention of indigenous communities: “Recognizing that communities, in particular indigenous communities, groups and, in some cases, individuals, play an important role in the production, safeguarding, maintenance and recreation of the intangible cultural heritage, thus helping to enrich cultural diversity and human creativity, (…)”.

Further information on UNESCO’s standard-setting instruments (including the authoritative texts in all UN languages, entry into force, States Parties, as well as their declarations and reservations, …) is available online at http://portal.unesco.org/en/ev.php-URL_ID=12024&URL_DO=DO_TOPIC&URL_SECTION=201.html.
**Article 15** stresses the need to involve communities and groups, including indigenous peoples (but without mentioning them specifically), in the implementation of best practices for safeguarding intangible heritage: “Within the framework of its safeguarding activities of the intangible cultural heritage, each State Party shall endeavour to ensure the widest possible participation of communities, groups and, in some cases, individuals that create, maintain, and transmit such heritage, and to involve them actively in its management.”

**Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005)**

The Convention on the Protection and Promotion of the Diversity of Cultural Expressions was adopted by the UNESCO General Conference at its 33rd session, in 2005, and entered into force on March 18, 2007. It is based on articles 8-11 of the above-mentioned UNESCO Universal Declaration on Cultural Diversity. 103 States are currently parties to this Convention.

Indigenous peoples are specifically mentioned in two paragraphs of the preamble (8 and 15) and in two articles of the Convention (2.3, under the heading “Guiding principles - Principle of equal dignity of and respect for all cultures” and 7.1, under the heading “Measures to promote cultural expressions”):

**Preambular paragraph 8:** “Recognizing the importance of traditional knowledge as a source of intangible and material wealth, and in particular the knowledge systems of indigenous peoples, and its positive contribution to sustainable development, as well as the need for its adequate protection and promotion,”

**Preambular paragraph 15:** “Taking into account the importance of the vitality of cultures, including for persons belonging to minorities and indigenous peoples, as manifested in their freedom to create, disseminate and distribute their traditional cultural expressions and to have access thereto, so as to benefit them for their own development,”

**Article 2.3:** “The protection and promotion of the diversity of cultural expressions presuppose the recognition of equal dignity of and respect for all cultures, including the cultures of persons belonging to minorities and indigenous peoples.”

**Article 7.1:** “Parties shall endeavour to create in their territory an environment which encourages individuals and social groups: (a) to create, produce, disseminate, distribute and have access to their own cultural expressions, paying due attention to the special circumstances and needs of women as well as various social groups, including persons belonging to minorities and indigenous peoples; (...)”

In addition, other articles such as articles 11 (“Participation of civil society”), and 12c & d (“Promotion of international cooperation”), insist on the key partner role of civil society, which is supposed to include IPs’ organisations:

**Article 11:** "Parties acknowledge the fundamental role of civil society in protecting and promoting the diversity of cultural expressions. Parties shall encourage the active participation of civil society in their efforts to achieve the objectives of this Convention.”

**Article 12:** “Parties shall endeavour to strengthen their bilateral, regional and international cooperation for the creation of conditions conducive to the promotion of the diversity of cultural expressions, (...) in order to: (...) (c) reinforce partnerships with and among civil society, non-governmental organizations and the private sector in fostering and promoting the diversity of cultural expressions; (d) promote the use of new technologies, encourage partnerships to enhance information sharing and cultural understanding, and foster the diversity of cultural expressions; (...)”.

The Programme of Action for the Second International Decade of the World’s Indigenous People also refers to this Convention in its paragraph 14: “All relevant actors are encouraged to work towards the adoption and ratification by States of the Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005) to ensure the right of indigenous peoples to create and disseminate in a fair environment their cultural goods and services, and their traditional expressions, so that they might benefit from them in the future.”

6. UPCOMING MEETINGS AND DEADLINES FOR INDIGENOUS PEOPLES, JANUARY TO APRIL 2010

The dates for the sessions of the Human Rights Council are subject to changes. Please check with the Council’s website http://www.ohchr.org/english/bodies/hrcouncil/ (to access the Extranet, the username is “hrc extranet” and the password is “Isession”).

JANUARY

11 January 2010 (Berlin, Germany)
**Launch of the International Year of Biodiversity**
Secretariat of the Convention on Biological Diversity
Contact: Mr. David Ainsworth, Focal Point for the IYB
413 St-Jacques Street, 8th floor, Office 800
Montreal, Quebec, Canada, H2Y 1N9
Phone: +1 514 287 7011 Fax: +1 514 288 6588
E-mail: secretariat@cbd.int Web: http://www.cbd.int/2010/welcome/

11 – 29 January 2010 (Geneva, Switzerland)
**54th session of the Committee on the Rights of the Child (CRC)**
Countries scheduled for consideration: Burkina Faso, Cameroon, Ecuador, El Salvador, Norway, Mongolia, Paraguay, Tajikistan, Estonia, Sierra Leone, Israël, Liechtenstein.
Office of the High Commissioner for Human Rights
Contact: Ms. Maja Andrijasevic-Boko, Secretary
United Nations, CH-1211 Geneva 10, Switzerland
Phone: +41 22 917 9276 Fax: +41 22 917 9022
E-mail: crc@ohchr.org Web: http://www2.ohchr.org/english/bodies/crc/crcs54.htm

12 – 14 January 2010 (New York, USA)
**International Expert Group Meeting: IPs: development with culture and identity; articles 3 and 32 of the UN Declaration on the Rights of IPs**
Secretariat of the Permanent Forum on Indigenous Issues
United Nations, 2 UN Plaza, Room DC2-1454
New York, NY, 10017, USA
Phone: +1 917 367 5100 Fax: +1 917 367 5102
E-mail: indigenous_un@un.org Web: http://www.un.org/esa/socdev/unpfii/en/workshops.html

18 January – 5 February 2010 (Geneva, Switzerland)
**45th session of the Committee on the Convention on the Eradication of all Forms of Discrimination Against Women (CEDAW)**
Countries scheduled for consideration: Botswana, Egypt, Malawi, Netherlands, Panama, United Arab Emirates, Ukraine, Uzbekistan.
Office of the High Commissioner for Human Rights
United Nations, 1211 Geneva 10, Switzerland
Fax: +41 22 917 9022
E-mail: cedaw@ohchr.org Web: http://www2.ohchr.org/english/bodies/cedaw/cedaws45.htm
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dCIP 
October / December 2009

25 – 29 January 2010 (Geneva, Switzerland)
Fourth session of the Human Rights Council Advisory Committee
Office of the High Commissioner for Human Rights
Contact: Human Rights Council Advisory Committee
Human Rights Council Secretariat
United Nations, 1211 Geneva 10, Switzerland
Phone: +41 22 917 9011 Fax: +41 22 917 9011
E-mail: hrcadvisorycommittee@ohchr.org
Web: http://www2.ohchr.org/english/bodies/hrcouncil/advisorycommittee.htm

FEBRUARY

8 – 19 February 2010 (Geneva, Switzerland)
Seventh session of the Human Rights Council Universal Periodic Review
Countries scheduled for consideration (in this order): Qatar, Nicaragua, Italy, El Salvador, Gambia, Bolivia, Fiji, San Marino, Kazakhstan, Angola, Islamic Republic of Iran, Madagascar, Iraq, Slovenia, Egypt, Bosnia and Herzegovina.
Office of the High Commissioner for Human Rights
Contact: OHCHR Civil Society Unit
United Nations, 1211 Geneva 10, Switzerland
Phone: +41 22 917 9656 Fax: +41 22 917 9011
E-mail: civilsocietyunit@ohchr.org
Web: http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx

9 – 10 February 2010 (Isle of Vilm, Germany) Tentative!
Access and Benefit-sharing Regional Consultations for Central and Eastern European Countries
Secretariat of the Convention on Biological Diversity
Contact: Mr. Ahmed Djoghlaf, Executive Secretary
413 St-Jacques Street, 8th floor, Office 800
Montreal, Quebec, Canada, H2Y 1N9
Phone: +1 514 288 2220 Fax: +1 514 288 6588
E-mail: secretariat@cbd.int Web: http://www.cbd.int/meetings/default.shtml

15 – 16 February 2010 (Auckland, New Zealand) Tentative!
Access and Benefit-sharing Regional Consultations for the Pacific
Secretariat of the Convention on Biological Diversity
Contact: Mr. Ahmed Djoghlaf, Executive Secretary
413 St-Jacques Street, 8th floor, Office 800
Montreal, Quebec, Canada, H2Y 1N9
Phone: +1 514 288 2220 Fax: +1 514 288 6588
E-mail: secretariat@cbd.int Web: http://www.cbd.int/meetings/default.shtml

15 February – 12 March 2009 (Geneva, Switzerland)
76th session of the Committee on the Elimination of Racial Discrimination (CERD)
Countries scheduled for consideration: Argentina, Cambodia, Cameroon, Guatemala, Iceland, Japan, Kazakhstan, Monaco, Netherlands, Panama, Slovakia.
Office of the High Commissioner for Human Rights
Contact: Ms. N. Prouvez, Secretary
United Nations, CH-1211 Geneva 10, Switzerland
Phone: +41 22 917 9022 Fax: +41 22 917 9022
E-mail: nprouvez@ohchr.org
Web: http://www2.ohchr.org/english/bodies/ced/cerd76.htm

24 – 26 February 2010 (Bali, Indonesia)
11th Special session of the UNEP Governing Council / Global Ministerial Environment Forum
United Nations Environment Programme (UNEP)
Contact: Mr. Jamil Ahmad, Secretary of the Governing Bodies
United Nations Avenue, Gigiri
PO Box 30552, 00100 Nairobi, Kenya
Phone: +254 20 762 3431/3411 Fax: + 254 20 7623929/3748
E-mail: executiveoffice@unep.org Web: www.unep.org

Published on December 22, 2009

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MARCH

1 – 12 March 2010 (New York, USA)

54th session of the Commission on the Status of Women: 15-year review of the implementation of the Beijing Declaration and Platform for Action (1995)
Department of Economic and Social Affairs
UN Division for the Advancement of Women (DAW)
2 UN Plaza, DC2-12th floor, New York, NY 10017, USA
E-mail: daw@un.org Fax: +1 212 963 3463

1 – 26 March 2010 (Geneva, Switzerland)

13th session of the Human Rights Council
Office of the High Commissioner on Human Rights
Contact: OHCHR Civil Society Unit
United Nations, 1211 Geneva 10, Switzerland
Phone: +41 22 917 9332 Fax: +41 22 917 9022
E-mail: pgillibert@ohchr.org
Web: http://www2.ohchr.org/english/bodies/hrcouncil

8 – 26 March 2010 (New York, USA)

98th session of the Human Rights Committee
Countries scheduled for consideration: New Zealand, Argentina, Mexico, Uzbekistan, Jordan, Hungary, Serbia, Poland, Belgium.
Office of the High Commissioner for Human Rights
Contact: M. P. Gillibert
United Nations, 1211 Geneva 10, Switzerland
Phone: +41 22 917 9332 Fax: +41 22 917 9022
E-mail: pgillibert@ohchr.org
Web: http://www2.ohchr.org/english/bodies/hrcouncil

18 – 24 March 2009 (Venue to be determined, Colombia)

Ninth meeting of the Open-ended Working Group on Access and Benefit-sharing
Secretariat of the Convention on Biological Diversity
Contact: Mr. Ahmed Djoghlaf, Executive Secretary
413 St-Jacques Street, 8th floor, Office 800
Montreal, Quebec, Canada, H2Y 1N9
Phone: +1 514 288 2220 Fax: +1 514 288 6588
E-mail: secretariat@cbd.int Web: http://www.cbd.int/meetings/default.shtml

22 – 26 March 2010 (Rio de Janeiro, Brazil)

Fifth World Urban Forum: The Right to the City: Bridging the Urban Divide.
UN-Habitat
Contact: World Urban Forum Secretariat, P.O. Box 30030, GPO, Nairobi, 00100, Kenya
Phone: +254 20 762 3334/762 3903 Fax: +254 20 762 4175
E-mail: wuf@unhabitat.org Website: www.unhabitat.org/wuf

March 2010 (Windhoek, Namibia) Tentative!

Access and Benefit-sharing Regional Consultations for Africa
Secretariat of the Convention on Biological Diversity
Contact: Mr. Ahmed Djoghlaf, Executive Secretary
413 St-Jacques Street, 8th floor, Office 800
Montreal, Quebec, Canada, H2Y 1N9
Phone: +1 514 288 2220 Fax: +1 514 288 6588
E-mail: secretariat@cbd.int Web: http://www.cbd.int/meetings/default.shtml
APRIL

19 – 30 April 2010 (New York, USA)

Ninth session of the Permanent Forum on Indigenous Issues
“IPs: development with culture and identity; articles 3 and 32 of the UN Declaration on the Rights of IPs ”
Secretariat of the Permanent Forum on Indigenous Issues
United Nations, 2 UN Plaza, Room DC2-1454
New York, NY, 10017, USA
Phone: +1 917 367 5100 Fax: +1 917 367 5102
E-mail: indigenous_un@un.org

26 April – 14 May 2010 (Geneva, Switzerland)

44th session of the Committee Against Torture
Countries scheduled for consideration: Austria, Cameroon, France, Jordan, Liechtenstein, Switzerland, Syrian Arab Republic.
Office of the High Commissioner for Human Rights
Contact: Ms. M. Morales Fernandez, Secretary
United Nations, 1211 Geneva 10, Switzerland
Phone: +41 22 917 9139 Fax: +41 22 917 9022
Web: http://www2.ohchr.org/english/bodies/cat/cats44.htm
7. OTHERS

Russian-speaking Indigenous Fellowship Programme of the OHCHR

The following fellows, from different regions of the Russian Federation, are participating in the OHCHR 2009 Russian-speaking indigenous fellowship programme, taking place in Moscow and Geneva:

- Ms. Elena Nechushkina, Shore people from the Krasnoyarsk region
- Mr. Vadim Ryazantsev, Keto people from the Krasnoyarsk region
- Ms. Liubov Odzhal, Nanay people from the Khabarovsk region
- Ms. Natalia Chayka, Nivkh people from the Sakhalin region
- Mr. Vladislav Tannagashev, Shore people from the Kemerovsk region
- Mr. Grigory Dyukarev, Nenets people from the Krasnoyarsk region
- Ms. Valeria Savran, Nganasan people from the Taymir region
- Ms. Olesya Seliverstova, Selkup people from the Tomsk region

If you have comments and suggestions about this Update, please do not hesitate to share them with us:

- by e-mail at: docip@docip.org (Subject: Update)
- by fax at: + 41 22 740 34 54
- by mail at: doCip, 14 avenue Trembley, CH-1209 Genève

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