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**Human Rights Council****Twenty-first session**

Agenda item 3

**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development****Report of the Special Rapporteur on the rights of  
indigenous peoples, James Anaya***Summary*

The present report is submitted to the Human Rights Council by the Special Rapporteur on the rights of indigenous peoples pursuant to his mandate under Council resolution 15/14. In the report, the Special Rapporteur provides a summary of his activities since his previous report to the Council (A/HRC/18/35), including his examination of the thematic issue of violence against indigenous women. He then reports on progress in his continuing study of issues relating to extractive industries operating on or near indigenous territories.

The Special Rapporteur addresses some issues that have arisen during his consultations over the past year with indigenous peoples, business enterprises, States and non-governmental organizations. In particular, he notes that a focus on the rights implicated in the context of a specific extractive or development project is an indispensable starting point for discussions involving extractive industries operating in or near indigenous lands. In this connection, consultation and free, prior and informed consent standards are best conceptualized as safeguards against measures that may affect indigenous peoples' rights. The Special Rapporteur also suggests that the "protect, respect and remedy" framework, which is incorporated into the Guiding Principles on Business and Human Rights, should apply to advance the specific rights of indigenous peoples in the same way as it applies to advance human rights more generally.

Lastly, the Special Rapporteur notes that there is a fundamental problem with the current model of natural resource extraction in which the plans are developed with little or no involvement of the affected indigenous community or peoples concerned, and in which the corporation is both in control and the primary beneficiary of the extractive operation. He suggests that a new model more conducive to indigenous peoples' self-determination is needed, which he will examine in more detail in a future report.

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## **I. Introduction**

1. The present report is submitted to the Human Rights Council by the Special Rapporteur on the rights of indigenous peoples pursuant to his mandate under Council resolution 15/14. In the report, the Special Rapporteur provides a summary of his activities since his previous report to the Council (A/HRC/18/35), including his examination of the issue of violence against indigenous women and girls. He then gives a report on progress in his continuing study of issues relating to extractive industries operating on or near indigenous territories.

2. The Special Rapporteur acknowledges with gratitude the assistance provided by the Office of the United Nations High Commissioner for Human Rights and the Support Project for the Special Rapporteur on Indigenous Peoples at the University of Arizona College of Law. Such assistance was indispensable in the preparation of the present report and its addenda, and in carrying out his work. He also expresses thanks to the many indigenous peoples, States, United Nations bodies and agencies and non-governmental organizations that cooperated with him over the past year in the implementation of his mandate.

## **II. Summary of activities**

### **A. Coordination with international mechanisms and bodies**

3. In accordance with his mandate from the Human Rights Council to develop a regular cooperative dialogue with all relevant actors, the Special Rapporteur has continued to coordinate work with the Permanent Forum on Indigenous Issues and the Expert Mechanism on the Rights of Indigenous Peoples, the two other United Nations bodies with specific mandates focusing on indigenous peoples, and with other United Nations institutions.

4. An especially important part of the Special Rapporteur's coordination with the Permanent Forum and Expert Mechanism is the practice of holding parallel meetings with indigenous peoples and organizations during the regular sessions of those bodies. At the recent sessions of the Permanent Forum and Expert Mechanism, the Special Rapporteur held individual meetings with some 40 indigenous groups, who presented information on specific cases of concern. Face-to-face meetings afford an opportunity to discuss issues directly with affected groups, bearing in mind the many cases involving threats to the rights of indigenous peoples around the world and the limited time and resources available to the Special Rapporteur to travel to all places of interest.

5. The Special Rapporteur also continues to participate in the annual sessions of the Permanent Forum and Expert Mechanism. During the eleventh session of the Permanent Forum, in May 2012, the Special Rapporteur spoke on the special theme for the year: "The Doctrine of Discovery: its enduring impact on indigenous peoples and the right to redress for past conquests (articles 28 and 37 of the United Nations Declaration on the Rights of Indigenous Peoples)". In his statement, he noted that it was clear that the colonial-era doctrine of discovery, when coupled with related doctrines of conquest and European racial superiority, was a driving force for atrocities committed against indigenous peoples on a global scale, with the consequences continuing to be felt. He said that the international community, especially through the United Nations system, had expressed strong rejection of the legal doctrines and social attitudes that perpetuated discrimination and disregard for indigenous peoples and their rights, and many developments over the past several decades,

especially the adoption of the United Nations Declaration on the Rights of Indigenous Peoples, represented that rejection.

6. In addition to making statements at the sessions of the Permanent Forum and Expert Mechanism, the Special Rapporteur contributed to those bodies' analysis of thematic issues. In January 2012, he provided comments during an international expert group meeting on combating violence against indigenous women and girls, which was organized by the Permanent Forum and held in New York. He opened the three-day meeting with a presentation in which he emphasized the need for a holistic approach to protecting and respecting the human rights of indigenous women and girls in effectively combating violence against them. The views expressed in that statement are discussed in further detail in part III, below. In addition, he discussed with members of the Expert Mechanism work on the issue of extractive industries, a thematic issue to which he is devoting attention and that the Expert Mechanism also examined over the past year. Further details can be found in part IV, below.

## **B. Areas of work**

7. The Special Rapporteur would like to bring to the attention of the Human Rights Council other activities that he carried out over the past year in fulfilment of his mandate. These activities fall within four areas of work: promoting good practices; country reports; responding to cases of alleged human rights violations; and thematic studies.

### **1. Promotion of good practices**

8. The Special Rapporteur continued to join efforts to strengthen the protection of the rights of indigenous peoples at both the international and national levels. A significant aspect of his thematic work on the issue of extractive industries is aimed at promoting good practices by States and business enterprises, and he held numerous meetings in this context, as described in part IV, below.

9. In January 2012, the Special Rapporteur, together with members of the Expert Mechanism and the Permanent Forum, participated in a two-day brainstorming session on the high-level plenary meeting of the General Assembly to be known as the World Conference on Indigenous Peoples and held in 2014. During the session, which took place in Copenhagen, they discussed substantive issues and issues relating to the participation of indigenous peoples in the World Conference. In his opening remarks, the Special Rapporteur noted that the World Conference provided an opportunity, first, for contributing to the development of measures for the direct participation of indigenous peoples in United Nations meetings; second, for advancing greater and more concerted efforts within the United Nations system to promote the rights of indigenous peoples; third, for promoting action at the national and local levels to secure the realization of indigenous peoples' rights; and fourth, for celebrating indigenous peoples and their contributions worldwide.

10. In addition, the Special Rapporteur visited Peru and Brazil in March and April 2012, respectively. He participated in discussions with indigenous leaders and Government officials around the development of mechanisms for consultations with indigenous peoples and to attempt to clarify the practical dimensions of the principle of free, prior and informed consent. In Peru, his involvement took place in the context of discussions around a new regulation to supplement an existing law on consultation with indigenous peoples. In Brazil, he participated in a conference convened by the Government to launch discussions with indigenous leaders towards the development of a new consultation law or regulation. In his statements, he stressed that there was a need for greater measures to ensure that indigenous peoples were able to set their own priorities for development. He referred in particular to procedures to consult indigenous peoples about legislative and administrative

decisions affecting them, especially regarding proposed activities by extractive industries. Such procedures, he stressed, should involve genuine dialogue in which indigenous peoples' own development priorities were at the forefront.

11. In addition, in October 2011, the Special Rapporteur and members of the Permanent Forum and Expert Mechanism participated in a meeting at the headquarters of the United Nations Educational, Scientific and Cultural Organization (UNESCO), in Paris, at which the organization launched its work to develop a policy on indigenous peoples. In a statement, the Special Rapporteur emphasized that UNESCO programming, just as that of other United Nations agencies that touched upon indigenous peoples' interests, must at a minimum be consistent with the international standards that had developed in that regard, as well as with relevant national laws and policies. Ideally, however, UNESCO programming would do more than avoid harm to indigenous peoples but would actively support their rights, as it already had in numerous instances and through numerous programmes. He expressed the belief that a UNESCO policy could assist greatly in supporting the rights of indigenous peoples in three main ways: first, by assisting UNESCO to reflect on the effects of its existing programming on indigenous peoples, as part of an evaluative process; second, by assisting UNESCO in its strategic planning for programmes affecting indigenous peoples, incorporating the objective of protecting the rights of indigenous peoples into programmatic work; and third, by providing UNESCO with practical orientation for consultation with indigenous peoples, in relation to UNESCO programmes and activities.

12. During his time in Paris, the Special Rapporteur also met representatives of UNESCO programmes relevant to indigenous peoples, including representatives of the World Heritage Centre and of the Intangible Cultural Heritage Section of the Division for Cultural Expressions and Heritage. He brought to the attention of UNESCO information that he had received in relation to the impacts on indigenous peoples of specific World Heritage sites.

13. Since then, the Special Rapporteur has continued to look into the issue in the context of his visits to countries and his examination of specific cases. For example, during his visit to Argentina in November and December 2012, he was informed of problems associated with the Quebrada de Humahuaca World Heritage Site. In his statement following the visit, he voiced concern about the information received that indigenous peoples living around the site were not involved in the process of its declaration as a World Heritage site, were not participating in the management of the site and felt limited in their abilities to maintain their traditional and subsistence activities within the site. It is worth noting, however, that the Special Rapporteur has also heard about positive examples in this regard, including the recent declaration of the Laponian area in northern Sweden as a World Heritage site, which the Sami people actively supported. The Special Rapporteur also notes as a good practice the designation of Taos Pueblo in New Mexico, United States of America, as a World Heritage site, which was proposed by the Taos people themselves. The Special Rapporteur will continue to look at the issue of World Heritage site designations affecting indigenous peoples with the hope of encouraging further good practices in this regard.

14. In addition, the Special Rapporteur has been collaborating with the United Nations Development Programme to produce a resource guide on indigenous peoples' rights for its staff and other development practitioners working on indigenous issues.

## **2. Cases of allegations of human rights violations**

15. The Special Rapporteur receives many allegations of violations of the rights of indigenous peoples in specific situations and often responds by communicating his concerns about the allegations to the relevant Governments. In some cases, he has conducted on-site visits to examine the situations and issued reports with observations and

recommendations. In March 2012, he travelled to Costa Rica and met indigenous leaders and Government officials to follow up on his 2011 visit to examine the situation of indigenous communities that could be affected by a hydroelectric project and on his report on that situation (A/HRC/18/35/Add.8).

16. In connection with the examination of specific cases, the communications reports of special procedures contains the full texts of letters sent to and replies received from Governments concerning cases of alleged violations of the human rights of indigenous peoples (A/HRC/19/44 and A/HRC/20/30). Over the past year, the Special Rapporteur sent communications on cases in Australia, Bangladesh, Bolivia (Plurinational State of), Brazil, Canada, Chile, China, Costa Rica, Ethiopia, Finland, France, Guatemala, Indonesia, Israel, Malaysia, Mexico, Panama, Peru, Philippines, Thailand and the United States. Some of those communications were sent jointly with other special procedures mandate holders. The Special Rapporteur is grateful for the numerous responses to these letters that he has received from Governments and hopes that outstanding replies are forthcoming.

17. The Special Rapporteur has sought to follow up on the numerous communications, in many cases issuing detailed observations with recommendations on those situations. Those observations are included as follow-up letters in the communications reports of special procedures. He is pleased to report to the Human Rights Council that, in almost all the situations about which he has written observations, the Governments involved have responded substantively, allowing for an important dialogue on the subjects. The issues touched upon by the Special Rapporteur in his observations include extractive and development projects involving natural resources taking place in indigenous peoples' territories, including mining and hydroelectric projects; threats to indigenous peoples' sacred places or areas of cultural significance owing to competing interests on those same lands; removals of indigenous peoples from their traditional lands and territories; and the development of national laws and policies that might result in negative impacts on the lives of indigenous peoples.

18. The Special Rapporteur has also on occasion issued media or other public statements regarding situations of immediate concern in some countries. Since his previous report to the Council, he has issued public statements concerning protests by indigenous peoples against a proposed road construction project through the Isiboro-Sécure National Park and Indigenous Territory in the Plurinational State of Bolivia; proposals made by members of the parliament of Norway to repeal key laws and policies on the rights of Sami people; the socioeconomic conditions faced by members of the Attawapiskat First Nation in Canada; and, in a joint statement with the Special Rapporteur on the right to food, the impacts on the rights of indigenous peoples of large-scale agro-industrial development projects in South-East Asia.

### **3. Country assessments**

19. Since beginning his mandate, the Special Rapporteur has issued reports on the human rights situation of indigenous peoples in specific countries, following visits to those countries. Those reports have included conclusions and recommendations aimed at strengthening good practices, identifying areas of concern and improving the human rights conditions of indigenous peoples in the countries visited. The country assessments set out as addenda to the present report are on the situations of indigenous peoples in Argentina and in the United States. In August 2012, the Special Rapporteur will visit El Salvador and subsequently will issue a report on the situation of indigenous peoples in that country. In addition, the Special Rapporteur is in the initial stages of planning future visits to Namibia and Panama, and he is grateful to the Governments of those countries for their positive responses to his requests to undertake those visits. He hopes that his outstanding requests for visits to other countries will also be considered favourably.

#### **4. Thematic issues**

20. The Special Rapporteur has continued to examine recurring issues of interest and concern to indigenous peoples worldwide, most notably the issue of extractive industries affecting indigenous peoples. He reports on his progress in this regard in part IV, below. Another issue that has been addressed by the Special Rapporteur over the past 12 months is that of violence against indigenous women and girls, which he discusses in part III, below.

### **III. Violence against indigenous women and girls**

21. The issue of violence against indigenous women and girls has arisen in the context of the Special Rapporteur's country visits, in particular to the United States, and in his examination of specific cases. It was also the subject of the expert seminar convened by Permanent Forum on Indigenous Issues referred to above, in which the Special Rapporteur participated (see para. 6). The expert seminar took as its point of departure article 22 of the United Nations Declaration on the Rights of Indigenous Peoples, under which States are to "take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination".

22. Part of the mandate given to the Special Rapporteur by the Human Rights Council under its resolution 15/14 is to pay special attention to the human rights and fundamental freedoms of indigenous children and women, and to take into account a gender perspective. Accordingly, the Special Rapporteur wishes to draw attention to the views that he expressed at the expert seminar, which are provided in the following paragraphs. These comments are not intended to be comprehensive.

#### **A. International standards relevant to combating violence against indigenous women and girls**

23. Throughout his work, the Special Rapporteur has heard compelling stories of suffering of indigenous women and girls caused by violence, and inspiring stories of perseverance and of steps to overcome that suffering.

24. Within the international human rights system there exists today a broad constellation of human rights standards relevant to combating violence against women. As women, indigenous women are guaranteed the rights enshrined in numerous international human rights instruments that specifically address women as such, most notably the Convention on the Elimination of All Forms of Discrimination against Women; the Platform for Action adopted at the Fourth World Conference on Women; and, at the regional level, the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women. Furthermore, as indigenous people, indigenous women are guaranteed enjoyment of the rights enshrined, most notably, in the United Nations Declaration on the Rights of Indigenous Peoples. Although not a treaty, the Declaration represents an authoritative common understanding, at the global level, of the minimum content of the rights of indigenous peoples, upon a foundation of various sources of international human rights law.

25. The existence and general content of these two rights regimes – women's rights and indigenous peoples' rights – is relatively well understood within many platforms of discussion, especially within the international human rights system. A question that necessarily comes to the forefront in this context, however, is how, exactly, the human rights guaranteed to indigenous women because of their status as women, and those guaranteed because of their status as indigenous, relate to or interact with one another.

Linked to this is the question of the ways in which international human rights standards do or should protect indigenous women differently from non-indigenous women.

## **B. Holistic approach to combating violence against indigenous women and girls**

26. A point of departure in answering these questions can be found in the approach articulated by the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, in her report to the General Assembly in 2011 (A/66/215). Albeit referring to violence against women in general terms, she emphasized that combating violence against women required a holistic approach, i.e. one that involved treating rights as universal, interdependent and indivisible; situating violence on a continuum that spanned interpersonal and structural violence; accounting for both individual and structural discrimination, including structural and institutional inequalities; and analysing social and/or economic hierarchies among women, and between women and men.

27. In a similar vein, combating violence against women and girls in the indigenous context must be achieved holistically; it cannot be addressed in isolation from the range of rights recognized for indigenous peoples in general. In this regard, violence against indigenous women and girls, which is distressingly all too common across the globe, cannot be seen as separate from the history of discrimination and marginalization that has been suffered invariably by indigenous peoples. This history manifests itself in continued troubling structural factors, such as conditions of poverty, lack of access to land and resources or other means of subsistence, or poor access to education and health services, which are all factors that bear on indigenous peoples with particular consequences for indigenous women. The history of discrimination against indigenous peoples has also resulted in the deterioration of indigenous social structures and cultural traditions, and in the undermining or breakdown of indigenous governance and judicial systems, impairing in many cases the ability of indigenous peoples to respond effectively to problems of violence against women and girls within their communities.

28. Combating violence against indigenous women and girls therefore requires remedying the structural legacies of colonialism and discrimination that indigenous peoples have faced. This includes advancing the range of rights guaranteed for indigenous peoples, most prominently those enshrined in the United Nations Declaration on the Rights of Indigenous Peoples. The Special Rapporteur observes that the standards affirmed in the Declaration share an essentially remedial character, seeking to redress the systemic obstacles and discrimination that indigenous peoples have faced in their enjoyment of basic human rights. From this perspective, it is important to note that the Declaration does not seek to bestow indigenous peoples with a set of special or new human rights, but rather provides a contextualized elaboration of general human rights principles and rights as they relate to the specific historical, cultural and social circumstances of indigenous peoples, including the situation of indigenous women and girls.

## **C. Essential element of the holistic approach: advancing indigenous peoples' self-determination**

29. A holistic approach to combating violence against women and girls therefore should include, in accordance with the United Nations Declaration on the Rights of Indigenous Peoples, advancing indigenous peoples' autonomy and self-governance (articles 5 and 18); strengthening indigenous peoples' traditional justice systems (articles 34 and 35); increasing indigenous peoples' access to justice (article 40); and improving indigenous



peoples' economic and social conditions (article 21). Stated comprehensively, tackling violence against indigenous women must in some way go along with advancing indigenous peoples' self-determination. As Special Rapporteur and others have stressed, the right to self-determination, which is affirmed for indigenous peoples in article 3 of the United Nations Declaration on the Rights of Indigenous Peoples, is a foundational right, without which the full range of indigenous peoples' human rights, both collective and individual, cannot be fully enjoyed. Enhancing indigenous self-determination is conducive to successful practical outcomes; studies have shown that indigenous peoples who effectively manage their own affairs tend to fare better across a range of indicators than those who do not.

30. In this connection, the Special Rapporteur would like to mention three specific ways in which indigenous self-determination may be enhanced in the context of combating violence against women and girls. While the following points are, of course, not exhaustive, they provide some reflections on the measures needed by States and indigenous peoples themselves to address concerns in this regard.

31. First, States should avoid responses to social problems affecting indigenous communities, including violence against women, that tend to limit, undermine or replace indigenous peoples' own authority and self-governance. In this connection, States should avoid making blanket limitations of the jurisdiction of indigenous traditional judicial systems over cases of violence against women, based on an assumption that the State justice system is better equipped to handle these cases or that the application of indigenous systems in cases involving violence against women results in inherently unfair judgements. In his work, the Special Rapporteur has observed situations in which States, faced with dire social problems within indigenous communities, including violence against women and children, develop initiatives designed to limit indigenous peoples' control over decision-making or administration of justice within their communities, placing such decision-making or judicial control in the hands of the State or third parties. State responses that limit indigenous control, however, run the risk of undermining indigenous self-determination and have been shown to be less effective long-term solutions, generally speaking, in comparison to initiatives that indigenous peoples themselves control.

32. Second, States should increase indigenous peoples' own participation in the design, delivery and oversight of programmes related to preventing and punishing violence against women. The development of programmes that are effective and culturally appropriate requires innovation and flexibility, and is not free from challenges. Initially, it requires consultation with the affected indigenous groups about community needs and programme design, and openness to varied models. In particular, it is essential to provide continued support to programmes, especially those designed by indigenous peoples themselves that have already demonstrated achievements. The Special Rapporteur has observed numerous successful indigenous-controlled programmes already in place to tackle issues of domestic violence, alcoholism, community development and related issues of concern, in ways that are culturally appropriate and adapted to local needs. These kinds of indigenous-run programmes must be supported and promoted.

33. Third, there is a need for indigenous peoples themselves to continue to strengthen their own organizational and local governance capacity, and their own justice institutions, to meet the challenges faced by their communities. Indigenous peoples have a responsibility to work to rebuild strong and healthy relationships within their families and communities, and to take concerted measures to address social ills where these exist. Within their households, their communities and the broader people of which they are a part, indigenous peoples must challenge and combat any existing patriarchal social structures, continued attitudes of superiority of men over women and supposed justifications based on culture for battering or discriminating against women. In this connection, indigenous peoples must

make concerted efforts to strengthen their own traditional justice systems, where these fall short of providing effective remedies to punish and prevent violence against indigenous women and girls in accordance with relevant human rights standards.

#### **IV. Report on progress in the study of the rights of indigenous peoples in relation to extractive industries**

34. In his previous report to the Human Rights Council, the Special Rapporteur underlined that natural resource extraction and development on or near indigenous territories had become one of the foremost concerns of indigenous peoples worldwide, and possibly also the most pervasive source of the challenges to the full exercise of their rights (A/HRC/18/35, para. 57). He expressed his intention to include a focus on the issue as part of his workplan for the remainder of his mandate, with the objective of helping to clarify and make operational the relevant international standards.

##### **A. Activities related to the study**

35. Over the past year, the Special Rapporteur engaged in consultations with representatives of indigenous peoples, Governments and transnational corporations to obtain their perspectives on the various dimensions of the issue of extractive and other major development operations affecting indigenous peoples. Concerns about extractive and other resource development industries were repeatedly raised by indigenous peoples in the context of the Special Rapporteur's official visits to Argentina, Costa Rica and the United States. The Special Rapporteur had the occasion to examine cases of mining, the extraction of hydrocarbon resources and hydroelectric power development, and to discuss those cases with both Government agents and the representatives of affected indigenous communities.

36. In addition, the Special Rapporteur exchanged information on cases of extractive industries with representatives of indigenous peoples, Governments and transnational corporations in the context of the communications procedure (see paras. 15-17). Also relevant to his studies of extractive industries were his discussions with representatives of indigenous peoples and Government actors in Brazil and Peru in the context of developing laws or regulations for consultations procedures (see para. 10).

37. The Special Rapporteur further engaged with relevant actors regarding extractive industries through his participation in conferences and meetings in Norway, Spain, Sweden and the United Kingdom of Great Britain and Northern Ireland. In October 2011, he participated in a conference with the theme "A dangerous business: the human cost of advocating against environmental degradation and land rights violations", organized by Peace Brigades International and other non-governmental organizations. The conference, which took place in London, brought together representatives of civil society, the Government of the United Kingdom and transnational corporations based in the United Kingdom to discuss the impacts of extractive industries on the human rights of indigenous peoples and other local communities and the challenges faced by human rights defenders in that context. The Special Rapporteur gave a keynote speech in which he emphasized the need to build the negotiating capacity of indigenous peoples in order for them to be able to overcome power disparities and effectively engage in consultation procedures involving proposed extractive activities on or near their territories. While in London, the Special Rapporteur held informal meetings with representatives of the Government of the United Kingdom, Members of Parliament and representatives of civil society organizations to gather information and views on official policies and legislation concerning the impact of transnational companies based in the United Kingdom on indigenous peoples around the world.

38. In February 2012, the Special Rapporteur also participated in and gave a keynote speech at a conference on indigenous peoples, corporations and the environment, which was held in Kirkenes, Norway, and organized by the Working Group of Indigenous Peoples of the Barents Euro-Arctic Council and the Barents Regional Council, a consultative body comprising representatives of the Nenets, Sami and Vepsian peoples within the Barents region in the northern parts of Finland, Norway and the Russian Federation. The conference featured presentations by representatives of indigenous peoples, Governments and industry about the implications for indigenous peoples of strategies and proposals for new natural resources extractive activities in the Barents region. In his keynote speech, the Special Rapporteur emphasized that there was a need to implement a new development model in which indigenous peoples would have the opportunity to be genuine partners, in particular in the context of natural resource extractive activities taking place in or near their traditional territories.

39. In April 2012, the Special Rapporteur visited Madrid to meet representatives of the Government of Spain, members of the Congress of Deputies, business enterprises and non-governmental organizations in relation to the impact of transnational companies based in Spain on the rights of indigenous peoples around the world, in particular in Latin America where such companies have a significant presence. The visit, which was facilitated by the Government of Spain and Almaciga, a non-governmental organization, allowed the Special Rapporteur to gather information and views on programmes and policies of the Government and business enterprises in relation to indigenous peoples' human rights.

40. The Special Rapporteur was in Jokkmokk, Sweden, in June 2012, where he participated in a conference on mining and other natural resource extraction in Sápmi, the Sami territory that traverses the northern parts of Finland, Norway, the Russian Federation and Sweden. The conference, which was organized by the National Association of Swedish Sami, afforded him an opportunity to listen to the concerns of Sami representatives, in particular with regard to the impacts of extractive industries on Sami reindeer herding, and to hear the perspectives of Government and industry representatives. In his presentation, the Special Rapporteur emphasized that there was a need for effective domestic legislation, along with corporate social responsibility policies, to protect indigenous peoples' rights in the context of proposed or existing extractive activities.

41. At the time of writing the present report, the Special Rapporteur was finalizing plans to engage in consultations in Australia with representatives of indigenous peoples, federal and state Governments and companies based in Australia about the activities of those companies, both in Australia and abroad. These consultations, which are scheduled to be held in August 2012, are being planned by the National Congress of Australia's First Peoples, in cooperation with representatives of companies.

## **B. Cooperation with the Expert Mechanism**

42. After the Special Rapporteur finalized his previous report to the Human Rights Council, in which he stated his intention to devote special attention to the issue of extractive industries during the remainder of his mandate, with a view towards possibly developing guidelines on the subject, at its fourth session, in July 2011, the Expert Mechanism on the Rights of Indigenous Peoples announced that it would also focus on the issue as part of its follow-up to its thematic study on the right of indigenous peoples to participate in decisions affecting them. The Special Rapporteur met the Expert Mechanism at its fourth session to discuss its anticipated thematic work on extractive industries, and later discussed that work with members of the Expert Mechanism as it proceeded.

43. The Expert Mechanism has recently proposed to the Special Rapporteur to jointly develop guidelines to implement the rights of indigenous peoples in the context of

extractive industries, and the Special Rapporteur will be discussing this proposal with the Expert Mechanism at its fifth session, in July 2012.

44. The Special Rapporteur intends to continue to examine the issue of extractive industries during the remainder of his mandate, in coordination with the Expert Mechanism. He anticipates including, in a subsequent report to the Council, elements of good practices on the basis of his examination of experiences around the world. Depending upon the further work of the Expert Mechanism on the issue, he may also develop or contribute to the development of relevant guidelines, as suggested in his previous report to the Council.

### **C. Observations relevant to contributing to shared understanding about relevant international standards and their application**

45. In anticipation of his further work on the issue of extractive industries in coordination with the Expert Mechanism, the Special Rapporteur considers it useful to provide observations that draw on his engagement with relevant actors in this regard. As indicated in his previous report to the Council, a significant barrier to the effective protection of indigenous peoples' rights in the context of natural resource extraction and development affecting them is the existence of conflicting points of view about the practical implications of international standards affirming the rights of these peoples, and about the kind of measures required to fulfil the responsibilities of States, corporate actors and indigenous peoples themselves (A/HRC/18/35, para. 85). Such conflicting points of view have continued to be apparent as the Special Rapporteur has continued his examination of indigenous peoples' concerns relating to extractive industries.

46. In the remainder of the present report, the Special Rapporteur provides observations aimed at contributing to a shared understanding about the relevant standards and their practical implications. The effort is to help to forge a conceptual approach for discerning international standards relating to resource extraction and development projects that affect indigenous peoples, an approach aimed at practical outcomes that fully respect the rights of indigenous peoples. The following observations build upon the Special Rapporteur's previous examinations of the duty of States to consult indigenous peoples on decisions affecting them (see A/HRC/12/34) and the issue of corporate responsibility to respect human rights (see A/HRC/15/37). These observations also take into account and seek to complement the recent report of the Expert Mechanism (A/HRC/EMRIP/2011/2).

#### **1. Need for an approach that comprehensively takes account of the rights that may be affected by extractive operations**

47. A common point of departure for examining the issue of extractive industries affecting indigenous peoples is discussion about the meaning of the principles of consultation and free, prior and informed consent that are articulated in international instruments and the jurisprudence of international bodies. This discussion has become highly contentious, with conflicting points of view about the scope of the duty of States to consult indigenous peoples and about the need to obtain their consent to extractive projects that may affect them.

48. The Special Rapporteur is of the view that the pre-eminent focus on consultation and consent is blurring understanding about the relevant human rights framework by which to discern the conditions under which extractive industries may legitimately operate within or near indigenous territories. It is simply misguided to tend to reduce examination of the rights of indigenous peoples in the context of resource development projects to examination of the contours of a right to be consulted or a right to free, prior and informed consent. To be sure, understanding the contours of the principles of consultation and consent is of

critical importance. Arriving at such understanding cannot be adequately achieved by framing the discussion within these principles alone, however.

49. A better approach appreciates, first, that neither consultation nor consent is an end in itself, nor are consultation and consent stand-alone rights. As instructed by the Inter-American Court of Human Rights in *Saramaka v. Suriname*,<sup>1</sup> principles of consultation and consent together constitute a special standard that safeguards and functions as a means for the exercise of indigenous peoples' substantive rights. It is a standard that supplements and helps effectuate substantive rights, including the right to property, which was the focus of the Court's judgement in that case, and other rights that may be implicated in natural resource development and extraction.

50. The primary substantive rights of indigenous peoples that may be implicated in natural resource development and extraction, as has been extensively documented include, in particular, rights to property, culture, religion, and non-discrimination in relation to lands, territories and natural resources, including sacred places and objects; rights to health and physical well-being in relation to a clean and healthy environment; and rights to set and pursue their own priorities for development, including development of natural resources, as part of their fundamental right to self-determination. These rights are grounded in multiple international instruments, including binding multilateral human rights treaties that have been widely ratified, and are articulated in the United Nations Declaration on the Rights of Indigenous Peoples.<sup>2</sup>

51. By their very nature, the rights that are potentially affected by natural resource extraction entail autonomy of decision-making in their exercise. This is especially obvious with regard to the rights to set development priorities and to property, but it is also true of the other rights. Accordingly, the consultation and consent standard that applies specifically to indigenous peoples is a means of effectuating these rights, and is further justified by the generally marginalized character of indigenous peoples in the political sphere, but it is a standard that certainly does not represent the full scope of these rights (A/HRC/18/35, para. 82).

52. Furthermore, it is important to comprehend that the consultation and consent standard is not the only safeguard against measures that may affect indigenous peoples' rights over their lands, territories and natural resources, among others. Such additional safeguards include but are not limited to the undertaking of prior impact assessments that provide adequate attention to the full range of indigenous peoples' rights, the establishment of mitigation measures to avoid or minimize impacts on the exercise of those rights, benefit-sharing and compensation for impacts in accordance with relevant international

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<sup>1</sup> Judgement of 28 November 2007, paras. 129-137.

<sup>2</sup> See E/CN.4/2003/90, paras. 6-30 (discussing the impact of large-scale development projects on indigenous peoples' rights, including rights over lands and resources); E/CN.4/2002/97, paras. 39-57 (a review of international and domestic law and practice upholding indigenous rights over lands, territories, and natural resources); A/HRC/9/9, paras. 20-30 (a review of the practice of human rights bodies under international instruments of general applicability); Report on the situation of human rights in Ecuador (OEA/Ser.L/V/II.96, Doc. 10 rev. 1 (1997)), chap. VIII (discussing conditions of environmental pollution resulting from oil development as inconsistent with the rights to life and physical well-being); Indigenous and tribal peoples' rights over their ancestral lands and resources, norms and jurisprudence of the Inter-American Human Rights System (OEA/Ser.L/V/II. Doc. 56/09 (2009)), paras. 5-22 (reviewing the foundations of indigenous rights over lands, territories and resources in international instruments, customary international law and the practice of treaty bodies).

standards.<sup>3</sup> All these safeguards, including the State's duty to consult, are specific expressions of a precautionary approach that should guide decision-making about any measure that may affect rights over lands and resources and other rights that are instrumental to the survival of indigenous peoples.

53. Consultation and consent and related safeguards are instrumental to securing indigenous peoples' rights in the face of extractive industries that operate or seek to operate on or near their territories, but understanding the reach of those underlying substantive rights and the potential impacts on those rights must be a starting point for solving the many questions that arise in this context.

## **2. Duty of States to protect and the responsibility of corporations to respect the human rights of indigenous peoples in relation to extractive activities**

54. The Special Rapporteur has observed a high level of acceptance by States and transnational business enterprises of the "protect, respect and remedy" framework that is incorporated into the Guiding Principles on Business and Human Rights (A/HRC/17/31, annex) that were endorsed by the Human Rights Council in 2011 in its resolution 17/4. The Guiding Principles affirm the well-established maxim of international law that States have a duty to protect human rights, including against abuses by business enterprises and other third parties, through appropriate policies, regulation and adjudication. The second pillar of the Guiding Principles is the responsibility of corporations to respect human rights by acting with due diligence to avoid infringing or contributing to the infringement of human rights. The third is the need for effective remedies to redress violations when they occur.

55. While the Special Rapporteur has observed a high level of acceptance of the Guiding Principles and their "protect, respect and remedy" framework, he has also noted ambiguity among Government and corporate actors about the extent to or manner in which the Guiding Principles relate to the standards of human rights that specifically concern indigenous peoples. This ambiguity should be dispelled in favour of a clear understanding that the Guiding Principles apply to advance the specific rights of indigenous peoples in the same way as they advance human rights more generally, when those rights are affected or potentially affected by business activities, including extractive industries. There is no sound reason to exclude the human rights standards that apply specifically to indigenous peoples from the application of the Guiding Principles, and to do so would be contrary to the injunction, found among the Guiding Principles' introductory paragraphs, that they should be applied "in a non-discriminatory manner", with particular attention to the rights and needs of groups that are vulnerable or marginalized.

56. The Special Rapporteur notes that the Expert Mechanism, in its recent follow-up report on indigenous peoples and the right to participate in decision-making (A/HRC/EMRIP/2011/2), discussed the relationship between the Guiding Principles and the rights of indigenous peoples. The Special Rapporteur joins the Expert Mechanism in affirming that all the Guiding Principles are to be applied specifically to indigenous peoples with due regard to the relevant international standards, and he urges all concerned to take account of the Expert Mechanism's exposition of the particular implications of the Guiding Principles in the context of extractive industries operating or seeking to operate within or near indigenous territories (A/HRC/EMRIP/2011/2, paras. 26-28).

57. It bears reiterating here that the State's protective role in the context of extractive industries entails ensuring a regulatory framework that fully recognizes indigenous peoples'

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<sup>3</sup> See *Saramaka*, paras. 138-140 (identifying participation, impact assessments and benefit-sharing as safeguards). See also, for discussion of these safeguards in the context of corporate responsibility, A/HRC/15/37, paras. 71-80.

rights over lands and natural resources and other rights that may be affected by extractive operations; that mandates respect for those rights both in all relevant State administrative decision-making and in corporate behaviour; and that provides effective sanctions and remedies when those rights are infringed either by Governments or corporate actors. Such a regulatory framework requires legislation or regulations that incorporate international standards of indigenous rights and that make them operational through the various components of State administration that govern land tenure, mining, oil, gas and other natural resource extraction or development.

58. The Special Rapporteur regrets that he has found, across the globe, deficient regulatory frameworks such that in many respects indigenous peoples' rights remain inadequately protected, and in all too many cases entirely unprotected, in the face of extractive industries. Major legislative and administrative reforms are needed in virtually all countries in which indigenous peoples live to adequately define and protect their rights over lands and resources and other rights that may be affected by extractive industries. Yet at the same time and in the same countries in which this need persists, extractive industries are permitted to encroach upon indigenous habitats, a situation that the Special Rapporteur finds alarming and in need of urgent attention.

59. For their part, business enterprises have a responsibility to respect human rights, including the rights of indigenous peoples, and this responsibility is independent of the State duty to protect. In referring to the human rights that corporations are responsible for respecting, principle 12 of the Guiding Principles states that these include, "at a minimum", those rights specified in the International Bill of Human Rights and the International Labour Organization's Fundamental Principles and Rights at Work, while the commentary to principle 12 clarifies that, when applicable, other human rights instruments, such as those applying to particular groups, including indigenous peoples, should inform the corporate responsibility to respect human rights. It is therefore evident, especially in the light of the mandate to apply the Guiding Principles in a non-discriminatory manner (see para. 55), that the rights that corporations should respect include the rights of indigenous peoples as set forth in the United Nations Declaration on the Rights of Indigenous Peoples and in other sources.

60. The commentary to principle 11 of the Guiding Principles also clarifies that the corporate responsibility to respect human rights "exists independently of States' abilities and/or willingness to fulfil their own human rights obligations, and does not diminish those obligations. And it exists over and above compliance with national laws and regulations protecting human rights."

61. This independence of responsibility notwithstanding, the Special Rapporteur has learned of numerous instances in which business enterprises engaged in extractive industries do not go further than compliance with domestic laws or regulations, regardless of the ineffectiveness of those laws and regulations for the protection of indigenous rights. Corporate attitudes that regard compliance with domestic laws or regulation as sufficient should give way to understanding that fulfilment of the responsibility to respect human rights often entails due diligence beyond compliance with domestic law. Due diligence requires, instead, ensuring that corporate behaviour does not infringe or contribute to the infringement of the rights of indigenous peoples that are internationally recognized, regardless of the reach of domestic laws. A discussion of particular aspects of corporate due diligence with regard to indigenous rights can be found in the Special Rapporteur's report to the Human Rights Council at its fifteenth session (A/HRC/15/37, para. 46).

### 3. Consultation and consent in relation to the State duty to protect and the corporate responsibility to respect

62. As stated in paragraphs 47 to 53, principles of consultation and consent function to safeguard indigenous peoples' rights when natural resource extraction may affect those rights, along with other safeguard mechanisms, including impact assessments, mitigation measures and compensation or benefit-sharing. The consultation and consent safeguard, just as the other safeguards, is part of the State duty to protect indigenous peoples' rights in the context of extractive industries, which finds expression in article 32 (2) of the United Nations Declaration on the Rights of Indigenous Peoples in the following terms:

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.

63. The Special Rapporteur has devoted considerable attention to the duty of States to consult indigenous peoples in previous reports to the Human Rights Council, reports in which he identified the various international treaties and other sources (including the Declaration) grounding the duty to consult and in which he sought to clarify the justification, scope and minimum requirements of consultation procedures (see, for example, A/HRC/12/34; A/HRC/12/34/Add.6, paras. 15-41; and A/HRC/15/37, paras. 60-70).

64. Given its character as a standard to safeguard indigenous peoples' rights, the specific requirements of the duty to consult and the objective of obtaining consent, in any given situation in which extractive operations are proposed, are a function of the rights implicated and the potential impacts upon them. Accordingly, a focus on the rights implicated, as urged in paragraphs 49 and 50, is an indispensable starting point for devising appropriate consultation and consent procedures. The particular indigenous peoples or communities that are to be consulted are those that are the bearers of the potentially affected rights, the consultation procedures are to be devised to identify and address the potential impacts on the rights, and consent is to be sought for those impacts under terms that are protective and respectful of the rights.

65. As established by the Inter-American Court of Human Rights, consistent with the United Nations Declaration on the Rights of Indigenous peoples and other sources, where the rights implicated are essential to the survival of indigenous groups as distinct peoples and the foreseen impacts on the exercise of the rights are significant, indigenous consent to the impacts is required, beyond simply being an objective of consultations.<sup>4</sup> It is generally understood that indigenous peoples' rights over lands and resources in accordance with customary tenure are necessary to their survival. Accordingly, indigenous consent is presumptively a requirement for those aspects of any extractive operation that takes place within the officially recognized or customary land use areas of indigenous peoples, or that has a direct bearing on areas of cultural significance, in particular sacred places, or on natural resources that are traditionally used by indigenous peoples in ways that are important to their survival. Even if consent is not strictly required, other safeguards apply and any impact that imposes a restriction on indigenous rights must, at a minimum, comply with standards of necessity and proportionality with regard to a valid public purpose, as

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<sup>4</sup> See *Saramaka*, paras. 134 and 137.



generally required by international human rights law when restrictions on human rights are permissible.<sup>5</sup>

66. Consultation procedures regarding proposed extractive operations are channels through which indigenous peoples can actively contribute to the prior assessment of all potential impacts of the proposed activity, including whether and to what extent their substantive human rights and interests may be affected. In addition, consultation procedures are crucial to the search for less harmful alternatives or in the definition of mitigation measures. Consultations should also be, ideally, mechanisms by which indigenous peoples can ensure that they are able to set their own priorities and strategies for development and advance the enjoyment of their human rights.

67. For them to serve as true avenues for dialogue and negotiation, consultation procedures should tackle existing power imbalances by establishing mechanisms for sharing information and adequate negotiation capacity on the indigenous peoples' side. Playing a genuine protective role, States should facilitate such mechanisms, which may require the involvement of State actors other than those directly involved in the project or the inclusion of external advisers. In fulfilling their responsibility to respect the rights of the indigenous communities, private companies that are the proponents of extractive projects should, on their part, defer to indigenous decision-making processes without attempting to influence or manipulate the consultation process. Only if these conditions are met can any agreement with indigenous peoples be considered to be the result of genuinely free and informed consultations.

68. If consent is obtained, it should be upon equitable and fair agreed-upon terms, including terms for compensation, mitigation measures and benefit-sharing in proportion to the impact on the affected indigenous party's rights. In addition, terms for a long-term sustainable relationship should be established with the corporation or other enterprise that is the operator of the extractive project. This implies new business models involving genuine partnerships, in keeping with indigenous peoples' right to set their own priorities for development (see paras. 72-76).

69. The duty to consult is one that rests with the State in accordance with its protective role. For its part, a business enterprise that seeks to operate extractive industries affecting indigenous peoples has the independent responsibility to ensure that adequate consultation procedures have been undertaken and indigenous consent obtained for impacts on indigenous rights under equitable terms, to the extent required by international standards.

70. The Special Rapporteur has observed that in many instances corporations approach and seek to negotiate directly with indigenous peoples about proposed extractive activities that may affect them. Such initiatives in principle are not incompatible with international human rights standards, and indigenous peoples are free, by virtue of their right to self-determination, to enter into negotiations directly with companies if they so wish. Direct negotiations between companies and indigenous peoples may be the most efficient and desirable way of arriving at agreed-upon arrangements for the extraction of natural resources within or near indigenous territories that are fully respectful of indigenous peoples' rights, and they may provide indigenous peoples with opportunities to pursue their own development priorities.

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<sup>5</sup> *Ibid.*, paras. 127-129 (regarding permissible restrictions on the right to property). See also article 18 (3) of the International Covenant on Civil and Political Rights, which permits limitations on the right to religion only as necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

71. Corporations must, however, exercise due diligence to mitigate power imbalances and avoid outcomes that are not compliant with human rights standards, and States must act to protect against such power imbalances and ensure the adequacy of any agreements. Because of the significant disparities in power, negotiating capacity and access to information that typically exist between corporations and indigenous peoples, the protective role of the State is especially important in this context. This duty to protect includes providing for appropriate grievance mechanisms.

#### **4. Towards new models of development for resource extraction**

72. The above analysis suggests that extractive industries can legitimately operate within or near indigenous territories if specific measures of State protection and corporate respect for indigenous peoples' rights are taken. The Special Rapporteur is aware, however, that across the globe indigenous peoples are continuing to resist extractive industry operations that may affect them. In many cases, they tend even to resist entering into consultations over proposed extractive and other natural resource development activity for fear of being forced down a path of acceptance of extractive activities that from the outset they do not want near them. In instances in which such resistance persists, it will be problematic for extractive industries to operate, even if only because of the practical consequences that derive from a lack of social licence.

73. The resistance of indigenous peoples to extractive industries is understandable, given the multiple human rights violations and instances of environmental devastation that indigenous peoples have suffered because of extractive operations, as discussed by the Special Rapporteur in his report to the Council in 2011. On top of this history of wrongs at the hands of extractive industries are the continuing lack of effective State laws, regulations and administrative practices to recognize and protect indigenous peoples' rights, and the lack of demonstrated corporate responsibility to respect those rights as a matter of course (see paras. 57-61). Initial steps towards enhancing the possibilities of extractive industries in or near indigenous territories involve addressing these deficiencies.

74. In the view of the Special Rapporteur, however, a more fundamental problem persists: the model of natural resource extraction that is being promoted by corporations and States for the development and extraction of natural resources within indigenous habitats. It is a model in which the initial plans for exploration and extraction of natural resources are developed by the corporation, with perhaps some involvement by the State, but with little or no involvement of the affected indigenous community or people. The corporation controls the extractive operation and takes the resources and profits from it, with the State gaining royalties or taxes, and indigenous peoples at best being offered benefits in the form of jobs or community development projects that typically pale in economic value in comparison to the profits gained by the corporation. It is a model of colonial overtones, in which indigenous peoples see their territories again encroached upon by outsiders who control aspects of their habitats and take from them, even when done with the promise of corporate social responsibility.

75. The Special Rapporteur believes that new and different models and business practices for natural resource extraction need to be examined, models that are more conducive to indigenous peoples' self-determination and their right to pursue their own priorities of development. Such models could include genuine partnership arrangements between indigenous peoples and corporations, in which the indigenous part has a significant or even controlling share in the ownership and management of the partnership, or models in which indigenous peoples develop their own extractive business enterprises.

76. The Special Rapporteur is aware that, in several places, indigenous peoples have in fact developed such partnership arrangements or their own extractive operations. On the other hand, some indigenous peoples may under no circumstances want to see natural

resources extracted from their traditional habitats on an industrial scale. If self-determination means anything, however, it means the right to choose – and not simply a binary choice between an existing model of resource extraction that is unattractive or no extraction at all. In his future work on extractive industries, the Special Rapporteur plans to examine various models of natural resource extraction in which indigenous peoples have greater control and benefits than is typically the case under the standard corporate model, drawing on a review of the experiences of indigenous peoples in various locations.

## **V. Conclusions**

### **A. Activities under the mandate**

77. **The Special Rapporteur is grateful for the opportunity to continue his work in accordance with Human Rights Council resolution 15/14, and expresses his gratitude to all those who have supported and continue to support him in this work.**

### **B. Violence against indigenous women and girls**

78. **A holistic approach to combating violence against indigenous women and girls requires that both their rights as women and children, and their rights as indigenous peoples, be advanced. More broadly, the rights enshrined in the United Nations Declaration on the Rights of Indigenous Peoples, which are designed to remedy the continuing legacies of discrimination against indigenous peoples, should be advanced concurrently with programmes that are designed specifically to target violence against women and girls, to tackle the structural problems affecting indigenous peoples that contribute to violence against women and girls. Lastly, indigenous self-determination in particular must be enhanced, along with efforts that are designed to prevent and punish violence against indigenous women and girls.**

### **C. Extractive industries**

79. **The common focus on consultation and free, prior and informed consent as a point of departure for discussing the issue of extractive industries in relation to indigenous peoples is blurring understanding of the relevant human rights framework by which to understand the issue. A better approach is first to consider the primary substantive rights of indigenous peoples that may be implicated in natural resource extraction. These include, in particular, rights to property, culture, religion, health, physical well-being and to set and pursue their own priorities for development, as part of their fundamental right to self-determination.**

80. **In this connection, consultation and free, prior and informed consent are best conceptualized as safeguards against measures that may affect indigenous peoples' rights. Other such safeguards include but are not limited to carrying out prior impact assessments, the establishment of mitigation measures, benefit-sharing and compensation for any impacts, in accordance with international standards.**

81. **The “protect, respect and remedy” framework, which is incorporated into the Guiding Principles on Business and Human Rights, should apply to advance the specific rights of indigenous peoples in the same way as it applies to advance human rights more generally, when those rights are affected or potentially affected by business activities, including extractive industries.**

82. In this connection, the State's protective role in the context of extractive industries entails ensuring a regulatory framework that fully recognizes indigenous peoples' rights over lands and natural resources and other rights that may be affected by extractive operations; that mandates respect for those rights both in all relevant State administrative decision-making and in corporate behaviour; and that provides effective sanctions and remedies when those rights are infringed either by Governments or by corporate actors.

83. For their part, business enterprises have a responsibility to respect human rights, including the rights of indigenous peoples. The corporate responsibility to respect human rights exists independently of States' ability or willingness to fulfil their own human rights obligations, and it exists over and above compliance with national laws and regulations protecting human rights. Businesses must carry out due diligence to ensure that their activities do not infringe or contribute to the infringement of the rights of indigenous peoples that are internationally recognized, regardless of the reach of domestic laws.

84. A focus on the rights implicated in the context of a specific extractive or development project is an indispensable starting point for devising appropriate consultation and consent procedures, in the exercise of the State duty to protect and corporate responsibility to respect human rights. The particular indigenous peoples or communities that are to be consulted are those that hold the potentially affected rights, the consultation procedures are to be devised to identify and address the potential impacts on the rights, and consent is to be sought for those impacts under terms that are protective and respectful of the rights.

85. Where the rights implicated are essential to the survival of indigenous groups and foreseen impacts on the rights are significant, indigenous consent to those impacts is required, beyond simply being an objective of consultations. It is generally understood that indigenous peoples' rights over lands and resources in accordance with customary tenure are necessary to their survival. Accordingly, indigenous consent is presumptively a requirement for those aspects of any extractive project taking place within the officially recognized or customary land use areas of indigenous peoples, or that otherwise affect resources that are important to their survival.

86. Lastly, there is a fundamental problem with the current model of natural resource extraction in which the plans are developed by the corporation, with perhaps some involvement by the State, but with little or no involvement of the affected indigenous community or people, and in which the corporation is in control of the extractive operation and is the primary beneficiary of it.

87. The Special Rapporteur is convinced that new and different models and business practices for natural resource extraction need to be examined, models that are more conducive to indigenous peoples' self-determination and their right to pursue their own priorities for development. In his future work on extractive industries, the Special Rapporteur plans to examine various models of natural resource extraction in which indigenous peoples have greater control and benefits than is typically the case under the standard corporate model, drawing on a review of the experiences of indigenous peoples in various locations.