



General Assembly

Distr.
GENERAL

A/HRC/EMRIP/2009/4
3 July 2009

Original: ENGLISH

HUMAN RIGHTS COUNCIL
Expert Mechanism on the Rights of Indigenous Peoples
Second session
10-14 August 2009
Item 3 of the provisional agenda

**CONTRIBUTION TO THE STUDY ON LESSONS LEARNED AND
CHALLENGES TO ACHIEVE THE IMPLEMENTATION OF THE
RIGHT OF INDIGENOUS PEOPLES TO EDUCATION**

Report of the secretariat*

* Late submission.

CONTENTS

	<i>Paragraphs</i>	<i>Page</i>
I. INTRODUCTION	1 - 2	3
II. REVIEW OF RELEVANT ISSUES ARISING OUT OF THE WORK OF THE TREATY BODIES	3 - 29	3
A. General comments	3	3
B. Good examples	4 - 8	3
C. Challenges	9 - 29	4
III. REVIEW OF RELEVANT ISSUES ARISING OUT OF THE WORK OF SPECIAL PROCEDURES	30 - 51	9
A. Thematic reports	31 - 33	10
B. Good examples and challenges	34 - 51	10
IV. REVIEW OF RELEVANT ISSUES ARISING OUT OF THE WORK OF THE HUMAN RIGHTS COUNCIL AND THE UNIVERSAL PERIODIC REVIEW	52 - 61	15
A. Examples highlighted in national reports	52 - 58	15
B. Challenges	59 - 61	16
V. REVIEW OF RELEVANT ISSUES ARISING OUT OF THE DURBAN DECLARATION AND PROGRAMME OF ACTION	62	17
VI. INDICATORS FOR THE RIGHT TO EDUCATION	63 - 65	18

I. INTRODUCTION

1. In its resolution 9/7, the Human Rights Council requested the Expert Mechanism on the Rights of Indigenous Peoples to prepare a study on lessons learned and challenges to achieve the implementation of the right of indigenous peoples to education, to be concluded in 2009.

2. The Council also requested the Expert Mechanism to seek input from relevant stakeholders, inter alia, the Office of the United Nations High Commissioner for Human Rights (OHCHR). The present report is a contribution to the study on lessons learned and challenges to achieve the implementation of the right of indigenous peoples to education. It presents a review of relevant issues, including related good examples and challenges, arising out of the work of the treaty bodies, the special procedures, the universal periodic review, the Durban Review Conference and the work of OHCHR on human rights indicators.

II. REVIEW OF RELEVANT ISSUES ARISING OUT OF THE WORK OF THE TREATY BODIES

A. General comments

3. Some treaty bodies have adopted general comments addressing the right to education for indigenous peoples. In 1999, the Committee on Economic, Social and Cultural Rights adopted general comments No. 11, on plans of action for primary education (E/C.12/1999/4), and No. 13, on the right to education (E/C.12/1999/10). In the latter, the Committee sets forth the normative content of article 13, in particular interrelated and essential features (availability, accessibility, acceptability and adaptability). The Committee on the Rights of the Child has adopted two general comments on indigenous children and their right to education: general comments No. 1 on the aims of education (CRC/GC/2001/1), and No. 11, on indigenous children and their rights under the Convention (CRC/C/GC/11), which includes a specific section on education. Similarly, in 1997, the Committee on the Elimination of Racial Discrimination adopted general recommendation No. 23 on indigenous peoples.¹ In 1989, the Human Rights Committee adopted general comment No. 17 on the rights of the child (HRI/GEN/1/Rev.9 (Vol. I)).

B. Good examples

4. In recent years, several good examples and challenges related to the right of indigenous peoples to education have been observed by treaty bodies in their review of States parties' reports.

1. Access to education

5. Treaty bodies have in many cases welcomed education programmes specifically addressing the needs of indigenous peoples. For instance, in 2006, the Committee on the Elimination of Racial Discrimination favourably noted measures taken to improve the situation of indigenous peoples in the field of education in Guyana (CERD/C/GUY/CO/14). In 2007, the Committee on

¹ *Official Records of the General Assembly, fifty-second session, Supplement No. 18 (A/52/18), annex V.*

the Rights of the Child noted with appreciation the efforts made to address the special educational needs of indigenous children in Malaysia, in particular the Orang Asli (CRC/C/MYS/CO/1); in 2006, it welcomed the measures taken by Mexico to encourage indigenous children to attend schools (CRC/C/MEX/CO/3). In 2006, the Committee on the Elimination of Discrimination against Women commended Venezuela (Bolivarian Republic of) for the nationwide implementation of education and literacy programmes and their positive impact on the status of women, particularly indigenous women (CEDAW/C/VEN/CO/6). In 2008, the Committee on the Elimination of Racial Discrimination acknowledged the intention of Namibia to improve the economic and social situation of indigenous communities through mobile school units and scholarships for San children (CERD/C/NAM/CO/12).

2. Bilingual and intercultural education

6. In a number of cases, treaty bodies have commented on the introduction of intercultural and bilingual education. For instance, in 2008, the Committee on the Elimination of Racial Discrimination noted with satisfaction the entry into force in 2006 in Nicaragua of the General Education Act establishing the Regional Autonomous Education System; it expressed the hope that the Act would secure acknowledgement of the right of the indigenous peoples and ethnic communities of the Caribbean Coast to intercultural education in their mother tongue (CERD/C/NIC/CO/14). In 2006, the Committee also welcomed in Guatemala Government Agreement No. 22-04, which provided for intercultural bilingual education as part of the national education system, as well as measures for its practical implementation (CERD/C/GTM/CO/11).

7. In 2005, the Committee on the Rights of the Child noted the existence of an alternative system of education for children belonging to indigenous cultural communities in the Philippines (CRC/C/15/Add.259) and the efforts to increase the number of schools providing bilingual education for indigenous communities in Costa Rica (CRC/C/15/Add.266).

3. Use of indigenous languages in education programmes

8. The importance of the education programmes provided in indigenous languages has also been raised by the Committee on the Rights of the Child and the Committee on the Elimination of Racial Discrimination. The latter welcomed the willingness of Botswana to provide primary education in the main mother tongues of non-Tswana tribes (CERD/C/BWA/CO/16), while the former welcomed various legislative, administrative, policy and budgetary measures to improve educational facilities and provide education in local or minority languages in Thailand (CRC/C/THA/CO/2).

C. Challenges

1. Challenges to accessibility

9. Treaty bodies have observed a number of challenges in their review of States parties: limited access of indigenous peoples to education; low enrolment and attendance rates; high dropout rates; often due to poverty; inequalities; high levels of illiteracy; systemic discrimination; and child labour.

10. Treaty bodies have regularly noted that the high level of poverty and inequality faced by indigenous peoples often prevented the full enjoyment of human rights, especially access to education. For example, in its 2008 concluding observations on Namibia, the Committee on the Elimination of Racial Discrimination expressed concern about the extreme poverty facing indigenous communities and the low level of school attendance among San people (CERD/C/NAM/CO/12). With regard to Ecuador, the Committee also noted in its concluding observations in 2008 (CERD/C/ECU/CO/19) that the limited enjoyment of economic, social and cultural rights, particularly in education, was caused by persistent poverty. Similarly, the Committee on the Rights of the Child underlined that widespread poverty among indigenous peoples in Belize and Kenya, the Philippines and Thailand limited their enjoyment of human rights and access to social services, such as education and health care (CRC/C/15/Add. 252, CRC/C/KEN/CO/2, CRC/C/15/Add.259 and CRC/C/THA/CO/2).

11. The disparities between indigenous and non-indigenous populations were also often noted by the treaty bodies when considering accessibility to education. The Committee on Economic, Social and Cultural Rights, while noting with appreciation in its 2006 concluding observations on Canada the reduction in disparities between Aboriginal and non-indigenous people in infant mortality and secondary education, also expressed concern at the significant disparities still remaining in other areas of education in the context of high levels of poverty and marginalization of Aboriginal people (E/C.12/CAN/CO/4, E/C.12/CAN/CO/5). Likewise, in its 2008 concluding observations on Bolivia, the Committee pointed out the limited access of vulnerable and marginalized groups, particularly indigenous peoples, to education and the high rate of illiteracy among the adult population. It noted with concern that this situation mainly affected girls and women (E/C.12/BOL/CO/2).

12. The Committee on the Elimination of Discrimination against Women has expressed its concern in many concluding observations at the high levels of poverty and discrimination faced by indigenous women and the resulting high levels of illiteracy, low enrolment rates and lack of enjoyment of human rights. For instance, in 2007, it noted the ongoing inequalities suffered by Aboriginal and Torres Strait Islander women in Australia, whose enjoyment of human rights remained unsatisfactory in many areas, particularly with regard to education (CEDAW/C/AUL/CO/5). In 2006, the Committee found higher levels of poverty and illiteracy and multiple forms of discrimination experienced by indigenous and rural women in Mexico, as well as large disparities between them and women in urban areas and from non-indigenous groups in access to basic social services, including education (CEDAW/C/MEX/CO/6). Similarly, the Committee noted the precarious situation of rural and indigenous women who lack access to education in Peru, the Philippines and Suriname (CEDAW/C/PER/CO/6, CEDAW/C/PHI/CO/6 and CEDAW/C/SUR/CO/3). As an example, in 2008, the Committee found that Aboriginal women in Canada continued to live in impoverished conditions, which included high rates of poverty, poor health, inadequate housing, lack of access to clean water, low school completion rates and high rates of violence (CEDAW/C/CAN/CO/7). In addition, a serious obstacle to access to education for indigenous women and girls is human trafficking, which is linked to poverty, discrimination and social exclusion, as noted by the Committee in its 2008 concluding observations on Ecuador (CEDAW/C/ECU/CO/7).

13. In its 2006 concluding observations on Guyana (CERD/C/GUY/CO/14), the Committee on the Elimination of Racial Discrimination observed with concern the low secondary school and university attendance by indigenous children and students. The Committee on the Rights of the

Child, in its 2005 concluding observations on Costa Rica (CRC/C/15/Add.266), regretted the low completion rate of secondary school, in particular in rural areas, especially of deprived children and indigenous children.

14. Indigenous peoples' limited access to education is further caused by discrimination affecting them, as observed by the treaty bodies. The Committee on the Rights of the Child expressed concern about discrimination faced by indigenous children, particularly in their reduced access to education, in the Democratic Republic of the Congo (CRC/C/COG/CO/1), Suriname (CRC/C/SUR/CO/2) and Chile (CRC/C/CHL/CO/3). In 2008, the Committee on the Elimination of Discrimination against Women expressed concern at the multiple forms of discrimination faced by aboriginal women in Canada, particularly in terms of access to, inter alia, education (CEDAW/C/CAN/CO/7). In its 2009 concluding observations on Ecuador, the Committee on the Elimination of Racial Discrimination recommended that the State take necessary steps to assure effective protection against discrimination of indigenous peoples in various areas, such as education (CERD/C/ECU/CO/19).

15. Treaty bodies have expressed their concern at the high levels of illiteracy among indigenous peoples. For instance, the Committee on the Elimination of Racial Discrimination stated its concern in its 2008 concluding observations on Nicaragua at the high rate of illiteracy of the indigenous peoples in the north of the Atlantic autonomous region (CERD/C/NIC/CO/14). High rates of illiteracy among indigenous peoples were also noted in 2006 in Guatemala, especially in rural areas, where 65 per cent of indigenous women are illiterate (CERD/C/GTM/CO/11). In 2006, the Committee on Economic, Social and Cultural Rights found a similar situation in Mexico, where indigenous children had limited access to education (E/C.12/MEX/CO/4). The Committee on the Elimination of Discrimination against Women, in 2008, welcomed efforts by the Ministry of Education and Culture of Ecuador to eliminate illiteracy, but noted with concern the high level of illiteracy among rural women speaking indigenous languages (CEDAW/C/ECU/CO/7).

16. Treaty bodies have also expressed their concern at low attendance and enrolment rates. In 2007, the Committee on the Rights of the Child in its concluding observations on Venezuela (Bolivarian Republic of) (CRC/C/VEN/CO/2) found low enrolment rates of indigenous children; and in Suriname significantly low primary school enrolment rates for indigenous children living in the interior of the country as well as a lack of early childhood education (CRC/C/SUR/CO/2).

2. Challenges to availability

17. With regard to the availability of education to indigenous peoples, the lack of school infrastructure in remote areas, the insufficient number of indigenous teachers and the lack of adequate training of teachers, including skills for intercultural bilingual education, are among the issues addressed by the treaty bodies in their review of States parties' reports.

18. One challenge is the lack of school infrastructure, including a lack of well-trained teachers or coverage of education programmes in remote areas, such as in the case of Mexico, noted by the Committee on Economic, Social and Cultural Rights in its 2006 concluding observations (E/C.12/MEX/CO/4). Similarly, the Committee on the Elimination of Racial Discrimination, in its 2006 concluding observations on Guatemala, recommended an increase in the number of bilingual schools, particularly in rural areas (CERD/C/GTM/CO/11). With regard to Colombia,

the Committee noted, in 2006, the limited coverage of bilingual education and high rates of illiteracy (CRC/C/COL/CO/3). The same year, the Committee on the Elimination of Racial Discrimination pointed out the lack of qualified teachers in areas of Guyana predominantly inhabited by indigenous peoples (CERD/C/GUY/CO/14). Similarly, the Committee on the Rights of the Child noted in its 2006 concluding observations on Peru a lack of adequate training of teachers, including skills for intercultural bilingual education to indigenous communities (CRC/C/PER/CO/3).

3. Challenges to acceptability and adaptability

19. Acceptability and adaptability are issues that have been systematically raised by the treaty bodies, specifically with regard to culturally appropriate education curricula meeting the needs of indigenous children and bilingual and intercultural education.

20. A lack of culturally appropriate curricula and materials has been highlighted by various treaty bodies in many concluding observations. The Committee on the Elimination of Racial Discrimination recommended, in its 2006 concluding observations (CERD/C/GTM/CO/11), that Guatemala should undertake educational reform, including through culturally relevant curricula. On Botswana, the Committee expressed in 2006 its concern at the non-inclusion of the history, culture and traditions of non-Tswana ethnic groups (CERD/C/BWA/CO/16). In its 2008 concluding observations on the United States of America (CERD/C/USA/CO/6), the Committee requested the State party to provide information on the extent to which curricula and textbooks for primary and secondary schools reflect the multi-ethnic nature of the State party. Likewise, the Committee on the Rights of the Child, in its 2008 concluding observations on Timor-Leste (CRC/C/TLS/CO/1), welcomed the State party's consideration of whether to include indigenous culture in the educational curricula, and recommended that the inclusion reflect the nature of indigenous culture and language as well as indigenous heritage and traditional art forms. In its 2005 concluding observations (CRC/C/15/Add.268), the Committee recommended that Australia develop and implement programmes to ensure equal access for indigenous children to culturally appropriate services, including social and health services and education, in consultation with indigenous peoples. Similarly, the Committee recommended that Thailand continue to provide indigenous children with equal access to quality education, to respect their distinct cultural patterns and use local indigenous and minority languages (CRC/C/THA/CO/2).

21. The Treaty bodies have welcomed the establishment of bilingual and intercultural education, while also identifying the challenges to the effective realization of the right of indigenous peoples to education. With regard to the use of indigenous language, in 2007, the Committee on the Rights of the Child recommended that Honduras continue to provide bilingual education in order to increase educational opportunities for indigenous children (CRC/C/HND/CO/3). Similarly, the Committee on the Elimination of Racial Discrimination, in its 2008 concluding observations on Botswana (CERD/C/BWA/CO/16), welcomed the State party's willingness to provide primary education in the main mother tongues of non-Tswana tribes while noting that it was difficult for children of those tribes to benefit from educational curricula owing to language barriers. The Committee for the Elimination of Discrimination against Women urged Bolivia in 2008 to take special temporary measures to reduce girls' illiteracy and school dropout rates, especially in rural and indigenous areas, and to provide formal or informal education for these girls in the relevant languages (CEDAW/C/BOL/CO/4). Likewise, in its 2008 concluding observations on Ecuador (CERD/C/ECU/CO/19), the

Committee on the Elimination of Racial Discrimination noted that, while a system of bilingual education existed in Ecuador, the bilingual intercultural system was poorly used. In its 2008 review on Guatemala (CERD/C/NIC/CO/14), the Committee was satisfied with the entry into force in 2006 of the General Education Act establishing the Regional Autonomous Education System, and hoped that the Act would secure acknowledgement of the right of the indigenous peoples and ethnic communities of the Caribbean Coast to intercultural education in their mother tongue. The Committee on the Rights of the Child, in its 2006 concluding observations on Peru (CRC/C/PER/CO/3), recommended that intercultural bilingual education be improved.

4. Challenges to effective measures

22. Treaty bodies have adopted recommendations that effective measures be taken for the realization of the right of indigenous peoples to education, such as poverty reduction policies with specific focus on education; technical assistance; specific action to reduce illiteracy and increase enrolment; affirmative action and measures; the enactment of relevant legislation, including legal strengthening of indigenous institutions; and temporary special measures and consultative processes.

23. In many cases, treaty bodies have urged consultation with indigenous peoples in the area of education. For example, the Committee on the Elimination of Racial Discrimination recommended in its 2006 concluding observations (CERD/C/BWA/CO/16) that Botswana hold consultations with the concerned tribes in relation to primary education policies. Similarly, the Committee on the Rights of the Child, in its 2006 concluding observations (CRC/C/15/Add.268), considered that Australia should develop and implement policies and programmes aimed at ensuring equal access of indigenous children to culturally appropriate education in consultation with indigenous communities.

24. In various instances, treaty bodies have underscored the need for strengthening bilingual and intercultural education programmes and institutions. In 2008, the Committee on the Elimination of Racial Discrimination stressed the need for Ecuador to strengthen the legal arrangements underpinning indigenous institutional structures (CERD/C/ECU/CO/19). In some cases, there is a need for a consolidated legal basis for bilingual and intercultural education; in 2006, the Committee on the Rights of the Child recommended that the Democratic Republic of the Congo amend the draft Law on the Promotion and Protection of the Rights of Indigenous Populations in the Republic of the Congo so as to ensure that it explicitly covered all areas of the Convention on the Rights of the Child (CRC/C/COG/CO/1). Likewise, in 2007, the Committee called on Kenya to constitutionally recognize and legislate on the right of indigenous pastoralist and hunter gatherers to their lands and resources (CRC/C/KEN/CO/2).

25. With regard to measures against illiteracy, the Committee on the Elimination of Racial Discrimination, in its 2008 concluding observations on Ecuador (CERD/C/ECU/CO/19), recommended both immediate and medium-term measures to reduce illiteracy among indigenous peoples. The same year, the Committee on the Elimination of Discrimination against Women called on Ecuador to strengthen efforts to eradicate illiteracy, particularly among rural women speaking indigenous languages (CEDAW/C/ECU/CO/7). In its 2007 concluding observations on Nicaragua (CEDAW/C/NIC/CO/6), the Committee noted measures that could be taken to improve the literacy level of girls and women, such as adequate resourcing of comprehensive programmes at the formal and non-formal levels, and adult education and training.

26. Treaty bodies have also recommended various measures against the discrimination faced by indigenous peoples in the area of education. Such measures included assuring effective protection against discrimination in the area of education (CERD/C/ECU/CO/19) and measures to address the root causes of poverty, including gender discrimination (CEDAW/C/ECU/CO/7). The Committee, in its 2008 concluding observations on Canada (CEDAW/C/CAN/CO/7), also called for temporary special measures to eliminate discrimination against aboriginal women, in particular regarding the remaining discriminatory legal provisions and equal enjoyment of their human rights to education.

27. Treaty bodies have also recommended measures to step up awareness-raising. In 2009, the Committee on the Elimination of Racial Discrimination encouraged Sweden to raise awareness among the Sami regarding the availability of mother-tongue tuition and to implement distance learning programmes (CERD/C/SWE/CO/18). The Committee on the Rights of the Child, in 2007, highlighted the awareness-raising activities conducted in Suriname to address negative attitudes and prejudices towards indigenous children, to ensure that they receive equal treatment and access to education (CRC/C/SUR/CO/2).

28. In terms of poverty reduction policies, the Committee on the Elimination of Discrimination against Women, in its 2006 concluding observations on Mexico (CEDAW/C/MEX/CO/6), underscored the need for ensuring that these policies explicitly address the structural nature and various dimensions of poverty and discrimination that indigenous and rural women face, and recommended the adoption of temporary special measures to address the disparities that indigenous and rural women face in their access to basic social services, including education. Other measures recommended by the Committee included the collection of disaggregated data by gender and the monitoring of trends over time on women and girls' education, by Nicaragua in 2007 (CEDAW/C/NIC/CO/6), and that information be gathered on access to schools, permanence and grade disaggregated by gender and ethnic group, by Ecuador in 2008 (CEDAW/C/ECU/CO/7).

29. Treaty bodies have also recommended the taking of affirmative action for the realization of the right of indigenous peoples to education. For instance, the Committee on the Rights of the Child, in its 2006 concluding observations on the Democratic Republic of the Congo (CRC/C/COG/CO/1), referred to affirmative measures to ensure that indigenous children gain de facto enjoyment of their rights, in particular in the area of education. In its 2008 concluding observations on Kenya (CRC/C/KEN/CO/2), the Committee recommended the development of affirmative action measures and necessary resources for free universal primary education and basic health care for indigenous children, in consultation with indigenous communities. The measures included establishing clinics and mobile schools, and incentives and training for teachers.

III. REVIEW OF RELEVANT ISSUES ARISING OUT OF THE WORK OF SPECIAL PROCEDURES

30. The Commission on Human Rights established two thematic mandates relevant to the right of indigenous peoples to education. In 2001, in its resolution 2001/57, the Commission established the mandate of Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, alongside the mandate of Special Rapporteur on the right to education, established by the Commission in its resolution 1998/33. The Human Rights Council

expanded these mandates in its resolutions 6/12 and 8/4, and appointed two new mandate holders. The present review focuses on these two mandates and their thematic and country visit reports.

A. Thematic reports

31. In 2005, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people submitted to the Commission a thematic report on education and indigenous peoples (E/CN.4/2005/88). He had found that several obstacles prevented indigenous peoples from having full access to the right to education, especially at middle school and higher levels. The demographics of indigenous peoples and the lack of adequate transportation prevented attendance at schools. The lack of adequate facilities, budgets and resources for indigenous schooling affected the quality of education. While he noted that the assimilationist model of education was beginning to change, indigenous children still faced discrimination in the educational system. While bilingual and intercultural education was often endorsed as a means to improve indigenous education, States often lacked adequate bilingual teachers and materials to implement related educational programmes.

32. To overcome the above-mentioned obstacles, the Special Rapporteur recommended that Governments prioritize indigenous education by providing funding for materials, institutional and intellectual resources. This included the training of bilingual teachers in conjunction with indigenous peoples' communities and a corresponding increase in incentive programmes and facilities for teachers. He also recommended greater involvement of universities and research centres in developing multidisciplinary curricula for indigenous education, including programmes on physical education. Special attention should be paid to training on the criminal justice system and for women, distance learning, adult education and continuing education. Nationally, courses on indigenous peoples should be broadened and incorporate a multicultural focus and respect for indigenous peoples' cultures and relationship to the environment. Lastly, the Special Rapporteur recommended that national media include content on indigenous peoples' cultures while providing access for indigenous peoples to media resources for their own use.

33. The Special Rapporteur on the right to education highlighted the issue of multiple discrimination in access to education. As an example, he addressed the situation of indigenous peoples in his report on the right to education of persons with disabilities (A/HRC/4/29), in which he referred to multiple discrimination suffered by disabled persons belonging to certain identity and social groups, including indigenous peoples.

B. Good examples and challenges

34. Country visit reports produced by the two Special Rapporteurs contain relevant information on the right of indigenous peoples to education. Good examples and challenges from their reports are highlighted below.

1. Access to education and disparities

35. In several countries visited by the two mandate holders between 2003 and 2008, access to education for indigenous peoples was a pressing challenge. Both Special Rapporteurs reported on significant differences between indigenous and non-indigenous populations in terms of access

to education, in particular for indigenous women and children. For example, in Colombia, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people reported that the situation of indigenous women was worrying, because their education, nutrition and health levels were lower than those of indigenous men and non-indigenous populations (E/CN.4/2005/88/Add.2). The Special Rapporteur noted with concern that, in Guatemala, school attendance rates were low compared to non-indigenous children, particularly for indigenous girls. Such a situation maintained exclusion and discrimination. The Special Rapporteur recommended the establishment of appropriate programmes of educational services for indigenous children (E/CN.4/2003/90/Add.2). In the case of Canada, the Special Rapporteur recommended that attention be paid to the disparities between Aboriginal and other Canadians in areas such as poverty, health, education and welfare services (E/CN.4/2005/88/Add.3). Similarly, in South Africa, the Special Rapporteur reported that, while indigenous peoples had access to all social services in principle, they were often marginalized and at the lower end of the socio-economic scale (E/CN.4/2006/78/Add.2). The Special Rapporteur observed that, in New Zealand, the Government was implementing strategies to reduce inequality between Maori and non-Maori, such as in education (E/CN.4/2006/78/Add.3). In Chile, the Special Rapporteur reported in 2003 (E/CN.4/2004/80/Add.3) that indigenous children school attendance rates were 2.2 years lower than non-indigenous children, and that only 3 per cent of the rural Mapuche population over the age of 15 had any post-secondary education. In his 2007 report on his visit to Kenya (A/HRC/4/32/Add.3), the Special Rapporteur noted the human development indicators for indigenous peoples were behind that of the national average and that the literacy level for Maasai in Kajiado and Somali in Mandera was only 3 per cent compared with a national average of 79.3 per cent.

36. Limited access to education was a major cause of the disparities revealed by the Special Rapporteurs. For instance, the Special Rapporteur on indigenous peoples recommended that, in Kenya, affirmative action should be applied to promote education for indigenous children at all levels, in particular for indigenous girls (A/HRC/4/32/Add.3).

37. Access to higher education, in particular, is a serious challenge for indigenous peoples. The Special Rapporteur on indigenous peoples recommended that Chile develop specific measures to provide assistance to indigenous students at the secondary and higher levels (E/CN.4/2004/80/Add.3) and that New Zealand lower student fees and increase allowances for indigenous students to stimulate their access to degree-level programmes (E/CN.4/2006/78/Add.3). In Kenya, the Special Rapporteur reported that access to secondary and university education was very limited (A/HRC/4/32/Add.3).

38. Lastly, the Special Rapporteur on indigenous peoples reported that armed conflict and violence constituted a serious obstacle to education. He noted that, in the Philippines, the presence of an extractive company on indigenous land had led to the militarization of the zone and acts of violence affecting indigenous communities, in particular causing disruption of education (E/CN.4/2003/90/Add.3). In Colombia, the Special Rapporteur reported that the armed conflict had an impact on the Wiwa peoples through damage to schools and theft of educational materials. He recommended that existing social programmes, especially education, should be extended to improve the situation of indigenous women and children, particularly those who had been internally displaced (E/CN.4/2005/88/Add.2).

2. Legacy of past and continuing models of education

39. According to the Special Rapporteurs on indigenous peoples and on the right to education, limited access to education is often brought about by policies seeking the incorporation and inclusion of indigenous peoples into the dominant society, leading, in many countries to processes of acculturation. For instance, in Guatemala, the Special Rapporteur on indigenous peoples noted the predominance of a Spanish-oriented education model and absence of an overall system of intercultural and bilingual education (E/CN.4/2003/90/Add.2). In Mexico, the Special Rapporteur further reported that education had been used as an acculturation policy to incorporate indigenous peoples into the national identity (E/CN.4/2004/80/Add.2). He also noted the engagement of Canada in addressing the wrongs of the residential school system, which severely disrupted several generations of Aboriginal families, their cultures and identities, through the Indian Residential Schools Resolution Programme (E/CN.4/2005/88/Add.3). The Special Rapporteur observed in New Zealand that the education system had been applied with an assimilation approach towards Maori indigenous peoples (E/CN.4/2006/78/Add.3). While in Kenya, the Special Rapporteur reported that the Government's 2005 Policy Framework for Education, Training and Research advocated affirmative action strategies without regard for indigenous culture, and that more appropriate educational curricula should be devised (A/HRC/4/32/Add.3).

3. Preservation of indigenous languages and culture

40. The need to stress culture and its revival through, inter alia, appropriate education programmes, is heightened by the consequences of assimilation approaches to education, applied in many countries. This issue remains a challenge. In Chile, the Special Rapporteur on indigenous peoples noted that the education system has not yet fully met the demand of indigenous people to protect, preserve and promote indigenous culture (E/CN.4/2004/80/Add.3); in 2008, he noted the lack of adaptation of the education system to indigenous cultures in Bolivia (A/HRC/6/15/Add.2).

41. In some countries, indigenous languages are threatened by extinction. According to the Special Rapporteur on indigenous peoples, this is the case of all indigenous languages in South Africa (E/CN.4/2006/78/Add.2). For this reason, he welcomed the establishment of specialized institutions devoted to the preservation and promotion of indigenous language and culture, such as the Khoe and San National Language Board and the Nama Development Institute in South Africa. The Special Rapporteur on the right to education highlighted as very relevant the recognition of the Amazigh language in the National Charter for Education adopted in Morocco, and welcomed the establishment of the Royal Institute of the Amazigh culture (A/HRC/8/10/Add.2). In some cases, the issue of the preservation of an indigenous language remains a challenge. As such, in the case of Kenya, the Special Rapporteur on indigenous peoples recommended that efforts should be made to protect small indigenous communities' languages through appropriate educational, linguistic and cultural policies (A/HRC/4/32/Add.3).

42. In the view of the Special Rapporteur, culturally relevant education is a necessary part of the right to education. For example, the Special Rapporteur on indigenous peoples recommended that Canada promote culturally relevant education in Aboriginal languages as an objective of national educational policies, and noted the Government's decision to establish the Aboriginal Languages and Culture Centre to preserve, revitalize and promote indigenous peoples' cultures

and languages (E/CN.4/2005/88/Add.3). He also reported on the recognition of the Maori language in New Zealand, first by the Waitangi Tribunal in 1985 and then in the Maori Language Act of 1987, which recognizes Maori as a national language and established the Maori Language Commission to promote Maori as a living language, including its use in the justice system. He noted, however, the unresolved problem of having culturally appropriate educational methodologies in New Zealand (E/CN.4/2006/78/Add.3).

4. Bilingual and intercultural education

43. Both Special Rapporteurs have reported on initiatives undertaken by Governments and indigenous peoples to address access to education through the promotion of bilingual and intercultural education.

44. The Special Rapporteur on indigenous peoples noted the importance of a legal basis, within the constitution or by law, that establishes bilingual and intercultural education. For example, during his visit to Guatemala in 2003, he noted that the 1985 Constitution recognized the value of indigenous languages and stipulated that schools in primarily indigenous regions should be bilingual. He also highlighted the Agreement on Identity and Rights (1995), which envisaged the reform of the education system to include bilingual and intercultural education and to guarantee access to education for indigenous peoples (E/CN.4/2003/90/Add.2). In Mexico, the Special Rapporteur noted the 1993 legislation on the linguistic rights of indigenous peoples (E/CN.4/2004/80/Add.2). In the Philippines, section 25 of the Indigenous Peoples Rehabilitation Act includes the right to special measures, such as in the area of vocational training and retraining for indigenous peoples (E/CN.4/2003/90/Add.3). In Colombia, the Constitution establishes a general subsidy scheme for indigenous reserves, to be directed primarily to basic needs such as education. In addition, the principle of indigenous bilingual and intercultural education is established by law (E/CN.4/2005/88/Add.2). In the case of Ecuador, the Special Rapporteur reported in 2006 that bilingual and intercultural education was already recognized in the 1998 Constitution as a collective right (A/HRC/4/32/Add.2). In his 2008 report on his visit to Bolivia, the Special Rapporteur noted that the Education Reform Act establishing the bilingual and intercultural education had been adopted in 1994 (A/HRC/6/15/Add.2).

45. The Special Rapporteur on indigenous peoples has found that several countries have established public institutions and programmes for bilingual and intercultural education. This strengthening of institutional support for bilingual education is necessary, in addition to a solid legal foundation. Examples of these institutions include the National Commission for the Development of Indigenous Peoples in Mexico (E/CN.4/2004/80/Add.2) and the Department of Bilingual Intercultural Education (A/HRC/4/32/Add.2). In his 2006 report, the Special Rapporteur recommended that the National Congress of Ecuador enact legislation on bilingual and intercultural education (A/HRC/4/32/Add.2). The Special Rapporteur reported on other programmes, for example in Chile, where such programmes were based on sound theoretical and pedagogical principles (E/CN.4/2004/80/Add.3). In a similar fashion, Mexico has established an educational curriculum with teaching methods suited to indigenous cultures (E/CN.4/2004/80/Add.2).

46. One recurrent challenge observed by the Special Rapporteur on indigenous peoples is inadequate funding for bilingual and intercultural education. Funding is necessary for well-trained bilingual teachers, teacher training centres and bilingual and intercultural teaching

materials. Examples of scarcity of teachers and resources were noted by the Special Rapporteur in his visits to Chile (E/CN.4/2004/80/Add.3) and Mexico (E/CN.4/2004/80/Add.2). Similarly, the Special Rapporteur on the right to education recommended in his 2008 report additional funding to ensure the progressive implementation of the National Charter for Education in Morocco (A/HRC/8/10/Add.2). The need for appropriate materials in addition to teachers and teacher colleges was raised by the Special Rapporteur in his report on Guatemala (E/CN.4/2003/90/Add.2). The inadequacy of teacher training for bilingual teachers was also raised in relation to Mexico (E/CN.4/2004/80/Add.2).

47. The lack of coverage and presence of bilingual and intercultural educational programmes in remote indigenous areas has been identified as a pressing challenge to effective bilingual and intercultural education, particularly for semi-nomadic and pastoralist peoples. In this regard, the Special Rapporteur on indigenous peoples recommended that coverage of bilingual education be extended in Guatemala (E/CN.4/2003/90/Add.2), and that the bilingual and intercultural programme be reinforced in indigenous areas of Colombia (E/CN.4/2004/80/Add.2). In the case of Kenya, where many indigenous peoples are semi-nomadic pastoralist families, the Special Rapporteur recommended that free boarding and mobile schools should be an integral part of the free universal primary programme (A/HRC/4/32/Add.3).

5. Indigenous education

48. The Special Rapporteur on indigenous peoples has highlighted the work of indigenous peoples in promoting indigenous education in several countries. In his report on Guatemala (E/CN.4/2003/90/Add.2), the Special Rapporteur reported that numerous Mayan organizations had taken action and pursued programmes and projects in the area of intercultural education. In South Africa, the Special Rapporteur reported on the initiative undertaken by the Working Group on Indigenous Peoples in Southern Africa in providing communities with educational and training opportunities (E/CN.4/2006/78/Add.2). In New Zealand, the Special Rapporteur reported on the initiative taken by Maori women to organize preschool Maori language immersion programmes (E/CN.4/2006/78/Add.3).

49. In certain countries, indigenous peoples have been able to develop their own education initiatives. During his visit to Canada, in 2004 (E/CN.4/2005/88/Add.3), the Special Rapporteur on indigenous peoples reported that, in the province of Quebec, nine Aboriginal languages may be taught in Aboriginal community schools. He also noted that several Aboriginal peoples in Canada had jurisdiction and control over schools and teacher training. The challenge often faced indigenous education is funding from the State, as in the case of the Nunavut. In his report on his visit to New Zealand (E/CN.4/2006/78/Add.3), the Special Rapporteur described the role of the Maori trust board, a representative body of Hauraki Maori, in charge of that education services. In general, the Special Rapporteur recommended that more resources be provided for Maori education at all levels, including teacher training programmes and development of culturally appropriate teaching materials.

50. In indigenous education, radio programmes are often an important means to disseminate indigenous culture and language. For instance, the role played by community radio stations in helping to preserve and promote indigenous culture and to guarantee cultural rights was noted by the Special Rapporteur on indigenous peoples in Mexico (E/CN.4/2004/80/Add.2). In Guatemala, the Special Rapporteur noted the difficulties in the use of radio frequencies to

develop communication projects for popular education in indigenous communities (E/CN.4/2003/90/Add.2). Similarly, in his report on New Zealand (E/CN.4/2006/78/Add.3), the Special Rapporteur pointed out the lack of funding for a network of 21 radio stations and radio news services in the Maori language.

51. Indigenous education also includes the development of indigenous higher education, mainly through the establishment of indigenous universities. For instance, in his report on his visit to Canada (E/CN.4/2005/88/Add.3), the Special Rapporteur on indigenous peoples highlighted efforts to develop university level education in Canada for Aboriginal students, such as the First Nations University of Canada and the Nunavut Arctic College in Iqaluit or the Nisga'a House of Wisdom. Likewise, in 2008, the Special Rapporteur welcomed the establishment in Bolivia (Plurinational State of) of the Indigenous and Intercultural University of Kawsay and the Public University of the Alto (A/HRC/6/15/Add.2).

IV. REVIEW OF RELEVANT ISSUES ARISING OUT OF THE WORK OF THE HUMAN RIGHTS COUNCIL AND THE UNIVERSAL PERIODIC REVIEW

A. Examples highlighted in national reports

52. Of the Member States under review as part of the universal periodic review, several have highlighted their commitment to indigenous education in their national reports.

1. Bilingual and intercultural education

53. Several States drew attention to their legal protection of bilingual and intercultural education. Argentina stated that its Constitution called on the Congress to recognize indigenous peoples' right to bilingual and intercultural education (A/HRC/WG.6/1/ARG/1). Similarly, in Mexico, the General Act on the Linguistic Rights of Indigenous Peoples recognizes the equality of indigenous languages to Spanish and established the National Institute of Indigenous Languages (A/HRC/WG.6/4/MEX/1). In Chile, the Indigenous Act affirms the cultural and educational values of indigenous people and established the National Indigenous Development Corporation, including the Education and Culture Unit (A/HRC/WG.6/5/CHL/1). Peru stated that multilingualism was legally protected by the Intercultural Bilingual Education Act (A/HRC/WG.6/2/PER/1).

54. Various Member States described national institutions for bilingual and intercultural education. Chile drew attention to its Bilingual Intercultural Education Programme and the establishment of intercultural kindergartens (A/HRC/WG.6/5/CHL/1). Similarly, in Ecuador, the Ministry of Education featured a national indigenous people's education department and a bilingual intercultural education system (A/HRC/WG.6/1/ECU/1). In Morocco, the Royal Institute of Amazigh Culture was established to safeguard and promote Amazigh language and culture and to introduce Amazigh into the educational system and adapt Tifinagh script to the Amazigh language. The Royal Institute also assists in the publication of textbooks and teaching guides (A/HRC/WG.6/1/MAR/1).

55. Several States highlighted intercultural and bilingual programmes. Mexico provides instruction in indigenous languages, including by developing teaching materials and training teachers (A/HRC/WG.6/4/MEX/1). New Zealand indicated that it had opened 73 Maori language

immersion schools where Maori language, culture and values predominate. The Government has also helped implement Maori tertiary institutions, Maori language courses for teachers and Maori language immersion childhood centres (A/HRC/WG.6/5/NZL/1). In South Africa, the Northern Cape Department of Education is exploring the use of a standard orthography of the San language to develop learning and teaching support material for use in primary schools. In addition, limited dictionaries in the San dialects Xun and Khwedam have been developed and piloted in one school in the Northern Cape (A/HRC/WG.6/1/ZAF/1). Belize has integrated intercultural bilingual education in three schools, two based on Garifuna traditions and language, the other on Mayan tradition (A/HRC/WG.6/5/BLZ/1).

2. Access to education

56. Several States indicated that they were improving the access of indigenous students to education, particularly higher education, by providing grants. Brazil implemented the programme *Universidade para todos - ProUni*, which earmarks a percentage of scholarships in private higher education institutions for indigenous peoples (A/HRC/WG.6/1/BRA/1). Chile also provides grants for indigenous students in basic, secondary and higher education through the Indigenous Grants Programme (A/HRC/WG.6/5/CHL/1). Similarly, Malaysia provides funding for indigenous students to cover the costs of school and transportation (A/HRC/WG.6/4/MYS/1/Rev.1).

57. Affirmative action was taken by various States as a means to improve indigenous peoples' access to education. The Government of Brazil implemented affirmative action policies, including by reserving vacancies for indigenous peoples in higher education institutions (A/HRC/WG.6/1/BRA/1). Likewise, Colombia stated that indigenous peoples benefited from affirmative action in education (A/HRC/WG.6/3/COL/1).

58. Several States highlighted policies to improve the performance of indigenous children in national education systems. Brazil declared it would fully implement the human right of education by guaranteeing education to traditionally excluded populations and the consolidation of public education systems for indigenous communities (A/HRC/WG.6/1/BRA/1). In the province of British Columbia in Canada, school boards and Aboriginal communities are working together to improve the success of Aboriginal students and reflected local Aboriginal culture in education (A/HRC/WG.6/4/CAN/1). Malaysia noted that, on the basis of a special remedial programme for indigenous people, curricula are redesigned to meet the needs and backgrounds of indigenous peoples (A/HRC/WG.6/4/MYS/1/Rev.1). New Zealand highlighted its specific Maori education strategy aimed at raising the performance of Maori students by focusing on Government, school and teacher practice. It also mentioned its professional development programme, which helps teachers address the needs of Maori students (A/HRC/WG.6/5/NZL/1).

B. Challenges

59. During the interactive discussions held in the 2008 and 2009 meetings of the Working Group on the Universal Periodic Review, several Member States made recommendations to States under review regarding the right of indigenous peoples to education. Several States under review voluntarily supported or committed to implementing these recommendations. Others responded to the recommendations by providing additional information.

60. Several States under review directly supported recommendations. Specifically, Botswana accepted the recommendation to pursue mother-tongue language education alongside the national languages (A/HRC/10/69/Add.1). Botswana also accepted to seek the assistance of OHCHR and the international community in the implementation of the rights of indigenous peoples, particularly the Basarwa (A/HRC/10/69/Add.1). In some cases, Member States supported recommendations that United Nations instruments on the rights of indigenous peoples be considered including provisions on education; for instance, Colombia agreed to take into account the United Nations Declaration on the Rights of Indigenous Peoples in implementing its public policies (A/HRC/WG.6/3/L.14). Finland agreed to follow up on the recommendation to ratify the International Labour Organization Convention concerning Indigenous and Tribal Peoples in Independent Countries (Convention No. 169) (A/HRC/8/24).

61. Other States under review commented on the recommendations made. Gabon was invited to end discrimination against the Pygmy population, particularly in education, and grant them basic human rights, including that envisaged under of article 13 of the International Covenant on Economic, Social and Cultural Rights (A/HRC/8/35). In response, Gabon drew attention to a plan of action, formulated by the Government in conjunction with the international community, to protect more effectively the Pygmies and their rights. Gabon also highlighted its integrated development project for the Pygmies, implemented in collaboration with the United Nations Children's Fund (UNICEF) (A/HRC/8/52). Guatemala was invited to improve the situation of indigenous children, particularly in their access to school services, and to ensure that indigenous women have full access to bilingual education (A/HRC/8/38). Guatemala noted the challenge it faced in implementing the recommendation and that it needed to strengthen its actions in the area of combating discrimination against indigenous peoples (A/HRC/8/52). Member States recommended that Japan review and harmonize the rights of the Ainu people with the United Nations Declaration on the Rights of Indigenous Peoples, particularly through dialogue with the Ainu people (A/HRC/8/44). Japan stated in its response that the Japanese Diet had unanimously adopted a resolution on the Ainu people on 6 June 2008 (A/HRC/8/44/Add.1).

V. REVIEW OF RELEVANT ISSUES ARISING OUT OF THE DURBAN DECLARATION AND PROGRAMME OF ACTION

62. In its preparatory process, the Intergovernmental Working Group on the effective implementation of the Durban Declaration and Programme of Action considered the topic of education (E/CN.4/2004/20). Delegates recognized that indigenous peoples faced significant challenges in their access to primary education, and emphasized the need for education to be culturally sensitive, to incorporate pluralism in States and to reflect the identity and spiritual beliefs of people. They also recognized that literacy was imperative for the transfer of knowledge and the creation of inclusive societies and, for that reason, children must have access to their right to education. The Durban Review Conference, held from 20 to 24 April 2009, culminated in a global agreement aiming to effect real changes in the fight against racism. The outcome document urged States to implement indigenous peoples' right to education in several of its provisions. In particular, article 72 urged States to direct their special measures, including affirmative or positive measures, and strategies or actions, as well as new investments in health care, public health, education, employment, electricity, drinking water and environmental control, to communities of African descent and indigenous peoples.

VI. INDICATORS FOR THE RIGHT TO EDUCATION

63. In response to a request of the Inter-Committee Meeting of the Human Rights Treaty Bodies, OHCHR has developed, in consultation with experts from treaty bodies, non-governmental organizations, academia, national human rights institutions, as well as policymakers and national stakeholders, a set of operationally feasible illustrative human rights indicators (HRI/MC/2008/3). The indicators, for promoting and monitoring the implementation of human rights, are based on a “structural-process-outcome” methodological framework, which assesses the commitment, efforts and results of a State in relation to a human right. Structural indicators assess institutional mechanisms for realizing a human right, such as the ratification and adoption of legal instruments. Process indicators evaluate State policy instruments that can lead directly to the realization of a human right. Outcome indicators capture individual and collective attainments of human rights in context. The framework allows for the identification of indicators of universally accepted human rights, then used to establish human rights standards that are contextually meaningful.

64. Illustrative human rights indicators, including of the right to education, have been developed. While all of the human rights indicators apply to indigenous peoples, specific reference was made to indigenous children. The structural indicator of the right to education is date of entry into force and coverage of domestic laws for implementing the right to education, including prohibition of corporal punishment, discrimination in access to education, making education institutions barrier-free, and inclusive education (for example for children with disabilities, children in detention, migrant children or indigenous children).

65. Further reference to indicators is found in a study, entitled “¿Que está pasando con los derechos de los pueblos indígenas?” on good practices, obstacles and challenges for the implementation of the recommendations of the Special Rapporteur on indigenous peoples, the Committee on the Rights of the Child and the Committee on the Elimination of Discrimination against Women in relation to indigenous peoples in Bolivia (Plurinational State of), Ecuador and Peru. The study, undertaken by OHCHR, UNICEF and the United Nations Development Fund for Women, takes into account the right of indigenous peoples to education, in particular by proposing indicators based on a configuration of structural process outcome. Examples of structural indicators are pursued through questions such as “Are there any national policies on indigenous education?” and “Are there any national guidelines on integrating academic content on indigenous peoples into national education, with a focus on tackling racism, promoting respect for cultural diversity and gender equality?”
