

## INDIGENOUS PEOPLES RIGHTS UNDER INTERNATIONAL LAW

### I. INTRODUCTION

There were several developments of relevance to Maori and Indigenous peoples' rights more generally in 2012. Modalities for the World Conference on Indigenous Peoples (WCIP) were agreed. Discussions continued regarding implementation of the United Nations Framework Convention on Climate Change (UNFCCC).<sup>1</sup> Domestically, New Zealand moved to partially privatise selected state-owned assets and prepared for its constitutional review. New Zealand's Indigenous rights situation was the subject of concerned comment by three mechanisms discussed below in Part V. Indigenous peoples' rights were discussed in various international fora, including in relation to Article 8(j) of the Convention on Biological Diversity (CBD)<sup>2</sup> and before the World Summit on Sustainable Development known as Rio+20. The World Intellectual Property Office (WIPO) forged ahead with negotiations for an instrument to protect Indigenous peoples' traditional knowledge (TK), traditional cultural expressions (TCE) and genetic resources (GR). In addition, international human rights treaty monitoring bodies and states participating in the Human Rights Council's Universal Periodic Review (UPR) further developed jurisprudence on the rights of Indigenous peoples. This note reviews New Zealand's state practice regarding Indigenous peoples' rights under international law in 2012 as well as tracing key international developments concerning those rights.

### II. DEVELOPMENTS IN RELATION TO INTERNATIONAL RESOLUTIONS, RECOMMENDATIONS AND OTHER FORMS OF NON-BINDING OR SOFT LAW INSTRUMENTS

In September 2012, the General Assembly (GA) passed a resolution setting out the modalities for the 2014 WCIP. The resolution provides, *inter alia*, that Indigenous peoples' representatives will co-chair the WCIP's informal round tables and interactive panel session; the accreditation process for Indigenous peoples' organisations will follow the procedures of the Permanent Forum on Indigenous Issues (PFII); and the meeting should produce an action

- 1 United Nations Framework Convention on Climate Change 1771 UNTS 107 (opened for signature 4 June 1992, entered into force 21 March 1994) [UNFCCC].
- 2 Convention on Biological Diversity 1760 UNTS 79 (opened for signature 5 June 1992, entered into force 29 December 1993) [CBD].

orientated outcome document, on which Indigenous peoples will be consulted.<sup>3</sup> New Zealand praised the resolution, in particular its provisions regarding Indigenous participation.<sup>4</sup>

### III. DEVELOPMENTS IN RELATION TO INTERNATIONAL TREATIES

The UNFCCC's 18th Conference of the Parties and the 8th Meeting of the Parties to the Kyoto Protocol were held from 26 November to 8 December 2012 in Doha, Qatar. No agreement was made on the method for reporting emissions reduction, implementation of safeguards and drivers of deforestation or on the financing for Reducing Emissions from Deforestation and Forest Degradation (REDD+), which are both of particular relevance to Indigenous peoples.<sup>5</sup>

### IV. ADOPTION OF NATIONAL LAWS AND REGULATIONS AND OTHER NATIONAL DEVELOPMENTS OF INTERNATIONAL SIGNIFICANCE

#### *A. Partial Privatisation of State-owned Assets*

Legislation enabling the partial privatisation of several state-owned enterprises – the Public Finance (Mixed Ownership Model) Amendment Act 2012 and the State-Owned Enterprises Amendment Act 2012 – was passed. Concerns were raised regarding the impact of the share sales on Maori rights over freshwater, including by the Waitangi Tribunal.<sup>6</sup> Government steps related to the sale were unsuccessfully challenged by the New Zealand Maori Council and others in a judicial review action before the High Court.<sup>7</sup>

3 GA Res 66/296, A/RES/66/296 (2012). For background see Tracey Castro Whare "UN World Conference on Indigenous Peoples 2014" in Cæcilie Mikkelsen (ed) *The Indigenous World 2013* (International Work Group for Indigenous Affairs, Copenhagen, 2013) at 446-447.

4 GA/SHC/4045 (22 October 2012). New Zealand reiterated this before the Permanent Forum on Indigenous Issues [PFII], see Tara Morton, Second Secretary New Zealand Permanent Mission to the United Nations "New Zealand Statement on the World Conference on Indigenous Peoples Eleventh session of the United Nations Permanent Forum on Indigenous Issues" (18 May 2012).

5 For background on the UNFCCC and REDD+ see Fleur Adcock and Claire Charters "Year in Review: Indigenous Peoples' Rights under International Law" (2010) 8 NZYIL 203. For discussion see Ida Peters Ginsborg, Francesco Martone and Kathrin Wessendorf "UN Framework Convention on Climate Change (UNFCCC)" in Mikkelsen, above n 3.

6 Waitangi Tribunal *The Stage 1 Report on the National Freshwater and Geothermal Resources Claim 2012* at [1.1.1] and Appendix VII.

7 *New Zealand Māori Council v Attorney-General* [2012] NZHC 3338 at [342]-[345].

## B. Constitutional Review

The Government's constitutional review panel, whose terms of reference include consideration of Crown-Maori relationship matters, publically released its engagement strategy in 2012.<sup>8</sup> A parallel iwi-led discussion on constitutional transformation also increased pace.<sup>9</sup> Concerns regarding the domestic insecurity of Indigenous peoples' rights in New Zealand have been raised by a host of international human rights actors.<sup>10</sup>

### V. INTERNATIONAL OVERSIGHT OF NEW ZEALAND'S COMPLIANCE WITH INDIGENOUS PEOPLES' RIGHTS

#### A. UN Special Rapporteur on the Rights of Indigenous Peoples

In 2012, the UN Special Rapporteur on the rights of indigenous peoples (Special Rapporteur) sent an allegation letter to New Zealand expressing concern regarding the exclusion of the Mangakahia Whanau from the Treaty of Waitangi settlement process.<sup>11</sup> Maori representation in the settlement process was raised as a specific issue in his 2011 report on New Zealand.

New Zealand responded with detail on the specific circumstances of the Whanau Mangakahia claim and information on the Crown's Treaty settlement policy, including the basis for its policy of negotiating with "large natural groups".<sup>12</sup>

#### B. Committee on Economic, Social and Cultural Rights

The Committee on Economic, Social and Cultural Rights (CESCR Committee) provided its concluding observations on New Zealand's third periodic report under the Convention on Economic, Social and Cultural Rights in May.<sup>13</sup> In strong language, the Committee called on New Zealand "to ensure that the inalienable rights of Māori to their lands, territories, waters and marine areas and other resources as well as the respect of the free, prior and informed consent of Māori on any decisions affecting their use are firmly

8 Constitutional Advisory Panel *Engagement Strategy for the Consideration of Constitutional Issues* (2012). New Zealand referred to the role of Maori in the constitutional review process before the PFII, see Jane Fletcher, Deputy Director, New Zealand Office of Treaty Settlements "New Zealand's constitutional review process, eleventh session of the United Nations Permanent Forum on Indigenous Issues" (statement, 9 May 2012).

9 Peace Movement Aotearoa "Independent Iwi Constitutional Working Group Aotearoa Matike Mai" <[www.converge.org.nz/pma/iwi.htm](http://www.converge.org.nz/pma/iwi.htm)>.

10 See for example Human Rights Council [HRC] *Report of the Special Rapporteur on the Rights of Indigenous Peoples, James Anaya, Addendum: The Situation of Maori People in New Zealand A/HRC/18/35/Add.4* (2011) at [77].

11 Letter from James Anaya to the New Zealand Government dated 16 August 2012 available in Human Rights Council *Communications Report of Special Procedures A/HRC/22/67* (2013) at 78.

12 Letter from Brian Wilson to James Anaya dated 6 November 2012 available in Human Rights Council *Communications Report of Special Procedures A/HRC/22/67* (2013) at 78.

13 Committee on Economic, Social and Cultural Rights [CESCR] *Concluding observations of the Committee on Economic, Social and Cultural Rights: New Zealand E/C.12/NZL/CO/3* (2012).

incorporated in the State party's legislation and duly implemented."<sup>14</sup> It also urged New Zealand to guarantee Maori redress for violations of these rights, including through implementation of Waitangi Tribunal recommendations, "and to ensure that Māori receive proper compensation and enjoy tangible benefits from the exploitation of their resources".<sup>15</sup> The Committee further recommended that when New Zealand acts upon the Waitangi Tribunal's recommendations in the Wai 262 report, *Ko Aotearoa Tenei*, it "bear in mind its obligation to protect the cultural rights of Māori".<sup>16</sup> It specified that these include "Māori's right to conserve, promote and develop their own culture, language and cultural heritage, traditional knowledge and traditional cultural expressions, and the manifestations of their sciences and cultures".<sup>17</sup> Additional comments and recommendations were made regarding Maori disadvantage;<sup>18</sup> the effect of family violence and sexual violence on Maori women;<sup>19</sup> and tobacco consumption amongst Maori.<sup>20</sup>

### *C. Committee on the Elimination of Discrimination Against Women*

The Committee on the Elimination of Discrimination Against Women (CEDAW Committee) considered New Zealand's seventh periodic report under the Convention on the Elimination of Discrimination Against Women in July.<sup>21</sup> It recommended, *inter alia*, that New Zealand "increase efforts to make sure ... Māori women are not discriminated against in the administration of justice"<sup>22</sup> and "[i]mplement measures to decrease dropout rates among Māori girls and to reintegrate them into the educational system".<sup>23</sup>

## VI. DISCUSSION OF INTERNATIONAL ISSUES RELATED TO INDIGENOUS PEOPLES IN INTERNATIONAL FORA

### *A. UN General Assembly Third Committee*

In the UN GA's Third Committee New Zealand stated that it "continued to work with the Maori to meet the remaining challenges regarding the Maori situation"; affirmed New Zealand's aspiration to conclude historical Treaty settlements with all large groups by 2014; and supported the Special Rapporteur's call for better coordination across UN bodies.<sup>24</sup>

14 At [11].

15 At [11].

16 At [26].

17 At [26].

18 At [12].

19 At [18].

20 At [25].

21 Committee on the Elimination of Discrimination against Women [CEDAW] *Concluding observations of the Committee on the Elimination of Discrimination against Women: New Zealand* CEDAW/C/NZL/CO/7 (2012).

22 At [15](a).

23 At [30](c).

24 GA/SHC/4045, above n 4.

### B. UN Human Rights Council

In addition to adopting its annual resolution on “Human rights and indigenous peoples”,<sup>25</sup> the Human Rights Council held a panel on Indigenous peoples and access to justice.<sup>26</sup>

### C. UN Expert Mechanism on the Rights of Indigenous Peoples

New Zealand participated in the fifth session of the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP). It suggested that the Marine and Coastal Area (Takutai Moana) Act 2011 appropriately recognised Maori customary rights in the marine and coastal area,<sup>27</sup> despite the concerns of the Special Rapporteur regarding the Act.<sup>28</sup>

### D. Permanent Forum on Indigenous Issues

The theme of the 11th session of the PFII was the Doctrine of Discovery.<sup>29</sup> Responding to the theme, New Zealand emphasised the importance of the Treaty settlement process for addressing Maori grievances, which it acknowledged “has its challenges”. It pointed out that “[t]he compensation cannot provide full financial redress; rather Treaty settlements aim to provide a platform for the cultural, social and economic development of Māori.”<sup>30</sup> Amongst the reports presented to the PFII was a report on combating violence against Indigenous women and girls,<sup>31</sup> which New Zealand supported. It acknowledged “that the impacts of colonisation are devastating and wide-ranging and have resulted in many of the risk factors that lead to violence again [sic] indigenous women.” It stressed that it “is taking a number of measures to combat violence against women” and emphasised the need to “address the structural issues that affect all indigenous peoples as well as the particular challenges that women face.”<sup>32</sup>

25 HRC Resolution 21/24 *Human Rights and Indigenous Peoples* A/HRC/Res/21/24 (2012).

26 HRC Resolution 18/8 *Human Rights and Indigenous Peoples* A/HRC/Res/18/8 (2011); Human Rights Council “Human Rights Council holds Panel discussion on access to justice for Indigenous Peoples” (18 September 2012) <[www.ohchr.org](http://www.ohchr.org)>.

27 Lucy Richardson, Second Secretary “Statement by New Zealand: Agenda Item 4: Follow-Up to past Thematic Studies: Maori decision making and extractive industries, Expert Mechanism on the Rights of Indigenous Peoples” (2012) (on file with author).

28 HRC, above n 10, at [55]-[56].

29 PFII *Report on the eleventh session* E/2012/43-E/C.19/2012/13 (2012).

30 Jane Fletcher, Deputy Director New Zealand Office of Treaty Settlements “Eleventh session of the United Nations Permanent Forum on Indigenous Issues, 7-18 May 2012” (statement, 7 May 2012).

31 PFII *Report of the International Expert Group Meeting on Combating violence against Indigenous Women and Girls: Article 22 of the United Nations Declaration on the Rights of Indigenous Peoples* E/C.19/2012/6 (2012).

32 Jane Fletcher, Deputy Director, New Zealand Office of Treaty Settlements “Eleventh session of the United Nations Permanent Forum on Indigenous Issues, 7-18 May 2012, New Zealand Statement on Violence Against Women” (statement, 10 May 2012).

### *E. Convention on Biological Diversity Conference of the Parties*

In October 2012, the 11th Conference of the Parties to the CBD took place. COP-11 adopted, *inter alia*, decision XI/14 on Article 8(j) and related provisions, which includes proposals regarding the integration of Article 8(j) into the CBD's various areas of work, Indigenous participation and the development of *sui generis* systems for the protection of TK.<sup>33</sup> New Zealand and Canada reportedly opposed Colombia's proposal to include reference to the "Tkarihwaí:ri Code of Ethical Conduct to Ensure Respect for the Cultural and Intellectual Heritage of Indigenous and Local Communities" in the operative text of this decision associated with tasks 7, 10 and 12 (broadly concerning the development of guidelines regarding fair and equitable benefit sharing, misappropriation of TK and GR, and rights over TK). Reference to the Code was retained in the preamble only.<sup>34</sup> The decision notes the recommendations of the 9th and 10th sessions of the PFII, including that "indigenous peoples and local communities" replace the CBD's current references to "indigenous and local communities"; a suggestion ultimately deferred.<sup>35</sup>

### *F. Rio+20*

The Rio+20 outcome document, "The Future We Want", contains several references to Indigenous peoples, including stressing "the importance of the participation of indigenous peoples in the achievement of sustainable development" and recognising (rather than simply noting) the importance of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) in the implementation of sustainable development strategies.<sup>36</sup> But the document contains no reference to Indigenous peoples in the sections on mining and forests.<sup>37</sup>

New Zealand supported Australia's launch of the International Indigenous Land and Sea Managers Network at Rio+20, commenting "New Zealand believes it can contribute to the success of this new network by drawing on our wealth of experience in land and sea management by Māori, and the joint activities undertaken by Māori and the Government". New Zealand also reiterated that "[t]raditional knowledge, local practices and cultural connections are important in sustainable use of the world's biodiversity."<sup>38</sup>

33 Conference of the Parties to the Convention on Biological Diversity at its Eleventh Meeting *Decision XI/14. Article 8(j) and related provisions* UNEP/CBD/COP/11/35 (2012) at 149-164.

34 iisd Reporting Services (2012) 9 (595) Earth Negotiations Bulletin 1 at 10.

35 Patricia Borraz "Convention on Biological Diversity" in Mikkelsen, above n 3, at 505.

36 United Nations Conference on Sustainable Development "The Future We Want" A/CONF.216/L.1 (2012) at [49]. See also [58](j), [71], [109], [130], [131], [175], [197], [211], [229], [238].

37 Kathrin Wessendorf "Rio+20" in Mikkelsen, above n 3, at 491.

38 Hon Amy Adams "Environment NZ supports indigenous network launched at Rio+20" (21 June 2012) <www.national.org.nz>.

### G. World Intellectual Property Office

WIPO's Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) held three sessions during 2012 to develop an instrument to protect Indigenous peoples' GR, TK and TCEs. During the session on TCEs, New Zealand raised questions regarding the definition to be given to TCEs, collective rights management and what beneficiaries can do.<sup>39</sup> In the session on TK, New Zealand offered various drafting suggestions, including concerning:

- the prior informed consent of beneficiaries;<sup>40</sup>
- ensuring consistency between the instrument on TK and TCEs;<sup>41</sup>
- “the means of redress” arguing it “should be governed by the legislation of the country where the protection was claimed”;<sup>42</sup>
- registers, arguing that “registers were a delicate issue for a number of countries with indigenous populations who did not want the State to take a role in documenting their TK for a number of reasons”;<sup>43</sup>
- the domestic protection provided to the TK of nationals of other states;<sup>44</sup>
- the objectives and principles of the instrument;<sup>45</sup>
- the definition of TK;<sup>46</sup> and
- the participation of observers in the work of the IGC.<sup>47</sup>

### H. World Heritage Convention

The 40th Anniversary of the World Heritage Convention was marked in 2012, with concerns continuing at the designation of World Heritage sites over Indigenous territories without Indigenous peoples' free, prior and informed consent.<sup>48</sup>

39 World Intellectual Property Office Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore *Draft Report of the Twenty-Second Session, Geneva, July 9 to 13, 2012* WIPO/GRTKF/IC/22/6 prov.2 (2012) at [51].

40 World Intellectual Property Office Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore *Draft Report on the Twenty-First Session, Geneva, April 16 to 20, 2012* WIPO/GRTKF/IC/21/7/PROV. 2 (2012) at [100], [121].

41 At [50].

42 At [140].

43 At [196].

44 At [228].

45 At [254].

46 At [314].

47 At [564].

48 Stefan Disko “World Heritage Convention” in Mikkelsen, above n 3, at 477-481.

*I. Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises*

The Working Group on the issue of human rights and transnational corporations and other business enterprises was formed in January 2012 and in its first year devoted particular attention to Indigenous peoples' rights, including in relation to extractive industries on or near Indigenous peoples' territories.<sup>49</sup>

VII. EVENTS/DEVELOPMENTS CONTRIBUTING TO THE  
DEVELOPMENT OF CUSTOMARY INTERNATIONAL LAW  
AND/OR OF PARTICULAR RELEVANCE TO NEW ZEALAND

International human rights treaty monitoring bodies and states participating in the Human Rights Council's Universal Periodic Review affirmed Indigenous peoples' rights to consultation and free, prior and informed consent; land; TK; cultural rights; political rights; and, access to justice. This jurisprudence will inform future reviews of New Zealand by these bodies.

*A. Committee on the Elimination of Racial Discrimination*

In 2012, the Committee on the Elimination of Racial Discrimination (CERD Committee) continued to lead the way with its comments on Indigenous peoples' rights, including recommending that states:

- implement Indigenous peoples' right to be consulted and to free, prior and informed consent;<sup>50</sup>
- protect Indigenous peoples' rights to their ancestral lands and natural resources;<sup>51</sup>
- “[e]nsure, in exceptional cases where it is deemed necessary to relocate and resettle indigenous peoples” there is “compliance with international standards”;<sup>52</sup>
- enhance Indigenous peoples' cultural autonomy;<sup>53</sup>

49 Kathrin Wessendorf “Business and Human Rights” in Mikkelsen, above n 3, at 472-475.

50 Committee on the Elimination of Racial Discrimination [CERD] *Concluding observations of the Committee on the Elimination of Racial Discrimination: Canada* CERD/C/CAN/CO/19-20 (2012) at [20](a); CERD *Concluding observations of the Committee on the Elimination of Racial Discrimination: Mexico* CERD/C/MEX/CO/16-17 (2012) at t 17](a). On consultation generally see also CERD *Concluding observations of the Committee on the Elimination of Racial Discrimination: Viet Nam* CERD/C/VNM/CO/10-14 (2012) at [13]; CERD *Concluding observations of the Committee on the Elimination of Racial Discrimination: Fiji* CERD/C/FJI/CO/18-20 (2012) at [14].

51 CERD *Concluding observations of the Committee on the Elimination of Racial Discrimination: Canada* CERD/C/CAN/CO/19-20 (2012) at [20](b).

52 CERD *Concluding observations of the Committee on the Elimination of Racial Discrimination: Mexico*, above n 50, at [17](c).

53 CERD *Concluding observations of the Committee on the Elimination of Racial Discrimination: Finland* CERD/C/FIN/CO/20-22 (2012) at [11].



- compensate Indigenous peoples for rights violations;<sup>54</sup>
- respect the principle of Indigenous self-identification;<sup>55</sup>
- ensure all Indigenous children “effectively receive education in their own languages”;<sup>56</sup>
- give domestic effect to the UNDRIP;<sup>57</sup>
- consider ratifying International Labour Organization (ILO) Convention 169<sup>58</sup> and, where it has been ratified, give it domestic effect;<sup>59</sup>
- ensure Indigenous peoples’ access to justice;<sup>60</sup> and
- “ensure the full participation of indigenous people, especially women, in all decision-making institutions”.<sup>61</sup>

Notably, the Committee recommended that Canada “take appropriate legislative measures to prevent transnational corporations registered in Canada from carrying out activities that negatively impact on the enjoyment of rights of indigenous peoples in territories outside Canada, and hold them accountable”.<sup>62</sup>

### *B. Committee on Economic, Social and Cultural Rights*

The Committee on Economic, Social and Cultural Rights issued a number of recommendations affirming Indigenous peoples’ rights in 2012, including that states:

- implement Indigenous peoples’ rights to be consulted and to free, prior and informed consent;<sup>63</sup>

54 At [19](g).

55 CERD *Concluding observations of the Committee on the Elimination of Racial Discrimination: Viet Nam*, above n 50, at [12]; CERD *Concluding observations of the Committee on the Elimination of Racial Discrimination: Finland*, above n 53, at [12]; CERD *Concluding observations of the Committee on the Elimination of Racial Discrimination: Fiji*, above n 50, at [14].

56 CERD *Concluding observations of the Committee on the Elimination of Racial Discrimination: Finland*, above n 53, at [14].

57 CERD *Concluding observations of the Committee on the Elimination of Racial Discrimination: Canada*, above n 50, at [19].

58 At [23].

59 CERD *Concluding observations of the Committee on the Elimination of Racial Discrimination: Thailand* CERD/C/THA/CO/1-3 (2012) at [15].

60 CERD *Concluding observations of the Committee on the Elimination of Racial Discrimination: Mexico*, above n 50, at [12] and [14]; CERD *Concluding observations of the Committee on the Elimination of Racial Discrimination: Canada*, above n 50, at [21].

61 CERD *Concluding observations of the Committee on the Elimination of Racial Discrimination: Mexico*, above n 50, at [16].

62 CERD *Concluding observations of the Committee on the Elimination of Racial Discrimination: Canada*, above n 50, at [14].

63 CESCR *Concluding observations of the Committee on the Economic, Social and Cultural Rights: Ecuador* E/C.12/ECU/CO/3 (2012) at [9]; CESCR *Concluding observations of the Committee on the Economic, Social and Cultural Rights: Ethiopia* E/C.12/ETH/CO/1-3 (2012) at [24]; CESCR *Concluding observations of the Committee on the Economic, Social and Cultural Rights: Peru* E/C.12/PER/CO/2-4 (2012) at [23].

- protect Indigenous peoples' rights to their ancestral lands and natural resources;<sup>64</sup>
- take steps to protect Indigenous peoples' TK;<sup>65</sup> and
- preserve and promote the use of Indigenous languages.<sup>66</sup>

### *C. Committee on the Rights of the Child*

The Committee on the Rights of the Child made several references to Indigenous peoples in 2012, including urging Australia to “[e]nsure the effective and meaningful participation of Aboriginal and Torres Strait Islander persons in the policy formulation, decision-making and implementation processes of programmes affecting them”.<sup>67</sup>

### *D. Committee on the Elimination of Discrimination Against Women*

The Committee on the Elimination of Discrimination Against Women urged, amongst other things, implementation of strategies to improve access to justice for Indigenous women in Brazil<sup>68</sup> and steps to improve the participation of Indigenous women in political life in Chile and Mexico.<sup>69</sup>

### *E. Human Rights Committee*

The Human Rights Committee's recommendations regarding Indigenous peoples included that Guatemala “carry out prior and informed consultations with indigenous peoples for all decisions relating to projects that affect their rights, in accordance with article 27 of the Covenant.”<sup>70</sup>

64 CESCR *Concluding observations of the Committee on the Economic, Social and Cultural Rights: Cameroon* E/C.12/CMR/CO/2-3 (2012) at [24] and [33].

65 CESCR *Concluding observations of the Committee on the Economic, Social and Cultural Rights: Ethiopia*, above n 63, at [28].

66 CESCR *Concluding observations of the Committee on the Economic, Social and Cultural Rights: Peru*, above n 63, at [27].

67 United Nations Committee on the Rights of the Child (CRC) *Concluding observations of the Committee on the Rights of the Child: Australia* CRC/C/AUS/CO/4 (2012) at [30](d). See also for eg CRC *Concluding observations of the Committee on the Rights of the Child: Namibia* CRC/C/NAM/CO/2-3 (2012) at [30](a); CRC *Concluding observations of the Committee on the Rights of the Child: Thailand* CRC/C/THA/CO/3-4 (2012) at [83](d); CRC *Concluding observations of the Committee on the Rights of the Child: Viet Nam* CRC/C/VNM/CO/3-4 (2012) at [39](e).

68 United Nations Committee on the Elimination of Discrimination against Women (CEDAW) *Concluding observations of the Committee on the Elimination of Discrimination against Women: Brazil* CEDAW/C/BRA/CO/7 (2012) at [33](b).

69 CEDAW *Concluding observations of the Committee on the Elimination of Discrimination against Women: Chile* CEDAW/C/CHL/CO/5-6 (2012) at [25]; CEDAW *Concluding observations of the Committee on the Elimination of Discrimination against Women: Mexico* CEDAW/C/MEX/CO/7-8 (2012) at [23](b) and (c).

70 United Nations Human Rights Committee *Concluding observations of the Human Rights Committee: Guatemala* CCPR/C/GTM/CO/3 (2012) at [27].

### *F. Committee on the Rights of Persons with Disabilities*

The Committee on the Rights of Persons with Disabilities commented on the multiple forms of discrimination experienced by Indigenous peoples with disabilities.<sup>71</sup>

### *G. Human Rights Council Universal Periodic Review*

During the HRC's 2012 UPR, states' recommendations regarding Indigenous peoples' rights included that:

- Ecuador, Peru, Brazil, Argentina and Guatemala ensure Indigenous peoples' right to be consulted is respected;<sup>72</sup>
- Brazil and Argentina respect Indigenous peoples' rights to their traditional lands, territories and resources;<sup>73</sup>
- the Philippines ratify ILO Convention 169<sup>74</sup> and Guatemala adopt national legislation to fully implement it;<sup>75</sup> and
- Ecuador take steps to enable Indigenous leaders to exercise their right to peaceful assembly and protest.<sup>76</sup>

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71 United Nations Committee on the Rights of Persons with Disabilities [CRPD] *Argentina* CRPD/C/ARG/CO/1 (2012) at [12]; CRPD *Peru* CRPD/C/PER/CO/1 (2012) at [13].

72 HRC *Universal Periodic Review: Ecuador* A/HRC/21/4 (2012) at [135.57] and [136.3]; HRC *Universal Periodic Review: Peru* A/HRC/22/15 (2012) at [116.111] and [116.112]. HRC, *Universal Periodic Review: Brazil* A/HRC/21/11 (2012) at [119.163]; HRC *Universal Periodic Review: Argentina* A/HRC/22/4 (2012) at [99.109]; HRC *Universal Periodic Review: Guatemala* A/HRC/22/8 (2012) at [99.106], [99.109], [99.110] and [99.111].

73 HRC *Universal Periodic Review: Brazil*, above n 72, at [119.164]; HRC *Universal Periodic Review: Argentina*, above n 72, at [99.110] and [99.111].

74 HRC *Universal Periodic Review: Philippines* A/HRC/21/12 (2012) at [131.4].

75 HRC *Universal Periodic Review: Guatemala*, above n 72, at [99.109].

76 HRC *Universal Periodic Review: Ecuador*, above n 72, at [135.37].

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