

## INDIGENOUS PEOPLES RIGHTS UNDER INTERNATIONAL LAW

### I. INTRODUCTION

Indigenous peoples' rights under international law continued to advance in 2013. Preparations for the 2014 high-level plenary meeting of the United Nations (UN) General Assembly (GA) to be known as the World Conference on Indigenous Peoples (WCIP) picked up pace. Developments relevant to Indigenous peoples' rights occurred under the UN Framework Convention on Climate Change (UNFCCC).<sup>1</sup> Domestically, reports were released on a Government instigated constitutional review and on an independent review into police conduct during "terror" operations in Māori communities. In addition, Māori unsuccessfully challenged the partial privatisation of a state-owned power company in the courts. New Zealand's Indigenous rights situation was the subject of scrutiny by the UN Committee on the Elimination of Racial Discrimination (CERD). Discussion on Indigenous peoples' rights occurred in various international fora, including in the GA, the Human Rights Council (HRC) and in sessions of the World Heritage Committee and a committee of the World Intellectual Property Office (WIPO). International human rights treaty monitoring bodies and states participating in the HRC's Universal Periodic Review (UPR) progressed jurisprudence on the rights of Indigenous peoples. This note reviews New Zealand's state practice regarding Indigenous peoples' rights under international law in 2013 and traces key international developments concerning those rights.

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

#### *A. World Conference on Indigenous Peoples*

In preparation for the WCIP Indigenous peoples held several regional preparatory meetings, which fed into a global Indigenous meeting attended by over 600 delegates and observers from all seven geo-cultural regions of the world in Alta, Norway in June 2013.<sup>2</sup> The purpose of the global meeting was to develop collective recommendations from Indigenous peoples regarding the procedures and thematic priorities of the WCIP. It produced

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 For background on the WCIP see Fleur Adcock "Year in Review: Indigenous Peoples' Rights under International Law" (2012) 10 NZYIL 207-208; Fleur Adcock and Claire Charters "Year in Review: Indigenous Peoples' Rights under International Law" (2010) 8 NZYIL 204.

an outcome document (the Alta Outcome Document or AOD) that will be submitted to the WCIP.<sup>3</sup> The AOD affirms that Indigenous peoples must be able to participate as equal partners with states in the WCIP and identifies the following broad thematic priorities: Indigenous peoples' lands, territories, resources, oceans and waters; UN action for the implementation of Indigenous peoples' rights; implementation of Indigenous peoples' rights; and Indigenous peoples' priorities for development with free, prior and informed consent.

### III. DEVELOPMENTS IN RELATION TO INTERNATIONAL TREATIES

#### *A. UN Framework Convention on Climate Change*

The UNFCCC's 19th Conference of the Parties (COP) and the 9th meeting of the parties to the Kyoto Protocol were held in November 2013. Two central outcomes of COP 19 were a Warsaw international mechanism on loss and damage and the Warsaw Framework for REDD+, both of which have implications for Indigenous peoples.<sup>4</sup> The mechanism on loss and damage is geared at addressing the loss and damage associated with climate change, including from floods and droughts, which Indigenous peoples are often particularly impacted by. The Warsaw Framework for REDD+ is a collection of seven decisions on the implementation of the REDD+ mechanism, which is of especial relevance to Indigenous peoples. The decisions concerned, inter alia, safeguard assessments for result-based finance and the non-carbon benefits of forest conservation. In 2013 the Green Climate Fund (the main financing mechanism for climate change mitigation and adaptation activities) released the first draft of its social and environmental safeguard standards that includes a section on Indigenous peoples and reference to the UN Declaration on the Rights of Indigenous Peoples (UNDRIP).<sup>5</sup> But Indigenous peoples have called for stronger language on free, prior and informed consent and customary laws in the standards.<sup>6</sup>

3 Letter dated 10 September 2013 from the Permanent Representatives of the Plurinational State of Bolivia, Denmark, Finland, Guatemala, Mexico, New Zealand, Nicaragua, Norway and Peru to the United Nations addressed to the Secretary-General, A/67/994 (2013) at Annex.

4 United Nations Framework Convention on Climate Change Conference of the Parties *Report of the Conference of the Parties on its nineteenth session, held in Warsaw from 11 to 23 November 2013* FCCC/CP/2013/10/Add.1 (2014). 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 205.

5 GA Res 61/295, A/RES/61/295 (2007).

6 Shree Kumar Maharjan and others "UN Framework Convention on Climate Change (UNFCCC)" in Cæcilie Mikkelsen (ed) *The Indigenous World 2014* (IWGIA, 2014) at 537-544.

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

##### *A. Constitutional Advisory Panel Recognises Fundamental Place of Treaty*

The Government's Constitutional Advisory Panel released its report on New Zealand's constitutional arrangements in 2013. The Panel's terms of reference included consideration of the place of the Treaty of Waitangi (Treaty) in New Zealand's constitutional arrangements and Māori electoral representation. The report recognised the Treaty as a fundamental part of New Zealand's constitutional arrangements. It recommended that the conversation regarding the Treaty's place in New Zealand's constitution continue and that it include the discussion of options that accommodate the Treaty within existing constitutional arrangements as well as options that have the Treaty at the centre. The Panel also recommended retaining the separate Māori electorates.<sup>7</sup>

##### *B. Independent Police Conduct Authority Critical of "Terror" Raids*

In 2013 the Independent Police Conduct Authority issued its report on police actions in Ngāi Tūhoe country during a 2007 "terror" operation,<sup>8</sup> which had been the subject of an allegation letter from the UN Special Rapporteur on the rights of indigenous peoples in 2007.<sup>9</sup> The Authority found that police action on the suspected offences was reasonable and justified. However, it found that aspects of the operation, including the roadblocks at Ruatoki and Taneatua and the detention of some individuals, were "unlawful, unjustified and unreasonable". The Authority recommended that the police "re-engage with Tūhoe and take appropriate steps to build bridges with the Ruatoki community".<sup>10</sup>

##### *C. Unsuccessful Challenge to Partial Privatisation of Mighty River Power*

In 2013 the New Zealand Supreme Court dismissed the New Zealand Māori Council's (NZMC) argument that the proposed partial privatisation of the state-owned power company Mighty River Power was inconsistent with the principles of the Treaty. The Supreme Court found that the partial

7 Constitutional Advisory Panel *New Zealand's constitution: A report on a conversation* (November 2013) at 28 and 38; Fleur Adcock "Aotearoa (New Zealand)" in Mikkelsen, above n 6, at 224.

8 Independent Police Conduct Authority *Operation Eight: The Report of the Independent Police Conduct Authority* (22 May 2013).

9 UN Human Rights Council [HRC] *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, S. James Anaya Addendum: Summary of cases transmitted to Governments and replies received* A/HRC/9/9/Add.1 (2008) at [339]-[357].

10 Independent Police Conduct Authority "Report into Operation Eight finds Police acted unlawfully" (press release, 22 May 2013); Fleur Adcock "Aotearoa (New Zealand)" in Mikkelsen, above n 6, at 226.

sale would not materially impair the Government's ability to recognise Māori rights or provide redress and that the consultations that had taken place with Māori were adequate.<sup>11</sup>

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

In 2013 the UN Committee on the Elimination of Racial Discrimination issued recommendations regarding the human rights situation of Māori in the course of considering New Zealand's 18th to 20th periodic reports.<sup>12</sup> The Committee's recommendations included that entrenchment of the Treaty be considered as part of the review of New Zealand's constitutional arrangements; the Marine and Coastal Area (Takutai Moana) Act 2011 be reviewed to guarantee Māori full enjoyment of their land and resource rights; Māori Treaty rights to freshwater and geothermal resources be fully respected in any partial privatisation of energy companies; and that the government's consultation processes with Māori be improved in light of Indigenous peoples' right to free, prior and informed consent under the UNDRIP.<sup>13</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 reaffirmed its support for the UNDRIP and stated that "[t]he principles and aspirations of the Declaration underpin the continued dialogue between Māori ... and the New Zealand Government." It asserted that "[t]he rights reflected in the Declaration are given varying effect through a range of measures in domestic law and policy", identifying the Treaty settlement process, the discussion on the place of the Treaty in the constitutional review process, and the use of Māori language in education as examples. It acknowledged continuing challenges in the socio-economic conditions of Māori.<sup>14</sup>

11 *New Zealand Māori Council v Attorney-General* [2013] NZSC 6 at [64], [87] and [149]-[150]; Fleur Adcock "Aotearoa (New Zealand)" in Mikkelsen, above n 6, at 225.

12 Committee on the Elimination of Racial Discrimination [CERD] *Concluding observations on the eighteenth to the twentieth periodic reports of New Zealand* CERD/C/NZL/CO/18-20 (2013).

13 At [7], [13], [18], [19]. See also Fleur Adcock "Aotearoa (New Zealand)" in Mikkelsen, above n 6, at 223-224.

14 Statement by Jim McLay, Permanent Representative of New Zealand, "68th session of the UN General Assembly – Item 66: Rights of Indigenous Peoples" (New York, 21 October 2013).

Regarding the WCIP, New Zealand emphasised “the need to ensure an inclusive World Conference on Indigenous Peoples in 2014.” It drew attention to its support, along with other states, for the AOD to be circulated “as a formal UN document as we consider that document, as a reflection of the views and recommendations of indigenous peoples, to be of relevance and value to the World Conference process.”<sup>15</sup>

### *B. UN Human Rights Council*

The HRC held an interactive panel on the WCIP in 2013. During the dialogue New Zealand reportedly stressed the importance of also engaging with and listening to Indigenous peoples outside of the Global Coordinating Group and the Alta preparatory meeting.<sup>16</sup> In its annual resolution on ‘Human rights and indigenous peoples’ the HRC took note of the AOD and recommended that the four themes it identified “be taken into account when considering the specific themes for the round tables and interactive panel for the World Conference”.<sup>17</sup>

In addition, during the clustered interactive dialogue on Indigenous peoples at which the Expert Mechanism on the Rights of Indigenous Peoples’ (EMRIP) report on access to justice was presented, New Zealand identified the over-representation of Māori in the criminal justice system as a major concern. New Zealand stated that it was taking steps to address this, “including addressing the social, economic and cultural issues that were the underlying causes of these high rates.”<sup>18</sup>

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

In the EMRIP’s 2013 final summary of responses to a questionnaire on best practices for implementing the UNDRIP, New Zealand along with several other states, was identified as being of the view “that existing national laws and policies already conformed to the principles contained in the Declaration and therefore they have not developed additional strategies to implement the Declaration.”<sup>19</sup> The summary further stated that “New Zealand respects the importance of Maori peoples’ relationship with their land and resources, but also maintains the existing legal regimes for ownership and management of land and natural resources.”<sup>20</sup>

15 Statement by Jim McLay, Permanent Representative of New Zealand, “68th session of the UN General Assembly - Item 66: Rights of Indigenous Peoples” (New York, 21 October 2013).

16 Indigenous Peoples’ Center for Documentation, Research and Information *Update No 106* (September/December 2013) at 33.

17 HRC *Human Rights and Indigenous Peoples A/HRC/RES/24/10* (2013) at [18].

18 Office of the High Commissioner for Human Rights “Human Rights Council holds Interactive Dialogue on Rights of Indigenous Peoples” (media release, 18 September 2013).

19 HRC Expert Mechanism on the Rights of Indigenous Peoples *Final summary of responses to the questionnaire seeking the views of States and indigenous peoples on best practices regarding possible appropriate measures and implementation strategies to attain the goals of the United Nations Declaration on the Rights of Indigenous Peoples: Report of the Expert Mechanism on the Rights of Indigenous Peoples A/HRC/24/51* (2013) at [13].

20 At [55].

### D. Permanent Forum on Indigenous Issues

The Permanent Forum on Indigenous Issues' (PFII) 2013 session was a review year focusing on culture, education and health. It included a discussion on the WCIP following which the PFII noted that all conclusions and recommendations arising from Indigenous peoples' preparatory meetings, including the Alta conference, "must be taken into consideration in the decision-making relating to the World Conference itself" and that the themes emerging from the Alta conference "should be considered as a firm basis for the identification of specific themes for the round table and panel discussions" at the WCIP.<sup>21</sup> The PFII also reaffirmed the UNDRIP as the normative framework for the WCIP.<sup>22</sup> During the discussion, New Zealand again emphasised the importance of Indigenous participation in the WCIP.<sup>23</sup>

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

In October 2013 the Convention on Biological Diversity's (CBD)<sup>24</sup> 8th session of the Working Group on Article 8(j) and related provisions (WG8J-8) and the 17th meeting of the Subsidiary Body on Scientific, Technical and Technological Advice (SBSTTA-17) took place. The WG8J-8, which was co-chaired by an Indigenous representative, addressed a number of items of relevance to Indigenous peoples, including activities to progress task 15 on the repatriation of traditional knowledge in the Program of Work; adopting a draft plan of action on customary sustainable practices to promote biodiversity; and discussing *sui generis* systems of protection.<sup>25</sup> A decision on whether the term "indigenous peoples and local communities" should replace the CBD's current references to "indigenous and local communities" in order to conform to the language of the UNDRIP was again deferred until 2014.<sup>26</sup> A major concern of Indigenous peoples at SBSTTA-17 was a new format that inhibited Indigenous peoples' representatives from fully participating in the discussions.<sup>27</sup>

21 UN Economic and Social Council Permanent Forum on Indigenous Issues *Report on the twelfth session* E/2013/43-E/C.19/2013/25 (2013) at [72] and [78].

22 At [71].

23 Indigenous Peoples' Center for Documentation, Research and Information *Update No 107* (January/April 2014) at 17 and 20.

24 Convention on Biological Diversity 1760 UNTS 79 (opened for signature 5 June 1992, entered into force 29 December 1993) [CBD].

25 Conference of the Parties to the Convention on Biological Diversity *Report of the eighth meeting of the Ad Hoc Open-Ended Inter-Sessional Working Group on Article 8(j) and Related Provisions of the Convention on Biological Diversity* UNEP/CBD/COP/12/5 (2013); Patricia Borraz "Convention on Biological Diversity" in Mikkelsen, above n 6, at 546-547.

26 Conference of the Parties to the Convention on Biological Diversity *Report of the eighth meeting of the Ad Hoc Open-Ended Inter-Sessional Working Group on Article 8(j) and Related Provisions of the Convention on Biological Diversity*, above n 25, at Decision 8/6; Patricia Borraz "Convention on Biological Diversity" in Mikkelsen, above n 6, at 547-548.

27 International Indigenous Forum on Biodiversity *SBSTTA-17 Closing Statement* (2013); Patricia Borraz "Convention on Biological Diversity" in Mikkelsen, above n 6, at 549.

### *F. Rio+20*

In 2013 Indigenous peoples contributed to thematic discussions around the development of global Sustainable Development Goals (SDGs) designed to address some of the shortcomings of the Millennium Development Goals through the Open Working Group of the GA on SDGs.<sup>28</sup>

### *G. World Intellectual Property Office*

WIPO's Intergovernmental Committee (IGC) on Intellectual Property and Genetic Resources (GR), Traditional Knowledge (TK) and Folklore held three sessions during 2013 to develop an instrument to protect Indigenous peoples' GR, TK and traditional cultural expressions (TCEs). The IGC's 23rd session focused on GR, the 24th session concerned TK and the 25th session dealt with TCEs and future steps.

At the 25th session on TCEs New Zealand stated that:

- “the participation of indigenous peoples and local communities was vital for the IGC to secure an outcome that worked for everybody” and encouraged other states to contribute to the UN Voluntary Fund for Indigenous Peoples in order to support Indigenous participation, as it had done;<sup>29</sup>
- “there was more work to be done” on art 3 regarding the scope of protection as it seemed to raise “two very clear options and the option chosen would depend on political positions”;<sup>30</sup>
- “more work was required” on art 5 concerning exceptions and limitations to ensure “a text that would make sense for all Member States”. It identified paragraphs 4 and 5 as “controversial” and going “to the heart of the TCE text”;<sup>31</sup>
- “the key to moving forward were Articles 1 and 2”, which covered the subject matter of protection and the beneficiaries of protection. It identified that “[o]ne of the most important issues was who the beneficiaries were: indigenous peoples, indigenous peoples and local communities, or indigenous peoples, local communities as well as nations or national entities”. It also identified definitional issues, remarking that “[e]ither one defined beneficiaries under national law, which was not agreeable to all Member States, or one defined ‘local communities’ at the international level, which would constitute a difficult endeavour”.<sup>32</sup>

28 Ida Peters Ginsborg “Post-2015 Development Agenda and the Sustainable Development Goals” in Mikkelsen, above n 6, at 567-568.

29 World Intellectual Property Office [WIPO] Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore *Draft Report of the Twenty-Fifth Session* WIPO/GRTKF/IC/25/8 prov.2 (2013) at [16].

30 At [363].

31 At [363].

32 At [363].



At the session agreement was not reached on entry into final high-level treaty negotiations and the IGC's mandate was subsequently extended for a further two years.<sup>33</sup>

### *H. World Heritage Convention*

In 2013 the World Heritage Committee continued to consider revisions to the WHC's Operational Guidelines for the Implementation of the World Heritage Convention (WHC) to reflect issues related to human rights and Indigenous peoples.<sup>34</sup> Further, two decisions of the World Heritage Committee made reference to Indigenous peoples' rights, including the decision on Talamanca Range-La Amistad Reserves/La Amistad National Park (Costa Rica/Panama), which is the first decision by that body to refer to Indigenous peoples' right to free, prior and informed consent.<sup>35</sup>

#### *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 released its final report on the topic of Indigenous peoples' human rights and business, which it presented to the GA in October.<sup>36</sup> The report analyses the Guiding Principles on Business and Human Rights with respect to Indigenous peoples. It uses the UNDRIP as a reference point. However, the report has been criticised by some non-governmental organisations for its weak stance on certain rights such as the right to free, prior and informed consent.<sup>37</sup>

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

Indigenous peoples' rights were a feature of the recommendations of international human rights treaty monitoring bodies and states participating in the HRC's UPR in 2013. This jurisprudence will inform the bodies' future reviews of New Zealand.

- 33 WIPO General Assembly *Forty-Third (21st Ordinary) Session* WO/GA/43/14 (2013) at [1]-[2].
- 34 United Nations Educational, Scientific and Cultural Organization [UNESCO] Convention Concerning the Protection of the World Cultural and Natural Heritage World Heritage Committee *Thirty-seventh session Phnom Penh, Cambodia 16-27 June 2013 Item 12 of the Provisional Agenda: Revision of the Operational Guidelines* WHC-13/37.COM/12 (2013); Stefan Disko "World Heritage Convention" in Mikkelsen, above n 6, at 555.
- 35 UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage World Heritage Committee *Thirty-seventh session Phnom Penh, Cambodia 16-27 June 2013 Decisions Adopted by the World Heritage Committee at its 37<sup>th</sup> Session (Phnom Penh, 2013)* WHC-13/37.Com/20 (2013) at [30(8)(b)]; Stefan Disko "World Heritage Convention" in Mikkelsen, above n 6, at 556-557.
- 36 HRC *Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises* A/68/279 (2013).
- 37 José Aylwin and others "Business and Human Rights" in Mikkelsen, above n 6, at 560-562.



### A. Committee on the Elimination of Racial Discrimination

In 2013 the Committee on the Elimination of Racial Discrimination's recommendations regarding Indigenous peoples included that states:

- protect Indigenous peoples' rights to their ancestral lands and resources;<sup>38</sup>
- respect Indigenous peoples' consultation rights and right to free, prior and informed consent;<sup>39</sup>
- take special measures to advance Indigenous peoples' rights;<sup>40</sup>
- ensure Indigenous peoples have access to justice and recognise Indigenous peoples' traditional justice systems;<sup>41</sup>
- improve the protection afforded to Indigenous peoples living in voluntary isolation and initial contact;<sup>42</sup>
- consider ratifying ILO 169;<sup>43</sup>
- ensure that counter-terrorism legislation is not applied to members of Indigenous peoples making social demands;<sup>44</sup>
- investigate allegations of violence against Indigenous peoples;<sup>45</sup>
- revive Indigenous languages and ensure that Indigenous peoples have access to education;<sup>46</sup> and

38 CERD *Concluding observations on the combined nineteenth to twenty-first periodic reports of Chile* CERD/C/CHL/CO/19-21 (2013) at [13(a)] and [13(b)]; CERD *Concluding observations on the combined nineteenth to twenty-first periodic reports of the Bolivarian Republic of Venezuela* CERD/C/VEN/CO/19-21 (2013) at [17]; CERD *Concluding observations on the twentieth to the twenty-second periodic reports of the Russian Federation* CERD/C/RUS/CO/20-22 (2013) at [20(c)].

39 Regarding consent, see CERD *Committee on the Elimination of Racial Discrimination Concluding observations on the combined nineteenth to twenty-first periodic reports of Sweden* CERD/C/SWE/CO/19-21 (2013) at [17]. Regarding consultation, see CERD *Concluding observations on the combined nineteenth to twenty-first periodic reports of Chile*, above n 38, at [12(b)], [12(d)] and [13(c)]; CERD *Concluding observations on the twentieth to the twenty-second periodic reports of the Russian Federation*, above n 38, at [20(d)].

40 CERD *Committee on the Elimination of Racial Discrimination Concluding observations on the combined nineteenth to twenty-first periodic reports of Sweden*, above n 39, at [8]; CERD *Concluding observations on the combined nineteenth to twenty-first periodic reports of Chile*, above n 38, at [16]; CERD *Concluding observations on the combined nineteenth to twenty-first periodic reports of the Bolivarian Republic of Venezuela*, above n 38, at [19].

41 CERD *Concluding observations on the combined nineteenth to twenty-first periodic reports of Chile*, above n 38, at [11]; CERD *Concluding observations on the combined nineteenth to twenty-first periodic reports of the Bolivarian Republic of Venezuela*, above n 38, at [18].

42 CERD *Concluding observations on the combined nineteenth to twenty-first periodic reports of the Bolivarian Republic of Venezuela*, above n 38, at [16].

43 CERD *Concluding observations on the combined sixteenth to twentieth periodic reports of Jamaica* CERD/C/JAM/CO/16-20 (2013) at [14]; CERD *Concluding observations on the twentieth to the twenty-second periodic reports of the Russian Federation*, above n 38, at [22].

44 CERD *Concluding observations on the combined nineteenth to twenty-first periodic reports of Chile*, above n 38, at [14(b)].

45 At [14(d)]; CERD *Concluding observations on the combined nineteenth to twenty-first periodic reports of the Bolivarian Republic of Venezuela*, above n 38, at [17].

46 CERD *Concluding observations on the combined nineteenth to twenty-first periodic reports of Chile*, above n 38, at [15].

- ensure Indigenous peoples' (especially Indigenous womens') full participation in public affairs.<sup>47</sup>

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

In 2013 the Committee on Economic, Social and Cultural Rights' recommendations affirming Indigenous peoples' rights included that states:

- respect Indigenous peoples' self-identification as Indigenous;<sup>48</sup>
- respect Indigenous peoples' right to be consulted on, and to consent to, projects affecting them;<sup>49</sup>
- take effective measures to protect TK and TCEs;<sup>50</sup> and
- take special measures to improve the position of Indigenous peoples.<sup>51</sup>

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

The Committee on the Rights of the Child's recommendations regarding Indigenous peoples' rights included that Rwanda "[g]rant Batwa children and families recognition of their special status, recognize their rights to the natural resources of the forests, and develop initiatives to reconnect them with their ancestral habitats and cultural practices".<sup>52</sup>

### D. Human Rights Committee

During 2013 the Human Rights Committee's recommendations included that Bolivia, Paraguay and Peru guarantee Indigenous peoples' consultation rights and right to free, prior and informed consent.<sup>53</sup>

47 At [16]; CERD *Concluding observations on the combined nineteenth to twenty-first periodic reports of the Bolivarian Republic of Venezuela*, above n 38, at [19]; CERD *Concluding observations on the twentieth to the twenty-second periodic reports of the Russian Federation*, above n 38, at [20](c).

48 Committee on Economic, Social and Cultural Rights [CESCR] *Concluding observations on the fifth periodic report of Denmark* E/C.12/DNK/CO/5 (2013) at [21].

49 CESCR *Concluding observations on the initial report of Gabon* E/C.12/GAB/CO/1 (2013) at [6].

50 CESCR *Concluding observations on the combined third and fourth periodic reports of Jamaica, adopted by the Committee at its fiftieth session (29 April-17 May 2013)* E/C.12/JAM/CO/3-4 (2013) at [32].

51 CESCR *Concluding observations on the third periodic report of Japan, adopted by the Committee at its fiftieth session (29 April-17 May 2013)* E/C.12/JPN/CO/3 (2013) at [30].

52 United Nations Committee on the Rights of the Child *Concluding observations on the third and fourth periodic reports of Rwanda* CRC/C/RWA/CO/3-4 (2013) at [57].

53 United Nations Human Rights Committee [HRCtee] *Concluding observations on the third periodic report of the Plurinational State of Bolivia* CCPR/C/BOL/CO/3 (2013) at [25]; HRCtee *Concluding observations on the third periodic report of Paraguay* CCPR/C/PRY/CO/3 (2013) at [27]; HRCtee *Concluding observations on the fifth periodic report of Peru* CCPR/C/PER/CO/5 (2013) at [24].

*E. Committee on the Rights of Persons with Disabilities*

The Committee on the Rights of Persons with Disabilities identified the need for Paraguay to consult with disabled persons organisations, including with Indigenous peoples, and for investigations into the situation of Indigenous children with disabilities.<sup>54</sup>

*F. Human Rights Council Universal Periodic Review*

During the HRC's 2013 UPR, states' recommendations regarding Indigenous peoples' rights included that:

- Botswana ensures that tourism developments allow Indigenous peoples to continue with their traditional practices and take measures to enhance Indigenous participation on issues affecting them;<sup>55</sup>
- Canada “[g]ive full effect to the United Nations Declaration on the Rights of Indigenous Peoples” and address violence against Indigenous women and girls;<sup>56</sup> and
- Mexico respects Indigenous peoples' traditional justice systems and ensures the “full and effective consultation of indigenous peoples on economic and development policies and projects affecting them”.<sup>57</sup>

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54 United Nations Committee on the Rights of Persons with Disabilities *Concluding observations on the initial report of Paraguay* CRPD/C/PRY/CO/1 (2013) at [10].

55 HRC *Report of the Working Group on the Universal Periodic Review: Botswana* A/HRC/23/7 (2013) at [117.35].

56 HRC *Report of the Working Group on the Universal Periodic Review: Canada* A/HRC/24/11 (2013) at [128.66] and [128.97].

57 HRC *Report of the Working Group on the Universal Periodic Review: Mexico* A/HRC/25/7 (2013) [148.113] and [148.166].

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