

**Mandate of the Special Rapporteur on the rights of indigenous peoples**

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Excellency,

1. I have the honour to address you in my capacity as United Nations Special Rapporteur on the rights of indigenous peoples pursuant to Human Rights Council Resolution 24/9.

2. The purpose of the present communication is to follow-up on observations and recommendations made in my report, "The situation of indigenous peoples in the United States of America" (A/HRC/21/47/Add.1) of 30 August 2012. As your Government is aware, the report contained a series of observations and recommendations that addressed the legal, political, social and economic situations of indigenous peoples in the United States with regard to their human rights and their disadvantaged conditions, many of which are present-day legacies of historical wrongs.

3. Subsequent to the publication of the report, I have continued to monitor the situation of indigenous peoples in the United States and its territories. In this connection, I have met with and heard from indigenous peoples and organizations, including during the annual sessions of the United Nations Permanent Forum on Indigenous Issues and the Expert Mechanism on the Rights of Indigenous Peoples. During these meetings, as well as through the written information received, I have learned about advances that the Government has made to address certain issues faced by indigenous peoples throughout the country, as detailed further in the relevant sections below. I have also received information indicating that many Native American tribes and other indigenous communities still face persistent barriers to the realization of their human rights as indigenous peoples, including with respect to lands and sacred places, preservation of their languages and cultural artefacts, and the welfare of their children and communities. In addition, I have received information regarding on-going grievances with special legal and policy regimes that affect indigenous peoples in Maine, Alaska, Hawaii and Guam.

4. In a spirit of constructive dialogue and to advance concrete action toward greater realization of the human rights of indigenous peoples in the United States, I respectfully address to your Government the following issues of on-going concern.

## **Lands and sacred places**

5. In my 2012 report, I observed that the contemporary conditions of indigenous peoples in the United States have a strong link to a well-documented history of the taking of expanses of indigenous lands, including areas that were abundant with resources or central to Native American cultural and religious practices. The report noted that in many instances indigenous lands were taken through the breach of treaty provisions that guaranteed rights to tribes over lands or resources in order to acquire land for non-indigenous interests. Further, the substantial loss of land significantly undermined indigenous peoples' economic foundations and resulted in enormous cultural loss, given the central role of land in Native American cultural and social patterns.

6. I acknowledge as a recent positive development the Land Buy-Back Program for Tribal Nations. This program was established to facilitate land consolidation within the context of the Cobell settlement agreement, which resolved claims that the federal Government breached certain trust duties to Native Americans. I am encouraged to learn that the program seeks to address the detrimental effects of land fractionation that is prevalent throughout indigenous territories in several parts of the United States.

7. However, I firmly believe that additional action by the Government is required in order to provide indigenous peoples with greater control over their traditional territories and natural resources as a fundamental component of future tribal economic development, self-determination and sovereignty. Restoration efforts also have the potential to play a vital role in addressing the on-going sense of significant loss still felt by indigenous peoples who were stripped of their lands and resources through a range of past misdealing and rights violations.

8. In this connection, I again draw the attention of your Excellency's Government to my 2012 report wherein I highlighted the Treaty of Fort Laramie of 1868, which reserved the Black Hills for the Lakota, Dakota and Nakota peoples, who are collectively known as the Great Sioux Nation. However, in 1877 the treaty was breached by a Congressional act following discovery of gold in the area. This breach resulted in the dispossession of vast expanses of Sioux lands that today still maintain a crucial place in their history, culture and worldview. Significantly, several Sioux tribes have refused to accept payment required in accordance with a 1980 Supreme Court decision and continue to request the return of the Black Hills. In my 2012 report, I recommended that unresolved issues, including those related to the Black Hills, be addressed with firm determination, within a program of reconciliation, particularly in light of the severed or frayed connection between indigenous peoples with culturally significant landscapes and sites (para. 76).

9. Against this background, on 21 August 2012, I sent an urgent appeal to the Government regarding allegations of the sale of land known as Pe' Sla. The Pe' Sla site is located in the Black Hills and is within the ancestral territory of the Great Sioux Nation and is considered to be of substantial spiritual importance to them. The urgent appeal also

contained questions requesting information about the measures taken by the federal or state governments to address the concerns that had been raised by the Lakota, Dakota and Nakota peoples due to the sale, including whether the Sioux people had been consulted about proposed developments in the Pe' Sla area.

10. On 2 January 2013, the Government provided a brief response to the urgent appeal stating that it understood that several tribes purchased the Pe' Sla site on approximately 30 November 2012. According to information received, in November 2012 the Sioux tribes did in fact purchase, for \$9 million dollars, 1,942 acres of land that included the Pe' Sla area, which will reportedly be protected indefinitely as a sacred site.

11. As I observed in my annual communications report (A/HRC/24/41/Add.4, para. 160), I consider the purchase of the Pe' Sla site to be positive in that Sioux tribes have regained control of the area. Nevertheless, I remain concerned that the Government did not take action to directly protect or assist to safeguard Pe' Sla before it was under threat of sale. In this connection, I have ongoing concerns that numerous sacred and cultural sites that maintain a critical place in the cultural survival of Native Americans remain under the threat of sale, development or other similar activities. Moreover, information received indicates the need for greater steps to be taken by your Government to proactively protect such sites or assist in transferring their management to the authority of indigenous peoples.

12. Further illustrating this need are the allegedly current yet so far unsuccessful efforts of the Jemez Pueblo people to recover traditional lands within the Valles Caldera National Preserve, lands that are sacred to the Pueblo but that they were dispossessed of without their consent in the 19th century. This situation was brought to the attention of your Excellency's Government in a separate communication of 13 January 2014, and I look forward to receiving your response.

13. In light of the foregoing, I again draw the attention of your Excellency's Government to the recommendation in my 2012 report that called for measures of reconciliation and redress in relation to indigenous lands and territories. I noted that such measures should address outstanding claims of treaty violations or non-consensual takings of traditional lands to which indigenous peoples retain cultural or economic attachment. In addition, I called for initiatives to restore or secure indigenous peoples capacities to maintain connections with places and sites of cultural or religious significance, in accordance with the United States' international human rights commitments (para. 90).

14. It bears reiterating that article 25 of the United Nations Declaration on the Rights of Indigenous Peoples affirms that indigenous peoples have the right to "maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands and territories ... and to uphold their responsibilities to future generations in this regard." In this way, the Declaration recognizes the vital link between the protection of and access to sites of religious and cultural significance in order for indigenous peoples to effectively practice and manifest their religious beliefs.

Furthermore, article 28 of the Declaration affirms that indigenous peoples have the right to redress, including restitution, or just, fair and equitable compensation, for their traditional lands, territories and resources that have been taken or used without their free, prior and informed consent.

### **Issues concerning culture and cultural artefacts**

#### **Indigenous languages**

15. As highlighted in my 2012 report, indigenous peoples throughout the United States represent a vast array of culturally and linguistically diverse communities. During my visit, in both rural and urban areas, I heard stories of Native Americans' on-going struggles to maintain their cultural traditions in spite of past assimilation and acculturation programs and in the face of contemporary socio-economic challenges. In particular, the history of removing American Indian children from their families for placement in boarding schools has greatly impeded the intergenerational continuity of cultural practices and proficiency in indigenous languages. Today, indigenous communities are seeking ways to revitalize those languages, many of which are on the verge of extinction.

16. The passage of the Native American Languages Act (NALA) in 1990 marked an important step toward supporting the recovery and use of indigenous languages through educational programs. More recently, in 2011, Executive Order 13592 was authorized for the purpose of expanding educational opportunities and improving outcomes for indigenous students, including through instruction in Native American languages, cultures and histories as part of the White House Initiative on American Indian and Alaska Native Education. In the Executive Order, the Government acknowledges the generally poor status of Native American educational indicators as well as its responsibility to help improve academic outcomes and opportunities for indigenous students. Importantly, the Order also calls for indigenous representatives to participate in the development and implementation of the White House Initiative.

17. I have also received information about initiatives to revitalize and perpetuate indigenous languages. For example, it is reported that the NANA regional corporation in northwest Alaska is working with the company Rosetta Stone, as part of their Endangered Language Program, to develop interactive computer learning program for their indigenous language, which is available to Alaska Native communities as well as the wider public. In addition, the Navajo Nation in the southwest United States has developed culturally relevant and bilingual curriculum for its students.

18. Despite these positive developments, indigenous peoples continue to voice concerns about the significant difficulties they face in sustaining their traditional practices, including the transmission of their languages to future generations. For example, concerns have been raised about an overall lack of funding to advance Alaska Native language initiatives, which include increased engagement with indigenous youth in public schools as well as support for adult language programs. Additionally, I have

received information that there is insufficient funding to support Native Hawaiian language immersion programs in elementary and secondary schools, and also a shortage of teachers and books for these initiatives.

19. In regard to Native American languages, the United Nations Declaration on the Rights of Indigenous Peoples affirms the right of indigenous peoples to “revitalize, use, develop and transmit to future generations their histories, languages, [and] oral traditions” and also calls for States to take effective measures to ensure that this right is protected (art. 13). Additionally, the Declaration calls on States to take effective measures, in conjunction with indigenous peoples, to facilitate access for indigenous individuals to education in their own cultural and provided in their own language, including opportunities for children as well as those living outside their communities (art. 14(3)).

### **Cultural Artefacts**

20. Since the release of my report in 2012, I have received information concerning the importation into and sale of Native American sacred items in France and other countries, which has affected the ability of indigenous peoples to protect and maintain their religions and customs, including the protection of cultural and sacred artefacts. According to information received, these sacred items came to be sold in international art markets due to historic circumstances, including their removal from their communities of origin as part of religious and cultural assimilation efforts in the United States during the 19th and early 20th centuries, as well as more recent incidents of alleged theft from Native American communities.

21. Specifically, I have learned of the auction of Hopi “Katsinam”, commonly referred to as “Katchina masks”, and other Native American sacred items that occurred in Paris, France in April and December 2013. The Katsinam are items of great cultural and religious significance to Hopi and Pueblo indigenous peoples in the southwestern United States. The care and maintenance of the Katsinam is undertaken according to well-defined cultural protocols and is entrusted only to properly initiated members of the relevant communities. In the worldview of the Hopi and Pueblo peoples, the unauthorized removal, public display or sale of these sacred items is deeply offensive and also believed to cause serious social, cultural and spiritual consequences.

22. According to the information received, indigenous representatives from the United States requested the assistance of United States embassy officials in France in their efforts to prevent the future auction of indigenous sacred items and repatriate those items. In the case of the December 2013 auction, U.S. embassy officials reportedly assisted Hopi representatives in their legal efforts to block the sale, which were unsuccessful, and also assisted the successful efforts of a private foundation to buy most of the Katsinam and other Native American sacred items for the purpose of returning them to the Hopi and other indigenous peoples in the United States.

23. Although Hopi and other indigenous peoples were able to retrieve some of their sacred items due to the private foundation's efforts at the December 2013 auction, concerns still exist over the broader issue of importation and sale of Native American sacred items without the authorization of the indigenous community concerned and without regard for their religious and spiritual beliefs. These concerns point to possible deficiencies in the implementation and sufficiency of U.S. domestic laws for the protection of Native American cultural patrimony, as well as the observance by France and other countries of international conventions and protocols regarding the importation, transfer, and sale of cultural property.

24. The information received indicates that indigenous peoples in the United States require further assistance from U.S. Government authorities to prevent future exportation, transfer and sale of their sacred items without their authorization and consent, and that domestic and international laws need to be strengthened to provide greater protections in this regard. The recent assistance provided by U.S. embassy officials in the case of the December 2013 auction in Paris was an important initial step in this direction.

25. In this connection, I draw the attention of your Excellency's Government to article 12 of the Declaration on the Rights of Indigenous Peoples, which provides that "[i]ndigenous peoples have the right to manifest, practise, develop and teach their spiritual and religious traditions..." including the corollary right to "the use and control of their ceremonial objects". The Declaration similarly affirms that States shall provide redress to indigenous peoples for "cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs" (art. 11(2)).

### **Indigenous child and community welfare**

26. Since my official visit in 2012, I have continued to receive troubling information regarding the effects of past and present removal of indigenous children from their families. Central to these concerns is a legacy of removals going back to the 1800s when Native American youth throughout the United States were regularly removed from the care of their families and placed in government and private religious boarding institutions, many of which were located long distances from their communities. In the 1950s and 1960s it was still commonplace for social service agencies and state officials to remove Indian children from their indigenous homes for placement with non-Native families.

27. As I noted in my 2012 report, in 1978 Congress enacted the Indian Child Welfare Act (ICWA) to blunt the effects of this history of detrimental child welfare policies and practices on the social and cultural cohesion of indigenous peoples. The ICWA establishes a strong presumption of indigenous custody for indigenous children and sets federal standards for state-court child custody proceedings involving Native American children who are members of, or qualify for membership in, a federally recognized tribe. The primary objective of the ICWA is to "protect the best interests of

Indian children and to promote the stability and security of Indian tribes and families”. The act similarly seeks to achieve the placement of indigenous children in “foster or adoptive homes which will reflect the unique values of Indian culture, and by providing for assistance to Indian tribes in the operation of child and family service programs” (25 U.S.C. § 1902).

28. According to information received, however, significant barriers still exist regarding the implementation of the ICWA. It is reported that Native American children in several parts of the country are placed with non-indigenous families in adoptive homes at high and disproportionate levels. By way of example, a survey conducted in 2008 estimated that 56 per cent of adopted Native American and Alaska Native children were placed in non-indigenous homes.

29. The situation of “Veronica”, which was the subject of my communication sent to your Government on 9 September 2013, exemplifies concerns brought to my attention regarding the current status of implementation of the ICWA. In that custody dispute, as reflected in my communication to your Government, Veronica’s biological father, a citizen of the Cherokee Nation, challenged the removal of his daughter to the custody of a non-indigenous couple. In my letter, I expressed concern that custody of Veronica had been awarded to a non-indigenous couple without allowing for a hearing or full determination about the best interests of the child, as ordinarily is done when custody or adoption is contested by a biological parent. I also expressed the considered view that Veronica should not be removed from her Cherokee family to the custody of the non-indigenous couple without an adequate hearing about her best interests which takes into account her current situation and Cherokee heritage and in which family members are allowed to participate. In addition, I called for relevant authorities to fully take into account the child’s rights to maintain her cultural identity and to maintain relations with her indigenous family and people.

30. I note your Excellency’s Government’s response of 15 November 2013, which informed that the custody dispute had come to a close and that Veronica’s biological father had returned the young child to her non-indigenous adoptive parents per court rulings. I also take note that the Government affirms its commitment to promoting compliance with the ICWA. Notwithstanding the stated commitment of the Government, I remain concerned that the circumstances and outcome of Veronica’s case as a Native American child is emblematic of a larger pattern of out-placement of indigenous children that runs counter to the spirit of the ICWA. Moreover, I remain concerned that in certain instances, as exemplified by Veronica’s case, indigenous children continue to be removed from their families without full adherence to the procedural and substantive provisions of the ICWA and under narrow interpretations of the act by courts.

31. I would like to reiterate the importance of international standards set forth in my 9 September 2013 communication to your Excellency’s Government regarding the rights of indigenous children to maintain their cultural identity and relations with their indigenous family and people. In particular, the United Nations Declaration on the Rights of Indigenous Peoples specifically guards against removal of indigenous children from

their families and communities (art. 7); protects indigenous peoples and individuals from forced assimilation or undermining of their culture (art. 8); affirms the right of indigenous individuals to belong to an indigenous community or nations (art. 9); and recognizes the right of indigenous children to be educated in their own language and culture (art. 14).

### **Ongoing grievances within special regimes**

32. As noted in my 2012 report, for historical reasons, certain groups of indigenous peoples under the jurisdiction of the United States are subject to special legal regimes and experience unique on-going grievances that result from their distinct histories and status. In particular, issues have been brought to my attention regarding the situations of indigenous peoples in Maine, Alaska, Hawaii and Guam.

#### **Maine**

33. I have received information regarding the indigenous peoples of Maine, including the Houlton Band of Maliseet Indians, the Passamaquoddy Tribe, the Penobscot Indian Nation, and the Aroostook Band of Micmacs. Collectively, these indigenous peoples are known as the Wabanaki tribes and are subject to, in varying degrees, the 1980 Maine Indian Claims Settlement Act (MISCA) (25 USC 1721 et seq. and 1991 Amendment ) and the related 1980 Maine Implementing Act (MIA) (30 MRSA §6201 et. seq.). Together, these acts sought to settle land claims, address jurisdictional issues and clarify state and tribal relationships, among other related matters.

34. Particular concerns have been expressed in regard to MISCA §§ 1735(b) and 1725(h), which make certain beneficial federal laws pertaining to Native American tribes inapplicable in the state of Maine. It is reported that these provisions, among others, subject the Wabanaki tribes to legal arrangements under the settlement acts that distinguish them from and disadvantage them in comparison to the majority of federally recognized tribes in the United States.

35. According to allegations received, the application of the settlement acts by Maine, particularly with regard to those provisions pertaining to civil and regulatory jurisdiction as well as the applicability of federal laws benefitting Native Americans, has limited Wabanaki tribes in their efforts to develop economically and protect their natural resources. In this connection, concerns have been raised that MISCA § 1735(b) has been applied in such a way as to impede Wabanaki tribes from utilizing certain economic development opportunities that benefit other federally-recognized tribes, for example, those available under the Indian Gaming Regulatory Act. In addition, concerns have been expressed that MISCA § 1735(b) renders inapplicable provisions of the federal Clean Air and Clean Water Acts that provide the opportunity for tribes to assume regulatory authority to protect against environmental harms in their territories.

36. It has also been reported that federal courts as well as Maine state courts have narrowly interpreted the settlement acts in ways that restrict tribes from exerting greater civil and regulatory jurisdiction within their lands. For example, a federal court



has held that the settlement acts authorized Maine to enforce state laws in the context of tribal government employment matters. Similarly, the settlement acts have been interpreted by a federal court to limit the environmental regulatory authority of the Penobscot and Passamaquoddy tribes in regard to navigable waters on their tribal lands.

37. Information received also indicates that the MICSA allows Maine to amend certain provisions to the MIA, including in regard to state-tribal jurisdictional matters (25 USC § 1725(e)(1)). In this connection, it is reported that Wabanaki view the MIA as a dynamic document that can be modified to reflect the changing conditions and circumstances of the tribes as well as the changing relationship between the Wabanaki tribes and the state. However, it is reported that while adjustments have been periodically discussed between state officials and tribal leaders and minimal modifications have been made, the state of Maine has yet to allow meaningful changes to the law, particularly in regard to enhancing tribal self-determination and jurisdictional powers.

38. Still, recent positive developments between Maine and indigenous peoples have been reported. For example, Maine and Wabanaki tribal representatives have collaborated in the creation of the Maine Wabanaki-State Child Welfare Truth and Reconciliation Commission, which seeks to address harms to Wabanaki children and families related to the state child welfare system. Further, Maine has expressed its support for the United Nations Declaration on the Rights of Indigenous Peoples. These represent important steps towards instituting measures of reconciliation with indigenous peoples.

39. However, concern continues to be expressed that insufficient progress has been made in addressing the Wabanaki tribes' desires for greater self-determination, economic development and regulatory jurisdictional opportunities within the framework of discussions for modification of the settlement acts. In this connection, Wabanaki tribes have expressed they have not been adequately consulted with respect other regulatory matters, including recent proposed legislation about elver fishing.

## **Alaska**

40. As briefly highlighted in my 2012 report, the situation of Alaska Native peoples merits particular attention due to the unique challenges they face regarding their subsistence rights, food security, cultural activities, and social and economic well-being. The legal and policy framework that shapes the contemporary situation of Alaska Natives can be traced back to a number of legal and political developments during the 20th century. Prominent among these developments was the process leading to Alaska statehood in 1959 within the context of United Nations-monitored decolonization, as well as a significant push soon thereafter to develop natural resources in the new state, but which was subject to unresolved indigenous land claims. Against this backdrop, Congress enacted the Alaska Native Claims Settlement Act of 1971 (ANCSA) and the Alaska National Interest Lands Conservation Act of 1980 (ANILCA).

41. These Acts resulted in a complex dual federal-state jurisdictional system that governs subsistence use of wildlife and fish in Alaska. The legal framework

governing subsistence activities in Alaska is derived from a myriad of state and federal laws as well as court decisions. Within this regime, one management regime is applied to federal lands while another is applied to state and private lands, which include the lands of Alaska Native corporations. This dual management approach is reportedly has inconsistencies and creates confusion, misunderstandings and distrust between indigenous peoples and state management officials. According to information received, the regime also hinders indigenous people from accessing their traditional foods, which continue to play a critical role in the food security of many Alaska Natives, particularly those living in remote rural communities. For example, it is reported that some villages are not issued a sufficient number of fishing permits to meet the substance needs of their residents and that restrictions have been placed on fishing during peak harvesting times.

42. It has also been reported that Alaska Natives experience a range of social ills, including high rates of suicide, alcoholism and incarceration as well as a low rate of educational attainment among indigenous youth. Of particular concern is the high rate of violence against indigenous women and girls. It is reported that they experience the highest rate of sexual assault in the country with half of Alaska Native women experiencing physical or sexual violence in her lifetime. Further, approximately 200 remote Alaska Native villages face significant public safety and law enforcement challenges due to their small and remote nature and a lack of trained and adequately equipped law enforcement officers. This contributes to high incidents of crime, drug and alcohol abuse, and domestic violence. In addition, it has been alleged that when law enforcement officials are present in Alaska Native communities they may lack cultural sensitivity, which creates additional barriers to addressing victim's needs.

43. During my visit to Alaska in 2012, I was informed that the passage of the Alaska Safe Families and Villages Act of 2011 (S. 1192) could offer a path toward addressing the reported high rates of crime and civil disturbances in rural indigenous communities. The 2011 proposed legislation was revised and a new version of the Alaska Safe Families and Villages Act was introduced in 2013 (S.1474), which generally addresses many of the same issues of the 2011 bill. The purpose of the 2013 bill is to improve judicial services in Alaska Native villages by encouraging the state and Indian tribes to work together through intergovernmental agreements to improve enforcement and adjudication of state laws pertaining to drug and alcohol offenses. In addition, the 2013 bill seeks to increase coordination and communication among law enforcement at various levels. Enactment of the proposed legislation in its current version would make indigenous Alaska communities eligible for the same tribal court and law enforcement programs and funding opportunities from the Government as are available to tribes in other parts of the United States.

44. Also importantly, since my visit in 2012, the Alaska Safe Families and Villages bill has been revised so that it would repeal section 910 ("the Alaska exclusion") of the Violence Against Women Reauthorization Act of 2013 (VAWA). Currently, section 910 excludes all but one of Alaska's tribes from VAWA provisions that permit tribal courts to exercise jurisdiction over both indigenous and non-indigenous alleged offenders in some circumstances. The Alaska Safe Families and Villages bill would provide

participating Alaska tribes, like numerous tribes in other areas of the United States, with jurisdiction over domestic violence crimes as well as the authority to “issue and enforce protection orders involving any person”.

45. As stated in my 2012 report, several Alaska Native representatives have expressed the view that problems today stem from the incorporation of Alaska into the United States as a federal state through procedures that allegedly were not in compliance with the right of the indigenous people of Alaska to self-determination. Until statehood, Alaska was on the General Assembly’s list of non-self-governing territories subject to decolonization procedures to implement self-determination. According to information received, the referendum leading to statehood limited self-determination options, and the Alaska Native vote in the referendum was overpowered by non-indigenous residents, many of them recent arrivals.

## **Hawaii**

46. Within the context of my 2012 visit to the United States, as well as through subsequent information received, concerns have been expressed that the vulnerable conditions of many Native Hawaiians today have a connection with a series of traumatic historical events, including aggressive patterns of colonialism that suppressed Hawaiian culture and devastated the traditional land tenure system. Today, divergent views exist among Native Hawaiians about how to advance and protect their rights as indigenous peoples. Nevertheless, many Native Hawaiians coincide in the view that a principal challenge facing them at present is the insecurity of their rights due to their unresolved status as indigenous Hawaiians.

47. As stated in my 2012 report, a growing movement of indigenous Hawaiians challenges the legitimacy and legality of the annexation of Hawaii by the United States following the overthrow of its monarch in 1893, as well as the process by which Hawaii moved from its designation as a non-self-governing territory under United Nations supervision to being incorporated into the United States in 1959. Given the undisputed history – which has given rise to a formal congressional apology – serious questions are raised about whether or not United Nations decolonization procedures have been adequately or fully implemented in light of the rights of self-determination.

48. Within this context, Native Hawaiians continue to struggle in the aftermath of having their lands and resources stripped from them at a rapid pace, which in turn precipitated enormous cultural loss and the near decimation of their people. Related to this, information has been received indicating that today Native Hawaiians experience significant socio-economic disparities and disadvantages when compared with the general population of the state, including higher rates of obesity, diabetes, infant mortality, and suicide attempts as well as a considerably shorter life expectancy. Equally concerning is information received regarding educational outcomes for Native Hawaiians that reflect low achievement, attendance, and graduation levels. Similarly, it is reported that Native Hawaiian families live in poverty more often and earn less than non-indigenous Hawaiian households.

49. I have also continued to receive information about the critical role that culture, language and sacred places maintain in connection with the overall well-being of Native Hawaiian communities. Concerns have been raised regarding limited public educational opportunities to foster, develop and transmit Native Hawaiian culture to indigenous youth. In this connection, concerns continue to be brought to my attention regarding the underlying commitment of the state government to support Hawaiian language programs. In particular, Native Hawaiian representatives have called for greater assistance for language immersion programs in public elementary and secondary classrooms where indigenous students comprise approximately 28 per cent of all students.

50. In addition, according to information received, Native Hawaiians seek greater control over and inclusion in the benefits flowing from the use of their traditional lands and natural resources, particularly those that are closely connected to cultural activities. For example, concerns have been raised about the state providing low-cost leases for the use of Mount Mauna Kea to support the construction and operation of several large telescopes for astronomical observations. Mauna Kea is a sacred place for indigenous Hawaiians, and observatory activities have reportedly resulted in damage to specific sacred and cultural sites.

51. Information received also indicates that Native Hawaiians have concerns regarding the long-standing and significant presence of the U.S. military throughout the state. This presence has allegedly caused severe damage to the cultural landscape, including through the dumping of weapons in the waters near the Hawaiian Islands, which indigenous people hold to be sacred. Related to this, it has been reported that Native Hawaiians have experienced some difficulties in accessing culturally important places, such as portions of the Mokapu peninsula, which are located on federally controlled lands and military installations.

## **Guam**

52. Another sui generis situation of indigenous peoples within the jurisdiction of the United States is that of the Chamorro indigenous people of the territory of Guam. Similar to the situations of other indigenous communities in the Pacific region, the Chamorro have experienced a complex history of colonization that shapes their modern day circumstances. Guam is an unincorporated territory of the United States and one of only 16 entities that remain on the United Nations list of non-self-governing territories. Guam's current political arrangement is grounded in the Organic Act of 1950, which created provisions for the governance of Guam under the general administrative supervision of the U.S. Secretary of the Interior.

53. Many among the Chamorro people have expressed concerns about Guam's continued political status as an unincorporated territory of the United States. In this connection, Chamorro representatives have called for an opportunity to exercise their right to self-determination and have voiced concerns that the current status of Guam as an

unincorporated territory limits their ability to participate in political life, including by not having a voting member in Congress and by not being able to vote for the president and vice-president of the United States.

54. Information received indicates that historically the Chamorro people practised subsistence fishing in the waters of Guam, and that fishing activities continue to play a central role in Chamorro culture and society with an emphasis placed on inter-generational education of fishing practices between Chamorro elders and youth. However, it has been alleged that many of the Chamorro's traditional subsistence and cultural activities have been eroded with successive waves of colonization and continue to be threatened by contemporary circumstances, including restrictions on fishing practices and an anticipated military build-up on the island.

55. According to information received, Chamorro fishing activities were significantly changed in 1997 when the Guam Legislature enacted Public Law (PL) 24-21, which created five Marine Preserve Areas for the purpose of protecting the island's fishing waters and preserving local traditions. The law came into full force beginning in 2001 after a period to allow fishers to become familiar with the new restrictions. PL 24-21 includes provisions that prohibit the fishing of a broad array of species and also bans various types of fishing methods that allegedly limit Chamorro fishing activities. Penalties imposed on fishers for improperly fishing in the Marine Preserve Areas can include fines between US \$50 and \$500, and/or imprisonment up to 90 days, in addition to forfeiture of fishing gear. Although the fishing restrictions under PL 24-21 apply equally to anyone fishing in the protected sea areas, it is alleged that the indigenous Chamorro are specifically affected by the law due to the subsistence and cultural significance of fishing to their communities. It is alleged that numerous Chamorros have been arrested, charged and fined under the law.

56. Information received indicates that Chamorro fishers traditionally have fished inshore, along the west coast of the island, where the waters are calmer and safer than other areas. In large part, the newly protected areas are found in traditional Chamorro fishing zones along the west coast as well as the northern and southern tips of the island. Implementation of PL 24-21 and the Marine Preserve Areas has allegedly forced indigenous fishers to fish in waters located on the eastern side of the island that are deeper, rougher and less safe. It is reported that exposure to hazardous fishing conditions has resulted in a dramatic increase in Chamorro fisher deaths by drowning. Furthermore, limited access to fishing grounds also curtails the ability of Chamorro people to provide fish for their families or teach traditional fishing practices to their children.

57. In 2008, subsequent to the implementation of PL 24-21, the Guam Legislature passed Public Law 29-127, which relates to indigenous fishing rights. PL 29-127 provides that "the Chamorro people shall have special rights to off-shore fishing and harvesting of resources in order to redress historical discriminatory policies" [emphasis original]. The law recognizes that Chamorro fishing "traditions and skills are in danger of being lost in the face of modern conservation restrictions" as well as from an increase in non-Chamorro migration to the island. The law also requires that the Guam Department

of Agriculture develop rules and regulations, in consultation with Chamorro people and organizations, to effectuate the law within 90 days of enactment. This law has been recognized as a positive development; however, the rules and regulations have allegedly not yet been approved to implement the law. As a result, Chamorro fishing activities are still restricted and fishers continue to fish in dangerous areas and conditions.

58. Another major issue that is allegedly facing the Chamorro people of Guam is the continued and substantial presence of the U.S. military on the island. In the 1940s, during the early years of the large military presence, the United States reportedly condemned thousands of acres of traditional Chamorro land to make way for military installations. Currently plans are being developed to relocate approximately 5,000 U.S. Marines from Okinawa, Japan to Guam beginning in the early 2020s. It has been alleged that the anticipated military build-up will involve dredging and construction that will negatively affect marine and other traditional natural resources used by the Chamorro. In this connection, concerns have also been expressed that the dramatic increase of population with the military build-up will result in heightened competition for land and resources and will limit the Chamorro people's access to fishing, hunting and foraging areas.

**The on-going need for remedial measures and steps toward reconciliation and to implement self-determination, in accordance with the Declaration on the Rights of Indigenous Peoples**

59. The information presented in this letter is communicated in the spirit of advancing determined action toward remedies for continuing grievances and genuine reconciliation, a central theme in my 2012 report. Just as do many of the concerns raised in the report, several of the problems presented above relate to historical wrongs carried out against indigenous peoples that still remain unresolved and continue to foster social and economic problems affecting indigenous individuals, communities and nations. I acknowledged steps taken in recent years to develop programmes and policies that are intended to strengthen the wellbeing of indigenous peoples and their communities throughout the country. However, I remain of the firm view that, unless greater movement is made toward resolving pending problems, the place of indigenous peoples in the United States will continue to be an unstable, disadvantaged and inequitable one.

60. In light of the above, I would like to again draw the attention of your Excellency's Government to the importance of the 2010 Congressional resolution of apology to the indigenous peoples of the country, which recognized widespread wrongdoing to Native peoples and included an expression of regret. Significantly, the apology "urges the President to acknowledge the wrongs of the United States against Indian tribes in the history of the United States" in order to bring healing to the country. In this connection, I again call for the apology to serve as a point of public awakening and to mark a path toward reconciliation. Likewise, I again emphasize that the President should, as an initial measure, "make the apology resolution widely known among indigenous peoples and the public at large, in a way that is appropriate to the sensitivities

and aspirations of indigenous peoples, and within a broader program that contributes to public education about indigenous peoples and the issues they face” (para. 97).

61. Moreover, as also stressed in my 2012 report, the principles embodied in the United Nations Declaration on the Rights of Indigenous Peoples should guide the United States in its actions to address the numerous challenges faced by indigenous tribes, communities and individuals. Emphasis should be placed on aligning Government actions and policies with the rights of indigenous peoples over their traditional lands and resources, which may include measures that provide redress by means of restitution or just, fair and equitable compensation. Special measures should also be taken to restore and secure indigenous peoples’ rights in regard to culture, religion, health, education, participation and development as affirmed in the Declaration.

62. Related to this, I reiterate my 2012 recommendation that the “federal executive and Congress should respond to initiatives promoted by indigenous peoples for new or amended legislation and programmes, in accordance with the international human rights commitments of the United States” (para. 88). Raising awareness about the Declaration and the United States’ commitment to indigenous peoples’ human rights is a necessary step to ensure that avenues of opportunity are created and sustained to implement the principles embedded in the Declaration. Awareness campaigns should be carried out within the various levels and branches of Government with complimentary campaign efforts made to educate the wider public.

63. Education and implementation efforts should pay special attention to indigenous peoples’ right to self-determination, which is a central feature of the Declaration. In this connection, I draw your Excellency’s Government’s attention to article 3 of the Declaration, which affirms that “[i]ndigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development”. This provision emphasizes that indigenous peoples in the United States and its territories have the right to pursue their own priorities in all aspects of life, under equal terms, and to live within governing institutional frameworks that are developed accordingly. Particular attention should be given to enhancing the right to self-determination of all indigenous peoples’ in the United States and, in particular, that of indigenous peoples in Maine, Alaska, Hawaii and Guam, who especially manifest a lack of implementation of this right.

64. In the case of Maine, the state government, like the federal government, has taken a positive initial step of expressing support for the United Nations Declaration on the Rights of Indigenous Peoples. However, the information received indicates that the need still exists for both state and federal governments to take concrete steps, beyond expressions of support, to implement the principles and norms of self-determination contained in the Declaration, particularly with respect to the framework established by the MISCA and MIA.

65. With regard to Alaska, Hawaii and Guam, it bears mention that the right to self-determination has a central role in both the indigenous rights and decolonization

regimes. In addition to several articles of the Declaration on the Rights of Indigenous Peoples, self-determination is affirmed as a right of all peoples in General Assembly resolutions 1514 (XV) of 14 December 1960 and 1541 (XV) of 15 December 1960, which promote the decolonization of non-self-governing territories. Moreover, realization of the right to self-determination often times requires more than carrying out decolonization procedures of the broader territory in which indigenous peoples live alongside others. In this connection, reconciliation measures with indigenous peoples of Alaska and Hawaii must acknowledge and address the alleged shortcomings of the respective decolonization processes and advance substantive rights of indigenous peoples under the Declaration, including self-determination under terms of equality.

66. As related to Guam, the Declaration should guide discussions with the Chamorro people regarding their aspirations for realization of their right to self-determination and protection of their human rights as indigenous people within the decolonization regime. In addition, public deliberations related to decolonization of the territory should include educational efforts related to the right to self-determination of Chamorro people, including aspects beyond and apart from statehood or the formal political status of Guam as a whole.

### **Request for response**

67. As I continue to monitor and clarify the circumstances surrounding the above-mentioned issues in follow-up to my previous report on the situation of indigenous peoples in the United States, I would be interested in knowing your Government's views on the accuracy of the information contained in this letter, and I would be grateful to receive any additional information your Government may deem relevant. Moreover, I am interested in learning what steps are being taken by your Government to implement the recommendations of my 2012 report and to address the concerns raised in this letter. In particular, I would like to know further information regarding:

### **Lands and sacred places**

1. What measures of reconciliation and redress has the Government taken to address outstanding claims of treaty violations or non-consensual takings of traditional lands to which indigenous peoples retain cultural or economic attachment, as exemplified by the taking of the Black Hills?

### **Issues concerning culture and cultural artefacts**

#### **Indigenous languages**

2. What measures have been taken by the Government to support indigenous-led programmes and initiatives to revitalize and support education of indigenous languages? What strategies are in place to ensure reliable funding for these programmes and initiatives?



3. What outcomes can be reported as a result of Executive Order 13592 regarding opportunities for indigenous students to learn their Native languages?

### **Cultural artefacts**

4. What specific measures exist to prevent the exportation, transfer and sale of Native American sacred items and other cultural patrimony that have been obtained without consent and authorization of the indigenous group concerned?

5. What measures have been taken by your Government, or in collaboration with the Governments of other countries, to investigate and sanction the recent exportation, transfer and sale of indigenous sacred items and cultural patrimony that may violate domestic or international laws and regulations regarding cultural property?

### **Indian child and community welfare**

6. What strategies are in place to educate judges and state child welfare workers regarding the purpose, objectives and requirements of the Indian Child Welfare Act and enhance tribal-state cooperation in implementing the act?

### **On-going grievances within special regimes**

#### **Maine**

7. What efforts has the federal Government made to work with the state of Maine and Wabanaki tribes to develop policies to promote the goals of the Declaration and to ensure that the decisions of state authorities are consistent with it, including efforts to amend or modify provisions of the MIA and/or MICSA that indigenous peoples have considered as problematic?

#### **Alaska**

8. What steps have been taken at the federal or state levels to address the concerns over the alleged burdensome effects on the subsistence activities of Alaska Natives created by ANCSA and ANILCA?

9. How is the high rate of sexual and physical abuse in indigenous communities currently being addressed? In the event that the proposed Alaska Safe Families and Villages Act does not become law, what strategies or programs are being developed to provide culturally appropriate, adequate and reliable law enforcement, judicial and victim services for remote indigenous communities?

10. What measures are being taken, if any, to address grievances about alleged irregularities in the process by which Alaska was removed from the list of non-self-governing territories subject United Nations supervisions and to ensure full implementation of the right to self-determinations for the indigenous peoples of Alaska?

## **Hawaii**

11. What programmes are in place to support culturally appropriate education, including language, for Native Hawaiian children, particularly those who are educated through the public school system? How are Native Hawaiian representatives or organizations involved in the development and implementation of these programs?

12. What steps, if any, are being taken to protect and rehabilitate places that are sacred to the indigenous people of the Hawaiian Islands? What measures are in place to ensure access to cultural or sacred places that are located on federally or state controlled lands, including military installations?

13. What measures are being taken by federal or state governments to address the outstanding grievances of indigenous Hawaiians stemming from the overthrow of the Hawaiian monarchy and the annexation of Hawaii by the United States, and to implement the right to self-determination for indigenous Hawaiians?

## **Guam**

14. What mechanisms are in place to address concerns by indigenous Chamorro residents about the effects of local legislation on traditional fishing practices and personal safety of Chamorro fishermen?

15. What safeguards are in place to protect Chamorro interests and rights related to their land, resources and traditional cultural activities in light of the anticipated military build-up beginning in the 2020s?

The on-going need for steps of reconciliation and action to address indigenous peoples' concerns, in accordance with the Declaration on the Rights Indigenous Peoples

16. What specific measures have been taken by the Government to make the 2010 resolution of apology by Congress widely known among indigenous peoples and the public more broadly? What strategies have been developed regarding implementation of the reconciliation measures called for in the apology resolution?

17. What specific measures have been taken by Government authorities to promote awareness among federal and state government officials about and to promote Government action at all levels that is consistent with the Declaration on the Rights of Indigenous Peoples?

18. What other measures, not addressed in the responses to the above questions, has the Government taken to implement the recommendations made in my 2012 report on the human rights situation of indigenous peoples in the United States?

I would appreciate a response from your Government in 60 days. I undertake to ensure that your Excellency's Government's response will be taken into account in my assessment of this situation and in developing any recommendations that I may make for your Excellency's Government's consideration pursuant to the terms of my mandate.

Please accept, Excellency, the assurances of my highest consideration.

James Anaya  
Special Rapporteur on the rights of indigenous peoples