

**STATEMENT**  
**BY**  
**THE DELEGATION OF THE REPUBLIC OF SOUTH AFRICA**  
**DURING THE GENERAL DISCUSSION ON THE RIGHTS OF**  
**INDIGENOUS PEOPLES**

**UNITED NATIONS**

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*PLEASE CHECK AGAINST DELIVERY*

Chairperson,

At the outset, my delegation wishes to thank the Secretary-General and the Special Rapporteur on the rights of indigenous peoples for their comprehensive reports. My delegation wishes to make the following observations and comments on the afore-mentioned reports.

On the report of the Secretary-General, submitted pursuant to UNGA resolution 69/2, the South African delegation has noted progress pertaining to the development of a system-wide action plan to ensure a coherent approach to achieving the ends of the Declaration, including the appointment of a senior official in the person of the Under Secretary-General for Economic and Social Affairs in October 2015.

Our delegation is also pleased that a Working group has been established in this regard, which has already identified specific action areas, and is consulting on a draft set of guiding principles. We are encouraged by these developments.

Chairperson

Our delegations participated actively during negotiations of a resolution that convened an Expert Seminar to review the mandate of the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP). It was clear during the negotiations that there are different views on how the review process should unfold, as well as on what the mandate of the reconfigured EMRIP should entail, also judging from the contents of the

report of the Secretary-general. Some recommendations such as the issuance of general observations and interpretations regarding the provisions of the Declaration, as well as seeking, receiving and considering communications and other information suggest Treaty Monitoring functions in the reconfigured mandate of the EMRIP. While we support the full and effective implementation of the Declaration, we are also cognisant that the Declaration does not carry the same status as a Convention. In this regard, our delegation is ready to support the elaboration of a Convention on the rights of indigenous peoples, something that our delegation has been advocating for, for some time.

It is unfortunate that while there has been a lot of rhetoric about supporting the Declaration, most of the main advocates of the Declaration are then completely opposed to any wording that talks to the “implementation of the provisions of the Declaration”, something that our delegation fails to comprehend. We encourage the sponsors of resolutions on this thematic issue to move to the elaboration of a Convention on the rights of indigenous peoples that would ensure that States report on the implementation of the provisions of such a Convention.

Chairperson,

The Outcome Document has among other things, requested the Secretary-General the responsibility of identifying the ways and means of enabling the participation of indigenous peoples representatives and institutions in meetings of relevant United Nations Bodies on issues affecting them. We have taken note of the report on this issue, including the recommendation that the President of the General Assembly

considers the appointment of a co-facilitators or advisers to lead an open-ended consultation process on the possible procedural and institutional steps and selection criteria necessary to enable indigenous peoples' participation in the UN. There are certainly differences of opinion on this particular proposal from among the indigenous peoples themselves, some of which are informed by experiences stemming from the manner in which the preparatory processes leading to the World 2014 Conference on Indigenous Peoples were handled. On our part, we would like to see a process that is inclusive and transparent, also in terms of the substantive contributions of indigenous peoples from all regions of the world.

Finally Chairperson, our delegation wishes to commend the Special Rapporteur on the rights of indigenous peoples for a very opportune report on the impact of international investment and free trade on the human rights of indigenous peoples. We fully share the concerns raised in the report having had the experience of being taken to an international arbitration process for the so-called investor-State dispute settlement when the Government sought to implement affirmation action policies following the democratic dispensation in South Africa, aimed at ensuring non-discrimination and levelling the playing fields for those who were previously excluded on the basis of their race. This is why among others, South Africa engaged in the process of reviewing and the subsequent termination of such bilateral investment treaties.

Transnational Corporation utilize hard law when they take States to international arbitration, yet they favour guidelines or self-regulation mechanisms to address the adverse impacts of their activities on human rights, which is indefensible. South Africa jointly with Ecuador initiated a

process that aims to address some of the concerns raised in the report in this regard, through the establishment of an Intergovernmental Working Group with a mandate to elaborate a legally binding instrument to ensure accountability by transnational corporations and other business enterprises for human rights violations, as well as adequate remedies for victims of such violations. We are therefore encouraged by the contribution of the Special Rapporteur, who also outlined the challenges with such an approach. The Special Rapporteur also highlighted the shrinking policy space occasioned by the need to balance the often competing priorities between investment and ensuring the promotion and protection of human rights by States.

We look forward to the Special Rapporteur's future reports on these issues.

I thank you.