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Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development

Panel discussion on the rights of Indigenous Peoples

Report of the Office of the United Nations High Commissioner for Human Rights

Summary

The present report contains a summary of the proceedings of the annual panel discussion on the rights of Indigenous Peoples that was held during the fifty-seventh session of the Human Rights Council. It includes summaries of the opening statements and of the presentations made by the panellists and highlights from the interactive discussion that followed. Pursuant to Council resolution 54/12, the theme of the panel discussion was “Laws, policies, judicial decisions and other measures taken by States to achieve the ends of the United Nations Declaration on the Rights of Indigenous Peoples”.



I. Introduction

1. On 25 September 2024, the Human Rights Council held its annual panel discussion on the rights of Indigenous Peoples as mandated in its resolution 18/8. Pursuant to its resolution 54/12, the theme of the panel discussion was “Laws, policies, judicial decisions and other measures taken by States to achieve the ends of the United Nations Declaration on the Rights of Indigenous Peoples”.

2. The panel discussion was aimed at:

(a) Discussing laws, policies, judicial decisions and other measures that States had taken, in compliance with article 38 of the United Nations Declaration on the Rights of Indigenous Peoples, to achieve the ends of the Declaration;

(b) Analysing the impact on the enjoyment of Indigenous Peoples’ rights of laws, policies, judicial decisions and other measures that States had taken in response to the adoption of the Declaration;

(c) Reflecting on measures that States had taken, in consultation and cooperation with Indigenous Peoples, to achieve the ends of the Declaration and discussing the challenges faced or the barriers encountered;

(d) Sharing good practices, models or approaches that had effectively contributed to the implementation of the Declaration at the national level;

(e) Identifying further measures that could be taken, as set out in article 38 of the Declaration, to achieve the goals thereof.

3. The panel discussion was chaired by the Vice-President of the Human Rights Council and Permanent Representative of Finland to the United Nations Office and other international organizations in Geneva, Heidi Schroderus-Fox. The opening remarks were delivered by the Assistant Secretary-General for Human Rights, Ilze Brands Kehris. The panellists were: Chair of the Expert Mechanism on the Rights of Indigenous Peoples, Valmaine Toki; Special Rapporteur on the rights of Indigenous Peoples, José Francisco Calí Tzay; Judge of the Special Tribunal for Peace (Colombia), Ana Manuela Ochoa Arias; and Director of Justice and Correctional Services of the Cree Nation Government (Canada), Donald Nicholls.

4. The opening remarks were followed by presentations by the panellists and an interactive discussion. The panel discussion ended with concluding remarks by the panellists. The panel discussion was made accessible to persons with disabilities through the use of sign language interpreters and closed captions and was webcast and recorded.¹

II. Summary of the proceedings

A. Opening remarks

5. In her opening remarks, the Assistant Secretary-General for Human Rights stated that the topic of the panel was particularly significant as it was aimed at analysing the laws, policies, judicial decisions and other measures that States had adopted to realize the United Nations Declaration on the Rights of Indigenous Peoples, measuring their impact on the rights of Indigenous Peoples and evaluating the cooperation with Indigenous Peoples in their design and implementation.

6. The Declaration, adopted by the General Assembly almost two decades previously, was the most comprehensive international instrument on the rights of Indigenous Peoples. It affirmed a broad range of their fundamental rights and showed clearly the commitment to those rights by Member States. The Assistant Secretary-General for Human Rights recalled that the Declaration began with consideration of the historical injustices suffered by Indigenous Peoples, including colonization and dispossession of their lands, territory and resources, and that it provided crucial guidance to States on remedying those injuries and

¹ The webcast may be viewed at: <https://webtv.un.org/en/asset/k19/k19m9xl7lf>.

promoting harmonious and cooperative relations with Indigenous Peoples on the basis of the principles of justice, democracy, respect for human rights, non-discrimination and good faith. The Declaration also described States' human rights obligations towards Indigenous Peoples by elaborating upon existing human rights standards as they applied to the specific situation of Indigenous Peoples and established a universal framework of minimum standards for their survival, dignity and well-being.

7. The Assistant Secretary-General for Human Rights stressed that, 17 years after the adoption of the Declaration, more efforts were required to promote its full realization. She referred to the report of the United Nations High Commissioner for Human Rights on the rights of Indigenous Peoples,² in which the High Commissioner had identified dire obstacles to the full enjoyment of the rights enshrined in the Declaration.

8. The Assistant Secretary-General for Human Rights underlined the persistent issue of recurrent violations to the right to free, prior and informed consent, in particular in the context of development and investment projects. Such violations often had related negative impacts on Indigenous Peoples' right to a clean, healthy and sustainable environment and on economic, social and cultural rights, with Indigenous women and youth particularly affected. The violations often took place in contexts characterized by the inadequate recognition of Indigenous Peoples' rights to their lands, territories and resources, as well as of their rights to autonomy, self-governance and participation, among many other rights embodied in the Declaration.

9. Referring to amended legislation and constitutional reforms inspired by the Declaration, she stated that legal reforms alone were not sufficient to bring about the changes required by the Declaration. The Assistant Secretary-General for Human Rights added that policy reforms should be part of a comprehensive action plan to achieve the ends of the Declaration, with clear indicators and expected results made periodically public, in collaboration with Indigenous Peoples. She stressed that any law, policy or other decision made without meaningful consultations with Indigenous Peoples was likely to fail to address their real needs, did not comply with the standards set in the Declaration and might ultimately violate their rights.

10. She mentioned that, despite an increasing number of judicial decisions by regional and national courts that applied the Declaration and the reference by several United Nations treaty bodies to the Declaration to interpret relevant provisions of human rights treaties in matters involving Indigenous Peoples, serious challenges to the implementation of the Declaration remained, which were a central problem for the realization of the Declaration.

11. Lastly, the Assistant Secretary-General for Human Rights stressed that renewed commitment by States to ensure that Indigenous Peoples' rights were a priority was required and needed to be translated into specific and coordinated actions. She underscored that, to achieve the goals of the Declaration, States should adopt a holistic approach to the realization of the rights of Indigenous Peoples. Such an approach implied avoiding fragmented initiatives and developing wide-ranging and well-planned strategies in collaboration with Indigenous Peoples.

B. Presentations by the panellists

12. Referring to the study carried out by the Expert Mechanism on the Rights of Indigenous Peoples in 2024,³ Ms. Toki began by recalling that the Declaration was an international instrument that affirmed the fundamental human rights of Indigenous Peoples and the formal commitment by Member States to those rights.

13. The Declaration was legally significant as an authoritative statement of human rights by the General Assembly, in addition to providing for a moral obligation for States to act in accordance with those fundamental human rights. She underscored that the Declaration was also a source of interpretation of States' obligations under the human rights treaties that they

² [A/HRC/57/25](#).

³ [A/HRC/57/62](#).

had ratified in the context of Indigenous Peoples and added that some of the provisions of the Declaration could be considered customary international law. She underlined that implementing the Declaration normally required the adoption of new laws or the amendment of existing legislation, as envisioned in its article 38. However, Indigenous Peoples-specific policy and regulatory frameworks were still lacking or were insufficient in most States and might therefore also be required. Transformations involved more than enacting Indigenous Peoples-specific laws and effective implementation needed the translation of laws, policies and structures to reflect States' obligations as contained in the Declaration. She emphasized the need for Member States to play their part in promoting the Declaration and ensuring its alignment with existing human rights obligations.

14. Ms. Toki highlighted some examples mentioned in the study by the Expert Mechanism: (a) the constitution of Mexico City, which was one of the most advanced local constitutions recognizing Indigenous Peoples' rights; (b) the Constitution of Ecuador, in which it was recognized that human rights established in international treaties were directly enforceable; (c) the national implementing legislation of Canada, in which it was explicitly affirmed that the Declaration was a universal international human rights instrument with application in Canadian law; and (d) Law No. 22/030 of the Democratic Republic of the Congo, on the protection and promotion of the rights of Indigenous Peoples.

15. She added that, while a few States had made tangible changes and had incorporated the principles of the Declaration into national laws and policies, many States across the world were not fulfilling their obligations. She insisted on the need to reiterate the significant responsibilities of States to promote the Declaration and ensure that their obligations under the Declaration were fully met. That could not be achieved effectively if States were not engaging with Indigenous Peoples.

16. She concluded by recalling the contribution of the Declaration to the development of general principles of international law and customary international law, the need for measures to direct and support the judiciary in ensuring that the interpretation and application of domestic laws were consistent with States' international human rights obligations and the need for the inclusion of Indigenous Peoples in legislative reforms, as recommended by the Expert Mechanism in its study.⁴

17. Mr. Calí Tzay began by outlining the significant gap between the intentions of the Declaration and its implementation. He referred to article 38 of the Declaration, which encapsulated the need for active and meaningful collaboration with Indigenous Peoples at every step of the legislative and policy process. He stated that that provision called for Indigenous voices and representatives to become a central part of the decision-making on and implementation and evaluation of laws and policies.

18. Considering that the rights of Indigenous Peoples were not to be imposed from above but realized through partnership and mutual respect, he noted the gap between the noble intentions of States and the lived experiences of the people who the policies were meant to protect. He added that States invited Indigenous Peoples to the table, but their input was neither adequately considered nor integrated into final decisions.

19. Even when adequate legislation was adopted, the challenges of implementation were multiple and included resource constraints, bureaucratic inertia and conflicting political interests, which often resulted in situations where laws remained largely symbolic. That was especially concerning in areas such as land rights, environmental protection and cultural preservation, where delayed or inadequate implementation could have irreversible consequences. While some countries had recognized the land rights of Indigenous Peoples on paper, those rights were frequently undermined by extractive industries, infrastructure projects and agriculture expansion, often with criminal impunity. In addition, Indigenous Peoples continued to face significant barriers when seeking justice in national courts and through international mechanisms. Such barriers included legal costs, discriminatory practices and sometimes outright violence and intimidation.

⁴ Ibid., annex, para. 5.

20. Mr. Calí Tzay recalled the need to address the structural inequalities that supported the implementation gap. Indigenous Peoples had historically been subjected to colonization, dispossession and systemic discrimination, which continued to manifest in socioeconomic disparities. Without addressing those root causes, it would be a struggle for even well-intentioned policies to make a meaningful impact.

21. He recommended three steps to bridge that implementation gap. The first and most crucial step required a reframe of the relationship between States and Indigenous Peoples, which implied moving beyond the mindset of consultation as a formality to seeing it as a fundamental democratic practice and a continuous dialogue. Indigenous Peoples must be engaged as co-creators of the policies that affected their lives, with their knowledge systems, governance structures and cultural practices fully respected and integrated. The second step was ensuring that the necessary resources were allocated to support the implementation of Indigenous Peoples' rights. That meant investing in capacity-building for both Indigenous Peoples and State institutions so that they could effectively enforce rights recognized under international and national law. It also meant holding States accountable when they failed to meet their obligations under the Declaration, including by providing mechanisms of redress. The third step concerned the need for monitoring and evaluation of the implementation of Indigenous Peoples' rights at the national and local levels. Monitoring and evaluation should involve Indigenous Peoples themselves. Transparent reporting and independent and impartial reviews could also play a crucial role in identifying gaps and driving continuous improvement.

22. He concluded by underlining the need to acknowledge that achieving the ends of the Declaration was not a one-time task, but an ongoing commitment, in particular in a context of global challenges such as climate change, economic inequality and political instability. He noted that the implementation gap was not merely a technical issue, but a matter of justice, equity and human dignity. Bridging that gap required a strong will for a fundamental shift in how States interacted with Indigenous Peoples. By honouring article 38 of the Declaration, a future in which Indigenous Peoples' rights were fully realized, not just in law, but in their daily lives across the world, was possible.

23. Ms. Ochoa Arias indicated that, as a judge from Colombia, her presentation concerned the judicial rulings that had been adopted by Colombian courts that could contribute to attaining the goals of the Declaration, in particular those adopted by the Special Jurisdiction for Peace, created by the Final Agreement for Ending the Conflict and Building a Stable and Lasting Peace, signed in 2016. She recalled that Colombia was a country that, with regard to the rights of Indigenous Peoples, did not lack legislative measures, institutions or judicial decisions. To date, the Colombian Constitutional Court had issued more than 400 rulings on various issues related to the rights of Indigenous Peoples, including approximately 23 in which the Court had invoked the Declaration. She noted that, in constitutional jurisprudence, the Declaration had typically been used as an instrument for the interpretation of the norms considered to have binding force in the current legal system.

24. She underlined that, despite the jurisprudence of the Constitutional Court in Colombia being considered as an example around the world, the challenge continued to be that of the real guarantees that ensured effective implementation of the rights of Indigenous Peoples. The recent focus on transitional justice had provided a better opportunity for them to seek justice.

25. The Special Jurisdiction for Peace implemented a victim-centred justice model that was unique in the world. The Peace Agreement required consultation and coordination with the special Indigenous jurisdiction and the jurisdiction for other ethnic groups. Protocols and guidelines had been adopted, which included ethically appropriate notifications, intercultural dialogue, interjurisdictional dialogue and support for Indigenous authorities. All of those mechanisms had been designed to bring about proper coordination.

26. With regard to the jurisprudence of the Special Jurisdiction for Peace, one of the main advantages had been the determined effort to focus on "the law of origin", or Indigenous law, through intercultural dialogue, interjurisdictional coordination and the interpretation of crimes using elements that reflected the Indigenous world vision. That was a major milestone in the judicial system of Colombia, as the implementation of Indigenous law and

jurisprudence nationally had been rather timid, despite Colombia being a pluralistic State. Ms. Ochoa Arias recommended that that inclusive practice be shared with other States.

27. With regard to the judicial decisions of the Special Jurisdiction for Peace on Indigenous Peoples, she highlighted two thematic lines that she considered as a step forward in terms of recognition and effective guarantee of the rights provided for in the Declaration, namely the recognition of the law of origin and the recognition of the territory as a victim.

28. Concerning the first point, she recalled that, in transition contexts, reference was frequently made to serious violations of human rights against the civilian population. However, little had been said about the way in which, on the basis of their own experiences, knowledge and visions, Indigenous Peoples could make contributions to healing the past, facing the present and building a future in which the minimum rules of coexistence were respected.

29. With regard to the second point (considering the territory as a victim), the Special Jurisdiction for Peace recognized the territory of numerous groups of Indigenous Peoples and persons of African descent as a victim of the conflict. The recognition of the territory as being alive affirmed that the damage was not just on human beings and recognized different world visions and equality among cultures. The Special Jurisdiction for Peace recognized that the territory was a fundamental and inherent component in Indigenous Peoples' lives. That broke with much of Western law and had opened the door to the process of decolonization.

30. She noted that the decisions by the Special Jurisdiction for Peace were based on principles such as the constitutional principle of recognition of the ethnic and cultural diversity of the Nation (art. 7 of the Constitution of Colombia), on the special Indigenous jurisdiction and legal-normative pluralism (art. 246 of the Constitution of Colombia) and on the incorporation of an ethnic chapter in the Peace Agreement. She concluded by recalling the need to strengthen the autonomy and governance of Indigenous Peoples, to improve their representation in decision-making functions and to use Indigenous laws as a source of law.

31. Mr. Nicholls recalled the James Bay and Northern Quebec Agreement, signed in 1975 by the Cree Nation with Canada and Quebec, that had marked the beginning of the comprehensive land claims agreement process in Canada. That treaty had created various Cree institutions to oversee the education system, healthcare and social services and economic development, policing and justice. The Cree Nation and Canada had agreed to establish an implementation office to facilitate the implementation of the treaty and a special commission as an oversight mechanism to report directly to Parliament. In 2008, a new relationship agreement with Canada had been concluded, transferring more authority and responsibilities to the Cree Nation government and creating a high-level standing liaison committee, with representatives of both governments, to regularly address any emerging issues.

32. He called for continued collaboration between Indigenous Peoples and States, highlighting the pivotal role of the Cree Nation in advocating for Indigenous rights in Canada, which had led to the landmark constitutional amendments of 1982. He noted the significant policy shift of Canada, from opposing the United Nations Declaration on the Rights of Indigenous Peoples in 2007 to fully supporting it in 2016 and adopting, in 2021, the United Nations Declaration on the Rights of Indigenous Peoples Act, pursuant to which it committed to the full implementation of the Declaration, thanks to effective advocacy by Indigenous Peoples in Canada.

33. The Act recognized the rights and principles affirmed in the Declaration as minimum standards for the survival, dignity and well-being of Indigenous Peoples. It acknowledged historical injustices, including colonization and dispossession of lands, and affirmed the rights of Indigenous Peoples to self-determination and self-government. The Act required Canada to take all measures necessary, in consultation and cooperation with Indigenous Peoples, to ensure that the laws of the country were consistent with the Declaration. The Act also required Canada to develop a national action plan to guide the implementation of the Declaration at the federal level. The federal Government had to report to Parliament each year on progress made. In a recent decision, the Supreme Court of Canada, which was the highest court in the country, had stated that the United Nations Declaration on the Rights of

Indigenous Peoples Act had effectively incorporated the Declaration into the positive law of Canada.

34. Mr. Nicholls stated that the steps taken by Canada towards the implementation of the Declaration, including the creation of a national action plan, had renewed relations between Indigenous Peoples and non-indigenous peoples as a relationship built on mutual benefit and respect. Despite important achievements and steps in the right direction, work remained to be done to fully implement the spirit and intent of the Declaration, such as the creation of an independent accountability and oversight mechanism to ensure its proper implementation, as noted by the Expert Mechanism.⁵

35. He concluded by stating that the Cree Nation would continue to advocate for the rights of Indigenous Peoples throughout the world and could share experiences and perspectives on the implementation of the Declaration with other States and Indigenous Peoples.

C. Interactive discussion

36. Representatives of Member States and international and non-governmental organizations took the floor to make comments or ask questions.⁶ Several Member States welcomed the focus of the panel and highlighted the fact that, 17 years since the General Assembly had adopted the Declaration, its provisions were far from being reality in most cases.

37. The ongoing need to work towards that cause involved reporting violations of Indigenous Peoples' rights, supporting organizations and their representatives and assisting them in improving their conditions. Enabling Indigenous Peoples to live in harmony with their world vision, on their ancestral lands, and to enjoy their unique cultures would serve all of humanity.

38. Participants expressed concern about the lack of measures taken for the implementation of the Declaration, considering the impacts of climate change that disproportionately affected Indigenous Peoples, threatening their lands, livelihoods and traditional ways of life. Indigenous Peoples were more vulnerable to environmental disruptions caused by rising temperatures, extreme weather and resource depletion as they often relied on natural ecosystems.

39. The discussions also highlighted the need for consultations with Indigenous Peoples, especially regarding territory and the management of natural resources, to obtain their free, prior and informed consent for development projects. It was noted that the lack of effective consultation processes disproportionately affected Indigenous Peoples, leading to loss of ancestral land, resources, livelihoods and cultures and to ecological degradation.

40. Participants recognized the historical challenges faced by Indigenous Peoples, in particular women, in their efforts to safeguard their territories and achieve self-determination and equality. They highlighted the indispensable contribution of Indigenous Peoples to sustainable development through their traditional knowledge. The need to preserve those invaluable practices and languages was underscored, in particular considering current global climate, pollution and biodiversity crises.

41. Several State representatives highlighted their countries' commitment to upholding Indigenous Peoples' rights. They discussed specific examples of strengthened legal frameworks, policies and programmes aimed at empowering Indigenous Peoples and enhancing their participation, including in developments regarding artificial intelligence.

42. The representative of the United Nations Human Settlements Programme (UN-Habitat) welcomed the Expert Mechanism's study and underscored the importance of the right to security of tenure for Indigenous Peoples, highlighting its role in preserving

⁵ *Ibid.*, para. 26.

⁶ Statements received are available at <https://hrcmeetings.ohchr.org/HRCSessions/RegularSessions/57/Pages/Statements.aspx?SessionId=81&MeetingDate=25/09/2024%2000%3a00%3a00>.

identity, welfare and cultural and environmental rights. UN-Habitat advocated a pluralistic approach to land rights, recognizing Indigenous laws and systems, and stressed the need for adequate housing, water, sanitation and social services for Indigenous Peoples in urban areas to ensure inclusion and equity.

43. The representative of the United Nations Educational, Scientific and Cultural Organization (UNESCO) highlighted the organization's efforts to advance the rights of Indigenous Peoples, in particular through the International Decade of Indigenous Languages. UNESCO had partnered with Indigenous Peoples' organizations, member States, United Nations agencies and private sector companies to integrate Indigenous languages into technology. Language being a fundamental human right, it played an important role in preserving the cultural identity and heritage of Indigenous Peoples. UNESCO was also conducting a study on how the media could support language rights and encouraged Member States to develop national action plans for language protection.

44. The representative of the United Nations Population Fund (UNFPA) noted that the implementation of the Declaration included advancing the sexual and reproductive health and rights of Indigenous women and girls. The representative stressed the disparities in access to sexual and reproductive health services faced by Indigenous women and girls. Committed to supporting the implementation of the Declaration, UNFPA aimed to address those inequalities by promoting culturally appropriate healthcare, ensuring access to voluntary family planning and maternal care and reducing maternal mortality.

45. Civil society representatives highlighted the negative consequences of legal measures and laws aiming at limiting Indigenous Peoples' rights, in particular regarding land rights. They considered those measures as denying legitimate land claims, rewarding land grabbers and perpetuating human rights violations.

46. Civil society representatives recalled the historical use of the coca leaf by Indigenous Peoples in the Amazon region for medicinal and cultural purposes and criticized the decision to include it in international drug control treaties as racially biased and harmful to Indigenous communities. They expressed hope for a potential review of the coca leaf's classification by the World Health Organization (WHO), which could lead to its removal from Schedule I of the Single Convention on Narcotic Drugs of 1961 as amended by the 1972 Protocol. That would be a significant step towards decolonizing drug policy and protecting the rights of Indigenous Peoples. Civil society representatives urged Member States and the United Nations human rights system, in particular United Nations entities focusing on protecting the rights of Indigenous Peoples, to support the important work of the WHO Expert Committee on Drug Dependence in that regard.

D. Concluding remarks by the panellists

47. In her concluding remarks, Ms. Toki welcomed the interest in the implementation of the Declaration expressed by many speakers and reiterated the significant responsibilities of States to ensure that norms of customary law were taken into account when training civil servants and judges. She encouraged States to effectively and genuinely engage with their Indigenous Peoples. The Expert Mechanism called upon the Human Rights Council to encourage States to fully meet the obligations under the Declaration and to refer to it as a formal universal international human rights instrument and domestic law. Lastly, she stated that she looked forward to continuing to work, through the Expert Mechanism, on the issue and addressing the practical measures that States could take to achieve the ends of the Declaration in accordance with article 38.

48. Mr. Calí Tzay provided examples of successful policies protecting Indigenous Peoples. He referred to a method of seed saving developed by Indigenous women in Africa and to the rescue and preservation by Kuna women in Panama of native plants threatened by rising sea levels. In a context of climate instability, the ecological knowledge held by Indigenous women was even more essential. To address the question of how to contribute to raising awareness on the needs of achieving the ends of the Declaration, he noted that support could include the translation of international standards, assistance to Indigenous organizations and support for the three United Nations mechanisms on Indigenous Peoples.

49. He referred to the recognition of Indigenous rights, including the right to self-governance and the right to land and resources. He provided examples from Canada, Peru and Sweden, where Indigenous Peoples derived financial benefits from their lands thanks to the recognition of their right to economic self-determination. He concluded with an example from Peru about a protective network of checkpoints surrounding Indigenous Peoples living in voluntary isolation.

50. Ms. Ochoa Arias referred to the need to incorporate Indigenous women's perspectives into judicial processes and rulings, not only in Colombia but also all over the world. She noted the importance of listening to Indigenous Peoples but also of the need to stop referring to "uses and customs" instead of "legal systems". She concluded by calling for the elimination of possibly misleading language, for the avoidance of generic solutions and for genuinely listening to Indigenous Peoples, which would allow for a world that was more fair and more respectful of diversity.

51. Mr. Nicholls highlighted the fact that implementing the Declaration benefited everyone, not only Indigenous Peoples. He noted that the implementation of the Declaration was particularly important in the context of climate change. Indigenous Peoples had unique knowledge and expertise that was necessary to resolve existential challenges such as the climate crisis. Indigenous communities were disproportionately affected by the climate crisis given their geographical locations, spiritual connections to the land and practices of hunting, fishing and gathering on their traditional territories. He concluded by noting that the United Nations Declaration on the Rights of Indigenous Peoples Act of Canada was a starting point to greater understanding, collaboration and equality between Indigenous Peoples and non-Indigenous peoples within a State. The future had to be based on the principles of cooperation and partnership, a renewed social contract upholding human rights, a commitment to protecting the planet and a recognition of fundamental interdependencies.
