

# **INTERNATIONAL EXPERT SEMINAR ON THE ROLE OF UN MECHANISMS WITH SPECIFIC MANDATE REGARDING THE RIGHTS OF INDIGENOUS PEOPLES**

**MADRID, 4- 6 FEBRUARY 2009**

## **Summary**

The International Expert Seminar on the role of United Nations Mechanisms with specific mandate regarding the rights of indigenous peoples took place in Madrid from 4 to 6 of February 2009.

The seminar followed an initiative of Prof. Bartolomé Clavero, member of the UN Permanent Forum on Indigenous Issues, and Prof. James Anaya, United Nations Special Rapporteur on the human rights situation and fundamental freedoms of indigenous people. It was hosted by the Spanish Agency for International Development Cooperation (AECID) and organized by the Inter-Cultural Group Almaciga and the International Work Group for Indigenous Affairs (IWGIA) .

The main objective of the meeting was to promote an informal dialogue among the members of the three UN mechanisms with specific mandates concerning the rights of indigenous peoples, with a view towards coordinating their work, as well as their work with other UN agencies and bodies.

The seminar was attended by all members of the UN Expert Mechanism on the Rights of Indigenous Peoples, the UN Special Rapporteur and four members of the UN Permanent Forum on Indigenous Issues. The meeting was also attended by the representatives of the secretariats of the three UN mechanisms, as well as by a group of experts from the different regions, including the former Special Rapporteur Rodolfo Stavenhagen (Mexico).

All participants attended the seminar in their own personal capacities as experts and advocates on indigenous peoples' rights. The informal and open brainstorming format of the seminar provided a unique opportunity to all participants to exchange experiences and share analysis with the practical objective of finding ways of interaction and cooperation that could promote a more efficient performance of the three UN mechanisms.

Over three days, the participants in the seminar debated on the possibilities of coordination and enhancement of their respective methods of work and came up with a set of recommendations for further consideration and discussion.

## I. INTRODUCTION

1. The United Nations Declaration on the Rights of Indigenous Peoples (“the Declaration”) calls upon the UN system and bodies, including the Permanent Forum on Indigenous Issues (“the Permanent Forum”) to “promote respect for and full application of the provisions” of the Declaration “and follow-up the effectiveness of the Declaration” (Art. 42). In the context of the process of institutional reform of the UN human rights machinery, the Declaration has been specifically identified as a normative framework of the mechanisms of the Human Rights Council with a specific mandate regarding the rights of indigenous peoples: the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples (“Special Rapporteur”)<sup>1</sup> and the Expert Mechanism on the Rights of Indigenous Peoples (“Expert Mechanism”).<sup>2</sup>

2. An important innovation in the new UN institutional design concerning the rights of indigenous peoples is the emphasis on the cooperation among these different mechanisms with a view to avoid unnecessary duplication and enhance the effectiveness of the system as a whole.<sup>3</sup> Reinforced cooperation among the different mechanisms requires of an in-depth reflection on ways to improve existing channels of communication and to generate new methodologies of interaction.

3. At the initiative of a member of the UN Permanent Forum, Mr. Bartolomé Clavero, and the Special Rapporteur, Mr. James Anaya, members of the UN mechanisms with a mandate regarding indigenous peoples, as well as a number of indigenous experts, were invited to participate in an informal meeting in order to discuss issues of coordination in their work to promote the rights of indigenous peoples in the framework of the implementation of the UN Declaration on the Rights of Indigenous Peoples. The meeting took place at the Spanish Agency of International Cooperation (AECID), in Madrid, from 4 to 6 February 2009. It was jointly organized by the non-governmental organizations the International Work Group on Indigenous Affairs (IWGIA) and the Almaciga Inter-Cultural Work Group.

## II. NARRATIVE REPORT OF THE MEETING

4. The meeting was attended by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Mr. James

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<sup>1</sup> Human Rights Council res. 6/12, paragraph 1(g).

<sup>2</sup> Human Rights Council resolution 6/36, preambular paragraph.

<sup>3</sup> The mandate of the Special Rapporteur calls upon him/her to “work in close cooperation with the Permanent Forum on Indigenous Issues and to participate in its annual session” (HRC resolution 6/12, paragraph 1(e)). Similarly, the Human Rights Council has called upon the Expert Mechanism “to enhance cooperation and avoid duplicating the work” of the Special Rapporteur and the Permanent Forum, inviting the Special Rapporteur and one member of the Forum to participate in its annual session.(HRC Res 6/36 paragraph 5).

Anaya; members of the UN Expert Mechanism on the Rights of Indigenous Peoples: Mr. John Henriksen, Ms. Jannie Lasimbang, Mr. José Carlos Morales, Mr. José Molintas, and Ms. Catherine Odimba; and the following members of the Permanent Forum on Indigenous Issues, in charge of the thematic mandate of human rights: Mr. Lars Anders Baer, Mr. Hassan Idr Balkassam, Mr. Bartolomé Clavero, and Mr. Carsten Smith.

5. The meeting was also attended by the former Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Mr. Rodolfo Stavenhagen (Mexico), as well as by the following individual experts: Mr. Mattias Åhren (Sweden), Ms. Naomi Kipuri (Kenya), Mr. Les Malezer (Australia), Mr. Adelfo Regino (Mexico), and Mr. Devasish Roy (Bangladesh).

6. In addition, the meeting was attended by representatives of the UN Office of the High Commissioner for Human Rights (OHCHR), the UN Department of Economic and Social Affairs (DESA), and from the International Labour Office (International Labour Organisation), as well as by observers from Almaciga (Spain), IWGIA (Denmark), Rights & Democracy (Canada), the University of Arizona (USA), and the University of Seville (Spain).

7. Both the list of participants and the list of documents available to the meeting are reproduced in the annexes to this report.

8. The meeting was inaugurated with opening statements by Mr. S. James Anaya, Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples; Mr. Bartolomé Clavero, Member of the UN Permanent Forum on Indigenous Issues; Mr. Juan Pablo de La Iglesia, General Director of AECID; and Ms. Lola García-Alix, on behalf of the organizers. After the opening, Mr. Bartolomé Clavero was elected President-Rapporteur of the meeting.

9. The President-Rapporteur presented the draft program for the meeting.<sup>4</sup> He underlined that the main thrust of the meeting was flexibility and informality, in order to provide for a space of candid dialogue among all participants. He described as the main objective of the meeting to promote an informal dialogue among the members of the UN mechanisms with a mandate concerning the rights of indigenous peoples with a view towards coordinating their work, as well as their work with other UN agencies and bodies.

10. The President-Rapporteur pointed out that, since the different mechanisms were created in different historical contexts and institutional frameworks, their mandates overlapped somewhat and their work methods have not necessarily been developed in a way that promotes effective coordination. With a view towards promoting that necessary cooperation, the President-Rapporteur suggested that the meeting result in some conclusions and recommendations.

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<sup>4</sup> The Program of work is annexed to this report.

## **1. The UN Declaration on the Rights of Indigenous Peoples as the normative framework**

11. The experts agreed that Article 42 of UNDRIP establishes an obligation for all relevant UN bodies and specialized agencies to promote the respect for and full application of the provisions of UNDRIP. A special role in this regard belongs to the three UN mandates with a specific mandate regarding the rights of indigenous peoples: the Permanent Forum on Indigenous Issues, the Expert Mechanism on the Rights of Indigenous Peoples, and the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people. The experts agreed that the Declaration should be considered as the normative framework for their respective activities, providing also a standard for assessing State's compliance with their international obligations as they refer to indigenous peoples.

12. The Chairperson-Rapporteur of the Expert Mechanism emphasized that although Article 42 of the Declaration only refers – by name – to the Permanent Forum, it should be interpreted as being equally applicable to the Special Rapporteur and Expert Mechanism, as well as to all other relevant UN bodies and entities, within the scope of their respective mandates and work. Consequently, at its first session, the Expert Mechanism decided to include the Declaration as a separate agenda item at its second session. Under this particular agenda item, the Expert Mechanism intends to focus on possible processes and mechanisms for the implementation of the Declaration, including those identified in the Declaration itself.

13. In their discussions, the experts identified a number of obstacles in the effective implementation of the Declaration, such as the denial of the existence of indigenous peoples, particularly in some countries of Africa and Asia; the lack of political will to address indigenous issues; and reservations by some States regarding the Declaration.

14. The experts also expressed serious concerns at the denial of the normative force of the Declaration, often characterized as “non-binding” by governments and UN agencies alike, as reflected for instance in the guidelines on indigenous peoples' rights prepared by United Nations Development Group (UNDG). In this regard, the experts shared the view that, while not having the same formal normative status of a convention, the Declaration has some kind of binding force both as a resolution of the General Assembly grounded in the authority of the United Nations Charter, and from the perspective of the substantive rights enshrined therein.

15. It was agreed that the Declaration reflects the existing international consensus regarding the individual and collective rights of indigenous peoples in a way that is coherent with, and expands upon, the provisions of the International

Labour Organisation (ILO) Convention 169 on Indigenous and Tribal Peoples, as well as other developments, including the interpretation of other human rights instruments by international bodies and mechanisms. As the most authoritative expression of this consensus, the Declaration provides a framework of action towards the full protection and implementation of these rights.

16. Some experts also raised the issue of the relationship between the UN Declaration and ILO Convention 169. All participants in the meeting agreed that these instruments represent two complementary parts of the same body of international human rights standards and that both instruments shall be used by the UN system and stakeholders as mutually reinforcing sets of standards to protect, promote and fulfill the human rights of indigenous peoples.

17. It was also stressed that the Declaration should be mainstreamed so it constitutes a normative framework of UN treaty bodies and other relevant international and regional human rights mechanisms when dealing with issues pertaining to indigenous peoples' rights.

## **2. Mandates and work methods of UN mechanisms concerning indigenous peoples**

18. The discussion opened with an introduction by representatives of the three mechanisms on their respective mandates.

### ***The UN Special Rapporteur on the situation of human rights and fundamental freedoms of Indigenous People***

19. The Special Rapporteur, James Anaya, provided an introduction of the different activities carried out in the framework of the mandate provided to him by the Human Rights Council. Since the establishment of the mandate in 2001, the Special Rapporteur has traditionally focused on three main, though interrelated, spheres of work: written communications to governments and other relevant stakeholder concerning alleged violations of the rights of indigenous peoples; thematic studies regarding issues of special concern for indigenous peoples; and country visits to examine the overall situation of indigenous peoples in specific countries or to examine a discrete situation.

20. The Special Rapporteur explained that, since he assumed his mandate in May 2008, he has reflected on his methods of work, particularly at the light of the adoption of the UN Declaration and of the establishment by the new Expert Mechanism by the Human Rights Council. The Special Rapporteur pointed out that he is adapting his methods of work in order to address specific country situations in a flexible manner, putting a special emphasis in country engagement and liaison with governments. These include communications and public statements, which can either address alleged human rights violations or best practices. In this regard, the Special Rapporteur explained that he is trying to move away from the practice of merely sending letters and receiving responses

from governments, to true constructive engagement with governments, which may involve on-site visits related to specific situations. In conducting all these activities, the Special Rapporteur is bound by the Human Rights Council's Code of Conduct for special procedures mandate holders (HRC Res. 5/12 of 2007).

21. The Special Rapporteur provided specific examples of how working visits to examine specific situations, including recent working visits to Ecuador, Panama, and Nicaragua, have worked in practice. He further referred to the existing request by the government of Suriname to provide technical assistance and support in the drafting of new legislation regarding indigenous peoples. The Special Rapporteur also explained his efforts to coordinate with other UN bodies, including the Permanent Forum and the Expert Mechanism, as well as with the inter-American human rights bodies.

### ***The UN Expert Mechanism on the Rights of Indigenous Peoples***

22. The Chairperson-Rapporteur of the Expert Mechanism on the Rights of Indigenous Peoples explained the Expert Mechanism's mandate. Human Rights Council resolution 6/36 mandates that the Expert Mechanism shall provide the Council with thematic expertise on the rights of indigenous peoples in the manner and form requested by the Council. Pursuant to resolution 6/36, the thematic advice from the Expert Mechanism to the Council shall mainly be in the form of studies and research. However, the Expert Mechanism may suggest proposals to the Council for its consideration and approval, within the scope of its work as set out by the Council. The Expert Mechanism reports annually to the Council on its work. It was pointed out that the mandate of Expert Mechanism is strictly thematic, in contrast to the Special Rapporteur, who is also mandated to gather, request, receive and exchange information and communications from all relevant sources, including governments, indigenous peoples and their communities and organizations, on alleged violations of indigenous peoples' rights.

23. The Chairperson-Rapporteur of the Expert Mechanism identified six possible main areas of work for the Expert Mechanism:

- Preparation of thematic studies. He said that The Council has stated that the thematic expertise of the Expert Mechanism shall focus *mainly* on studies and research-based advice.
- Development and adoption of general thematic comments and recommendations on the rights of indigenous peoples. He said that such general comments and recommendations (somewhat similar to the general comments adopted by treaty bodies) could be based on the Mechanism's thematic studies and research. These have the potential of adding value to Expert Mechanism's thematic studies. The Chairperson-Rapporteur expressed the view that general thematic comments and recommendations will be of value not only to the Human Rights Council, but also to indigenous peoples, governments, UN bodies, mechanism and agencies, and other stakeholders.

- Review of UN policies in the context of the rights of indigenous peoples. The Human Rights Council has already requested the Expert Mechanism to provide it with advice in one such review process, the review of the Durban Declaration and Program of Action.
- Submission of other proposals to the Human Rights Council. The Expert Mechanism is mandated to submit proposals—on its own initiative— to the Human Rights Council for its consideration and approval. This process provides the Mechanism with the possibility of bringing specific thematic issues to the attention of the Council, without having to await a specific request from the Council. Such proposals may be generated by the Expert Mechanism’s research activities, or emerge as a natural outcome of the discussions and consultations during the annual sessions of Expert Mechanism, or elsewhere.
- The Chairperson-Rapporteur said that the Mechanism also has the potential for becoming an important multilateral forum for dialogue on indigenous peoples’ rights, by providing a space for discussions on those rights. Hence, it has an important role to play in making the Declaration operational, and to contribute towards a better understanding of the scope and content of relevant international provisions.
- Finally, the Chairperson-Rapporteur identified cooperation with other UN bodies and mandates as an important method of work for the Mechanism. He said that the Mechanism has already engaged itself in a dialogue with the Special Rapporteur and other mechanisms under the Human Rights Council structure, as well as the Permanent Forum, UN treaty bodies, and specialized agencies, on specific thematic issues as well as about possible cooperation.

### ***The UN Permanent Forum on Indigenous Issues***

24. A member of the Permanent Forum on Indigenous Issues described briefly the Forum’s history, structure, and mandate, which focuses mainly on providing expert advice to the Economic and Social Council (ECOSOC) and to the UN agencies in relation to indigenous issues in the field of economic and social development, culture, the environment, education, health and human rights. The Permanent Forum further plays a key role in the preparation and dissemination of information regarding indigenous issues within the UN system.

25. A member of the Permanent Forum reflected on the implications of Article 42 of the Declaration in the work of the Permanent Forum under its mandated area of human rights. He mentioned the possibility that the Permanent Forum act somewhat like treaty body to monitor implementation of the Declaration by states and other actors. He further referred to the conclusions of the International Expert Group Seminar on Article 42 of the Declaration which took place in New York in January 2009, which suggested that a task force be established within the Permanent Forum to monitor the implementation of the Declaration. However, during the discussion that followed, caution with this approach was advised, given the relative youth of the mechanisms and the Declaration, and in

order to ensure that any interpretations of the Declaration are carefully thought-out and to avoid any potential backlash by states with respect to the Declaration.

26. Another member of the Permanent Forum explained a number of ongoing initiatives regarding direct engagement with governments, including upcoming visits to Bolivia and Paraguay, as well as the possibility of establishing a dialogue with governments and indigenous peoples on the basis on the reports submitted to the Permanent Forum's annual session on a voluntary basis.

### ***General Debate***

27. In the debate that followed, the experts stressed that an important focus, if not the primary focus, of the Permanent Forum should be to work with the UN agencies as well as UN Country teams (UNCTs) given the lack of awareness of or unwillingness to engage in indigenous matters on the part of some institutions, as well as the fact that, as a practical matter, these institutions are often those that deal most directly with indigenous peoples on the ground.

28. During the debate, it was also expressed the need to improve the Permanent Forum's current methods of work during its annual sessions, in order to enhance indigenous contributions and participation in the debates as well as in order to improve the interaction with UN agencies, and to better coordinate work with other UN mechanisms and bodies, particularly those with a specific mandate concerning the rights of indigenous peoples.

29. In addressing the mandates and working methods of the different UN mechanisms with a specific mandate regarding indigenous peoples, the experts stressed the need to enhance cooperation in order to fulfill the terms of Article 42 of the Declaration, while preserving the independence of each mechanism. The experts noted that, for historical and institutional reasons, the mandates and activities of the three mechanism overlap in some areas, which creates a need for greater strategizing, as well as for the establishment of a more clear division of labour and coordination of information among the three mechanisms and their respective secretariats.

30. As a means for promoting the cooperation of the different mechanisms, several experts suggested that the Special Rapporteur and the chairpersons of the two other mandates meet periodically. These meetings could take place at the annual session of the UN Permanent Forum in New York and/or during the annual sessions of the Expert Mechanism. In addition, some experts noted the need to exchange work plans periodically, as part as the coordination among the different mechanisms.

31. The experts stressed that it is important that each mandate exercise restraint with respect to carrying out certain activities that could have the effect of duplicating the work of the other mandates. In this respect, the participants pointed out that the Special Rapporteur's decision to limit carrying out thematic



studies given the specific mandate of the Expert Mechanism in this regard was a welcome development, helping to establish a clear division of labour between the two mandates. It was acknowledged that the division of labour seemed clearer between the Special Rapporteur and the Expert Mechanism, since the former focuses on liaising with governments and country engagements and the latter focuses on thematic research and advice.

32. It was also acknowledged that the dialogue that takes place at the annual sessions of the Permanent Forum between the Special Rapporteur and the Permanent Forum is also a good cooperation practice.

33. Several experts noted the need to expand the vision of cooperation and coordination and take into account the activities of other international bodies and mechanisms, including UN treaty bodies and special procedures, the Universal Periodic Review (UPR), and the UN High Commissioner on Human Rights herself. All these mechanisms, along with regional human rights mechanisms, international agencies, and financial institutions, play also a role in promoting and protecting the rights of indigenous peoples. Reference was made to the important role of the Inter-Agency Support Group, as well as the secretariats of the respective mechanisms, in this regard.

34. In addition, the experts stressed the need for coordination of UN actors at the country level. In this connection, the participating experts agreed that the three UN mechanisms should work together and in cooperation with indigenous peoples in order to promote dialogue with governmental institutions and encourage a better coordination of UN agencies at the regional and country levels on issues related to indigenous peoples rights, especially considering that, as a practical matter, these institutions are often responsible for engaging in indigenous issues on the ground.

### **3. Thematic research**

35. Within their respective spheres of competence, the three UN mechanisms with a specific mandate regarding indigenous peoples share the role of producing thematic research on indigenous rights-related issues.<sup>5</sup>

36. In performing this role, both the Permanent Forum and its individual members have produced a number of thematic reports related to the Permanent Forum's six mandated-areas or the Forum's themes for its annual sessions. Similarly, the Special Rapporteur has produced in the past a number of thematic

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<sup>5</sup> The Permanent Forum is mandated to "[p]rovide expert advice and recommendations on indigenous issues" to ECOSOC and the international agencies.(ECOSOC Res 2000/22 para. 2[a]). Similarly, the Special Rapporteur has been requested by the Human Rights Council to "submit a report on the implementation of his/her mandate to the Council," on an annual basis.(HRC Res 6/12, para. 1 [j]). Finally, the Expert Mechanism's main function is to "provide the Council with thematic expertise on the rights of indigenous peoples," focusing mainly on "studies and research-based advice" (HRC Res 6/36, para. 1 – 1 [a]).

reports to the former Commission on Human Rights and the Human Rights Council on issues of special concern to indigenous peoples. Lastly, upon its establishment, the Expert Mechanism was requested to produce its first thematic report on the right to education.<sup>6</sup>

37. In addition, the Permanent Forum has made recommendations that the Special Rapporteur carry out research on specific thematic areas. The experts described how the thematic reports produced by the different mechanisms were or could be used for negotiations between indigenous peoples and States, legal and political reform at the national level, as well as by other human rights mechanisms.

38. The former Special Rapporteur, Mr. Rodolfo Stavenhagen, noted the particular importance of thematic research as a way to educate UN member states and other stakeholders on issues of special concern for indigenous peoples. In his first report to the former Commission on Human Rights, the former Special Rapporteur presented to the Commission a work-plan including a number of thematic topics for his annual reports. On the basis of this plan, he subsequently presented to the Commission and later to the Human Rights Council reports on the following topics: the impact of mega-development projects on indigenous territories; indigenous education; indigenous law and justice systems; the implementation of national and international standards regarding the rights of indigenous peoples; recent standard-setting concerning the rights of indigenous peoples; and the human rights-based approach to development in the context of indigenous peoples.

39. The former Special Rapporteur, Mr. Rodolfo Stavenhagen, also expressed the difficulties in accessing information in preparation of his thematic reports, as well as the limitation of resources to prepare those reports. The carrying out of thematic studies was further made difficult by the lack of feed-back from governments, indigenous organizations, and UN agencies. However, Mr. Stavenhagen acknowledged the important support he received from non-governmental organizations in this regard.

40. The current Special Rapporteur, Mr. James Anaya, explained that, after the establishment of the Expert Mechanism with a specific mandate by the Human Rights Council to conduct thematic research, he saw thematic studies as a secondary part of his work, and that he would rather focus on country-engagement, including through written communications regarding specific human rights situations and country visits. The Special Rapporteur explained that, rather than focus on thematic studies as in the past, his annual reports to the Human Rights Council would focus on the activities carried out during the year, which may include also an assessment of specific situations and particular issues of concern. The Special Rapporteur further committed to contribute to the thematic research of other mechanisms, particularly the Expert Mechanism, through his

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<sup>6</sup> Human Rights Council res. 9/7, paragraph 5.

own work assessing specific situations of human rights violations. In addition, the Special Rapporteur suggested that consultation should take place before the other mechanisms request or recommend that the Special Rapporteur carry out thematic studies.

41. Members of the Expert Mechanism and the Permanent Forum explained their experience in the preparation of thematic studies. They underlined the difficulties involved in this kind of studies, and identified major challenges including difficulties in accessing relevant information; lack of cooperation of government, agencies, and indigenous organizations; lack of funding; and language barriers. They also stressed the need to coordinate with the Special Rapporteur and other mechanisms, as well as to develop a common strategy with respect to future research.

42. A member of the Expert Mechanism noted the importance of taking advantage of the participation of indigenous representatives during the Mechanism's annual sessions to assist with the preparation of the thematic studies. In this connection, she underlined the need to ensure that the indigenous representatives supported by the UN Voluntary Fund to participate in the annual sessions of the Expert mechanism should be able to provide substantial contributions on the topics under consideration. This would require a better coordination with the Voluntary Fund on Indigenous Populations and other institutions/organizations that support indigenous participation in UN meetings.

43. Concerning the specific topics of research by the Expert Mechanism, the experts suggested focusing on one theme per year, or at least one theme within a set timeframe. It was also noted that the reports produced by the Expert Mechanism should pay due regard to the targeted audience, by ensuring that the reports can be effectively used by indigenous communities to further their rights and concerns, and that indigenous peoples themselves should be involved in the process at all stages.

44. With regard to the coordination between the different mechanisms, the experts emphasized the important role of the Expert Mechanism in carrying out thematic studies. It was noted that the Special Rapporteur could contribute to the thematic studies to be developed by the Expert Mechanism and by the Permanent Forum with information gathered regarding specific situations of human rights violations.

#### **4. Responding to specific allegations of human rights violations**

45. All three mechanisms share in the objective of promoting the full enjoyment by indigenous peoples of their human rights. The experts recognized the unique role that the Special Rapporteur plays in responding to specific allegations of

human rights violations given the explicit mention of this work in his mandate.<sup>7</sup> In this regard, the Special Rapporteur emphasized that he is giving priority consideration to engaging states through diverse working methods designed to address specific situations of human rights violations.

46. Within this mandate, the Special Rapporteur routinely sends communications to governments and other actors regarding specific allegations of human rights violations received from indigenous organizations and human rights non-governmental organisations (NGOs). These communications are typically divided into urgent appeals, for cases of urgent necessity in which action is needed to avoid irreparable harm, and allegation letters, for less urgent matters. In cases of special concern, the Special Rapporteur has issued press releases concerning specific country situations. Like other aspects of the Special Rapporteur's work, the communications procedure is regulated by the Code of Conduct for special procedures mandate holders.

47. The human rights of indigenous peoples are also one of the six areas on which the Permanent Forum provides advice and technical expertise. Following a pattern similar to that of the Working Group on Indigenous Populations, indigenous delegates and other participants at the annual sessions of the Permanent Forum typically submit allegations of specific human rights violations or country situations. However, no procedural mechanism is currently in place to follow-up on these allegations. In a limited number of instances, the Permanent Forum has made reference to specific country situations as part of the recommendations included in its annual reports. In addition, the Chairperson has issued, in at least one occasion, a press statement concerning the human rights situation in one specific country.

48. In this connection, it was also pointed out that numerous indigenous groups attend the annual sessions of the Permanent Forum and the Expert Mechanism with allegations of specific situations of human rights violations. The Permanent Forum also receives individual complaints between sessions. It was noted that the Permanent Forum and the Expert Mechanism face limitations in responding to these allegations. Given the recognized expectations on the part of indigenous peoples to have these concerns heard, it was pointed out that there is a need to develop measures to channel these allegations in a constructive manner, taking into consideration the specific mandate of the Special Rapporteur, as well as the various other mechanisms available for addressing specific situations, including the UN treaty bodies (especially CERD, the Human Rights Committee, and the Committee on Economic, Social and Cultural Rights), and regional human rights institutions.

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<sup>7</sup> HRC Res 6/12, para. 1[b] calls him to "gather, request, receive and exchange information and communications from all relevant sources, including governments, indigenous people and their communities and organizations, on alleged violations of their human rights and fundamental freedoms"

49. The Chairperson-Rapporteur of the Expert Mechanism informed that the Special Rapporteur made his staff available throughout the entire first session of the Expert Mechanism to receive communications and documentation of alleged human rights violations of indigenous peoples and individuals who attended the session of the Expert Mechanism. It was agreed that this is a good example of concrete cooperation between the Expert Mechanism and the Special Rapporteur. The latter suggested that this practice should be formalized and that the OHCHR should inform indigenous peoples about this arrangement well in advance of the second session of the Expert Mechanism.

50. Some experts pointed out a resistance by some states to respond to issues affecting indigenous peoples. In this connection, the Special Rapporteur identified two principal barriers that he has encountered in his own work to engaging states to address specific situations of human rights violations: the failure of some states to recognize “indigenous peoples” within their borders as such; and the assertion of some states that they are under no duty to comply with the provisions of the Declaration, due to either the legally non-binding nature of the Declaration or the decision of some states to not vote in favor or to abstain from voting in favor of the Declaration. The Special Rapporteur noted that he is developing working methods and strategies to engage states on these issues, despite these perceived barriers.

51. During their interventions, the experts recognized the need to place greater emphasis on engagement with governments at the country level, especially given the special role that local government institutions play in implementing Declaration as a practical matter within their respective states. The process of sending communications to governments was identified as an important tool in this regard, bearing in mind the need for a coordinated approach to address specific situations.

52. Some experts pointed out that, where two mechanisms issue statements on the same specific situations, these should be exchanged and, in some cases, it may be advisable for the mechanisms to ensure that their assessments of individual situations are coordinated and mutually reinforcing, in particular with respect to press releases or public statements concerning individual issues.

## **5. Country Visits**

53. The mandate of the Special Rapporteur, like that of other special procedures, includes the capacity to undertake, at the request or with the consent of governments, official visits to countries to assess generally the human rights situation of indigenous peoples in the countries visited or to investigate particular situations of alleged violations. Since the establishment of his mandate in 2001, the Special Rapporteur has undertaken many such visits, which have resulted in official reports presented to the CHR/Human Rights Council. In addition the country visits to assess human rights conditions, the Special

Rapporteur has also undertaken numerous visits to countries to attend seminars or other meetings upon the invitation of indigenous organizations, international agencies, universities, or civil society. In performing his country visits, the Special Rapporteur is now bound by the Code of Conduct for special procedures mandate holders.

54. Together with the Special Rapporteur, the Chairperson and the members of the Permanent Forum, and more recently, of the Expert Mechanism, have taken part actively in an increasing number of activities at the country level, at the invitation of UN Country Teams, international agencies, governments, indigenous organizations or civil society. The Permanent Forum has further considered the possibility of undertaking an official mission (including the Chairperson, and one or several additional members) to report on the human rights situation in one specific country.

55. During the discussion, representatives of the Permanent Forum and Expert Mechanism noted that, despite their lack of specific authorization to conduct country missions, they are invited to numerous seminars, conferences, and other activities in individual countries. In this connection, the experts noted that they are also often requested to provide comments or input on specific situations, and that these statements may be understood to be representative of the Permanent Forum or Expert Mechanism, respectively. The experts pointed out the difficulty in separating their roles as individual members of the Permanent Forum or Expert Mechanism from their roles as members of the collective group. The experts articulated a need to distinguish between country visits undertaken by experts in their individual capacity and country visits undertaken in representation of the Permanent Forum or Expert Mechanism as a whole. It was noted that, given the individual nature of the mandate of the Special Rapporteur, he does not purport to speak or act in his personal capacity as opposed to his capacity as Special Rapporteur when addressing indigenous issues.

56. In addition, some experts pointed out that many actors, including indigenous peoples, governments, UN agencies, and NGOs, are unclear about the specific mandates of each mechanism and any potential limitations they may confront when carrying out country visits, particularly when members of the Permanent Forum and Expert Mechanism visit countries and make statements in their individual capacities. In this regard, it was also noted with concern that all three mechanisms have at times been viewed as representatives of “the UN” as an entity. Thus, the importance of awareness building and education in this regard was stressed.

57. Some experts also advised that in situations where individual members of the Permanent Forum and Expert Mechanism are invited to carry out visits to countries in their individual capacities, they should inform the other members of their respective mechanisms to increase communication and encourage any possible cooperation.

## **6. The role of the secretariats and the Interagency Support Group in assisting the UN mechanisms**

58. The coordination of the UN mechanisms relies, to an important extent, on the work of the respective secretariats: the Permanent Forum's Secretariat, which is staffed by the UN Department of Social Affairs (DESA); the OHCHR's Indigenous Peoples and Minority Unit, for the Expert Mechanism; and OHCHR's Special Procedures Division, for the Special Rapporteur.

59. In view of the important role they perform in relation to the functioning and coordination of the UN mechanisms with a specific mandate regarding indigenous peoples' rights, representatives of the secretariats as well as a representative of one of the UN agencies member of the Inter-Agency Support Group (IASG) were invited to contribute to the Expert Seminar.

60. The presentations made by the representatives of the secretariats showed their important work and their basic role in terms of coordination among the mechanisms, information sharing, and communication among the members.

61. The discussion that followed the presentations from the secretariats clearly indicated that there is a will both by the members of the three mechanisms as well as from their respective secretariats to develop a closer cooperation in order not only to avoid duplication of work, but also to reinforce the mandates of the different mechanisms and enhance their work performance.

62. However, experts underlined that secretariat assistance provided by the UN system to the mechanisms greatly differs. While the Permanent Forum enjoys the support of a secretariat composed of 9 staff members working full-time, the Expert Mechanism has no specific secretariat and only one staff member from the Indigenous Peoples and Minorities Unit of the OHCHR who provides it with part time assistance.

63. It was suggested that an annual coordinated work plan should be agreed upon by the three mechanisms. The report on the proposed activities that the IASG sends every three months to the Permanent Forum's secretariat was presented as a good practice of coordination. The experts expressed that a similar reporting procedure could be useful to improve coordination among the mechanisms.

64. In the context of this discussion, the experts also stressed that coordination activities should be considered not only in the work at the international level but also in relation to regional and national activities.

65. Article 41 of the Declaration calls upon the "organs and specialized agencies of the United Nations system and other inter-governmental

organizations [to] contribute to the full realization of the provisions of [the] Declaration through the mobilization, inter alia, of financial cooperation and technical assistance.” Since 2002, the work of UN agencies and other regional organizations is coordinated by the Inter-Agency Support Group on Indigenous Issues.

66. In her presentation, the representative of the ILO explained that the IASG serves as a clearing house for discussion and coordination among the various agencies, in particular around the Permanent Forum’s sessions. However, she noted that the IASG’s mandate is not, in principle, restricted to the Permanent Forum’s activities, and should also play an important role in supporting the activities of the other two mechanisms.

67. The ILO representative mentioned that the ILO’s role in assisting with the official visit carried out by the Special Rapporteur to Nepal and with the upcoming visit of a delegation of the UN Permanent Forum to Bolivia and Paraguay are good examples of the collaboration that the ILO has established with the UN mechanisms.

## **7. Indigenous peoples’ access to and effective participation in the work of the mechanisms and other UN, international or regional fora**

68. The effectiveness of the Special Rapporteur, the Permanent Forum, and the Expert Mechanism is inextricably linked to effective indigenous peoples’ participation. Indigenous peoples have successfully demanded to have their voices heard in international fora. Their enhanced participation in these fora is now a corollary of indigenous peoples’ right to participate in any decision making affecting them, as affirmed in the Declaration.

69. The mandates of the different mechanisms on the rights of indigenous peoples acknowledge the importance of the participation of indigenous peoples.<sup>8</sup> These mechanisms have developed a number of channels of interaction within their annual sessions (in the cases of the Permanent Forum and the Expert Mechanism) or in relation to their specific activities, like country visits or communications (in the case of the Special Rapporteur). Indigenous peoples’ organizations are also actively engaged in other international human rights processes, including Human Rights Council’s and treaty bodies’ sessions, and the Working Group on the Universal Periodic Review (UPR).

70. The experience of the Working Group on Indigenous Populations left an important precedent regarding the participation of indigenous peoples’ representatives within the UN system. For many decades, indigenous peoples attending the sessions of the WGIP presented their views and grievances, and submitted specific allegations of human rights violations in their own countries. With the establishment of the Permanent Forum, a similar methodology of open

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<sup>8</sup> (Human Rights Council res. 6/12, paragraph 1[f]).



participation was adopted in its two-week annual sessions, where indigenous representatives take the floor and contribute to the Forum's discussions, or present information on the situation of indigenous peoples in their respective countries. In this regard, participating experts underlined the need for continuous support to indigenous peoples' participation in the sessions of both the Expert Mechanism and the Permanent Forum, as well as during the presentation of the relevant reports to the Human Rights Council.

71. One expert noted that, in reflecting upon issues of indigenous peoples' participation in UN mechanisms, it was important to bear in mind the important expectations that indigenous individuals and communities put on these mechanisms. Those expectations do not always align with the mandates of the UN mechanisms, which poses an important challenge to indigenous peoples.

72. Experts pointed out the need of capacity building and other initiatives which would allow indigenous peoples' institutions and organizations to better engage in the work of the mechanisms so to achieve the best results in terms of protecting and promoting indigenous peoples' rights. Enhancing the quality of indigenous peoples' participation is an important issue so that the mechanisms can be fully effective within the scope of their mandates.

73. Experts also discussed the importance of engagement with the mechanisms at the country level, taking into account institutions such as national human rights institutions.

74. In order to facilitate involvement and participation, it was suggested that, within the framework of the Human Rights Council, secretariats should attempt to coordinate each other so that the reports and activities of the Special Rapporteur, the OHCHR and the Expert Mechanism are considered at the same time and session of the HRC.

### **III. CONCLUSIONS & RECOMMENDATIONS**

#### **A. The UN Declaration on the Rights of Indigenous Peoples**

75. The UN Declaration on the Rights of Indigenous Peoples provides the framework for action towards the full protection and implementation of indigenous peoples rights.

76. The UN Declaration on the Rights of Indigenous Peoples is the principal normative framework for the three UN mechanisms with specific mandate regarding indigenous peoples' rights, and it should also constitute an important frame of reference for the UN treaty bodies and other relevant international and regional human rights mechanisms.

77. Article 42 of the UN Declaration on the Rights of Indigenous Peoples requires the three mechanisms to apply the Declaration universally, irrespective of the positions individual states on the Declaration.

## **B. General Coordination**

78. The three mechanisms should take advantage of their participation at the annual sessions of the Permanent Forum and Expert Mechanism to meet and coordinate their work agendas. In any case, the three mechanisms should consider holding an annual meeting to coordinate their work.

79. The chairperson, or if not possible a designated member, of the Permanent Forum and of Expert Mechanism, and the Special Rapporteur should always participate in the annual sessions of the Permanent Forum and the Expert Mechanism.

80. The three mechanisms should consult with the Inter-Agency Support Group to develop methods for strengthening coordination and cooperation with UN agencies.

## **C. Division of Labour among mechanisms**

81. Taking into account the specific terms of their respective mandate, each of the three mechanisms should avoid engaging in work that is the special focus of the mandates of the other mechanisms or that would more adequately be addressed by other bodies and agencies of the UN system, including the treaty bodies.

82. In the aftermath of the adoption of the UN Declaration, the Permanent Forum should review its working methods in order to promote cooperation with the other two mechanisms and enhance its responsibilities under Article 42 of the Declaration. A greater role could be given to the Forums' interaction with the UN agencies, including in public meetings, particularly those that carry out activities at the country level regarding the rights of indigenous peoples.

83. The Permanent Forum's and Expert Mechanism's sessions should strive to focus the participation of governments, indigenous representatives, and other stakeholders, on the specific issues and functions falling within their respective mandates.

## **D. Thematic Research**

84. The Expert Mechanism has a specific mandate to carry out thematic research. The Special Rapporteur has adopted the view that his role in thematic research will be secondary, contributing to the thematic research of the other

mechanism on the basis of his experience engaging with governments on country situations.

85. The Permanent Forum should reflect on its role in carry out thematic research, and avoid duplication of the work of the Expert Mechanism to prevent “thematic fatigue.”

86. The Expert Mechanism and Permanent Forum should seek to collaborate closely on research projects of shared interest. The participation of indigenous experts should always be promoted.

### **E. Specific Situations of Human Rights violations**

87. This is a priority area of work for Special Rapporteur.

88. The Permanent Forum and the Expert Mechanism should develop measures to channel the specific allegations of human rights violations presented by indigenous peoples during their annual sessions, including to the Special Rapporteur and other relevant mechanisms mandated to address such allegations.

89. The Special Rapporteur should develop methodologies for receiving allegations of human rights violations and, as required, of direct dialogue between the governments and indigenous peoples, during his participation at the annual sessions of the Permanent Forum and the Expert Mechanism.

### **F. Country visits**

90. Country visits to assess the human rights conditions of indigenous peoples is one of the principal work methods of the Special Rapporteur pursuant to his mandate.

91. The Permanent Forum on Indigenous Issues has an important role to develop in relation to the work of the UN agencies and programmes at the country level, enhancing knowledge of indigenous issues among the different agencies.

92. The Permanent Forum should develop internal guidelines to orient the activities and scope of work carried out by their individual members during country visits.

93. The Permanent Forum’s secretariat could seek methods to enhance the cooperation and information among the Forum’s individual members in order to strengthen their roles and the effectiveness of their activities as members between sessions. The Forum’s members should be actively involved in inter-sessional activities, including those carried out by the secretariat.

## **G. The role of the Secretariats**

94. The Secretariat staff should periodically share information regarding the activities of the three mechanisms and the Secretariats themselves, coordinate work-plans regularly, and collaborate on research and other areas as appropriate.

95. The Secretariats should enhance efforts for training of UN staff members on indigenous rights and issues at headquarters and in the field, in coordination with efforts made by the three mechanisms.

96. Where possible, more resources, both financial and human, should be dedicated to the Secretariats. In particular, the Secretariat of the Expert Mechanism needs to be strengthened considerably. Priority should be given to the recruitment of indigenous staff.

97. The Secretariat of the UN Permanent Forum and the OHCHR should consider utilizing the members of the Permanent Forum and the Expert Mechanism as resource persons in the elaboration of their own policies, guidelines, and publications on indigenous issues.

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### **ANNEX I Programme of Work**

### **ANNEX II List of documentation**

### **ANNEX III List of participants**