



General Assembly

Distr.
GENERAL

A/HRC/10/56
8 January 2009

Original: ENGLISH

HUMAN RIGHTS COUNCIL
Tenth session
Agenda item 5
Expert Mechanism on the Rights of Indigenous Peoples

HUMAN RIGHTS BODIES AND MECHANISMS

**REPORT OF THE EXPERT MECHANISM ON THE RIGHTS
OF INDIGENOUS PEOPLES ON ITS FIRST SESSION**

Geneva, 1-3 October 2008

Chairperson-Rapporteur: John HENRIKSEN

Summary

The Expert Mechanism on the Rights of Indigenous Peoples held its first session from 1 to 3 October 2008. The session was attended by the five members of the Expert Mechanism, representatives of States, United Nations bodies and specialized agencies, academics and a large number of indigenous peoples and non-governmental organizations, including participants supported by the United Nations Voluntary Fund for Indigenous Populations.

The Expert Mechanism held a discussion on the implementation of Human Rights Council resolution 6/36 entitled “Expert Mechanism on the rights of indigenous peoples”, including consideration of thematic expertise. It also held a discussion on issues related to the study on lessons learned and challenges to achieve the implementation of the rights of indigenous peoples to education, as requested by the Council in its resolution 9/7. Pursuant to that resolution, the Expert Mechanism also undertook a review of the Durban Declaration and Programme of Action for the purpose of submitting recommendations as contributions to the outcome of the Durban Review Conference.

The Expert Mechanism adopted the report of the session as well as five proposals for consideration and approval by the Council. The proposals relate to the issues of organization of work; the Durban Review Conference; the right of indigenous peoples to education; participation of indigenous peoples; and coordination with other United Nations bodies and mandates. The Expert Mechanism proposes specifically that the Council authorize the Expert Mechanism to meet for five working days in 2009. It also proposes that the Council approve two additional days for the members to meet prior to the session to make preparations. Moreover, the Expert Mechanism proposes that the Council approve a two-day technical workshop/review to finalize the study on the rights of indigenous peoples to education. It further proposes that the Chairperson-Rapporteur be invited to participate in the Durban Review Conference in April 2009 and that the Chairperson-Rapporteur or a designated member of the Expert Mechanism be invited to the session of the Permanent Forum on Indigenous Issues.

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I. INTRODUCTION

1. In its resolution 6/36 of 14 December 2007, the Human Rights Council decided to establish the Expert Mechanism on the Rights of Indigenous Peoples as a subsidiary expert mechanism to assist the Council in the implementation of its mandate, by providing it with thematic expertise on the rights of indigenous peoples in the manner and form requested by the Council. The thematic expertise was to focus mainly on studies and research-based advice, and the mechanism could make proposals to the Council for its consideration and approval, within the scope of its work as set out by the Council.

II. PROPOSALS FOR CONSIDERATION AND APPROVAL BY THE HUMAN RIGHTS COUNCIL

Proposal 1: Organization of work

The Expert Mechanism on the Rights of Indigenous Peoples,

1. *Proposes* that the Council authorize the Expert Mechanism to meet for five working days in 2009 and to hold two days of preparatory meetings prior to its second session;
2. *Invites* participants to submit relevant written documentation to the Expert Mechanism.

Proposal 2: Durban Review Conference

The Expert Mechanism on the Rights of Indigenous Peoples,

1. *Affirms* its support for the Durban review process and welcomes the request from the Human Rights Council to contribute to the outcome of the Durban Review Conference;
2. *Notes* the achievements in the area of indigenous peoples' rights since the 2001 Durban Conference and, in particular, the adoption of the United Nations Declaration on the Rights of Indigenous Peoples, the establishment of the mandate of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people in 2001, the Permanent Forum on Indigenous Issues, which held its first session in May 2002, and the creation of the Expert Mechanism on the Rights of Indigenous Peoples, which met from 1 to 3 October 2008;
3. *Welcomes* the positive steps taken by Governments to address the discrimination faced by indigenous peoples, including through the introduction of legislation and ratification of ILO Convention No. 169 on indigenous and tribal peoples in independent countries;
4. *Recommends* that the Durban Declaration and Programme of Action be revised to take into account the above-mentioned developments; in particular, the Durban Declaration and Programme of Action should acknowledge that the right of self-determination and the principle of free, prior and informed consent are now universally recognized through the adoption of the Declaration, making paragraph 24 of the Durban Declaration obsolete; the Expert Mechanism

also recommends that these principles be included in the future outcome document, and proposes that paragraph 43 of the Durban Declaration be revised to take into account the recognition in the United Nations Declaration on the Rights of Indigenous Peoples of indigenous peoples' rights to lands and resources;

5. *Considers* that the specific paragraphs in the Programme of Action relating to indigenous peoples remain relevant but is of the opinion that the United Nations Declaration on the Rights of Indigenous Peoples provides a new overarching context that orientates the action to be taken by States; it furthermore recommends that specific reference is made in the outcome document to implementation of the Declaration on the Rights of Indigenous Peoples by States and that particular attention be paid by the United Nations system and international and regional financial institutions to assisting States in the implementation of the provisions;

6. *Proposes* that the outcome document include a request to States to implement recommendations made by the Committee on the Elimination of Racial Discrimination in relation to indigenous peoples' rights, and considers that specific reference needs to be made to the discrimination being encountered by indigenous peoples in maintaining their traditional occupations;

7. *Also proposes* that the Expert Mechanism continue to provide input during the preparatory phase for the Durban Review Conference to the Human Rights Council and the Preparatory Committee for the Durban Review, and requests that any proposals be taken into account;

8. *Urges* all future preparatory meetings to ensure indigenous participation;

9. *Recommends* that the Chairperson-Rapporteur of the Expert Mechanism be invited to participate in the Durban Review Conference in April 2009.

Proposal 3: Right of indigenous peoples to education

The Expert Mechanism on the Rights of Indigenous Peoples,

Bearing in mind Human Rights Council resolutions 6/36 of 14 December 2007 and 9/7 of 18 September 2008, and in order to fulfil the request of the Council to prepare a study by 2009 on lessons learned and challenges to achieve the implementation of the right of indigenous peoples to education,

1. *Requests* the Office of the United Nations High Commissioner for Human Rights to send out notifications to indigenous peoples organizations, Member States, relevant international and regional organizations, the Special Rapporteur on the right to education, relevant United Nations agencies, national human rights institutions and civil society organizations to submit, by February 2009, information pertaining to achieving the implementation of the rights of indigenous peoples to education, including lessons learned, case studies, challenges and recommendations, which may be in the form of written reports or audio-visuals;

2. *Invites* the Office of the High Commissioner to provide inputs;

3. *Invites* the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people and the Permanent Forum on Indigenous Issues to contribute to the study;

4. *Proposes* that the Council authorize a two-day technical workshop/review to facilitate the finalization of the above-mentioned study.

Proposal 4: Participation of indigenous peoples

The Expert Mechanism on the Rights of Indigenous Peoples,

Noting paragraph 8 of Human Rights Council resolution 9/7, and considering the importance and need for indigenous peoples to follow-up on the work of the Expert Mechanism,

1. *Proposes* that the Human Rights Council suggests to the General Assembly to broaden the mandate of the United Nations Voluntary Fund for Indigenous Populations to help indigenous peoples to participate in the sessions of the Council and the treaty bodies;

2. *Encourages* the Board of Trustees to identify beneficiaries of the Fund who could effectively contribute to the thematic agenda of the Expert Mechanism.

Proposal 5: Coordination with other United Nations bodies and mandates

The Expert Mechanism on the Rights of Indigenous Peoples,

Bearing in mind paragraph 5 of Human Rights Council resolution 6/36, in which the Council decided that, in order for the Expert Mechanism to enhance cooperation and avoid duplicating the work of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people and the Permanent Forum on Indigenous Issues, it should invite the Special Rapporteur and a member of the Permanent Forum to attend and contribute to its annual meeting,

1. *Proposes* that the Chairperson-Rapporteur of the Expert Mechanism or a designated member thereof participate in the sessions of the Permanent Forum on Indigenous Issues;

2. *Invites* all relevant mandate-holders, in particular the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people and representatives of the Permanent Forum, to participate in the annual sessions of the Expert Mechanism.

III. ORGANIZATION OF THE SESSION

A. Attendance

2. The Expert Mechanism on the Rights of Indigenous Peoples held its first session in Geneva from 1 to 3 October 2008. The members who participated in the session were Catherine Odimba (Congo), Jannie Lasimbang (Malaysia), John Henriksen (Norway), José Carlos Morales (Costa Rica) and José Mencio Molintas (Philippines).

3. The Expert Mechanism was attended by representatives of 37 Member States, the Holy See, 4 United Nations organizations and programmes, a national human rights institution and a large number of indigenous delegates and non-governmental organizations. A total of 367 participants were accredited, with 222 effectively participating (see annex I).

4. The Special Rapporteur on the situation of the human rights and fundamental freedoms of indigenous people, James Anaya, and Mick Dodson and Bartolomé Clavero, members of the Permanent Forum on Indigenous Issues, attended the session. The President of the Human Rights Council Advisory Committee, Miguel Alfonso Martinez, also attended the session. The Expert Mechanism would like to express its appreciation to the Indigenous Peoples' Centre for Documentation, Research and Information, the International Work Group for Indigenous Affairs and the Indigenous Portal for their support for indigenous participants during the session.

B. Documentation

5. The Expert Mechanism had before it the provisional agenda (A/HRC/EMRIP/2008/1) and the annotated provisional agenda (A/HRC/EMRIP/2008/1/Add.1), as prepared by the Office of the United Nations High Commissioner for Human Rights (OHCHR).

C. Opening of the session

6. The Deputy High Commissioner for Human Rights, Kyung-Wha Kang, opened the first session of the Expert Mechanism. She referred to the institutional changes represented by the creation of the Human Rights Council and its enhanced normative framework. In particular, she encouraged the experts to consider how they would contribute to the promotion and implementation of the United Nations Declaration on the Rights of Indigenous Peoples. She recalled that the Declaration set out a clear and universally agreed upon framework for the advancement of the rights of indigenous peoples. Although the Declaration is non-binding, it nonetheless offers the basis for reconciliation between indigenous peoples and States. She added that the provisions of the Declaration provided an agenda for dialogue and practical policymaking.

7. The Deputy High Commissioner assured the participants and the members that the work of her Office was to assist States and indigenous peoples in implementing the Declaration. She stated that the Expert Mechanism also had its role to play in helping to contribute to that end.

8. The President of the Council, Martin I. Uhomoibhi, recalled that the Declaration was one of the first international instruments adopted by the Council and provided, together with International Labour Organization (ILO) Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries and other human rights standards, the international normative framework on the rights of indigenous peoples. He said that the Expert Mechanism was directly accountable to the Council and this gave it more leverage and significance as a veritable organ of the Council, to which it could propose how to contribute best to ensure the respect and advancement of the rights of indigenous peoples.

D. Election of officers

9. The Deputy High Commissioner invited the members to nominate a Chairperson for the first session. Ms. Lasimbang announced that the members of the Expert Mechanism, through consensus, had nominated Mr. Henriksen and Mr. Morales as Chairperson-Rapporteur and Vice-Chairperson-Rapporteur, respectively. The Deputy High Commissioner declared them elected by acclamation.

10. In his opening statement, the Chairperson-Rapporteur said that the Expert Mechanism provided a unique space for focused multilateral discussions on how the United Nations could contribute to a better understanding of the scope and content of the rights of indigenous peoples. He emphasized that the mandate and functions of the Expert Mechanism were different from those of the former Working Group on Indigenous Populations. The Expert Mechanism had a strictly thematic mandate. It was not mandated to develop new standards or address country situations, nor was it a complaint procedure.

11. The Chairperson-Rapporteur stated that the normative framework for the work of the Expert Mechanism included all relevant international instruments related to the rights of indigenous peoples, including the United Nations Declaration on the Rights of Indigenous Peoples. He added that the Expert Mechanism had an important role in promoting the operationalization of the rights affirmed in the Declaration and in mainstreaming them into the Council's overall efforts to promote and protect all human rights.

12. The Chairperson-Rapporteur called upon Member States, indigenous peoples and other stakeholders to engage themselves in the work of the mechanism. He said that it should be able to address issues that are truly important for indigenous peoples. He expressed the hope and belief that the thematic focus of the Expert Mechanism would emerge as a natural outcome of the discussions and consultations during the annual sessions of the Mechanism.

13. The Chairperson-Rapporteur was of the view that the open arrangement for participation greatly facilitated the work of the Expert Mechanism. He stated that it was of particular importance that indigenous peoples' organizations and representatives not in consultative status with the Economic and Social Council were also able to participate. In his view, strong and broad indigenous participation was of utmost importance. He welcomed the suggestions made by the Council to the General Assembly to adjust the mandate of the United Nations Voluntary Fund for Indigenous Populations, taking into account the creation of the Expert Mechanism.

14. A representative of the Navajo nation, Rex Lee Jim, gave an invocation to open the session.

E. Adoption of the agenda and programme of work

15. At its first meeting, the revised provisional agenda prepared by OHCHR was adopted (see annex II). At the same meeting, the Expert Mechanism also adopted a programme of work for the session, showing the order and distribution of meeting time for each agenda item at the first session. The Expert Mechanism held six meetings during the session, of which one was a private meeting.

IV. IMPLEMENTATION OF HUMAN RIGHTS COUNCIL RESOLUTION 6/36, INCLUDING CONSIDERATION OF THEMATIC EXPERTISE

16. The Chairperson-Rapporteur invited delegations to make general statements on the implementation of the mandate of the Expert Mechanism. He stated that the item provided an opportunity to discuss the scope of the mandate, expectations and methods of work of the new body about its thematic focus and how to enhance cooperation and avoid duplicating the work of other mandates.

17. He invited observers to provide the Expert Mechanism with concrete suggestions about possible proposals to the Council so that the members could take them into account in their deliberation under agenda item 6 (see annex II). The members of the Expert Mechanism encouraged States, United Nations agencies, indigenous peoples, non-governmental organizations and other delegations present at the session to engage in a frank and constructive dialogue and invited them to actively contribute to the work of the Expert Mechanism. The importance and need to benefit from the expertise and experience of indigenous peoples were stressed.

18. A number of States, including Argentina, Bolivia, Canada, Denmark, Guatemala, Indonesia, Mexico, Nepal, New Zealand, Peru, the Philippines, the Russian Federation and Venezuela (Bolivarian Republic of), took the floor to underline the need for coordination to be established among the Expert Mechanism, the Permanent Forum on Indigenous Issues and the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, to ensure effectiveness and credibility and to avoid duplication of activities.

19. The Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya, and a member of the Permanent Forum on Indigenous Issues, Michael Dodson, also recognized the challenges ahead for the three mechanisms to coordinate their work and establish fruitful cooperation, thus ensuring complementarity.

20. Referring to the research-based and study-oriented nature of the mandate of the Expert Mechanism, the Special Rapporteur stated that he expected the United Nations Declaration on the Rights of Indigenous Peoples to be an important focal point of the Mechanism's research and studies on issues of concern to indigenous peoples.

21. The Special Rapporteur further elaborated on his own role, noting that he would focus primarily on examining specific situations of violations of indigenous peoples' human rights, and said that he would complement the Expert Mechanism by providing input to its thematic mandate rather than by engaging in thematic studies. He informed the meeting participants that OHCHR staff assisting his mandate would be available throughout the session of the Expert Mechanism to receive communications and documentation of alleged human rights violations of indigenous peoples and individuals.

22. All participants welcomed the establishment of the Expert Mechanism and pledged support for its work. The first session was seen as a historic moment, as it represented the start of a new phase in the promotion and protection of indigenous peoples' rights. Tribute was paid to the achievements of the Working Group on Indigenous Populations; while some acknowledged that

the Expert Mechanism was to some extent a legacy of the Working Group, the different purposes of the two mechanisms were emphasized. Suggestions were made that the Expert Mechanism take into account the work of the Working Group while carrying out its research mandate. It was also suggested that the Expert Mechanism prepare a review of the status and implementation of the recommendations on studies carried out by the Working Group. However, some observers expressed the concern that this approach might overburden the new body.

23. The United Nations Declaration on the Rights of Indigenous Peoples was unanimously seen as a vital instrument providing a normative framework to guide the work of the Expert Mechanism.

24. The opportunity for the Expert Mechanism to establish effective collaboration and contribute substantially to the work of the Council was emphasized. Some recommended that the United Nations Declaration on the Rights of Indigenous Peoples, as an international instrument adopted by the Council and the General Assembly, be used as a reference in the context of the universal periodic review process. It was also suggested that the Expert Mechanism engage with other international human rights mechanisms, including the treaty bodies, as well as with regional and national human rights bodies, in particular national human rights institutions and the Working Group on Indigenous Populations/Communities of the African Commission on Human and Peoples' Rights.

25. Many indigenous representatives said that they would prefer to be referred to as "rights-holders" rather than "stakeholders" in the context of indigenous peoples' rights.

26. Methodological considerations were discussed, including the importance that the Expert Mechanism have an inclusive approach and ensure the full and effective participation of indigenous peoples in its work. In that regard, some appealed to the United Nations to provide adequate funding through its regular budget to the Expert Mechanism and for the participation of indigenous representatives in future sessions of the Expert Mechanism.

27. The need for the Expert Mechanism to identify global and cross-cutting issues of significance to indigenous peoples and engage in subsequent studies was stressed on several occasions. Some suggestions were made on potential areas or themes of interest, including the right to land and territories; the right to self-determination; the right to free, prior and informed consent; indigenous refugees and internally displaced persons; customary law; challenges to the implementation of indigenous peoples' rights; treaties; oil and mining industries; the impact of environmental contamination on indigenous peoples' lives; and the specific challenges and rights of indigenous children, women and people with disabilities.

28. The indigenous caucus, on behalf of all indigenous observers, proposed that the agenda of the Expert Mechanism include a permanent item on the United Nations Declaration on the Rights of Indigenous Peoples. Three thematic issues were identified as possible sub-agenda items for the second session: (a) the right to self-determination and the right to development; (b) free, prior and informed consent; and (c) adjudication, remedies, repatriation and redress.

V. STUDY ON LESSONS LEARNED AND CHALLENGES TO ACHIEVE THE IMPLEMENTATION OF THE RIGHT OF INDIGENOUS PEOPLES TO EDUCATION

29. The Chairperson-Rapporteur referred to Council resolution 9/7, in which the Council request the Expert Mechanism to prepare a study on lessons learned and challenges to achieve the implementation of the right of indigenous peoples to education, and to conclude it in 2009. He informed the participants that the Expert Mechanism had entrusted two of its members, Ms. Lasimbang and Mr. Molintas, with the overall responsibility for preparing the study.

30. Ms. Lasimbang made preliminary remarks on the agenda item, inviting the participants to share their views on effective methods for carrying out the thematic research related to the right to education. She recalled the request by the Council, in its resolution 9/7, that the Expert Mechanism prepare a study on lessons learned and challenges to achieve the implementation of the right of indigenous peoples to education. The study, she said, could broadly encompass the following elements: (a) a human rights-based approach to the right to education; (b) good examples and lessons learned in establishing and controlling indigenous education systems and institutions; (c) the challenges to achieve the implementation of the rights of indigenous peoples to education; and (d) recommendations.

31. Ms. Lasimbang acknowledged the existing relevant sources related to the theme, including the report by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people (E/CN.4/2005/88) and the outcome of the fourth session of the Permanent Forum on Indigenous Issues related to the right to education as part of achieving the Millennium Development Goals (E/2005/43). She stated that the study should build on those and other reports and draw on the recommendations they contained.

32. Ms. Lasimbang concluded by stressing that the study should elaborate and focus on the promotion of the right of indigenous peoples to establish and control their own education systems and institutions that provide education in their own languages, curricula that are based on cultural values and philosophies and conducted in a manner appropriate to indigenous cultures and learning.

33. A number of governmental delegations acknowledged the importance of the study to be undertaken, hoping that it would contribute to a greater awareness of options to effectively implement this right at the national level, based on shared experiences on what was needed and what has proved to work. Many States provided concrete examples on how recognition by domestic law, including constitutions, of indigenous languages as official or national languages or the affirmation of the collective right to education for indigenous peoples have promoted the right to education as it applies to indigenous peoples. Others stressed that any efforts and good practices that have proved effective in ensuring that indigenous peoples enjoy their right to education were based on the imperative of high-quality teaching, for instance when bilingual education systems were established.

34. A large number of indigenous representatives, while recognizing efforts made in some countries, stressed that the greatest challenge faced by many indigenous peoples in terms of achieving the full implementation of the right to education was the continuing non-recognition by States of the existence of indigenous peoples. In urban areas, indigenous-controlled education

is rare and educational bodies and formal educational milestones, which are set by State-endorsed programmes, have been detrimental to the education of indigenous peoples. Another critical issue noted by indigenous representatives was the threat to indigenous languages and cultures.

35. Specific proposals were made to the Expert Mechanism regarding areas of consideration for the study, including the use of mother tongues and indigenous systems of education; the impact of religious schools on indigenous communities; the implementation of the provisions of the Convention on the Rights of the Child and other related international instruments on education; and the impact on education of demographic policies, such as population transfer.

36. Some examples of successful educational work among indigenous peoples that was initiated and managed by indigenous peoples themselves were shared as positive initiatives. It was suggested that such indigenous-led initiatives should be supported and expanded.

37. Indigenous representatives noted that the study should also take into consideration the fact that no actions or measures could be effective if the issue of the high level of illiteracy among indigenous communities, particularly women and girls, was not overcome. It was also important to address the serious lack of educational resources faced by indigenous communities living in remote areas, including human resources, infrastructure and educational materials.

38. Many statements underlined the need not to isolate the right to education from other rights affirmed in the United Nations Declaration on the Rights of Indigenous Peoples, in particular the right to self-determination, free, prior and informed consent, treaties, non-discrimination and equality. The distinct identities and cultures of indigenous peoples require States to take special legislative, administrative and budgetary measures to ensure that indigenous peoples enjoy the right to education in a meaningful and effective manner.

39. Reference was also made to possible cooperation with regional mechanisms, in particular with the Working Group on Indigenous Populations/Communities of the African Commission on Human and Peoples' Rights, which has engaged in extensive studies on the situation of indigenous peoples in Africa. The draft declaration on the rights of indigenous peoples of the Organization of American States was also seen as a normative framework that should guide the study together with the international instruments related to indigenous peoples' rights.

40. With regard to the methods of work of the Expert Mechanism, indigenous representatives called upon the experts to involve indigenous researchers in their work and encouraged the Expert Mechanism to include regional seminars and case studies on thematic issues. Indigenous representatives also referred to the World Indigenous Peoples Conference on Education which will be held in Melbourne, Australia, from 7 to 11 December 2008.

41. In a joint intervention, indigenous representatives from Australia invited the members of the Expert Mechanism to attend the Conference in Melbourne.

VI. REVIEW AND RECOMMENDATIONS TO THE OUTCOME TO THE DURBAN REVIEW CONFERENCE

42. The Chairperson-Rapporteur referred to Council resolution 9/7, in which the Expert Mechanism is requested to undertake a review of the Durban Declaration and Programme of Action and submit recommendations as contributions to the outcome of the Durban Review Conference, through its Preparatory Committee. He invited observers to provide recommendations for the Mechanism's input to the Durban review process for the imminent second session of the Preparatory Committee, from 6 to 17 October 2008, and the Review Conference itself, pursuant to Council resolution 9/7.
43. The Chairperson-Rapporteur reported that the Expert Mechanism had entrusted two of its members, Mr. Morales and Ms. Odimba Kombe, with the overall responsibility for preparing the above-mentioned recommendations.
44. Mr. Morales and Ms. Odimba Kombe introduced the agenda item by pointing out that the Durban Declaration and Programme of Action included a number of paragraphs dealing specifically with discrimination against indigenous peoples, but that some of the paragraphs, such as paragraphs 24, 44, 45, had become obsolete owing to recent developments, most notably by the adoption of the United Nations Declaration on the Rights of Indigenous Peoples.
45. There was consensus among the participants that the Expert Mechanism should review the Durban Declaration and Programme of Action and make recommendations for the Durban review process, taking into account that the United Nations Declaration on the Rights of Indigenous Peoples should provide the normative framework for the Durban review process with regard to indigenous peoples. It was suggested that changes should be made to the Durban Declaration and Programme of Action based on the Declaration as a reference document for the minimum standards to combat discrimination against indigenous peoples.
46. Many participants reported that indigenous peoples continue to be targets of racism and discrimination in all parts of the world, which was also the conclusion of a recent draft report of the intersessional open-ended working group, issued on 29 September 2008, and the Durban review process should thus pay close attention to the need for implementation of the rights and freedoms contained in the Declaration on the Rights of Indigenous Peoples, particularly those related to non-discrimination and equality (such as articles 1, 2, 7, 8, 9, 15, 21 and 22).
47. Many participants argued that the Durban Declaration and Programme of Action fell well below currently recognized international human rights standards and thus needed to be revised. The basis for its revision should be the full implementation of the United Nations Declaration on the Rights of Indigenous Peoples. For example, paragraph 24 of the Durban Declaration and Programme of Action states that the term "indigenous peoples" could not "be construed as having any implications as to rights under international law". As such, the Durban Declaration and Programme of Action denies indigenous peoples the right to self-determination in article 3 of the Declaration and other well-established international standards. Similarly, paragraph 43 of the Durban Declaration and Programme of Action limits the right of indigenous peoples to ownership of their lands to domestic law and not the international standard of traditional use, as found in articles 25 and 26 of the Declaration as well as the jurisprudence of the treaty bodies and regional mechanisms. The Durban Declaration and Programme of Action also does not

include the principle of free, prior and informed consent of indigenous peoples before any development can take place on their lands and territories, enshrined in article 32 of the Declaration. However, participants also acknowledged that there were a number of positive articles in the Durban Declaration and Programme of Action, such as in Durban Declaration articles 22 and 25, and in Durban Programme of Action paragraphs 18, 50 and 117, and States should be urged to implement them.

48. Some participants further stressed that the review process should include an assessment of the implementation by States of the concluding observations of the Committee on the Elimination of Racial Discrimination because experience indicates that these recommendations are often ignored by Governments. There should be a national level process of review of the Durban Declaration and Programme of Action involving indigenous peoples in accordance with paragraph 22 (b) of the Durban Programme of Action. Participation of indigenous peoples in the review process should be ensured at all levels - national, regional and international - and increased funding should be provided for it.

49. One non-governmental organization raised a concern that there was no acknowledgement of discrimination faced by indigenous peoples in Africa during the recent regional preparatory meeting in Abuja, and called on States to ensure that indigenous issues remain one of the key issues to be addressed in the review process. Other suggestions for the Expert Mechanism included that it should conduct an independent evaluation of discrimination against indigenous peoples worldwide for the purposes of the Durban Review, call upon all States to participate in the Durban review process, and to support a gender perspective in it.

50. Two governmental delegations took the floor, mostly to express support for the fight against racism and to encourage the Expert Mechanism to submit its recommendations for the review process, pursuant to Council resolution 9/7, before the meeting of the Preparatory Committee so that they could be reflected in the outcome document.

VII. ADOPTION OF THE REPORT AND PROPOSALS

51. At its last meeting, the Expert Mechanism adopted five proposals for the consideration and approval of the Council. The proposals related to the organization of work; the Durban Review Conference; the right of indigenous peoples to education; participation of indigenous peoples; and coordination with other United Nations bodies and mandates.

52. In his closing statement, the Chairperson-Rapporteur expressed his gratitude to all participants for their attendance and contribution, with a special mention for the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people and the Permanent Forum on Indigenous Issues. He also expressed appreciation to the Secretariat for the organization of the session.

53. The Expert Mechanism adopted a provisional agenda for its second session (see annex III).

54. Under agenda item 5 (see annex III), the Expert Mechanism intends to focus on possible processes and mechanisms for the operationalization of the United Nations Declaration on the Rights of Indigenous Peoples, including processes and mechanisms identified in the Declaration itself (adjudication, remedies, repatriation, redress and compensation).

ANNEXES

Annex I

LIST OF PARTICIPANTS

States members of the United Nations represented by observers: Angola, Bolivia, Brazil, Burundi, Canada, Chile, China, Colombia, Costa Rica, Egypt, El Salvador, Denmark, Dominican Republic, Finland, France, Germany, Guatemala, India, Indonesia, Japan, the Lao People's Democratic Republic, Mauritius, Mexico, Morocco, Namibia, Nepal, New Zealand, Norway, Panama, Peru, Philippines, Russian Federation, Singapore, Spain, Sweden, Switzerland, Thailand, Uruguay, Venezuela (Bolivarian Republic of) and Viet Nam.

Non-Member State represented by an observer: Holy See.

Donors represented by observers: German Technical Cooperation, Spanish Agency for International Cooperation.

United Nations mandates, mechanisms, bodies and specialized agencies, funds and programmes represented by observers: United Nations Institute for Training and Research, United Nations Development Programme, United Nations Population Fund, United Nations Environment Programme, Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Permanent Forum on Indigenous Issues, Human Rights Council Advisory Committee.

Intergovernmental organizations represented by observers: Council of Europe, European Commission.

National human rights institution represented by observers: Australian Human Rights Commission.

Academics and experts on indigenous issues represented by observers of the following institutions: Marinpol Technical State University, University of the Andes-Mérida, University of Berlin, University of Tubingen.

Non-governmental organizations represented by observers: Anafilm, Association of World Citizens, International Federation of Rural Adult Catholic Movements, International Work Group of Indigenous Affairs, Lutheran World Federation, Quaker United Nations Office, Rights and Democracy, European Bureau of Lesser Used Languages, Incomindios, Institute for Ecology and Action Anthropology, Netherlands Centre for Indigenous Peoples, Peace Campaign Group, Provea y Sociedad Homo et Natura, Rencontre africaine pour la défense des droits de l'homme, Solidarité avec les peuples autochtones des Amériques.

Indigenous nations, peoples and organizations represented: Action communautaire pour la promotion des défavorisés Batwa, Adivasi Jagonan Sanity, Agencia Internacional de Prensa Indígena, Ainu Association of Hokkaido, Ainu Resource Centre, All-India Santal Welfare and Cultural Society, Allkoch Rajbanshi Students' Union, American Indian Children's Council, American Indian Law Alliance, Andes Chinchasyo, Aotearoa Indigenous Rights Trust, Arameans of Akam-Naharaim Foundation, Aren Nodde Nooto, Asia Indigenous Peoples Pact,

Asociación de autoridades tradicionales Wayuu Jepira, Association of Dolgan People, Association socioculturelle Taftilt, Asociación Maya Ukux Be, Association Tamount, Bahing Kiriati Mulukihim, Bangsa Adat Alifuru, Bawm-Zo Indigenous Peoples Organization, Bengaldesh Indigenous Peoples Forum, Blood Tribe, Comisión Jurídica para el Autodesarrollo de los Pueblos Andinos, Communauté des Autochtones de RDA, Casa Nativa Sonccoypa Cusicuynin, Cecide, Centro de Asistencia Legal Popular, Centro Salasaka, Chin Human Rights Organization - community of Mongol-Valdu, Congrès populaire Contumia, Consejo de la Nación Otomi, Consejo de Pueblos Nahuas del Alto Balsas, Consejo de todas las Tierras, Consejo Indio de Sudamerica, Coordinadora Indígena Campesina Agroforestales de Peru, CISA-Nitassinan, Enlace Continental de Mujeres Indígenas de América, Federación Nativa Ache del Paraguay, Foundation for Aboriginal and Islander Research Action, Fundación Indígena Paz, Justicia y Libertad, Fundación Intercultural Wayunka, Fundación para la Promoción del Conocimiento Indígena, FUSIAM-México, Grand Council of the Crees, Indian Confederation of Indigenous Tribal Peoples, Indian Confederation of Indigenous and Tribal Peoples North East Zone, Indigenous Peoples and Nations Coalition, Indigenous Peoples Links, Indigenous Peoples of Africa Coordinating Committee, Indigenous World Association, Information Center of Indigenous of Khakasia, Inuit Circumpolar Council, International Alliance of Indigenous Peoples of the Tropical Forest, International Fund for Indigenous, International Organization of Indigenous Resource Development, International Touareg, Kanuri Development Association, Kirat Yathung Chumlung, Krasnoyarsk Russia Northern Indigenous Population Communities Union, Kus Kura, L'auravetl'an Information and Education Network of Indigenous Peoples, Lohorong Yakhkhaba Society, Lungga Mangwang Agong Center, Mainyidid Pastoralist Integrated Development Organization, Maluku, Metis National Council, Mboscuda Cameroon, Minority and Indigenous Rights Advocacy of Nigeria, Mbororo Social and Cultural Development Association, Mohawk Nation, Mouvement de jeunes Kanak, Namayiana Women Organization, Navajo Nation, National Native Title Council-Australia, Olaji Lo Larusa Integrated Programme for Agro-Pastoralists Development, Organización de la Nación Aymara, Organización Nacional Indígena de Colombia, Pastoralist Network Forum, Pueblo Chibuleo, Pueblo Wayuu, Russian Association of Indigenous Peoples of the North, Rehoboth Community of Namibia, Servicios del Pueblo Mixe, Sherpa Association of Nepal, South African San Council, Taller Permanente de Mujeres Indígenas y Amazónicas, Tamaynut Amazigh Organisation, Te Runanga Onga Kaimahi Maori o Aoteavoa, Ti Tlanizke, Movement for the Survival of the Ogoni Peoples, Waso Trustland Project, Wara Institution Indígena Brasileiro, Wayunka, Welfare Association of Tribals of Chotanagpur and Yakhahaba Society.

Annex II

PROVISIONAL AGENDA FOR THE FIRST SESSION

1. Election of officers
2. Adoption of the agenda and organization of work
3. Implementation of Human Rights Council resolution 6/36 entitled “Expert mechanism on the rights of indigenous peoples”, including consideration of thematic expertise
4. Study on lessons learned and challenges to achieve the implementation of the right of indigenous peoples to education
5. Review and recommendations to the outcome to the Durban Review Conference
6. Proposals to be submitted to the Human Rights Council for its consideration and approval
7. Adoption of the report

Annex III

PROVISIONAL AGENDA FOR THE SECOND SESSION

1. Election of officers
2. Adoption of the agenda and organization of work
3. Possible thematic requests from the Council
4. Study on lessons learned and challenges to achieve the implementation on the right of indigenous peoples to education (presentation of study)
5. United Nations Declaration on the Rights of Indigenous Peoples on the themes:
 - (a) Implementation of the Declaration at the regional and national levels
 - (b) Adjudication, remedies, repatriation, redress and compensation
6. Proposals to be submitted to the Human Rights Council for its consideration and approval
7. Adoption of the report
