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## Human Rights Council

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Agenda item 5

### Human rights bodies and mechanisms

## Report of the Expert Mechanism on the Rights of Indigenous Peoples on its third session, Geneva, 12-16 July 2010\*

Chairperson-Rapporteur: José Carlos Morales Morales

### *Summary*

The Expert Mechanism on the Rights of Indigenous Peoples held its third session from 12 to 16 July 2010. In addition to the five members of the Expert Mechanism, the participants in the session included representatives of States, United Nations bodies and specialized agencies, non-governmental organizations, national human rights institutions, academics and a large number of indigenous peoples.

The Expert Mechanism held a discussion on the progress report on the study on indigenous peoples and the right to participate in decision-making, in order to finalize it. It also held a discussion on the United Nations Declaration on the Rights of Indigenous Peoples, with a particular focus on its use at the international, regional and national levels to promote and protect the rights of indigenous peoples. It further held a discussion on proposals to be submitted to the Human Rights Council.

The Expert Mechanism adopted its progress report on the study on indigenous peoples and the right to participate in decision-making, as well as a number of proposals.

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\* Late submission.

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## I. Introduction

1. Human Rights Council resolution 6/36 of 14 December 2007 established 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 resolution states that the thematic expertise will focus mainly on studies and research-based advice, and that the mechanism may suggest proposals to the Council for its consideration and approval, within the scope of its work, as set out by the Council.

## II. Adoption of the progress report on the study on indigenous peoples and the right to participate in decision-making, and adoption of proposals.

2. The Expert Mechanism adopted the progress report on the study on indigenous peoples and the right to participate in decision-making and also adopted the proposals set out below.

### A. Adoption of the progress report on the study on indigenous peoples and the right to participate in decision-making

3. *The Expert Mechanism on the Rights of Indigenous Peoples*

(a) *Refers* to paragraph 6 of Human Rights Council resolution 12/13 in which the Council requested the Expert Mechanism, in accordance with its mandate, to carry out a study on indigenous peoples and the right to participate in decision-making, and to present a progress report to the Council at its fifteenth session, and a final study to the eighteenth session;

(b) *Adopts* the progress report on the study on indigenous peoples and the right to participate in decision-making, as contained in A/HRC/EMRIP/2010/2;

(c) *Authorizes* the Chairperson-Rapporteur, in consultation with the other members of the Expert Mechanism, to make the necessary revisions to the progress report in the light of discussions carried out at its third session, and to submit the progress report to the fifteenth session of the Human Rights Council.

### B. Proposals to the Human Rights Council

#### Proposal 1. Human rights institutions and mechanisms

4. *The Expert Mechanism on the Rights of Indigenous Peoples*

(a) *Refers* to proposal 2 from its second session on human rights institutions and mechanisms, as contained in the report of the Expert Mechanism on its second session (A/HRC/12/32);

(b) *Reiterates* the important role of national human rights institutions and regional human rights mechanisms in protecting and promoting the rights of indigenous peoples and in implementing the United Nations Declaration on the Rights of Indigenous Peoples;

(c) *Proposes* that the Human Rights Council encourage States to ensure that they have strong national human rights institutions established according to the Paris Principles, that can effectively promote and protect the rights of indigenous peoples;

(d) *Encourages* national human rights institutions to take into consideration the results of the international meeting on the role of national human rights institutions in promoting the implementation of the United Nations Declaration on the Rights of Indigenous Peoples, organized by the Office of the United Nations High Commissioner for Human Rights in Bangkok from 16 – 17 December 2009, in order to strengthen their activities to promote and protect the rights of indigenous peoples, including monitoring compliance with standards contained in international treaties and the United Nations Declaration on the Rights of Indigenous Peoples; contributing to the thematic studies of the Expert Mechanism on the Rights of Indigenous Peoples; and conducting training relevant to various stakeholders.<sup>1</sup>

## **Proposal 2. Consideration of the rights of indigenous peoples in the Human Rights Council**

### *5. The Expert Mechanism on the Rights of Indigenous Peoples*

(a) *Refers* to its earlier proposal pertaining to the consideration of the rights of indigenous peoples during sessions of the Human Rights Council, as contained in the report on its second session (proposal 3, in A/HRC/12/32);

(b) *Reiterates* that the Human Rights Council should consider organizing regular panel events devoted to the rights of indigenous peoples during its future sessions, with the participation of the Expert Mechanism and other relevant experts, including regional human rights mechanisms and national human rights institutions. Such panel events could be devoted to specific themes, and could include sessions on the follow-up to thematic studies prepared by the Expert Mechanism;

(c) *Proposes* that the first such panel event be devoted to the review of the follow-up to the study on the right of indigenous peoples to education and organized in close cooperation with the Expert Mechanism, in the context of the eighteenth session of the Human Rights Council in September 2011;

(d) *Proposes* that a similar panel be convened by the Human Rights Council in due course on the right to participate in decision-making, following the submission of the final study on this topic;

(e) *Encourages* the Human Rights Council to continuously pay particular attention to the rights of indigenous peoples and the Declaration on the Rights of Indigenous Peoples in its work, including in connection with the universal periodic review.

## **Proposal 3. Human Rights Council review**

### *6. The Expert Mechanism on the Rights of Indigenous Peoples*

(a) *Refers* to General Assembly resolution 60/251, in which the Assembly decided that the Council should review its work and functioning five years after its establishment and report back to the Assembly, and to Human Rights Council resolution 12/1 which is related to the review;

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<sup>1</sup> Note on the outcome of the meeting is available on the OHCHR website at [http://www2.ohchr.org/english/issues/indigenous/docs/report\\_seminarNHRI\\_IP16-17Dec2010.doc](http://www2.ohchr.org/english/issues/indigenous/docs/report_seminarNHRI_IP16-17Dec2010.doc)

(b) *Proposes* that the Human Rights Council include the Expert Mechanism and representatives of indigenous peoples in the Human Rights Council review from the earliest possible stage of the process, with a view to ensuring that the results of the review are such that they help to further strengthen the work of the Expert Mechanism and the capacity of the Human Rights Council to promote and protect the rights of indigenous peoples.

**Proposal 4: Review of developments pertaining to the promotion and protection of the rights of indigenous peoples pursuant to the provisions of the United Nations Declaration on the Rights of Indigenous Peoples**

7. *The Expert Mechanism on the Rights of Indigenous Peoples*

(a) *Refers* to article 42 of the United Nations Declaration on the Rights of Indigenous Peoples which obliges the United Nations, its bodies, specialized agencies and States to promote respect for and full application of the provisions of the Declaration and to follow up the effectiveness of the Declaration;

(b) *Proposes* that the Human Rights Council authorizes the Expert Mechanism, on an annual basis, to review developments pertaining to the promotion and protection of the rights of indigenous peoples pursuant to the provisions of the Declaration on the Rights of Indigenous Peoples, and to give the Human Rights Council thematic advice on possible steps to be taken to achieve the objectives of the Declaration.

**Proposal 5. Measures to achieve the ends of the United Nations Declaration on the Rights of Indigenous Peoples**

8. *The Expert Mechanism on the Rights of Indigenous Peoples*

(a) *Refers* to article 38 of the United Nations Declaration on the Rights of Indigenous Peoples which establishes a duty for States, in consultation and cooperation with indigenous peoples, to take appropriate measures, including legislative measures, to achieve the objectives of the Declaration;

(b) *Proposes* that the Human Rights Council encourage States, in consultation and cooperation with indigenous peoples, to adopt appropriate measures, including administrative and legal measures, as well as overall implementation strategies, and follow up these measures and strategies in order to ensure respect for and full application of the Declaration.

**Proposal 6: Mandate of the Voluntary Fund for Indigenous Populations**

9. *The Expert Mechanism on the Rights of Indigenous Peoples*

(a) *Welcomes* the request made by the Human Rights Council, as reflected in paragraph 9 of resolution 12/13, that OHCHR prepare a detailed document outlining the practical implications of a change in mandate of the Voluntary Fund, in particular if it is expanded, the current working methods and resources of the Fund.

(b) *Proposes* that the Human Rights Council take further steps in its forthcoming session towards the implementation of the earlier proposal of the Expert Mechanism to expand the mandate of the Fund.

## C. Other proposals

### **Proposal 7. Compilation of recommendations issued within the universal periodic review process**

10. *The Expert Mechanism on the Rights of Indigenous Peoples*

(a) *Refers* to its earlier proposal, as contained in proposal 3 from its second session;

(b) *Reiterates* that in order to ensure enhanced attention for the rights of indigenous peoples in the context of the Human Rights Council universal periodic review (UPR), the Office of the High Commissioner should consider preparing a compilation of the recommendations issued so far in respect of indigenous peoples in the context of the UPR process as a useful resource.

### **Proposal 8. International expert seminar on truth and reconciliation processes**

11. *The Expert Mechanism on the Rights of Indigenous Peoples*

(a) *Recognizes* that national truth and reconciliation processes provide an important model and mechanism for improved relations between States and indigenous peoples, and that such processes have the potential to facilitate strengthened recognition and implementation of the rights of indigenous peoples;

(b) *Encourages* the Office of the High Commissioner to consider the possibility of preparing an international expert group seminar on the relevance of national truth and reconciliation processes as a mechanism for conflict resolution and reconciliation between States and indigenous peoples.

### **Proposal 9. Secretarial support to the Expert Mechanism on the Rights of Indigenous Peoples**

12. *The Expert Mechanism on the Rights of Indigenous Peoples*

*Recognizes* and welcomes the assistance provided by the Office of the High Commissioner to the Expert Mechanism and encourages Member States and the Office of the High Commissioner to ensure that adequate human and financial resources are made available to the Expert Mechanism.

### **Proposal 10. United Nations specialized agencies**

13. *The Expert Mechanism on the Rights of Indigenous Peoples*

*Welcomes* the activities undertaken by United Nations organizations and specialized agencies to promote the rights of indigenous peoples and encourages continued cooperation between the Expert Mechanism and the agencies in promoting respect for and full application of the provisions of the United Nations Declaration on the Rights of Indigenous Peoples, in line with article 42 of the Declaration.

## III. Organization of the session

### A. Attendance

14. The Expert Mechanism on the Rights of Indigenous Peoples held its third session in Geneva from 12 to 16 July 2010. The members who participated in the session were Catherine Odimba

Kombe (Democratic Republic of Congo), Jannie Lasimbang (Malaysia), John B. Henriksen (Norway), José Carlos Morales Morales (Costa Rica) and José Mencio Molintas (Philippines).

15. The participants in the session of the Expert Mechanism included representatives of Member States, the Holy See, six United Nations organizations and programmes, national human rights institutions (NHRIs) and a large number of indigenous delegates and non-governmental organizations (NGOs). Approximately 500 participants were accredited to the session (see annex I).

16. The Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya, the Chair of the United Nations Permanent Forum on Indigenous Issues, Carlos Mamani, and the representative of the United Nations Voluntary Fund for Indigenous Populations, Tegegn Melakou, participated in the session.

## **B. Documentation**

17. The Expert Mechanism had before it the provisional agenda (A/HRC/EMRIP/2010/1) and the annotated agenda (A/HRC/EMRIP/2010/1/Add.1) as prepared by OHCHR, the advanced version of the progress report on the study on indigenous peoples and the right to participate in decision-making (A/HRC/EMRIP/2010/2), prepared by the Expert Mechanism, and the OHCHR contribution to the progress report (A/HRC/EMRIP/2010/4).

18. In addition, the report of the United Nations seminar on treaties, agreements and other constructive arrangements between States and indigenous peoples was introduced and made available to participants (A/HRC/EMRIP/2010/5).

## **C. Opening of the session**

19. The outgoing Chairperson-Rapporteur, Jannie Lasimbang, opened the third session of the Expert Mechanism and gave the floor to the United Nations High Commissioner for Human Rights, who delivered an opening speech.

20. In her statement, the High Commissioner highlighted the fact that support for the Declaration on the Rights of Indigenous Peoples continues to expand. She welcomed the endorsement of the Declaration by New Zealand earlier this year, which, together with the endorsement by Australia in 2009, further strengthens its role as a shared tool and framework for action both at the international and national level. She recalled that indigenous peoples continue to face discrimination and violations of their right to land and, all too often, to the fundamental right to life, and that in the search for solutions, expert guidance is always crucial. In this regard, the Expert Mechanism can play a key role by providing sound and constructive thematic expertise, studies and research-based advice to the Human Rights Council. She encouraged all stakeholders present to put to active use the results of the first study of the Expert Mechanism devoted to the right to education. She also stressed that the current thematic focus of the Expert Mechanism - the right to participate in decision-making - is a topic of paramount importance and called for the active participation of States, indigenous peoples and others concerned in the finalization of the study. The High Commissioner congratulated the five members of the Expert Mechanism for the way in which they have carried out their work, and for launching this new body in an exemplary manner through their sound and constructive approach.

21. In his opening statement, the President of the Human Rights Council welcomed the fact that the Expert Mechanism has been able to build a constructive approach in the implementation of its mandate, always aiming to achieve concrete results and engaging constructively with the Human Rights Council. He also recalled that the Council will be

reviewing its work and functioning pursuant to General Assembly resolution 60/251 and welcomed any input or contribution from the Expert Mechanism on the review.

22. In his remarks on behalf of the United Nations Voluntary Fund for Indigenous Populations Mr. Melakou welcomed the beneficiaries of the Fund and expressed support for the proposal to expand the mandate of the Fund to cover the treaty bodies and sessions of the Human Rights Council. He also thanked those who have been contributing to the Fund and appealed for more contributions in view of the decline in the amount received last year.

#### **D. Election of officers**

23. The outgoing Chairperson-Rapporteur of the Expert Mechanism invited the members to nominate a Chairperson-Rapporteur for its third session. Ms Odimba Kombe announced that the members had decided, by consensus, to nominate Mr. Morales Morales and Mr. Mencio Molintas as Chairperson-Rapporteur and Vice-Chairperson-Rapporteur respectively. Thereafter, the outgoing Chairperson-Rapporteur declared the two members elected by acclamation.

24. In his statement, the new Chairperson-Rapporteur, welcomed all observers, including the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, as well as the Chair of the Permanent Forum on Indigenous Issues. He also thanked the High Commissioner for her presence and the support provided by her Office. He then recalled that the mandate given by the Human Rights Council to the Expert Mechanism is to provide thematic expertise to the Council on the rights of indigenous peoples. He further highlighted that the Expert Mechanism, given its thematic mandate, offers a forum for discussing the content and scope of the provisions of the Declaration on the Rights of Indigenous Peoples.

25. The Chairperson then indicated that the main agenda items to be discussed during the third session of the Expert Mechanism, namely the study on indigenous peoples and the right to participate in decision-making, the Declaration on the Rights of Indigenous Peoples, and the proposals to be submitted to the Council for its consideration and approval. With regard to the study, he welcomed all the written contributions made by States, indigenous peoples, NHRIs, NGOs, universities and United Nations agencies. He emphasized that these contributions were extremely useful in the preparation of the progress report on the study on indigenous peoples and the right to participate in decision-making, to be submitted to the Council at its fifteenth session.

26. The Chairperson also highlighted the intersessional activities of the Expert Mechanism, in particular the collaboration with the Permanent Forum on Indigenous Issues and the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, and recognized the support and cooperation of OHCHR in this context. Referring to the practice of the first two sessions and recalling that the Expert Mechanism does not have the mandate to address country situations or allegations of human rights violations, he welcomed the arrangements made during the session for indigenous representatives to have parallel meetings with the Special Rapporteur, providing the possibility to submit information related to allegations of human rights violations, in accordance with the mandate of the Special Rapporteur.

27. Finally, he concluded by inviting all participants to contribute to the third session of the Expert Mechanism in a spirit of collaboration and dialogue, in order to ensure productive and successful discussions that contribute to the promotion and protection of the rights of indigenous peoples.



## **E. Adoption of the agenda**

28. The agenda of the session (A/HRC/EMRIP/2010/1) was adopted. Following the adoption of the agenda and programme of work for the third session, the Chairperson-Rapporteur opened agenda item 3.

## **IV. Study on indigenous peoples and the right to participate in decision-making**

29. The Chairperson-Rapporteur invited Mr. Henriksen, member of the Expert Mechanism and one of the two principal co-authors of the progress report, to introduce the first part of the advanced progress report on the study on indigenous peoples and the right to participate in decision-making. Mr. Henriksen stressed that one of the main concerns of indigenous peoples around the world is that they have limited and, in some cases, no opportunities to effectively determine priorities for their own development, and participate in decision-making processes affecting their rights and lives. He thanked the Human Rights Council for authorizing the Expert Mechanism to undertake a study on the right to participate in decision-making, following a related proposal by the Expert Mechanism, and for the very constructive and positive working relationship between the Expert Mechanism and the Council

30. Mr. Henriksen emphasized that the study provides an opportunity for the Mechanism to elaborate on the right to participation, and to start to look into many interrelated concepts and comprehensive sets of provisions and standards, that are interlinked with the right to participation, such as the right to self-determination, the principle of free, prior and informed consent and the right to be consulted. He welcomed the fact that a significantly larger number of contributions were received in relation to the current study, compared with what was received when the Mechanism prepared its first study and stressed the importance of the seminar co-organized by the Asia Indigenous Peoples Pact and the International Work Group for Indigenous Affairs in Chiang Mai, Thailand, as well as the technical workshop organized by OHCHR to contribute to the preparation of the study. However, as many indigenous peoples still have great difficulties in communicating with the Mechanism, additional ways of communicating with indigenous peoples and communities are needed in order to ensure their inclusion in its work.

31. In his comments on the substance of the progress report, Mr. Henriksen underlined that international human rights provisions of general applicability refer to the right to participation in both general and specific forms. He also noted that International Labour Organization (ILO) Convention No. 169 (1989) on Indigenous and Tribal Peoples in Independent Countries contains a number of fundamentally important provisions on the right of indigenous peoples to participation and is grounded in the recognition of the aspirations of indigenous peoples to exercise control over their own institutions, ways of life and economic development, and to maintain and develop their identities, languages and religions within the framework of the State in which they live.

32. Mr. Henriksen noted that for the purpose of the study, the Expert Mechanism distinguishes between the internal-decision making processes and institutions of indigenous peoples and external decision-making processes which affect them, i.e. where those other than indigenous peoples themselves are taking decisions. This distinction has generally been applied throughout the entire progress report, as the members of the Mechanism feel that this corresponds with the underlying logic of the Declaration on the Rights of Indigenous Peoples.

33. Mr Henriksen further noted that while the current version of the progress report does not specifically elaborate on the element of “consent” in the principle of free, prior and informed consent, the members of the Mechanism will address this issue in the final study. However, he emphasized that the principle of free, prior and informed consent must be interpreted and understood in light of the fact that contemporary international human rights law affirms that indigenous peoples have the right to self-determination and this will have implications for how the requirement of “consent” is understood.

34. Mr. Henriksen recalled that the Declaration on the Rights of Indigenous Peoples contains more than 20 provisions affirming either their right to participate in external decision-making, or their right to develop and maintain their own decision-making institutions. This underscores the fact that the right to participation of indigenous peoples is a core principle and right under international human rights law. He concluded by saying that, while some progress has been made, there remains an urgent need to foster more inclusive participation in governance through initiatives that strengthen the capacity of governments to be more responsive to indigenous peoples, and the capacity of indigenous peoples to claim their rights.

35. The Chairperson-Rapporteur then invited Ms. Lasimbang, member of the Expert Mechanism and the other principal co-author of the progress report, to introduce the remaining two chapters relating to (a) the internal decision-making processes and institutions of indigenous peoples, and (b) participation in decision-making mechanisms linked to both State and relevant non-State institutions and processes affecting indigenous peoples. Ms. Lasimbang noted that it is difficult to cover the characteristics of the internal decision-making processes and institutions of indigenous peoples globally, in view of the diversity of situations in which indigenous peoples find themselves. The report however tries to capture the principles of decision-making processes upheld by indigenous societies in both traditional and contemporary settings.

36. In her overview, Ms. Lasimbang stressed that with the guidance of indigenous laws and dispute-resolution procedures, decisions are generally reached through inclusive and participatory processes. She noted that the structures of traditional decision-making institutions vary, but that generally there is a council responsible for administering matters in order to maintain peace and cohesiveness.

37. Ms. Lasimbang mentioned that one concern for traditional decision-making institutions is the influence of contemporary structures that has led to the council of elders falling into disuse. Changes in traditional leadership and representation have had a negative impact on the internal decision-making systems of indigenous peoples and many have lost confidence in their own institutions. Nevertheless, indigenous communities continue to maintain and adapt decision-making processes and institutions in dynamic ways, and traditional decision-making systems operate in parallel to other governance systems in indigenous communities today. There may be interference because of differing development perspectives between States and indigenous peoples and such interference is manifested in the limited jurisdiction of indigenous institutions to decide on matters concerning communal land and resources, and divisions and conflicts, particularly where indigenous models of development and thinking are not respected or understood.

38. As regards “external” decision-making or participation by indigenous peoples in mechanisms linked to both State and relevant non-State institutions and processes affecting indigenous peoples, Ms. Lasimbang said the topics in themselves are broad enough to be individual thematic studies. They include participation in electoral politics, parliamentary processes, State-created bodies, non-governmental associations, implementation of free, prior and informed consent related to development projects, as well as participation in regional and international forums and processes. She said that in preparing the report, the Expert Mechanism faced the burden of capturing the diverse ways

in which indigenous peoples engage State and non-State actors, particularly challenges in asserting the right to participate in decision-making processes that are usually outside their control. Ms. Lasimbang underscored, *inter alia*, that parliamentary representation is both practically and symbolically particularly important for indigenous communities. Parliamentary representation has improved over recent years because of increasing political awareness of indigenous peoples or of special measures. However, she also pointed to many challenges, including the lack of leadership influence enjoyed by indigenous representatives.

39. Ms. Lasimbang further noted that indigenous peoples worldwide are struggling to maintain control over their lands and many decisions connected to development projects drastically affecting indigenous peoples rights are taken without consultation or implementation of the principles of free prior and informed consent. Many non-political associations are formed to advance indigenous interests at both local and international forums but challenges in gaining recognition from States and ensuring full and effective participation in such forums persist. She concluded that while there are a number of positive steps that have been taken regarding indigenous participation in external decision-making processes, progress is not uniform and still requires serious attention. A gap exists between formal legislative intent and the implementation of those rights in practice.

40. After the presentation, the Chairperson-Rapporteur invited other participants to comment on the draft progress report and to provide concrete suggestions to improve it under agenda item 3. Several States, including Australia, Burkina Faso, Denmark, Finland, Guatemala, Mexico, New Zealand and Norway, took the floor commending the Expert Mechanism for its progress report, which they saw as a good basis for the preparation of the final study. A number of States provided information on the state of implementation of the right to participate in decision-making in their respective countries and made proposals as to further development of the study, including through additional examples of positive practices that exist at different levels of decision-making.

41. Mr. Mamani, Chair of the Permanent Forum on Indigenous Issues commended the progress report by stressing the key importance of the right to participate in decision-making in the realization of the collective and individual rights of indigenous peoples. Mr. Mamani recommended that the Expert Mechanism consider in further detail the challenges for the realization of the rights of indigenous peoples, in particular in relation to participatory and decision-making mechanisms. He further provided information on the work of the Permanent Forum on Indigenous Peoples, in particular in relation to the issue of development with culture and identity, linked to articles 3 and 32 of the Declaration on the Rights of Indigenous Peoples. He went on to comment on the achievements made in terms of indigenous peoples participating in bodies in the United Nations through such bodies as the Expert Mechanism and the Permanent Forum. He also referred to the development of policies and participative mechanisms in various intergovernmental institutions. Despite these positive developments, the Chairperson of the Permanent Forum stressed that progress is still needed, in particular in achieving meaningful participation through well established consultative mechanisms.

42. The Special Rapporteur on the situation of the human rights and fundamental freedoms of indigenous people noted that the progress report of the Expert Mechanism aptly identifies relevant provisions of various international instruments, including the Declaration on the Rights of Indigenous Peoples, ILO Convention No. 169, the International Convention on the Elimination of All Forms of Racial Discrimination, and the International Covenant on Civil and Political Rights, as well as regional human rights instruments, including the American Convention on Human Rights. In this regard he recalled that a number of basic human rights principles underpin the right to participation and inform its content. Without being exhaustive, these include the right to self-

determination, the right to equality, the right to culture and the right to property. He stated that in his work as Special Rapporteur he has seen that for indigenous peoples, a lack of participation in the design and delivery of programmes that affect them can undermine the effective enjoyment of other key rights, such as the right to education and the right to health.

43. Several indigenous representatives commended the Expert Mechanism for the progress report. At the same time, they made a number of proposals as to the issues to be addressed further in the preparation of the final study, including further reflection on the principle of free, prior and informed consent and on the achievements and challenges faced by indigenous peoples in international forums.

44. In the concluding discussion, Mr. Henriksen thanked observers for their very valuable comments and suggestions aimed at improving the study. He said that while only the most pressing adjustments could be made in the progress report, the members of the Mechanism would continue to work on other issues, and that concerns could be dealt with in the context of the final study, which will be developed before the fourth session of the Mechanism.

45. He further noted that the discussions on the draft progress report demonstrated that the right to participation is of crucial importance in relation to the full spectrum of matters that affect the lives of indigenous peoples, and that this right forms the fundamental basis for the enjoyment of the full range of human rights. Mr. Henriksen welcomed the fact that there seemed to be broad agreement that the distinction between internal and external decision-making is a useful approach when elaborating on the right to participate in decision-making of indigenous peoples. He stressed that the Declaration on the Rights of Indigenous Peoples establishes a good balance between the right to autonomy and self-government in matters relating to their internal and local affairs of indigenous peoples and their participation in the society at large. In response to a direct question from a governmental delegation, Mr. Henriksen elaborated on why the Declaration in his view should not be perceived as promoting the isolation of indigenous peoples and communities. Mr. Henriksen also welcomed the suggestion that the study should also address the issue of constitutional arrangements for the protection of the rights of indigenous peoples, including their right to participate in decision-making, as well as suggestions to expand the content of chapter II, section D of the report.

46. Ms. Lasimbang commented on the requests to collect case studies and good practices on matters relating to indigenous peoples and the right to participate in decision-making, and recalled that those that had already been received and referenced in footnotes in the progress report were available on the OHCHR website linked to the documentation of the progress report. She stated that it would not be possible to go into the details of any additional case studies and good practices received in the course of finalizing the report, but the experts would consider including additional references to relevant submissions and also make these available on the website. She also noted the request to refer explicitly to pastoral and nomadic peoples and to issues on militarization in the context of participation in decision-making and urged experts on these subjects to make written submissions.

47. She further noted that the experts will endeavour to capture the rich discussion with regard to free, prior and informed consent and agreed that the current scope of the progress report is very limited in this respect. There is also a need to take into account comments by several speakers that decision-making within international institutions and platforms that affect peoples' lives should be examined further. In this respect, she noted the concerns expressed about certain consensus-based decision-making frameworks, as well as the references to the Arctic Council as a good example for intergovernmental processes.

## V. The United Nations Declaration on the Rights of Indigenous Peoples

48. The Chairperson-Rapporteur opened the discussion under the agenda item on the Declaration on the Rights of Indigenous Peoples by recalling that the purpose of the discussion is not to list violations or to monitor the implementation of the Declaration, which the Expert Mechanism is not mandated to do. Rather, the aim of the discussion is to identify positive practices and challenges in the use of the Declaration at the local, regional and international level. In this context, he also welcomed contributions concerning the follow-up to the first study on the right to education and on how the study has helped efforts to improve the implementation of the Declaration.

49. Several government delegations made interventions under this agenda item, highlighting achievements in the implementation of the principles of the Declaration, and also providing a number of examples of efforts to raise awareness of the Declaration, including through its publication and distribution in local languages. Many governments highlighted the importance of the Declaration and the chance to have a specific discussion on it in the context of the Expert Mechanism session was welcomed by a number of speakers. There were also specific examples of the way in which the first study by the Expert Mechanism on the right to education has been considered at the national level in the context of the formulation of policies and practices concerning indigenous peoples and education.

50. Many representatives of indigenous delegations welcomed the discussion on the Declaration and the endorsement of the Declaration by their respective governments. Many speakers commended the fact that those States that voted against the Declaration have changed or are reassessing their positions and that the role of the Declaration is therefore strengthening further. Several positive examples of the use of Declaration in the domestic context were provided, but various obstacles in the implementation of the principles of the Declaration were also highlighted by several speakers, including issues related to the recognition of indigenous peoples. Many speakers called for enhanced implementation by the authorities and others concerned and stressed the need to step up awareness-raising and training on the Declaration. A number of speakers stressed the role of the NHRIs in supporting the implementation of the Declaration and welcomed the recent activities of OHCHR aimed at further encouraging the engagement of NHRIs in this area.

51. Proposals were also made with regard to the future work of the Expert Mechanism, including a proposal for a compilation and analysis of the growing jurisprudence related to the Declaration.

52. The Special Rapporteur put forward a proposal to enhance the implementation of the Declaration, calling for training, seminars and conferences at national and local levels to bring together State officials and indigenous leaders to develop strategies and initiatives for implementation. He also stated that States should engage in comprehensive reviews of their existing legislation and administrative programmes to identify where they may be incompatible with the Declaration.

53. The Chair of the Permanent Forum recalled that the Expert Mechanism, the Special Rapporteur and the Permanent Forum are the three United Nations mechanisms dealing specifically with indigenous issues and recommended that they continue to have regular meetings to strengthen their collaboration and the coordination of their work in promoting the rights of indigenous peoples. In relation to the support to the Declaration, he commended the recent developments toward universal endorsement while acknowledging the existing challenges for the effective implementation of the Declaration. He further

mentioned some positive developments, such as the recent exchange of experience between indigenous experts, State representatives and United Nations bodies that took place with the support of the Permanent Forum and the ILO.

54. The report on the second seminar on treaties, agreements and other constructive arrangements between States and indigenous peoples (A/HRC/EMRIP/2010/5), and recommendations contained therein was presented by OHCHR and the co-Rapporteurs of the seminar, Wilton Littlechild and Andrea Carmen in light of its relevance for the implementation of article 37 and other pertinent provisions of the Declaration. The seminar took place in the traditional lands of the Maskwacîs Cree peoples in Hobbema, Canada, from 14 to 17 November 2006.

55. In concluding the discussion, Mr. Henriksen reflected on numerous aspects of the debate under agenda item 4. With reference to the final report on the study on treaties, agreements and other constructive arrangements between States and indigenous populations, developed within the framework of the Sub-Commission on Prevention of Discrimination and Protection of Minorities (E/CN.4/Sub.2/1999/20, he expressed disagreement with the views of the former Special Rapporteur of the Sub-Commission who in his final report expressed the view that groups in African and Asian States claiming to be indigenous should be analysed in other United Nations forums than those that are concerned with the problems of indigenous peoples.<sup>2</sup> Mr. Henriksen referred to the fact that a number of Asian and African States recognize the existence of indigenous peoples within their territories. He underlined that he was not of the view that every group claiming to be indigenous should be recognized as such, but that every case should be considered on its merits. Mr. Henriksen expressed his agreement with the calls to make the Declaration more accessible to people at the national and local levels, including through translation into national, local and indigenous languages. He also welcomed the fact that the discussion demonstrated that in addition to problems and challenges the Mechanism is in a position to welcome information about positive achievements.

56. Ms. Lasimbang stressed the importance of engaging NHRIs in the implementation of the Declaration and welcomed statements by indigenous peoples that demonstrated positive initiatives to understand the aspirations of indigenous peoples themselves. Such initiatives were critical, not only in bridging the existing gaps but also to show how these rights can be implemented in the context of the Declaration.

57. Ms. Odimba Kombe also made concluding remarks under agenda item 4, highlighting the fact that despite the challenges that still exist for the effective implementation of the Declaration, some positive developments were presented during the discussion, including the efforts made by Member States and indigenous peoples to take into account in their activities and policies the study on the right to education prepared by the Expert Mechanism. For instance, she mentioned the consultation with aboriginal peoples undertaken by the Government of Australia on the new national plan for education.

58. Mr. Mencio Molintas welcomed the fact that support for the Declaration is expanding further, including in New Zealand, and he expressed the hope that the ongoing consideration of this issue in the United States of America and in Canada will soon result in the endorsement of the Declaration.

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<sup>2</sup> E/CN.4/Sub.2/1999/20, paragraph 90.

## **VI. Proposals to be submitted to the Human Rights Council**

59. The Chairperson-Rapporteur of the Expert Mechanism opened the discussion on proposals to be submitted to the Human Rights Council, recalling Council resolution 6/36. He further noted that for the first time the Expert Mechanism had decided to open this agenda item for a general discussion. He indicated that the decision was made in order to provide an opportunity for observers to share ideas and suggestions on the proposals that the Expert Mechanism could submit to the Council, at its fifteenth session.

60. A number of observers made recommendation for issues to be included in the proposals to be submitted by the Expert Mechanism. These included recommendations for thematic issues to be taken up in the future but also a number of recommendations concerning follow-up to the first and second studies undertaken by the Expert Mechanism.

## **VII. Adoption of the report and proposals**

61. At the final meeting of its third session, the Expert Mechanism adopted the progress report on the study on indigenous peoples and the right to participate in decision-making and several proposals, contained in chapter II above. All proposals were adopted by consensus by the members of the Expert Mechanism.

62. In addition, the members of the Expert Mechanism adopted a provisional agenda for the fourth session of the Expert Mechanism, as contained in annex II.

## Annex 1

*[English only]*

### List of participants

States members of the United Nations represented by observers:

Algeria, Angola, Armenia, Australia, Austria, Bahrain, Bangladesh, Belgium, Bolivia (Plurinational State of), Botswana, Brazil, Burkina Faso, Canada, Chile, Congo (Democratic Republic of), Costa Rica, Côte d'Ivoire, Denmark, Ecuador, Finland, France, Germany, Greece, Guatemala, Guyana, India, Indonesia, Iran (Islamic Republic of), Iraq, Japan, Kenya, Lao People's Democratic Republic, Lesotho, Libyan Arab Jamahiriya, Malaysia, Mali, Mauritius, Mexico, Morocco, Nepal, New Zealand, Nigeria, Norway, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Russian Federation, Rwanda, Saudi Arabia, Serbia, Singapore, Thailand, Togo, Turkey, United States of America, Venezuela (Bolivarian Republic of) and Viet Nam.

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

Donors represented by observers: German Technical Cooperation and the European Commission.

United Nations mandates, mechanisms, bodies and specialized agencies, funds and programmes represented by observers: International Labour Organization, Permanent Forum on Indigenous Issues, Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, United Nations Educational, Scientific and Cultural Organization, United Nations Development Programme, United Nations Institute for Training and Research and World Health Organization.

Intergovernmental organizations, regional organizations and mechanisms in the field of human rights represented by observers: European Union and the World Bank.

National human rights institutions represented by observers: Australia Human Rights Commission and the New Zealand Human Rights Commission.

Academics and experts on indigenous issues represented by observers of the following institutions: Bielefeld University, Graduate Institute of International and Development Studies, Harvard University, Hiroshima Peace Institute, Middlesex University, Technische University, Universidad Autonoma de Barcelona, Universidad Autonoma de Madrid, Universidad del Rosario de Colombia, Universidad Carlos III, Universidad Nacional de Educación a Distancia, Université de Grenoble, University of Arizona, University of Auckland, University of Berlin Structural Analysis of Cultural Systems, University of Essex, University of Lüneburg, University of Tulsa, University of Vienna and University of Zurich.

Non-governmental organizations as well as indigenous nations, peoples and organizations represented by observers:

Aathpahariya Kirat Rai Samaj, Aboriginal Legal Service of Western Australia, Aktionsgruppe Indianer and Menschenrechte, African Commission on Health Promoters and Human Rights, Agence Kanak de Developpement, Agencia Internacional de Prensa



Indígena, Amnesty International, ANISTED, Anthroscape, Aotearoa Indigenous Peoples Trust, Asia Indigenous Peoples Pact, Asociación Akaupa Waimakat para la Divulgación, Promoción y Defensa de los Derechos Humanos e Indígenas, Asociación de Autoridades Tradicionales del Territorio Etnico Wayuu, Asociación de Comunicadores Indígenas de la Región Ucayali, Asociación Interétnica de Desarrollo de la Selva Peruana, Asociación Nacional Indígena Salvadoreña para la Tercera Edad, Asociación territorial y étnico Wayiru de Colombia, Assemblée des Arméniens d'Arménie Occidentale, Assistance Foundation to National Minorities and Migrants, Association des Scolaires et Universitaires de la Région de Kidal, Association of Indigenous Peoples of the North, Siberia and Far East of Russian Federation, Association of Taymyr Small-Numbered Indigenous Peoples, Association pour le Développement Global des Batwa au Rwanda, Association socioculturelle, Association of Indigenous Peoples in the Ryukyus, Association of Indigenous Women, Association World Citizens, Association Tidawt, Badil Resource Center, Bangladesh Adivasi Forum, Bangsa Adat AlifUru, Bilingual Indigenous Professionals Alliance Nation Purherecha, Canadian Friends Service Committee, Capitanía Alto Parapeti de la Asamblea del Pueblo Guaraní, Centre de conseils et d'appui en matière de droits de l'homme, Centre Europe Tiers-Monde, Centro Amazónico de Antropología y aplicación práctica, Comisión Colombiana de Juristas, Comisión de Juristas Indígenas en la Republica Argentina, Comisión Jurídica para el autodesarrollo de los pueblos Originarios Andinos, Comité de Solidarité avec les Indiens des Amériques, Comité de Solidaridad Trique en el Area Metropolitana, Communauté des Poitiers du Rwanda, Comunidad Indígena Aymara Ancorinto, Comunidad Integradora del Saber Andino, Comunidad "Juan Paillalef," Comunidad Mapuche Choin Lafguenche, Confederación de Nacionalidades Amazónicas del Perú, Confederación Indígena de Tayrona, Congrès Amazigh Mondial, Congrès Populaire Coutumier Kanak, Consejo Indio de Sur America, Consejo de Pueblos Nahuas del Alto Balsas, Conservation Initiative on Human Rights, Conservation International, Consejo Nacional de Allus y Markas del Qullasuyo, Cordillera Peoples Alliance, Corporación Nueva Generación, Council of Yukaghir's Elders, Cultural Association Berbere, Culture of Afro-indigenous Solidarity, Defensor Jurídico Social Autonomo Mapuche, Delegation for the Cham Nation's Issues, Dewan Adat Papua, Droits et Démocratie, European support groups for Indigenous Peoples, FEDECMA, Federación Departamental de Clubes de Madres y Mujeres de Ayacucho, Flemish Support Group for Indigenous Peoples, Foundation for Aboriginal and Islander Research Action, Front Amyaway pour l'action Amazigh, Fuerza de Mujeres Wayuu, Fundación de Ayuda y Promoción de las Culturas Indígenas, Geneva for Human Rights, Global Indigenous Youth Council, Grand Council of the Crees, Hawai'i Institute for Human Rights, Helio International, Imuhagh International Touaregue, Incomindios, Indigenous Peoples' Center for Documentation, Research and Information, Indigenous Peoples Development Services, Indigenous Peoples and Nations Coalitions, Indigenous Peoples of Africa Coordinating Committee, Indigenous Portal Asia, Indigenous World Association, International Indian Treaty Council, International Organization of Indigenous Resource Development, International Public Organization Foundation for Research and Support of Indigenous Peoples of Crimea, International Union for Conservation on Nature, International Work Group for Indigenous Affairs, Inuit Circumpolar Council, Jaringan Orang Asal Se Malaysia, Khmer Kampuchea - Krom Federation, Kirat Yakthung Chumlung (KYC), Kunas Unidos por Napguana, Lawyers Association for Indigenous Rights, L'auravetlan Information and Education Network for Indigenous People, Lchoro Community Water Services and Catchment Protection Organization, Legal Indigenous Commission, Lelewal – Barka, Mbororo Social and Cultural Development Association, Meghalaya Peoples' Human Rights Council, Mena Muria Foundation, Montagnard Human Rights Organization, Movimiento Indígena Tupaj Amaru, Municipalidad Indígena de Santo Tomás Chichicastenango, Naadutaro (Pastoralists' Survival Options), Nali, National Aboriginal Community Controlled Health Organisation, National Indian Youth Council,

National Native Title Council, Native Women's Association of Canada, Navajo Nation Human Rights Commission, Negev Coexistence Forum for Civil Equality, Newcastle Regional Aboriginal Land Council, New South Wales Aboriginal Land Council, North Coast Regional Aboriginal Land Council, Ochapowace First Nation, ONG Adjmor, Organización Nacional Indígena de Colombia, Organización de naciones y gente indígenas en Argentina, Organización de Naciones y Pueblos Indígenas en Argentina, Organización Khamba, Organización Nacional de Mujeres Indígenas Andinas y Amazonas del Perú, Organización de los Pueblos Indígenas de la Amazonía Colombiana, Organization "Amyaway" for the Amazigh Action, PACOS Trust, Parahuiyo Pastoralists Indigenous Community Development Organization, Parbatya Chattagram Jana Samheil Samiti, Pastoralists Indigenous Community Development Organization, Philippines Indigenous Peoples' Links Forest Peoples Programme, Programme d'Intégration du Peuple Pygmee au Kire, Pueblo Banive de la Amazonia Venezolana, Pueblos Indígenas Cumanagoto de la Republica Bolivariana de Venezuela, Regional Public Organization Information Legal Center of Indigenous Peoples of Krasnoyarsky Krai, Rehoboth Community of Namibia, Réseau Amazigh pour la Citoyenneté, Réseau des Populations Autochtones et Locales pour la Gestion Durable des Ecosystèmes Forestiers d'Afrique Centrale, Return to the Land, Revista Ecuamundo, Saami Council, Sénat Coutumier Nouvelle Calédonie, Sami Parliament of Norway, Servindi, Society for Threatened Peoples, Solidarité avec les peuples autochtones des Amériques, Solidarity Commission Triqui, Solidarity with Indigenous Peoples of America, Supreme National Council of Kampuchea-Krom, Syriac Universal Alliance, Te Rúnangá o Te Rarawa, Tin Hinan, Tunfa, Union Nationale du Peuple Kanak, Vivat International, Waso Trustland Wetlands International and BirdLife International, World Indigenous Nations Sports, inc, and World Wildlife Fund.

## **Annex 2**

### **Provisional agenda for the fourth session of the Expert Mechanism on the Rights of Indigenous Peoples**

1. Election of officers
  2. Adoption of the agenda and organization of work
  3. Follow-up of thematic studies and advice
  4. Study on indigenous peoples' right to participate in decision-making
  5. United Nations Declaration on the Rights of Indigenous Peoples
  6. Proposals to be submitted to the Human Rights Council for its consideration and approval
  7. Adoption of the report
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