

**Economic and Social Council**

Distr.: General
26 January 2023

Original: English

Permanent Forum on Indigenous Issues**Twenty-second session**

New York, 17–28 April 2023

Future work of the Permanent Forum, including issues considered by the Economic and Social Council, the outcome document of the World Conference on Indigenous Peoples and emerging issues

International expert group meeting on the theme “Truth, transitional justice and reconciliation processes”**Note by the Secretariat***Summary*

The international expert group meeting on the theme “Truth, transitional justice and reconciliation processes” was held in Santiago, Chile, from 15 to 17 November 2022. The present note contains the report of the meeting.



Report of the international expert group meeting on the theme “Truth, transitional justice and reconciliation processes”

I. Introduction

1. Indigenous Peoples are often caught up in violent conflicts and militarization that occur as a result of different factors. Most recurrent conflicts are related to economic interests over Indigenous Peoples' lands, territories and resources, but a common denominator is that Indigenous Peoples fail to have their rights guaranteed as enumerated in the United Nations Declaration on the Rights of Indigenous Peoples, the Indigenous and Tribal Peoples Convention, 1989 (No. 169) of the International Labour Organization (ILO) and other international human rights standards.

2. These conflicts and militarizations directly affect Indigenous Peoples' lives, causing human rights violations, including displacement from their ancestral lands, extrajudicial executions, sexual violence and the forced recruitment of children, denying their basic means for survival as distinct peoples and cultures. Conflicts cause poverty, reverse development and have contributed to the out-migration and displacement of Indigenous Peoples to urban areas, where they are no longer under the protection of traditional justice systems and become particularly vulnerable to discrimination and marginalization. Although they face common challenges from these conflicts, including displacements from their land and negative environmental health impacts from the extractive sectors, Indigenous women and children are often more vulnerable and suffer more in times of conflict. In some countries, Indigenous Peoples become victims of violence, massacres or even genocide owing to their distinct identities. The continued denial and violation of Indigenous Peoples' right to self-determination is the root cause of many conflicts faced by Indigenous Peoples.

3. Conflict prevention initiatives, peace processes and agreements have formed the basis of peaceful negotiations to address social unrest and conflicts. However, most negotiated peace accords remain unimplemented or only partly implemented owing to political and economic interests that benefit from conflicts or the lack of political will to conduct prosecutions. Some agreements are not negotiated in good faith by Member States, and Indigenous Peoples sometimes lack the legal and financial resources to ensure a good outcome. This failure results in continued widespread human rights violations, violent conflicts and military control. In the end, the poor quality and/or implementation record of peace agreements is a missed opportunity to build trust between the State and Indigenous Peoples, who suffer in the middle of warring parties.

II. Overview of the discussions of the meeting

4. Every year, the Department of Economic and Social Affairs of the Secretariat organizes an international expert group meeting on a theme identified by the Permanent Forum on Indigenous Issues and endorsed by the Economic and Social Council. The present report is of the expert group on its 2022 meeting, which was on the theme of “Truth, transitional justice and reconciliation processes”. The meeting gathered information and analysis from some of the world's leading experts on the issue in preparation for the 2023 session of the Permanent Forum, which will be on the theme of “Indigenous Peoples, human health, planetary and territorial health and climate change: a rights-based approach”.

5. The meeting was held from 15 to 17 November 2022 in Santiago, Chile, at the Economic Commission for Latin America and the Caribbean (ECLAC) headquarters with the support of the Population Division of ECLAC. It was attended by members

of the Permanent Forum and Indigenous and non-indigenous experts (see annex II). Participants included members of Indigenous Peoples' organizations, academia, civil society, national human rights institutions and the United Nations system.

6. The following is an overview of the opening meeting, discussions, presentations and interactive debate that took place at the expert group meeting. The present report does not capture the full range and depth of the discussions, which covered a number of complex issues with insights and experiences of Indigenous Peoples on the subject discussed. For more details, including the programme of work (see annex I), papers and other documents of the meeting are available on the website of the Permanent Forum.¹

7. At the opening of the expert group meeting, two Indigenous elders from the Mapuche people (Chile) conducted a traditional ceremony. The Deputy Executive Secretary for Management and Programme Analysis of ECLAC gave a statement welcoming everyone to the meeting. The United Nations Resident Coordinator in Chile referred to the guidance note of the Secretary-General on the United Nations approach to transitional justice.² The Chairperson of the Permanent Forum on Indigenous Issues delivered opening remarks, highlighting that the United Nations Declaration on the Rights of Indigenous Peoples was the key instrument for promoting and ultimately achieving a framework of justice, reconciliation and respect for the human rights of all. The Acting Chief of the Indigenous Peoples and Development Branch of the Department of Economic and Social Affairs outlined the objectives of the meeting and noted that there had been a hiatus with regard to in-person meetings for two years during the coronavirus disease (COVID-19) pandemic and a move to remote expert meetings, but in the interests of improving outreach and participation by Indigenous networks and organizations in the seven sociocultural regions, the current meeting in Santiago was now in person. In 2018 the meeting was in Nairobi and in 2019, Chiang Mai, Thailand.

A. Conflict resolution, truth, transitional justice and reconciliation: international law and the United Nations system

8. Dario Mejía Montalvo, the Chairperson of the Permanent Forum on Indigenous Issues, moderated the session and stressed that truth, transitional justice and reconciliation processes should respond to the needs and perspectives of Indigenous Peoples.

9. Laura Flores, Director of the Americas Division of the Departments of Political and Peacebuilding Affairs and Peace Operations, noted that her office had a mandate to strengthen its work on conflict prevention on Indigenous issues. Overall, the Departments monitored and assessed global political developments to address potential crisis situations and provide support and advice to the Secretary-General, his envoys and political missions. Growing geopolitical conflicts meant that conflict resolution tools have had to adapt to increase dialogue through mediation as a key tool, and Indigenous Peoples' voices must be central to these dialogues. Within the context of the report of the Secretary-General entitled "Our Common Agenda" (A/75/982), a New Agenda for Peace had been launched to agree on more collective security responses, including increased investments in prevention that would focus on the inclusion of traditionally marginalized sectors of society.

¹ See www.un.org/development/desa/indigenouspeoples/meetings-and-workshops/egm-2022_truth.html.

² See www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/TJ_Guidance_Note_March_2010FINAL.pdf.

10. Brenda Gunn, from the National Centre for Truth and Reconciliation of Canada, described how the Indian Residential Schools Settlement Agreement of Canada (2007) included the establishment of the Truth and Reconciliation Commission in 2009 and the creation of a permanent archive for the submitted statements, documents and materials at the National Centre for Truth and Reconciliation. The work of the Commission was underpinned by the United Nations Declaration on the Rights of Indigenous Peoples, and its objective was to shift the colonial relationship of State government exercising control over Indigenous Peoples towards a new relationship grounded in human rights, including the self-determination of Indigenous Peoples.

11. Among the key lessons learned during this process was that Indigenous Peoples' own laws and customs should be integrated into transitional justice processes by using their own concepts of justice and healing to validate their personal experiences. It was noted that Western-based processes tended to be adversarial in nature and were detrimental to the overall goals of truth, reconciliation and healing. In addition, simply adding "Indigenous elements" to truth and reconciliation processes created by others did not lead to successful outcomes.

12. Ms. Gunn pointed out that a critical aspect to truly addressing conflict was the acknowledgement of the truth surrounding a conflict, since history has mainly been told from the colonizers' perspective. Moving forward and addressing the impacts of colonization required the truth to be broadly and publicly known. A key recommendation highlighted was that the United Nations could play a role in ensuring that truth-telling processes occur, and must be culturally appropriate and trauma-informed.

13. Benjamín Ilabaca, Human Rights Adviser to the Municipality of Rapa Nui, noted that overcoming the collective trauma suffered by Indigenous Peoples as a result of historical violations depended on the measures States took a posteriori of the perpetration of crimes. Promoting mutual understanding within societies divided by atrocities, he added, was essential to building a common future where Indigenous Peoples were respected in their cultural and institutional diversity. Truth, when duly reported and established, would give rise to dialogue and, in time, to effective reconciliation.

14. Mr. Ilabaca stressed that reconciliation processes involving Indigenous Peoples required structural changes in national policymaking, which would only succeed insofar as they managed to conceive peace and reconciliation in the terms posed by each Peoples' cosmovision. Concrete measures should be addressed within the framework of rule of law and across all instances of power, encompassing both judicial and extrajudicial actions. In particular, he highlighted the need for judges and other civil servants to be trained to interpret international human rights law from the perspective of Indigenous Peoples.

15. Citing examples from Chile (the Historical Truth and the New Deal with Indigenous Peoples Commission, established in 2001) and New Zealand (the Treaty of Waitangi Act of 1975), Mr. Ilabaca stressed that reparation processes carried out by States with Indigenous Peoples should be legally binding. He also noted that the United Nations could play a significant role as an observer of State compliance with international standards and urge the implementation of transitional justice processes with due consideration to Indigenous issues.

16. During the discussion, experts noted the challenges in bringing States to dialogues that recognized the equal value and standing of Indigenous Peoples' reconciliation and justice systems. It was noted that in some cases, States were interested in the process of reconciliation but not necessarily interested in hearing or acknowledging the truth.

17. Transitional justice was limited in that it tended to focus on ending a specific conflict while ignoring the larger underlying issue of colonialism. Experts emphasized the importance of Indigenous truth reaching the general public, as opposed to the more mainstream biased perspectives that tended to predominate in communications. For example, in Canada, the tipping point that moved the truth process forward was the threat of multiple lawsuits, but the real political will for truth and reconciliation came when the bodies of Indigenous children at former residential schools were discovered and widely reported by mainstream media. This led to a wider recognition of the colonial past and actions were developed to acknowledge and effect change.

18. Participants pointed out that ILO Convention No. 169 had been ratified in most countries in the Latin American region, but often States did not guarantee Indigenous Peoples' rights, in particular with regard to free, prior and informed consent. Rapa Nui participants highlighted that their history and cultural heritage were unique from other Indigenous Peoples in Chile, which must be formally recognized for genuine reconciliation; otherwise, the continued disregard of their demands would further entrench and exacerbate the conflict.

B. Barriers preventing Indigenous Peoples' participation

19. Hannah McGlade, a member of the Permanent Forum, opened the panel discussion.

20. Aminata Diallo, a representative of Association Tihinan from Mali, noted that Indigenous Peoples were not recognized in the Constitution of Mali. However, the African Commission on Human and Peoples' Rights, in the report of its Working Group on Indigenous Populations/Communities and Minorities, recognized the Tuareg and Peul populations as Indigenous Peoples.

21. Ms. Diallo stated that Mali was confronted with a hostile environment of conflict, violence and the recruitment of child soldiers. Further, the Agreement on Peace and Reconciliation in Mali of 2015 remained largely unimplemented and did not address the needs of most Malians, including Indigenous Peoples, because they were not consulted in the negotiations. Conflict was growing and extending further south. The majority of child soldiers were Indigenous, and a culture of weapons was beginning to replace the value of Indigenous knowledge among the younger generation. The voices of the public sphere, which largely promoted the notion that only owning weapons and being part of armed group movements would ensure respect of peoples' rights, highlighted the lack of Government action to ensure justice, rights and equal treatment. Unfortunately, the Agreement did not address the reintegration of child soldiers using Indigenous processes and solutions to stem their recruitment.

22. Ms. Diallo also stressed the need for access to social services, including education and health, and socioeconomic opportunities for youth. In addition, she stated that child soldiers and increased insecurity in Mali would continue growing, in particular among Indigenous communities, since the Agreement and its component for reconciliation did not take into consideration Indigenous Peoples' methods and practices.

23. Ms. Diallo highlighted that at all levels of conflict prevention and resolution processes, as well as in the implementation of peace agreements, the participation of Indigenous Peoples, in particular women and youth, must be key. Another action to consider was to document and support Indigenous justice systems to prevent conflicts and build peace for sustainable development for all (Sustainable Development Goal 16), in accordance with article 40 of the United Nations Declaration on the Rights of Indigenous Peoples.

24. Carlos Poveda, an Ecuadorian attorney, pointed out that despite the recognition of the rights of Indigenous Peoples in the 2018 Constitution of Ecuador, public policies still failed to respond to serious challenges related to civil, political, cultural and territorial rights. As a result, Indigenous Peoples had led protests as a last resort to demand structural changes for the most excluded (equality, access to health care, education and employment, and reparation for social and environmental impacts in Indigenous territories, among others). The recent uprisings in 2019 and 2022, led by the Confederation of Indigenous Nationalities of Ecuador, together with other social movements including labour workers, doctors, students and others, were stigmatized as protests financed by drug cartels. Media played a large role during and after the events in shaping how people thought of Indigenous Peoples by stereotyping their struggle as dangerous and labelling them as terrorists. As a result, the State had prosecuted Indigenous and non-indigenous leaders, including women, based on this narrative.

25. Mr. Poveda highlighted that although article 171 of the Constitution of Ecuador placed the Indigenous and formal justice systems on an equal footing, the Constitutional Court of Ecuador put limitations on Indigenous jurisdiction in cases of murder, although international human rights standards did not establish such limitations.

26. Mr. Poveda provided some examples of coordination and cooperation between Indigenous and formal justice systems in observance of international human rights standards, article 40 of the United Nations Declaration on the Rights of Indigenous Peoples, article 9 (1) and (2) of ILO Convention No. 169 and article 171 of the Constitution of Ecuador, including the establishment of truth commissions in Indigenous communities to investigate and clarify facts, the provision of access to the truth through due process, and the participation of Indigenous women. In cases related to the criminalization of social protests, formal courts had applied the “Indigenous safeguard” to prevent penalties of deprivation of liberty. The latter measure had protected not only the freedom of Indigenous leaders, but also their lives. Likewise, the Constitutional Court of Ecuador had endorsed this measure as an alternative to custodial sentences.

27. During the discussion, participants denounced the fact that the reforms that would have enshrined Indigenous Peoples’ rights into the 2022 proposed Constitution of Chile became the target of a campaign to reject the new text. In addition, Indigenous representatives working on the Constitution were stigmatized. Similar sentiment had been shared by Indigenous Peoples in Colombia when, in 2016, the peace referendum with the Revolutionary Armed Forces of Colombia – People’s Army was rejected. Within these contexts, participants agreed that Indigenous Peoples must continue exercising the rights recognized in the United Nations Declaration on the Rights of Indigenous Peoples, even if their rights were not yet recognized in their constitutions. Furthermore, they identified that a key element in the building of plurinationalism and interculturality was the full recognition of Indigenous justice and the adequate coordination and cooperation between Indigenous and non-indigenous justice systems.

28. Participants also discussed how unbalanced media coverage during many conflicts spread misinformation and prolonged conflict. It was noted that States may make decisions based on media reporting rather than by listening to stakeholders and, at times, use the media themselves to spread one-sided information. Participants remarked that a lack of organized Indigenous communication made it difficult to combat misinformation.

29. During the discussion it was noted that Indigenous Peoples often lived in countries where there were protracted national conflicts. However, because they were

typically the most marginalized, they were seldom consulted or included in peace and reconciliation processes, ignoring that insecurity, violence and human rights violations affected the whole of society. That was the case of the Ba'aka people in the Central African Republic within the ongoing transitional justice process, where weak institutions and regions with high levels of violence were threatening their survival. Nonetheless, the role of non-governmental organizations and academia could support their participation and even contribute to the reparation process. For example, a study by the Institut Francophone pour la Justice et la Démocratie on the situation of the Ba'aka people during the 2013/14 crisis found that the Ba'aka had been victims of serious violence committed by the Séléka rebels and anti-balaka militias, and fled to the forest to take refuge. Others were tortured and mutilated in their communities. Many Ba'aka also died in the forest as a result of unhealed wounds, hunger, disease and cold, while others died on their return to their communities owing to a lack of access to health care.

30. Participants pointed out that States must guarantee rights to improve the well-being of Indigenous Peoples affected by violence, and a component of the reparation process must include urgent access to socioeconomic rights to improve their lives after abuses, regardless of how they occurred.

C. Examples of lessons learned from work carried out by and with Indigenous Peoples

31. Vital Bambanze, a member of the Permanent Forum on Indigenous Issues, moderated the discussion.

32. Ana Manuela Ochoa Arias, Magistrate of the Special Tribunal for Peace in Colombia, explained that in Colombia, there were 115 diverse Indigenous Peoples groups, each of which had their own political, social, economic, cultural and justice systems, which predated the nation-state. The Constitution of Colombia of 1991 recognized a number of rights pertaining to Indigenous Peoples. It acknowledged the legal character of Indigenous Peoples' unique judicial processes and recognized its jurisdiction within Indigenous territories.

33. Ms. Ochoa Arias noted that discussions on peace and reconciliation in Colombia were focused on the ongoing conflict, which had now lasted for more than 50 years and had resulted in forced displacement and land dispossession, in particular of Indigenous Peoples. The Special Jurisdiction for Peace, which was a result of the peace negotiations between the Colombian Government and the Revolutionary Armed Forces of Colombia – People's Army, was the transitional justice mechanism that integrated Indigenous Peoples' systems of justice as part of efforts to take a holistic approach to transitional justice and reconciliation.

34. For Indigenous Peoples, their own cosmovision, natural law (*ley de origen*), justice systems and spiritual beliefs were key components of their understanding of the world. Therefore, it was crucial to consider the ways in which these unique knowledge systems interacted with truth and reconciliation, and how peace processes could respect and meaningfully incorporate Indigenous Peoples' perspectives.

35. Ms. Ochoa Arias provided an overview of some of the shared characteristics of Indigenous Peoples' justice systems, which could provide a useful framework for peace and reconciliation processes. For example, she noted the holistic nature of Indigenous legal systems, which incorporated the material, psychological and spiritual essence of a crime and attempted to delve deeper into the reasons for transgressional behaviour and prioritize the social reintegration of the transgressor. Moreover, Indigenous justice systems valued collective, participatory and

intersectional decision-making, with Indigenous women, youth and families also playing an active role in processes.

36. Ms. Ochoa Arias concluded by offering three key lessons that may be applicable to other situations of peace and reconciliation processes where Indigenous Peoples were present. First, that Indigenous Peoples must be represented in State institutions in order to change institutional racism and discrimination. Indigenous Peoples had the right to contribute to these institutions and official bodies, without losing sight of their essential Indigenous identity. Second, working with Indigenous Peoples in reconciliation efforts required consciously listening to Indigenous Peoples and understanding their unique cosmovision and knowledge systems. These cosmovisions were an integral part of Indigenous society and must therefore form an integral part of reconciliation processes. Finally, all dialogue and discussions must be conducted horizontally, with Indigenous Peoples placed on an equal footing with other stakeholders.

37. Vasily Nemechkin, Associate Professor at Mordovia State University, pointed out that in Russian society, truth and reconciliation perspectives were primarily considered in the context of the history of the Russian State of the twentieth century.

38. Mr. Nemechkin highlighted the importance of understanding the tragic experience of the Russian Federation after the events of October 1917, leading up to the Second World War, which was characterized by the breakdown of traditions, the loss of continuity of cultural experience and the destruction of intergenerational ties. This included mass deportations of Indigenous Peoples and ethnic minorities such as the Finno-Ugric people, before those policies were overturned many years later. Thus, at a time when many other peoples of the Russian Federation were actively engaged in the national revival and development of language and culture in the early 1990s, the Ingermanland Finns were focusing on measures imposed on them.

39. Mr. Nemechkin noted that according to Ingermanland Finns organizations, the State had taken appropriate measures in acknowledging violated rights, but had not established an effective redress mechanism in the form of compensation and other measures to mitigate past wrongs. Instead, rehabilitated people were asked to prove in court on a case-by-case basis that reprisals affected their families while demanding appropriate individual compensation. Thus, the collective dimension of the rights of Indigenous Peoples had not been adequately taken into account in the reparations process, despite the fact that the truth-seeking and rehabilitation process had recognized the unlawful actions of the State against an entire people, not its individual representatives.

40. Mr. Nemechkin stressed that States must approach truth and reconciliation processes in a holistic manner that included all necessary elements, including the restoration of infringed rights. The memorialization and the legal and public acknowledgement of wrongdoing, while contributing to reconciliation and overcoming the consequences of the intergenerational trauma, did not, however, complete the process if these measures did not lead to the restoration of rights and compensation.

41. Salvador Millaleo, Mapuche lawyer and former adviser on Indigenous affairs to the Minister for the Interior and Public Security of Chile, noted the State's lack of knowledge about Indigenous Peoples and their values. Recalling that recommendations stemming from the Historical Truth and the New Deal with Indigenous Peoples Commission established in 2001 had not been implemented, he pointed to the State's inability to structure agreements.

42. Referring to ILO Convention No. 169, Mr. Millaleo emphasized the issue of Indigenous Peoples' participation in decision-making, pointing to the current absence

of an Indigenous counterpart to the State in Chile. Furthermore, he noted the failure of the State to account for collectiveness and the interconnectedness between humans and nature. In the context of the relationship between the State and Indigenous Peoples, he stressed that conflict resolution should be regarded as a process of recognition rather than as one in a series of demands.

43. Mr. Millaleo noted that coloniality could not be overcome without reconciliation. He added that there was currently no experience of transitional justice with respect to collective rights. Furthermore, he highlighted how the increasing agency of Indigenous women in politics had made gender-based violence within their communities more visible. He proposed advancing Indigenous diplomacy to promote dialogue and share and transfer knowledge on how to engage with intergovernmental mechanisms to benefit Indigenous Peoples and avoid centralism.

44. During the discussions, experts stressed that the core goals of Indigenous Peoples' socioeconomic systems were prosperity, harmony, peace, sustainability, reciprocity and responsibility for the whole community. However, States had traditionally viewed these systems as barriers to "development" and adopted policies to ban or destroy them. Structural inequities and inequalities were further reinforced by discriminatory legislation and oppressive laws, which ignored Indigenous Peoples' customs and other systems. In such situations, Indigenous governance systems were on the brink of extinction. However, Indigenous communities themselves could revitalize their systems for the betterment of their communities. Participants called on States to respect Indigenous governance systems and recognize Indigenous authorities in State dialogue mechanisms.

45. It was also noted that the Special Jurisdiction for Peace in the Colombian restorative justice process, with its roots in Indigenous justice (*ley de origen*), had become part of the broader transitional justice framework. This had led to thinking about justice for violations not only in terms of humans but also territories and environment. In addition, the Special Jurisdiction had established a dialogue between the State judiciary, Indigenous judiciaries and Indigenous Peoples themselves based on mutual respect and autonomy. This had resulted in greater transparency in communication and had led to a deeper understanding of Indigenous jurisdiction at the State level.

46. Participants also agreed that these processes gave the opportunity to Indigenous Peoples to communicate "their truth" to the general population, and reach a shared understanding. In addition, any process must be considered a holistic rather than sectorial approach, as Indigenous Peoples' rights were indivisible and interrelated.

47. It was also mentioned that transitional justice models must consider the cultural context of the recipients of justice policies as well as be implemented in an intercultural approach and not repeat the vertical top-down model. For example, in Guatemala, despite the payment of reparations in the landmark Plan de Sánchez case, Indigenous Peoples did not benefit from culturally appropriate reparations, and justice remained as elusive as ever; therefore, spiritual ceremonies performed collectively, and the encoding of dreams, were key to the reconstruction of their social fabric.

D. Standards and policies for conflict resolution, truth, transitional justice and reconciliation

48. Francisco Xavier Mena, Deputy Regional Representative for South America of the Office of the United Nations High Commissioner for Human Rights in Chile, moderated the panel.

49. Hannah McGlade, a member of the Permanent Forum on Indigenous Issues, discussed the Aboriginal history of Australia in the context of colonization, and the efforts of Aborigines over the years to bring their truth to the fore through various media for recognition of the past and possible reconciliation, although no formal process had been established. Various reports and inquiries related to the policy of removing Aboriginal children from their families had led to positive actions by some states and territories in Australia.

50. The Council for Aboriginal Reconciliation was established by the Government of Australia in 1991, and for a decade supported reconciliation and a more truthful account of history. In its final report to the Government in 2001, the Council recommended that Australia enter into treaties with Indigenous Peoples and that the Constitution be amended to prohibit racial discrimination. Thousands of Australians engaged in a reconciliation process, and participated in reconciliation meetings and walks to acknowledge the past and express their remorse. Reconciliation had been accepted by all governments, endorsed by the incumbent federal Australian Labor Party and supported by the business sector. Reconciliation Australia oversaw the adoption of reconciliation action plans; however, there was no capacity to monitor the plans, and Indigenous Peoples aggrieved by racism and systemic discrimination at the hands of such bodies had little recourse to any formal process. In 2022, Reconciliation Australia asked people to “Be Brave. Make Change” and address systemic racism affecting Aboriginal people. Some states and territories, including Victoria, the Northern Territory and Queensland, were involved in a treaty-making process with Aboriginal people.

51. Aboriginal people also met at Uluru in a process of constitutional reform, and adopted the Uluru Statement from the Heart,³ which called for a national political voice to be established within the Constitution of Australia. On the eve of his election in 2022, the Prime Minister of Australia, Anthony Albanese, endorsed a constitutional referendum on whether to include an “Aboriginal and Torres Strait Islander Voice” in Parliament. Having had no Aboriginal representative body since it was disbanded by the Government, the process of “Voice, Treaty and Truth” endorsed more than five years ago at Uluru has now become official government policy. An Aboriginal “voice” in the Constitution would allow for national representation and advocacy on all issues affecting Aboriginal people.

52. Eduardo Gonzalez, a transitional justice specialist, noted the expansion of the field of transitional justice, a testament to its relevance for peacebuilding and strengthening the rule of law. Progressively, the field had evolved to encompass the experiences of populations in conditions of vulnerability, including Indigenous Peoples – who, in parallel, had made strides towards international recognition and the implementation of their rights. The eventual convergence of these two processes, he added, had led Indigenous Peoples to adopt elements from transitional justice as tools to advance their rights, and also attempt to decolonize its assumptions and practices.

53. Based on experiences of Indigenous participation in truth commissions and reparation and prosecution processes, Mr. Gonzalez noted how Indigenous perspectives had challenged assumptions and methodologies conventionally adopted in the field of transitional justice. Furthermore, he presented the following recommendations for consideration by relevant United Nations mechanisms and other international bodies: ensuring the formal and explicit recognition of Indigenous Peoples and their forms of justice and concepts, as well as the harms historically inflicted upon them; subjecting transitional justice processes that have the potential to touch upon Indigenous rights to the same rules of consultation and consent that are enshrined for other State policies, in line with the United Nations Declaration on the

³ See <https://ulurustatement.org/the-statement/>.

Rights of Indigenous Peoples; formally including Indigenous restorative and healing practices in all transitional justice mechanisms; engaging in dialogue with and addressing the specific needs of Indigenous women and youth; and maintaining a normative decolonial orientation to ensure real reconciliation.

54. Jens Heinrich, Head of the Greenland Representation in Copenhagen, remarked that in 2014 the Greenland Home Rule Government established the Greenland Reconciliation Commission. The aim of the Commission was to address the historical legacy of the colonial era in Greenland. The Government of Denmark declined to participate, and the Commission therefore focused on internal Greenlandic reconciliation. However, the relationship between Denmark and Greenland had since improved, owing to pressure from Greenland and the recognition of its geopolitical significance. Ongoing studies were addressing historical legacies such as involuntary birth control. The long-term political goal of Greenland was independence.

55. Mr. Heinrich indicated that in both Greenland and Denmark the joint history between the two countries was seen as essential to building a stronger relationship. In the case of Greenland, a people well-versed in its history was paramount in the current nation-building process. The path of Greenland towards independence was an ongoing process that had had to come to terms with and surmount the legacy of its colonial history, and develop nation-building into new areas.

56. Mr. Heinrich also noted that the history of Greenland had largely been written by Denmark. However, being able to tell one's own history was an important part of defining oneself. The feeling of Greenlandic inferiority stemmed from the development and modernization of the country following the Second World War. The 300 years of joint and parallel history shared by Greenland and Denmark was a history of progression and negotiations, where the power dynamics had now begun to shift.

57. During the discussion, participants highlighted the importance of strategic alliances between organizations with different mandates to seek the truth, and support victims in healing and empowering them to seek justice. For example, in Guatemala, psychosocial support for Indigenous women survivors of Sepur Zarco⁴ was crucial in order for them to feel comfortable about breaking their silence publicly in 2011 and filing a case. By creating a network of solidarity and support, and conversing openly in Indigenous languages, the women were empowered and developed adequate protective measures and an effective communications campaign.

58. It was also noted that basic trust was needed among parties to reach the point where a truth commission could be established, and that transitional justice would not solve problems, but might give order to them and teach people how to deal with them. As was raised in the case of Greenland, non-official truth commissions could be created among Indigenous Peoples themselves. This was the case in Colombia, where Indigenous Peoples, Afro-Colombian communities and women's groups started work before a truth commission was created. However, a fundamental principle was that, without the specific recognition of the situation of Indigenous Peoples, there was no pathway for the success of transitional justice tools.

59. The importance of strategic support from international actors was also highlighted, not only prior to and during the litigation of a case, but also with respect to the implementation of reparations granted in the case. For example, it was mentioned that international law experts could submit amicus curiae briefs and United Nations entities could support the implementation of reparation measures in close

⁴ In 1982, the military set up a rest outpost in Sepur Zarco in Guatemala. The Kekchi leaders of the area were seeking legal rights to their land at the time. The military retaliated with the forced disappearance, torture and killing of Indigenous men and the rape and enslavement of Indigenous women. See www.unwomen.org/en/news/stories/2018/10/feature-sepur-zarco-case.

cooperation with victims and Indigenous Peoples' organizations. In addition, where possible, the use of United Nations human rights complaints mechanisms could influence and change State behaviour. One expert mentioned the importance of trying to move things beyond a combative "us and them" in order to engage in peacebuilding. Several experts spoke about the importance of addressing intergenerational trauma.

60. The Chairperson of the Permanent Forum stressed the importance of building organization among Indigenous Peoples in a self-listening process to establish unity, and noted the importance of trusting each other.

E. Strategies to identify gaps and challenges and a possible way forward

61. In order to determine strategies to identify gaps and challenges and a possible way forward on the themes discussed, experts and participants organized themselves into two working groups. Each working group nominated a presenter and a rapporteur. The results of the working groups were read out at the plenary session, which was moderated by the Chairperson of the Permanent Forum.

62. The working groups noted the Secretary-General's guidance note on a United Nations approach to transitional justice, and suggested that the United Nations system, in close cooperation with the three United Nations mechanisms on Indigenous Peoples', prepare a companion report with a focus on Indigenous Peoples. The working groups identified the following issues of vital importance which could be included in the companion report:

- (a) Full and effective participation:
 - (i) Education/understanding of Indigenous Peoples' causes and struggles, in a shift away from models based on Western education systems;
 - (ii) States must provide resources (financial and human) to ensure full and effective participation at all levels;
 - (iii) States must ensure the establishment of mechanisms with the full and effective participation of Indigenous Peoples, with appropriate access in terms of Indigenous languages and geographical reach;
 - (iv) Enhanced Indigenous women's participation and representation in decision-making processes;
 - (v) States must respect Indigenous Peoples' own governance structures and representation;
 - (vi) States must ensure proper representation of Indigenous Peoples in every sphere and structure;
 - (vii) Transversal perspectives should also be incorporated to include participation by Indigenous youth, Indigenous elders and Indigenous persons with disabilities;
- (b) Effective dialogue:
 - (i) Diversity should be regarded as an asset rather than an obstacle for effective dialogue, with Indigenous protocols respected. The realities of Indigenous Peoples will vary by country, therefore there is a need to understand their specificities;
 - (ii) States must promote dialogue with interlocutors recognized by Indigenous Peoples;

-
- (iii) States must recognize that decolonization is a prerequisite for reconciliation;
 - (c) Cooperation between formal and Indigenous Peoples' justice systems:
 - (i) States must establish mechanisms for the coordination of and cooperation among the formal justice system and Indigenous Peoples' systems;
 - (ii) Institutional reform, such as the training of judges, can improve the relationship between Indigenous Peoples and formal justice systems;
 - (iii) Formal justice systems must reach and carry out field assessments and missions in Indigenous Peoples' territories, using culturally appropriate norms;
 - (d) Investigation of cases:
 - (i) States must ensure the proper investigation of reports of violations of Indigenous Peoples' rights;
 - (ii) Evidence must be documented and archived and records made public to allow transparency in reconciliation processes. Archives are an essential element of truth-seeking;
 - (iii) States must conduct investigation of cases in Indigenous languages and respect Indigenous Peoples' protocols;
 - (e) Education and funding:
 - (i) Education systems should teach and promote the rights of Indigenous Peoples;
 - (ii) Funding at all levels must be ensured to strengthen Indigenous Peoples' movements and organizations;
 - (iii) There is a need for greater funding for Indigenous-led research to promote Indigenous Peoples' knowledge and solutions;
 - (f) Different forms of healing:
 - (i) Spirituality is key to reconciling internally and forgiving perpetrators;
 - (ii) Music can be a conduit to express frustration, sadness, anger and other emotions;
 - (iii) Listening to others;
 - (g) Land, territories, waters, coastal waters and other resources:
 - (i) Indigenous Peoples' right to self-determination on their ancestral lands and territories, waters, coastal waters and other resources is central to truth and reconciliation;
 - (ii) States are to respect the collective rights of Indigenous Peoples, their constructive agreements and historical treaties;
 - (iii) National legislation is to be adopted with the free, prior and informed consent of Indigenous Peoples when such legislation involves their territories, lands and natural resource waters, coastal waters and other resources;
 - (h) Empowering Indigenous Peoples to tell their truth:
 - (i) Ensure that Indigenous Peoples can tell their own truth and support the establishment of their own mechanisms;
 - (ii) Indigenous languages/history must be tools used to compile Indigenous Peoples' truth;

- (iii) Transformative justice must focus on root causes and prevention, collective needs and institutional reform to address social and cultural concerns, among others, and “guarantees of non-recurrence”;
- (i) Human rights abuses:
 - (i) Violations of Indigenous Peoples’ rights should be always condemned, regardless of their percentage of the national population;
 - (j) States and United Nations entities:
 - (i) States and the United Nations should respond in an integrated way to the concerns of Indigenous Peoples and not with an isolated and short-term response;
 - (ii) States and the United Nations should recognize that reconciliation is impossible without the acknowledgment of the violation of Indigenous Peoples’ human rights;
 - (iii) States and the United Nations must harmonize the understanding of Indigenous Peoples’ concepts and cosmovisions with terms such as plurinationality, restorative justice and holistic transformative justice;
 - (iv) States should develop processes to establish enforcement mechanisms of international instruments related to Indigenous Peoples;
 - (v) United Nations country offices are called to support consultation processes with Indigenous Peoples and government officials prior to the annual sessions of the Permanent Forum on Indigenous Issues, as an opportunity to highlight ongoing pressing issues and amplify Indigenous Peoples’ voices in international processes;
 - (k) International instruments:
 - (i) The United Nations Declaration on the Rights of Indigenous Peoples must be key for frameworks of transitional justice and the rule of law;
 - (ii) ILO Convention No. 169 must be applied in a direct manner;
 - (iii) The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (General Assembly resolution 40/34) should be revised in order to broaden the definition of victims, including nature.

III. Recommendations

63. The discussions during the expert group meeting pointed to the urgent need for actions to ensure the promotion and protection of the rights of Indigenous Peoples at all levels, but specifically on the ground. Experts at the meeting made various recommendations to that end, including the following key recommendations:

64. The Permanent Forum on Indigenous Issues should recommend that States and governments:

(a) Review and revise national constitutions and legal frameworks to comprehensively recognize the human rights of Indigenous Peoples. The process of constitutional revision should be in close cooperation with Indigenous Peoples;

(b) Develop training programmes on human rights and Indigenous Peoples’ rights for government agencies and their officials. The training of judiciary and law enforcement officials is key to transformative reparation measures, and such efforts must be in collaboration with Indigenous Peoples;

(c) Guarantee the inclusion of Indigenous leadership in all transitional justice institutions, with the active participation of Indigenous Peoples' communities and representative organizations, and the adaptation of the structure of transitional justice institutions to effectively reflect such leadership;

(d) Ensure the proper inclusion of Indigenous Peoples concerned through their own representative institutions in conflict prevention initiatives, peace processes and agreements. Governments must establish mechanisms for dialogue with long-term results to benefit all, instead of weakening and dividing Indigenous organizations;

(e) Promote and respect the decisions taken by the application of the Indigenous justice system by Indigenous leaders and authorities, as, in some circumstances, the formal judicial system can open parallel lawsuits against them alleging that the decisions taken exceed their territories;

(f) Coordinate and conduct dialogue between the formal justice system and Indigenous Peoples' justice systems to promote access to justice and dispute resolution and contribute to harmonious relationships within Indigenous Peoples' communities and within society;

(g) Prevent media from stereotyping Indigenous Peoples' causes and struggles as negative to the development of society, which in some circumstances has labelled them as traitors or terrorists. States must develop and implement anti-discrimination policies that respect human rights;

(h) Encourage and enable national human rights institutions to promote truth and reconciliation processes, with a mandate to support educational programmes on human rights.

65. The Permanent Forum should recommend to the United Nations entities that, in the light of the Secretary-General's guidance note on a United Nations approach to transitional justice, the Office of the United Nations High Commissioner for Human Rights, in cooperation with relevant United Nations entities and in full cooperation with the three United Nations mechanisms related to Indigenous Peoples, prepare a companion report with a focus on Indigenous Peoples by 2025, taking into consideration the key issues identified in this expert group meeting.

Annex I

Programme of work

*Date/time**Programme***Tuesday, 15 November 2022**

10–11 a.m.

Traditional opening ceremony by Mapuche elders Doralisa Millalelem and Mario Mila Millalelem, Chile

Opening remarks

Raúl García-Buchaca, Deputy Executive Secretary for Management and Programme Analysis of the Economic Commission for Latin America and the Caribbean

María José Torres Macho, United Nations Resident Coordinator in Chile

Dario Mejía Montalvo, Chairperson of the Permanent Forum on Indigenous Issues

11.30–11.40 a.m.

Opening presentation by Rosemary Lane, Acting Chief, Indigenous Peoples and Development Branch – Secretariat of the Permanent Forum on Indigenous Issues, Division for Inclusive Social Development, Department of Economic and Social Affairs

11.40 a.m.–1.30 p.m.

Theme 1: conflict resolution, truth, transitional justice and reconciliation: international law and the United Nations system

Moderator: Dario Mejía Montalvo, Chairperson of the Permanent Forum on Indigenous Issues

Presentations:

Laura Flores, Director, Americas Division, Departments of Political and Peacebuilding Affairs and Peace Operations

Brenda Gunn, Academic and Research Director, National Centre for Truth and Reconciliation of Canada

Benjamín Ilabaca, lawyer, expert in human rights of Indigenous Peoples, Human Rights Adviser to the Municipality of Rapa Nui

General discussion

Guiding questions:

- Which Indigenous customary laws and legal traditions need to be better integrated in transitional justice processes?
- How can the United Nations Declaration on the Rights of Indigenous Peoples and other United Nations principles and guidelines be incorporated into conflict resolution and peace and reconciliation processes?

*Date/time**Programme*

- What support could the United Nations provide to Indigenous Peoples in negotiating peace accords, or other peacemaking processes?
- Are existing guidelines and protocols guiding transitional justice and peacebuilding exercises utilized by practitioners, and if so, would specific guidelines for Indigenous Peoples be useful?
- How is the United Nations system working in this area including Indigenous Peoples?

3–6 p.m.

Theme 2: barriers preventing Indigenous Peoples' participation

Moderator: Hannah McGlade, member of the Permanent Forum on Indigenous Issues

Presentations:

Aminata Diallo, Representative, Association Tinhinan, Mali

Carlos Poveda, attorney, former Second Criminal Judge of Cotopaxi, national and international consultant and university professor, Ecuador

General discussion

Guiding questions:

- How have transitional justice processes engaged Indigenous Peoples and addressed or failed to address their needs?
- What shifts within Governments and in partnership with Indigenous Peoples will create the conditions for moving from denial to recognition, replacing conflict with cooperation?
- What public sphere voices focus on fears/confusion/mistrust that are opposed to aspects of reconciliation?
- Why have Indigenous Peoples often been excluded from national peacebuilding processes?

Wednesday, 16 November 2022

10 a.m.–1.30 p.m.

Theme 3: examples of lessons learned from work carried out by and with Indigenous Peoples

Moderator: Vital Bambanze, member of the Permanent Forum on Indigenous Issues

Presentations:

Ana Manuela Ochoa Arías, Magistrate of the Special Tribunal for Peace, Colombia

Vasily Nemechkin, Associate Professor, Department of Legal Disciplines, National Research, Mordovia State University, Russian Federation

*Date/time**Programme*

Salvador Millaleo, Mapuche lawyer and former adviser on Indigenous affairs to the Minister for the Interior and Public Security of Chile

General discussion

Guiding questions:

- What three key lessons have been learned from your work with Indigenous Peoples?
- What lessons have been learned from Indigenous Peoples working in conflict resolution, reconciliation and transitional justice?
- What measures have been identified to ensure the implementation of approaches based on ethnic and gender equality?
- How can examples of lessons learned be transferred among/between regions?

3–6 p.m.

Theme 4: standards and policies for conflict resolution, truth, transitional justice and reconciliation

Moderator: Francisco Xavier Mena, Deputy Regional Representative for South America, Office of the United Nations High Commissioner for Human Rights, Chile

Presentations:

Hannah McGlade, member of the Permanent Forum on Indigenous Issues

Eduardo Gonzalez, human rights consultant and professor, specializing in transitional justice

Jens Heinrich, Head of the Greenland Representation in Copenhagen

General discussion

Guiding questions:

- What processes, both judicial and non-judicial, can be identified to provide recognition to victims and reinforce respect for Indigenous Peoples' human rights?
- Which ethnic gender-sensitive dimensions can be considered to deal with the victims, their families and communities?
- How to provide justice, recognition and dignity to the victims and ensure the implementation of agreed standards to find peace?
- What are good practices and methodologies in promoting and facilitating constructive dialogues with States?

*Date/time**Programme*

Thursday, 17 November 2022

10 a.m.–1.30 p.m.

Musical performance by the Andean musical group Khantati,
“*Grito de nuestros pueblos*”

Theme 5: strategies to identify gaps and challenges and a possible way forward

Working groups by language (English and Spanish) to prepare recommendations

Plenary session to report back from working groups

Moderator: Rosemary Lane, Acting Chief, Indigenous Peoples and Development Branch – Secretariat of the Permanent Forum on Indigenous Issues, Division for Inclusive Social Development, Department of Economic and Social Affairs

Closing remarks

Dario Mejía Montalvo, Chairperson of the Permanent Forum on Indigenous Issues

Annex II

List of participants

Members of the Permanent Forum on Indigenous Issues

Dario Mejía Montalvo, Chairperson
Vital Bambanze
Hannah McGlade

Experts

Aminata Diallo, Mali
Eduardo Gonzalez, Peru
Brenda Gunn, Canada
Jens Heinrich, Greenland
Benjamín Ilabaca, Rapa Nui, Chile
Vasily Nemechkin, Russian Federation
Salvador Millaleo, Chile
Ana Manuela Ochoa Arías, Colombia
Carlos Poveda, Ecuador

United Nations system

Departments of Political and Peacebuilding Affairs and Peace Operations
Economic Commission for Latin America and the Caribbean
Office of the United Nations High Commissioner for Human Rights, Chile
United Nations Resident Coordinator, Chile
