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International Expert Group Meeting

**The Mandate of the United Nations Permanent Forum on Indigenous Issues under
Article 42 of the UN Declaration on the Rights of Indigenous Peoples**

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Background paper

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United Nations Permanent Forum on Indigenous Issues

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A. Introduction

1. In September 2007, the General Assembly adopted the UN Declaration on the Rights of Indigenous Peoples (*hereinafter UN Declaration or UN-DECRIPS*), marking a major victory for the world's indigenous peoples and an extraordinary achievement in international standard setting. The adoption of the UN Declaration, after more than two decades of struggle and advocacy by indigenous peoples, was described by Secretary-General Ban Ki-moon as “a historic moment when UN Member States and indigenous peoples reconciled with their painful histories and resolved to move forward together on the path of human rights, justice and development for all.”¹ Speaking before the General Assembly following the adoption, Victoria Tauli-Corpuz, Chair of the UN Permanent Forum on Indigenous Issues (*hereinafter UNPFII or Permanent Forum*) stated that “This day will forever be etched in our memories as a significant gain in our peoples’ long struggle for our rights.”²

2. The adoption of UN-DECRIPS presents a remarkable opportunity to motivate states to comply with human rights standards, including those it sets forth. Article 42 of the UN Declaration signals a new mandate for the United Nations Permanent Forum on Indigenous Issues in this regard, establishing that:

The United Nations, its bodies, including the Permanent Forum on Indigenous Issues, and specialized agencies, including at the country level, and States shall promote respect for and full application of the provisions of this Declaration and follow up the effectiveness of this Declaration.

3. These important responsibilities constitute new functions for the Permanent Forum under its overall human rights mandate, established by resolution 2000/22 of the Economic and Social Council (ECOSOC). At its seventh session, the UNPFII recommended that the Council authorize an international expert group meeting to discuss in greater detail the way in which the Permanent Forum should address its new mandate under article 42 of the UN Declaration. At its regular session in 2008, ECOSOC approved the Forum’s recommendation in decision 2008/249.

B. The United Nations Permanent Forum on Indigenous Issues and the human rights of indigenous peoples

4. The UN Permanent Forum serves as an advisory body to ECOSOC with a mandate to provide expert advice and recommendations to the Council, programmes, funds and agencies of the United Nations on a range of indigenous issues, including human rights. It is also mandated to promote the integration and coordination of activities related to indigenous issues within the UN system, and to prepare and disseminate information on indigenous issues.

¹ Statement attributable to the Spokesperson for the Secretary-General on the adoption of the Declaration on the Rights of Indigenous Peoples, 13 September 2007.

² Statement of Victoria Tauli-Corpuz, Chair of the UN Permanent Forum on Indigenous Issues on the Occasion of the Adoption of the UN Declaration on the Rights of Indigenous Peoples, 61st Session of the UN General Assembly, 13 September 2007.

5. The Permanent Forum is supported by the Secretariat of the Permanent Forum on Indigenous Issues (SPFII), which is based at UN Headquarters in New York in the Division for Social Policy and Development of the UN Department of Economic and Social Affairs (DSPD/DESA). The work of SPFII includes providing support to UNPFII's broad mandate and serving as a source of information and an interagency coordination point for advocacy efforts relating to the Permanent Forum's mandate and policy recommendations. Within the UN system, SPFII advocates for implementation of the Permanent Forum's recommendations, including human rights recommendations, throughout the year.

6. Since its establishment in 2002, UNPFII has integrated human rights into its overall work and has been developing its work in the area of human rights in a number of ways, including the following:

- UNPFII has created an open forum to hear statements about the situation of the human rights of indigenous peoples, including a forum for dialogue with the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, and other human rights rapporteurs. UNPFII has also developed a close collaborative relationship with and has supported the work of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people.
- On the basis of the information and reports provided by indigenous peoples, UN agencies and states, and the ensuing debates during its sessions, UNPFII has developed a substantial number of recommendations addressing human rights problems of indigenous peoples, including those related to indigenous children and youth, indigenous women, and the Millennium Development Goals, as well as issues concerning migration and housing.
- Based on the recommendations, UNPFII's Secretariat has promoted the elaboration of how the human rights-based approach to development can be operationalized for indigenous peoples. SPFII has participated actively in the formulation of the UN Development Group Guidelines on Indigenous Peoples' Issues. SPFII has also prepared, in cooperation with several agencies, a Resource Kit on Indigenous Peoples' Issues and a Training Module for UN country staff on indigenous peoples' issues, which seeks, *inter alia*, to increase the "enjoyment of human rights and more specifically indigenous peoples' rights", and for which the UN Declaration serves as a contextual and content basis.
- The Bureau of the Permanent Forum acts as the advisory group to the Secretary-General in connection with a small grants program under the Trust Fund on Indigenous Issues. In this capacity, the Bureau regularly selects for funding indigenous peoples' organizations working for the advancement of the human rights of indigenous peoples.

7. In 2007, UNPFII member Ms. Victoria Tauli-Corpuz was mandated by the Forum to prepare the document "Implementation of the human rights mandate of the Permanent Forum on Indigenous Issues"³ for its sixth session. The paper provides a detailed description of UNPFII efforts in the field of human rights. During the sixth session in 2007, UNPFII appointed two of its members, Ms. Ida Nicolaisen (Vice-chair) and Mr. Wilton Littlechild, to conduct an

³ Implementation of the Human Rights Mandate of the Permanent Forum on Indigenous Issues (2007), E/C.19/2007/6

additional study. Ms. Nicolaisen and Mr. Littlechild completed the report, “Study on the structures, procedures and mechanisms that presently exist and that might be established to effectively address the human rights situation of indigenous peoples and to arrange for indigenous representation and inclusion in such structures, procedures and mechanism”⁴ in 2007.

8. In their report, Ms. Nicolaisen and Mr. Littlechild called upon UNPFII to ensure that the UN Declaration is integrated into its own recommendations on the six substantive mandated areas of the Forum, as well as its work under the special theme for each session and its ongoing themes and priorities.

9. Ms. Nicolaisen and Mr. Littlechild also recommended that the Permanent Forum consider the creation of a procedure of the Permanent Forum that would promote a constructive dialogue with Governments on the challenges, achievements and future action that indigenous issues require in each country under the UN-DECRIPS. Such dialogue would take place periodically and enlist the participation of indigenous organizations as well as the UN system. It would create an enabling environment of cooperation at national and international level, aiming at practical results on the ground, including through the international development agenda.⁵

C. The UN Permanent Forum on Indigenous Issues and the UN Declaration on the Rights of Indigenous Peoples

10. In considering opportunities, including those proposed by Ms. Nicolaisen and Mr. Littlechild, for the Permanent Forum to support the UN Declaration and to promote its implementation, it is important to consider the strengths of the Permanent Forum, including the following:

- The Permanent Forum has a significant convening power, which has developed as one of its most important features. It is the foremost body for dialogue between indigenous peoples, UN agencies and States. Each year, close to 2,000 representatives from indigenous peoples’ organizations, more than 70 UN Member States, 35 UN bodies, mechanisms, agencies and other intergovernmental organizations, and close to 100 representatives of NGOs and academia participate in the session of UNPFII. The Forum has also succeeded in bringing high-level officials or representatives of the UN system, including the Secretary-General, the President of the General Assembly and the High Commissioner for Human Rights, to participate in its sessions. The Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people participates in each annual session and other special rapporteurs and chairs of human rights bodies have also participated in various sessions. During the annual sessions, UNPFII gathers and galvanizes these participants into a “cooperative forum which is solution-oriented towards practical results on the ground.”⁶

⁴ Study on the structures, procedures and mechanisms that presently exist and that might be established to effectively address the human rights situation of indigenous peoples and to arrange for indigenous representation and inclusion in such structures, procedures and mechanism (2008), E/C.19/2008/2

⁵ *See Id.*

⁶ *See Id.*

- UNPFII has established a collaborative approach to advancing indigenous issues within the United Nations, creating a space for cooperation among UN bodies, States and indigenous peoples. For example, the UNPFII successfully engages UN bodies on indigenous peoples' issues through its comprehensive recommendations in all the areas of its mandate.
- SPFII also advocates for indigenous peoples' issues through its substantive support and participation in the Inter-Agency Support Group (IASG) on Indigenous Peoples' Issues, which includes 31 United Nations bodies, programmes, agencies and funds as well as other intergovernmental organizations and which was established to support and promote the mandate of UNPFII. SPFII also actively promotes the integration of indigenous issues in the UN system by participating in a variety of inter-agency mechanisms, such as the United Nations Development Group.
- With regard to States, the cooperative nature of the work of UNPFII is evidenced by the fact that a number of States voluntarily provide information on an annual basis regarding their policies and practices related to indigenous peoples. The Permanent Forum has always welcomed this and has also, to a certain extent, influenced governments in reviewing and developing their policies towards indigenous peoples.
- The Permanent Forum also enjoys the advantages of a varied composition. The membership of the Permanent Forum is comprised of equal numbers of indigenous-nominated and government-nominated experts, who work on the basis of consensus as per ECOSOC resolution 2000/22, which established the Forum.
- The Permanent Forum has a broad mandate to discuss indigenous issues within the areas of expertise of the ECOSOC relating to economic and social development, culture, the environment, education, health and human rights. The broad thematic mandate of the Permanent Forum matches the broad scope of the UN Declaration, which covers all areas of the Forum's mandate.
- In addition to its mandate under ECOSOC resolution 2000/22 the Permanent Forum now has a new mandate that stems directly from Article 42 of the UN Declaration. The mandate of the Special Rapporteur on the situation of the human rights and fundamental freedoms of indigenous people, with whom the Permanent Forum works closely, was also expanded in 2007 by Human Rights Council Resolution 6/12, which called upon the Special Rapporteur to "promote the United Nations Declaration on the Rights of Indigenous Peoples and international instruments relevant to the advancement of the rights of indigenous peoples, where appropriate."⁷ In the case of the UNPFII, a new request by ECOSOC would not be necessary due to the role assigned directly and explicitly to the Permanent Forum under Article 42 of the UN Declaration.

D. Goals and Objectives of the International Expert Group Meeting

11. The UN Declaration recognizes a wide range of individual and collective human rights and fundamental freedoms of indigenous peoples and indigenous persons. **The goal of the**

⁷ Human Rights Council, Human Rights and Indigenous Peoples: Mandate of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Resolution 6/12 (2007).

workshop is to determine and detail how the Permanent Forum, the UN body named specifically in Article 42, will promote respect for and full application of these and all provisions of the Declaration, and follow up on its effectiveness.

12. Although there have been substantial developments in the promotion and protection of the human rights of indigenous peoples in recent years, there remains a persistent implementation gap between international legal frameworks and the effective protection of indigenous peoples' human rights. In spite of legal developments at the international and national levels, indigenous peoples have continued to "suffer egregious violations of their basic human rights and fundamental freedoms and justice for many of them remains illusive at the national, regional and global levels."⁸ The functions mandated by Article 42, promoting "respect for" and the "full application of" the provisions of the Declaration, as well as following up their effectiveness, therefore, require that the "implementation gap" be overcome, and that the provisions of the UN Declaration become realized in practice.

13. It is important to seize the historic opportunity created by the adoption of the UN Declaration by establishing work plans and methods that can strengthen the promotion and protection of indigenous peoples' rights and focus on their attainment, addressing existing human rights violations and preventing future abuses from taking place. In the course of the International Expert Group Meeting, participants will be asked to outline specific approaches that the Permanent Forum can take to promote the implementation of the UN-DECRIPS and to set out methodologies by which the Permanent Forum can begin to fulfill its new responsibilities. Specifically, participants are requested to consider the discussion points detailed below and make recommendations regarding each. The report of the Workshop will be presented to the eighth session of UNPFII.

E. Items for Discussion at the International Expert Group Meeting: Opportunities for the Permanent Forum to support the Declaration

14. Five major themes of discussion regarding how UNPFII can best fulfill its mandate under Article 42 of the UN Declaration, taking advantage of the opportunities and momentum provided by its recent adoption, are suggested below. Under each of the themes are preliminary questions identified for consideration and to stimulate discussion. Participants are asked to consider the themes for discussion in light of the existing human rights work of UNPFII and in light of its strengths as detailed above.

Theme 1: Integration of the UN Declaration into the ongoing work of the Permanent Forum

- How can UNPFII integrate the promotion of the UN Declaration into its ongoing work? For example, how can the Permanent Forum ensure that the UN Declaration is incorporated into its own recommendations on the six substantive mandated areas of the Forum, as well as its work under the special theme for each session and its ongoing themes and priorities, as recommended by Ms. Nicolaisen and Mr. Littlechild?
- How might UNPFII best promote respect for and full application of the UN Declaration, and follow up on its effectiveness through its own research (for example, through its

⁸ See E/C.19/2007/6

practice of appointing Permanent Forum members as special rapporteurs to conduct selected studies or research)? What types of research would best contribute to the implementation of the UN Declaration (for example, country-specific studies, implementation guides, compilations of best practices)?

- How can UNPFII develop article-specific commentaries on the UN Declaration?
- What resources would be required by UNPFII and SPFII? In this regard, should UNPFII seek to develop relationships with academic institutions that might participate in the development and dissemination of research materials and, in doing so, contribute additional resources to implementation efforts?

Theme 2: Capacity development for indigenous and non-indigenous communities and organizations

- How can the Permanent Forum promote the dissemination of and capacity-building on the UN Declaration for indigenous peoples' organizations and both indigenous and non-indigenous communities?
- How can UNPFII best support indigenous peoples' organizations in their efforts towards the realization of the provisions of the UN Declaration at local, national and regional levels?

Theme 3: Promotion of respect for and full application of the UN Declaration at the State level

- Given that the UN Declaration outlines the obligations of States, how can UNPFII best work with States to support their efforts in the implementation of the UN Declaration at local, national and regional levels?
- How can the Permanent Forum promote cooperative solutions to problems between governments and indigenous peoples at the country level within the context of the UN Declaration?
- How can UNPFII encourage States to require private sector actors to also comply with the provisions of the UN Declaration?
- How can the Permanent Forum promote the dissemination of the UN Declaration to key State actors, including government agencies and parliamentarians? How might UNPFII best promote dissemination of the UN Declaration to additional key groups working at the national level, such as judicial officials, lawyers, professors and members of the media?

Theme 4: Dialogue with States regarding respect for and application of the UN Declaration and follow up on its effectiveness

- During the 2008 ECOSOC, Member States provided voluntary reports regarding their efforts at the country level on the Millennium Development Goals. Taking this practice as an example and, given the participation of States in UNPFII sessions and the voluntary submission of information to UNPFII by numerous Governments, how can UNPFII encourage States to further share promising national practices with regard to indigenous peoples?
- Could the information provided by Governments to UNPFII on their relevant national policies and practices become the basis for constructive dialogues between

- Governments and UNPFII, as proposed by Ms. Nicolaisen and Mr. Littlechild? What could be the contribution of the UN system and indigenous organizations to such dialogues?
- What methodologies should be followed by UNPFII in promoting and facilitating constructive dialogues with States? When would such meetings be held (for example, before, during or in-between sessions of UNPFII)? How should such dialogues be structured and who should participate? What outcome and follow-up would be expected or sought from such dialogues?
 - What resources would be required by UNPFII and SPFII to pursue such dialogues?

Theme 5: Cooperation within the United Nations

- In carrying out its responsibilities under Article 42, how can the Permanent Forum coordinate its efforts with those of the Special Rapporteur on the situation of the human rights and fundamental freedoms of indigenous people and the Expert Mechanism on the Rights of Indigenous Peoples?
- How can UNPFII promote the integration of the UN Declaration and the inclusion of indigenous peoples into the planning and work of UN country teams?
- How can UNPFII ensure that its members enjoy close and fruitful relationships with UN country teams regarding the UN Declaration?
- How can UNPFII and SPFII best disseminate the UN Declaration and promote the application of its provisions within the UN system?
- How can the UNPFII work together with the ILO to create an operational interpretation that reconciles and strengthens both the UN Declaration and ILO Convention 169?
- How can UNPFII best learn from the experiences of other UN bodies in their promotion of other human rights instruments, such as the Convention on the Rights of the Child?

F. Participants

15. Indigenous experts from each of the seven indigenous socio-cultural regions⁹ and, in consultation with the Chair of the Permanent Forum, a limited number of Forum members are invited to participate in the International Expert Group Meeting. In addition, the meeting is open to observers at the expert level from indigenous peoples' organizations, States and the UN system.

G. Working Documents

16. Experts invited to participate in the workshop are requested to submit brief papers on any of the above themes drawing from their work and experience at the national and community level, or within agencies.

H. Useful Background Documents

- Study on the structures, procedures and mechanisms that presently exist and that might be established to effectively address the human rights situation of indigenous peoples and to

⁹ Latin America and the Caribbean, Pacific, Arctic, Africa, Asia, North America and Eastern Europe, the Russian Federation, Central Asia and Transcaucasia.

arrange for indigenous representation and inclusion in such structures, procedures and mechanism (2008), E/C.19/2008/2

- Nota sobre el Alcance del Mandato Contenido en el Artículo 42 de la Declaración sobre los Derechos de los Pueblos Indígenas y el Mejor Modo de Satisfacerlo por Parte del Foro Permanente para las Cuestiones Indígenas (2008), submitted by Bartolomé Clavero, Member of the UN Permanent Forum on Indigenous Issues, E/C.19/2008/CRP.6
- Implementation of the Human Rights Mandate of the Permanent Forum on Indigenous Issues (2007), E/C.19/2007/6
- Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people (Mr. James Anaya), Communications to and from governments, A/HRC/9/9/Add.1 (available at: <http://www2.ohchr.org/english/bodies/hrcouncil/9session/reports.htm>)