Human Rights Council
Twenty first session
Agenda item 5
Human rights bodies and mechanisms


Chairperson-Rapporteur: International Chief Wilton Littlechild

Summary

The Expert Mechanism on the Rights of Indigenous Peoples held its fifth session from 9 to 13 July 2012. In addition to members of the Expert Mechanism, the participants in the session included representatives of States, indigenous peoples, United Nations bodies and specialized agencies, non-governmental organizations, national human rights institutions and academics.

The Expert Mechanism held a half-day session to discuss the World Conference on Indigenous Peoples and then moved to a discussion of follow-up to thematic studies and advice with particular attention paid to the follow-up report on indigenous peoples and the right to participate in decision-making, with a focus on extractive industries.

The Expert Mechanism’s study on the role of languages and culture in the promotion and protection of the rights and identity of indigenous peoples was considered. Discussions on the United Nations Declaration on the Rights of Indigenous Peoples were also held including an inaugural interactive dialogue between the Special Rapporteur on the rights of indigenous peoples, the Chairperson of the United Nations Permanent Forum on Indigenous Issues and the Chairperson-Rapporteur of the Expert Mechanism.

The Expert Mechanism also adopted the proposals to be submitted to the Human Rights Council at its twenty-first session and adopted: its follow-up report on indigenous peoples and the right to participate in decision making, with a focus on extractive industries; its study on the role of languages and culture in the promotion and protection of the rights and identity of indigenous peoples; and its report on the questionnaire to seek the views of States on best practices regarding possible appropriate measures and implementation strategies in order to attain the goals of the United Nations Declaration on the Rights of Indigenous Peoples.
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I. Introduction

1. In its resolution 6/36, the Human Rights Council established the Expert Mechanism on the Rights of Indigenous Peoples as a subsidiary body to assist the Council in the implementation of its mandate by providing it with thematic expertise on the rights of indigenous peoples, as requested by the Council. In the resolution, the Council established that the thematic expertise would focus mainly on studies and research-based advice, and that the Expert Mechanism may suggest proposals to the Council for its consideration and approval.

II. Adoption of studies and reports and proposals

2. The Expert Mechanism adopted: its follow-up report on indigenous peoples and the right to participate in decision making, with a focus on extractive industries; its study on the role of languages and culture in the promotion and protection of the rights and identity of indigenous peoples; and its report on the questionnaire to seek the views of States on best practices regarding possible appropriate measures and implementation strategies in order to attain the goals of the United Nations Declaration on the Rights of Indigenous Peoples and the proposals set out below.

A. Adoption of the follow-up report on indigenous peoples and the right to participate in decision making, with a focus on extractive industries

_The Expert Mechanism on the Rights of Indigenous Peoples:_

(a) Refers to paragraph 8 of Human Rights Council resolution 18/8, in which the Council welcomed the completion by the Expert Mechanism of its final study and the inclusion of the examples of good practices at different levels of decision-making therein, including those in connection with the activities of extractive industries, and requested the Expert Mechanism to continue to build on its previous studies, including its study on indigenous peoples and the right to participate in decision-making;

(b) Adopts the follow-up report on indigenous peoples and the right to participate in decision making, with a focus on extractive industries;¹

(c) Authorizes the Chairperson-Rapporteur, in consultation with the other members of the Expert Mechanism, to make the necessary revisions to the report in the light of discussions carried out at its 5th session and to submit the report to the Human Rights Council at its 21st session.

B. Adoption of the study on the role of languages and culture in the promotion and protection of the rights and identity of indigenous peoples

_The Expert Mechanism on the Rights of Indigenous Peoples:_

(a) Refers to paragraph 9 of Human Rights Council resolution 18/8, in which the Council requested the Expert Mechanism to prepare a study on the role of languages and culture in the promotion and protection of the rights and identity of indigenous peoples, and to present it to the Human Rights Council at its 21st session;

¹ A/HRC/EMRIP/2012/2
(b) Adopts the study on the role of languages and culture in the promotion and protection of the rights and identity of indigenous peoples;

(c) Authorizes the Chairperson-Rapporteur, in consultation with the other members of the Expert Mechanism, to make the necessary revisions to the study in the light of discussions carried out at its 53rd session and to submit the study to the Human Rights Council at its 21st session.

C. Adoption of the report on the summary of responses from the questionnaire to seek the views of States on best practices regarding possible appropriate measures and implementation strategies in order to attain the goals of the United Nations Declaration on the Rights of Indigenous Peoples.

The Expert Mechanism on the Rights of Indigenous Peoples:

(a) Refers to paragraph 10 of Human Rights Council resolution 18/8, in which the Council requested the Expert Mechanism to undertake, with the assistance of the Office of the High Commissioner, a questionnaire to seek the views of States on best practices regarding possible appropriate measures and implementation strategies in order to attain the goals of the United Nations Declaration on the Rights of Indigenous Peoples;

(b) Adopts the report on the summary of responses from the questionnaire seeking the views of States on best practices regarding possible appropriate measures and implementation strategies in order to attain the goals of the United Nations Declaration on the Rights of Indigenous Peoples;

(c) Authorizes the Chairperson-Rapporteur, in consultation with the other members of the Expert Mechanism, to make the necessary revisions to the report in the light of discussions carried out at its 53rd session and to submit the report to the Human Rights Council at its 21st session.

D. Proposals

Proposal 1: Indigenous peoples and access to justice

The Expert Mechanism on the Rights of Indigenous Peoples

(a) Refers to paragraph 3 of the Human Rights Council resolution 9/7, in which the Council requested the Expert Mechanism to identify proposals and to suggest them by consensus to the Council;

(b) Proposes that the Human Rights Council request the Expert Mechanism to prepare a study on indigenous peoples and access to justice given the gravity of the issues facing indigenous peoples, including discrimination against indigenous peoples in criminal justice systems, particularly for indigenous women and youth. Over-representation of indigenous peoples in incarceration is a global concern. Good practices, particularly those associated with traditional justice systems, will be examined.

2 A/HRC/EMRIP/2012/3.
Proposal 2: Extension of time for States to respond to the questionnaire on the implementation of the United Nations Declaration on the Rights of Indigenous Peoples

The Expert Mechanism on the Rights of Indigenous Peoples:

(a) Proposes that the Human Rights Council request the Expert Mechanism to continue to solicit responses to the questionnaire seeking the views of States on best practices regarding possible appropriate measures and implementation strategies with a view to completing a final summary of responses for presentation to the 24th session of the Human Rights Council and to encourage those States which have not yet provided their responses to do so.

Proposal 3: World Conference on Indigenous Peoples

The Expert Mechanism on the Rights of Indigenous Peoples:

(a) Refers to the resolution 65/198 of the General Assembly (Res A/RES/65/198) wherein the General Assembly decided to organize a high-level plenary meeting of the General Assembly in 2014, to be known as the World Conference on Indigenous Peoples, to share perspectives and best practices on the realization of the rights of indigenous peoples, including the objectives of the United Nations Declaration on the Rights of Indigenous Peoples;

(b) Proposes that the Human Rights Council welcome the recommendations of the Permanent Forum on Indigenous Issues from its 11th session related the World Conference on Indigenous Peoples (E/C.19/2012/13) and encourage the development of an action-oriented outcome document at the World Conference on Indigenous Peoples;

(c) Proposes that the Human Rights Council support the full and effective participation of indigenous peoples at all preparatory and follow-up stages of the World Conference on Indigenous Peoples, as well as during the World Conference itself. Indigenous peoples must also be equal participants in the drafting of the outcome documents and in the co-chairing of all World Conference meetings;

(d) Proposes that the Human Rights Council encourage the participation of national human rights institutions in all the preparatory and follow-up processes of the World Conference on Indigenous Peoples as well as at the World Conference itself;

(e) Proposes that Human Rights Council recommend that the themes, agenda items, duration, location and timing of the World Conference on Indigenous Peoples be determined by consultations with indigenous peoples and States and in a manner that will best facilitate the realisation of the rights of indigenous peoples;

(f) Proposes that the Human Rights Council recommend that the studies and advice of the Expert Mechanism be discussed at, and incorporated into the agendas of, the preparatory and follow-up meetings, as well as the World Conference on Indigenous Peoples;

(g) Proposes that the Human Rights Council encourage States and all United Nations agencies to support the World Conference on Indigenous Peoples, especially through technical and financial contributions.

Proposal 4: International expert seminar on truth and reconciliation processes

The Expert Mechanism on the Rights of Indigenous Peoples:
(a) Noting that an international expert seminar on truth and reconciliation processes will promote reconciliation and referring to Expert Mechanism’s proposal 7 from its 4th session and proposal 8 from its 3rd session;

(b) Noting also the recent appointment of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence;

(c) Refers to the Permanent Forum on Indigenous Issues 10th session report welcoming the Expert Mechanism’s proposal to hold an international expert seminar on truth and reconciliation processes;

(d) Proposes that an international expert seminar on truth and reconciliation processes be held in 2013 in partnership with other interested parties.

Proposal 5: Implementation of the Declaration on the Rights of Indigenous Peoples within the communities and Nations of indigenous peoples

The Expert Mechanism on the Rights of Indigenous Peoples:

Proposes that the Human Rights Council request the Expert Mechanism to undertake, with the assistance of the Office of the High Commissioner for Human Rights, a questionnaire to seek the views of indigenous peoples regarding the measures and strategies that they may undertake to attain the goals of the United Nations Declaration on the Rights of Indigenous Peoples within their communities and Nations;

Proposal 6: Engagement of agencies and institutions focused on indigenous peoples with the Expert Mechanism

Proposes that the Human Rights Council call on specialised bodies and institutions, established by governments to focus on indigenous peoples, to actively engage in the Expert Mechanism.

Proposal 7: International Day of the World’s Indigenous Peoples

The Expert Mechanism on the Rights of Indigenous Peoples:

Proposes that the Human Rights Council recommend that States support the celebration of the International Day of the World’s Indigenous People.

Proposal 8: Consideration of the rights of indigenous peoples in the Human Rights Council

The Expert Mechanism on the Rights of Indigenous Peoples:

(a) Welcomes the decisions by the Human Rights Council to hold an interactive dialogue after the presentation of the annual report of the Expert Mechanism to the Human Rights Council and to hold a half-day panel on access to justice; and also proposes that the Human Rights Council’s 2013 half-day panel discussion on the rights of indigenous peoples focus on the World Conference on Indigenous Peoples;

\[4\] A/HRC/18/43 and A/HRC/15/36.
(b) Proposes that the Human Rights Council specifically review the human rights of indigenous peoples, including in its universal periodic review, through questions and recommendations to states directed at the implementation of the Declaration on the Rights of Indigenous Peoples;

(c) Refers to proposal 2(c) from its report of its fourth session and proposes that the Human Rights Council request States, United Nations human rights treaty bodies, special procedures and other relevant bodies and institutions to utilize the recommendations and advice of the Expert Mechanism within their activities;

(d) Proposes that the Human Rights Council urge states to contribute to the United Nations Voluntary Fund for Indigenous Populations.

Proposal 9: World Heritage Committee

The Expert Mechanism on the Rights of Indigenous Peoples

(a) Notes that the 40th Anniversary of the World Heritage Convention is being celebrated in 2012 under the theme “World Heritage and Sustainable Development: the Role of Local Communities”;

(b) Refers to articles 41 and 42 of the United Nations Declaration on the Rights of Indigenous Peoples as well as paragraph 38 of Expert Mechanism Advice No. 2 (A/HRC/18/42);

(c) Reiterates that UNESCO must enable and ensure effective representation and participation of indigenous peoples in decision-making related to the World Heritage Convention and that robust procedures and mechanisms should be established to ensure indigenous peoples are adequately consulted and involved in the management and protection of World Heritage sites, and that their free, prior and informed consent is obtained when their territories are being nominated and inscribed as World Heritage sites;

(d) Welcomes World Heritage Committee Decision 35 COM 12E (2011) which encourages States to involve indigenous peoples and local communities in decision-making, monitoring and evaluation of the state of conservation of World Heritage sites and to respect the rights of indigenous peoples when nominating, managing and reporting on World Heritage sites in indigenous peoples’ territories;

(e) Encourages the World Heritage Committee to establish a process to elaborate, with the full and effective participation of indigenous peoples, changes to the current procedures and operational guidelines and other appropriate measures to ensure that the implementation of the World Heritage Convention is consistent with the United Nations Declaration on the Rights of Indigenous Peoples and that indigenous peoples can effectively participate in the World Heritage Convention’s decision-making processes.

III. Organization of the session

A. Attendance

5 A/HRC/18/43.
3. The Expert Mechanism on the Rights of Indigenous Peoples held its fifth session in Geneva, from 9 to 13 July 2012. The members Ms. Jannie Lasimbang (Malaysia), International Chief Wilton Littlechild (Canada), Mr. José Carlos Morales Morales (Costa Rica) and Mr. Danfred Titus (South Africa) participated in the fifth session of the Expert Mechanism.

4. The observers in the fifth session of the Expert Mechanism included representatives of Member States, the Holy See, United Nations organizations and programmes, national human rights institutions, indigenous peoples and non-governmental organizations (see annex I).

5. The Special Rapporteur on the rights of indigenous peoples, Mr. James Anaya, Chairperson of the Permanent Forum on Indigenous Issues, Grand Chief Edward John, and the Chairperson of the United Nations Voluntary Fund for Indigenous Populations, Mr. Shankar Limbu, also participated in the session.

6. In addition, Permanent Forum on Indigenous Issues members Mr. Paul Kanyinke Sena, Mr. Saul Vicente Vazquez and Ms. Valmaine Toki attended. The Vice-Chairperson of the Committee on the Elimination of Racial Discrimination, Mr. José Francisco Cali Tzay, also attended.

B. Documentation

7. The Expert Mechanism had before it the provisional agenda (A/HRC/EMRIP/2012/1) and the annotated agenda (A/HRC/EMRIP/2012/1/Add.1) as prepared by the Office of the United Nations High Commissioner for Human Rights, and the follow-up report on indigenous peoples and the right to participate in decision making, with a focus on extractive industries; the study on the role of languages and culture in the promotion and protection of the rights and identity of indigenous peoples; and, lastly, the report on the summary of responses from the questionnaire seeking the views of States on best practices regarding possible appropriate measures and implementation strategies in order to attain the goals of the United Nations Declaration on the Rights of Indigenous Peoples.

C. Opening of the session

8. Mr. Antti Korkeakivi, Chief of the Indigenous Peoples and Minorities Section of the Office of the High Commissioner for Human Rights, opened the fifth session of the Expert Mechanism and introduced the Director of the Research and Right to Development Division, Office of the High Commissioner for Human Rights, Ms. Marcia Kran, for opening remarks.

9. Ms. Kran noted that in resolution 18/8, the Human Rights Council requested the Expert Mechanism to conduct a survey on States’ best practices regarding appropriate measures and implementation strategies to attain the goals of the Declaration on the Rights of Indigenous Peoples. While Ms. Kran expressed her appreciation for the quality of the responses that had been received, she also noted her disappointment that too few responses had been received to date. She also commented on the ways in which the Office of the High Commissioner for Human Rights can assist in the implementation of the rights of indigenous peoples.

10. In her opening statement, the President of the Human Rights Council, Ambassador Laura Dupuy Lasserre, expressed that the sessions of the Expert Mechanism provides a space for dialogue between indigenous peoples and States. She highlighted the importance of the participation of indigenous peoples in the Human Rights Council and noted that the Human Rights Council had requested a detailed document from the Secretary-General of the United Nations examining the methods of promoting the participation of indigenous peoples at the United Nations, which will be presented at the 21st session of the Human Rights Council. The
President of the Human Rights Council noted that the implementation of the Declaration on the Rights of Indigenous Peoples is a central focus of the Human Rights Council.

D. Election of officers

11. Mr. Antti Korkeakivi, Chief of the Indigenous Peoples and Minorities Section of the Office of the High Commissioner for Human Rights, invited the members of the Expert Mechanism to nominate a Chairperson-Rapporteur and Vice-Chairperson-Rapporteur for its fifth session. Mr. Morales nominated International Chief Littlechild and Ms. Lasimbang as Chairperson-Rapporteur and Vice-Chairperson-Rapporteur respectively, who were then appointed by acclamation.

12. The new Chairperson-Rapporteur, International Chief Wilton Littlechild, thanked the other members of the Expert Mechanism for his election and also thanked the outgoing Chairperson of the Expert Mechanism, Mr. Vital Bambanze for his contribution. The Chairperson-Rapporteur welcomed the new member of the Expert Mechanism, Mr. Danfred Tims.

13. The Chairperson-Rapporteur highlighted the importance of developing concrete national strategies to implement the Declaration on the Rights of Indigenous Peoples, noting that one of the objectives of the Expert Mechanism is to more proactively engage with states and indigenous peoples at the national level to achieve that goal, and emphasized the need for full implementation of the Declaration. He noted the valuable contributions of the observers to the work of the Expert Mechanism.

14. The Special Rapporteur on the rights of indigenous peoples reflected on his work relating to extractive industries and noted that concerns about extractive industries were repeatedly raised in his engagement with indigenous peoples. He stressed the need to focus more attention on the protection of the primary substantive rights of indigenous peoples that may be implicated in natural resource extraction, such as the right to self-determination, and that he will elaborate further in his report to the 21st Session of the Human Rights Council.

15. Grand Chief Edward John, Chairperson of the Permanent Forum on Indigenous Issues, noted the coordination between the three United Nations mechanisms on indigenous peoples and emphasized the overarching goal of implementing the United Nations Declaration on the Rights of Indigenous Peoples. He discussed the importance of recognizing and protecting indigenous peoples' languages and cultures in the context of the implementation of the human rights of indigenous peoples and expressed particular concern relating to the continued violence against indigenous women.

E. Adoption of the agenda

16. The Expert Mechanism adopted the agenda and the programme of work of the fifth session.6

IV. The World Conference on Indigenous Peoples

17. Mr. John Henriksen, indigenous co-facilitator of the World Conference on Indigenous Peoples, provided an update on consultations related to the World Conference. He explained that there are two points of broad agreement including: the need for indigenous peoples' full and effective participation in the World Conference; and that the outcomes of the conference

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6 A/HRC/EMRIP/2012/1 and A/HRC/EMRIP/2012/Add.1
should be action-oriented, focusing on the realization of the implementation of the human rights of indigenous peoples.

18. The indigenous peoples' global coordinating group related to the World Conference noted that it has undertaken consultations with States to seek support and has worked closely with the indigenous co-facilitator Mr. John Henriksen. The Indigenous peoples' global coordinating group also provided recommendations to the Expert Mechanism concerning the modalities of the World Conference on Indigenous Peoples, including an independent and preliminary thematic hearing to facilitate the development of a concise action-oriented outcome document. It further recommended that documentation resulting from relevant preparatory processes be recognized as official documents at the World Conference on Indigenous Peoples.

19. Observers made recommendations concerning the duration, location, dates, procedures, agenda items and themes of the World Conference on Indigenous Peoples, frequently articulating the need for the full, effective and equal participation of indigenous peoples in the planning, follow-up and implementation of the outcomes of the World Conference. Various observers recommended that the World Conference take place over three days, voicing the importance of ensuring the availability of sufficient financial resources to enable the participation of indigenous peoples at all stages.

20. Grand Chief Edward John, Chairperson of the Permanent Forum on Indigenous Issues, outlined the recommendations of the Permanent Forum related to the World Conference contained in its 11th session report.7

21. Ms. Lasimbang and the Chairperson Rapporteur expressed concern that State representatives from Asia or Africa did not make statements concerning the agenda item.

22. Mr. Morales noted that 2014 would also mark the end of the Second International Decade of the World's Indigenous Peoples and Chairperson Rapporteur called for the establishment of a Third International Decade. In Mr. Morales' view, the World Conference should take place over three days.

23. Mr. Henriksen expressed his gratitude for observers' and experts' views and suggestions nothing that they would be considered in future consultations. He assured observers that he and his co-facilitator, Ambassador De Alba of the Permanent Mission of Mexico to the United Nations in New York, were open to further communications.

V. Follow-up to thematic studies and advice

24. Mr. Morales, in introducing the Expert Mechanism's follow-up report on indigenous peoples and the right to participate in decision making, with a focus on extractive industries, highlighted the duty of free, prior and informed consent and the permanent sovereignty of indigenous peoples over natural resources.


7 E/C.19/2012/13.
transnational corporations and other business enterprises, the Special Rapporteur on the rights of indigenous peoples, the Permanent Forum on Indigenous Issues and the Expert Mechanism to promote the effective implementation of the Declaration on the Rights of Indigenous Peoples in relation to the Guiding Principles on Business and Human Rights.

26. Observers noted that the follow-up report on indigenous peoples and the right to participate in decision making, with a focus on extractive industries provided an important opportunity for engagement on one of the most pressing issues facing indigenous peoples around the world. Observers also raised concerns that reliance on voluntary compliance by corporate interests fails to address the power imbalance that typically exists between indigenous peoples and the proponents of extractive development. Respect for indigenous peoples' right to free, prior and informed consent was emphasized as a key component in the development of improved relations between indigenous peoples, States and extractive industries, including the right of indigenous peoples to decide not to proceed with resource development if they so choose.

27. Some States noted that agreements between indigenous peoples and extractive companies had been reached in relation to extractive projects and described different measures, plans and programmes that exist to engage indigenous peoples in resource development.

28. Mr. Morales noted specific measures taken by States to engage with indigenous peoples regarding resource extraction processes and offered examples of difficulties experienced by indigenous peoples in Latin American countries in the context of resource development. He noted the opportunity for collaborative efforts between the Special Rapporteur on the rights of indigenous peoples, the Permanent Forum on Indigenous Issues and the Expert Mechanism to address concerns associated with the exploitation of natural resources.

29. Ms. Lasimbang noted her appreciation for interventions relating to free, prior and informed consent and expressed concern about the lack of mechanisms available to address conflicts between indigenous peoples and States or industries in relation to extractive projects. She further expressed concerns about the lack of extractive industry engagement in the United Nations bodies addressing indigenous issues and the practice of some States to leave consultation with indigenous peoples to industry rather than engaging in, and taking responsibility for, direct consultations. Ms. Lasimbang also expressed that the Expert Mechanism continues to be deeply concerned about the serious impacts that result from the lack of recognition of indigenous peoples' rights in relation to extractive industries, particularly mining.

30. Ms. Lasimbang referenced the Expert Mechanism's study on lessons learned and challenges to achieving the right of indigenous peoples to education and noted the ongoing need for sustained funding to develop culturally appropriate curricula and to support the realization of indigenous peoples' right to education.


32. Some observers also spoke to the Expert Mechanism's study on lessons learned and challenges to achieve the right of indigenous peoples to education (A/HRC/12/33), outlining challenges and good practices.
VI. Study on the role of languages and culture in the promotion and protection of the rights and identity of indigenous peoples

33. Former Member and Chairperson-Rapporteur of the Expert Mechanism, Mr. Bambanze, presented the final report of the Expert Mechanism on the study on the role of languages and culture in the promotion and protection of the rights and identity of indigenous peoples.

34. Mr. Bambanze noted that the right of indigenous peoples to languages and cultures is a facet of the right to self-determination and mentioned positive examples of the promotion and revitalisation of indigenous peoples' languages and cultures. He also reflected on indigenous peoples' negative experiences of assimilationist policies, which, in some cases, are continued to the present day. Mr. Bambanze encouraged active efforts to revitalise languages and cultural practices and to recognize that cultures are alive.

35. Observers consistently emphasized the importance of indigenous languages and cultures to the identities and well-being of indigenous nations and communities. Various observers noted the importance of indigenous peoples' control over the development of programmes, policies and laws designed to promote and protect indigenous peoples' languages and cultures and shared strategies for protecting and revitalizing indigenous peoples' languages and cultures.

36. Observers discussed concerns relating to the loss of indigenous peoples' cultures and languages, including, in some cases, their extinction, especially when threatened by dominant majority cultures and the negative impact of discriminatory laws. Observers shared challenges arising from the lack of recognition of indigenous peoples' languages in national laws and raised concerns relating to the continued repression of the use of indigenous peoples' languages by indigenous children in state custody. Observers emphasized the strong connection between indigenous peoples' rights to languages and cultures and their rights related to lands, territories and resources noting that indigenous peoples' cultures are indivisible from their relationship to their lands, territories and resources. One observer highlighted the relationship between culture and sovereignty noting that for his people, culture is sovereignty and sovereignty is culture, a perspective that joined agreement from other observers.

37. Ms. Lasimbang emphasized the need for recognition and acceptance of the positive value of indigenous languages and cultures and to ensure cultural flexibility in local governing structures. She also noted that programmes and measures to address the promotion and protection of indigenous languages and culture should not be implemented without adequate reflection and the participation of indigenous peoples themselves.

38. Mr. Bambanze discussed the role of indigenous peoples' languages and cultures in the preservation of indigenous identity and urged States to promote and protect indigenous language and cultures including by implementing the recommendations of the Expert Mechanism.

39. Mr. Morales expressed his appreciation for the open dialogue on the issue of culture and languages of indigenous peoples and echoed concerns expressed about the disappearance of languages and cultures. He offered his congratulations to those indigenous youth who have sought to learn their indigenous languages and urged States to work with indigenous peoples who are seeking to revitalise their languages and cultures.

40. The Chairperson-Rapporteur acknowledged the importance of the State contributions to the protection of the languages and cultures of indigenous peoples and thanked the observers for their valuable input.
VII. Declaration on the Rights of Indigenous Peoples

41. Prior to opening discussion on the Declaration on the Rights of Indigenous Peoples, the Chairperson-Rapporteur invited Mr. Shankar Limbu, Board Member of the Board of Trustees of the United Nations Voluntary Fund for Indigenous Populations, to address the participants of the session.

42. Mr. Limbu welcomed the 16 beneficiaries of the Voluntary Fund for Indigenous Populations and noted the significant impact of past beneficiaries of the Fund. He also acknowledged recommendations received from observers to the fifth session of the Expert Mechanism to expand the scope of the Voluntary Fund for Indigenous Populations to support indigenous participation in the World Conference on Indigenous Peoples. Mr. Limbu noted that sufficient funding would have to accompany any such expansion to the mandate of the Fund.

43. Mr. Limbu expressed gratitude to the contributors to the Fund. However, he expressed concern that there had been a significant decrease in contributions to the Fund and stressed the importance of ensuring the participation of those directly affected by the work of the United Nations Mechanisms.

44. The Chairperson-Rapporteur noted that the General Assembly had adopted the United Nations Declaration on the Rights of Indigenous Peoples on 13 September 2007. He further noted that the Human Rights Council had requested the Expert Mechanism to prepare a questionnaire to seek the views of States on best practices regarding possible appropriate measures and implementation strategies in order to attain the goals of the United Nations Declaration on the Rights of Indigenous Peoples in Human Rights Council resolution 18/8.

45. Ms. Lasimbang welcomed the responses received from States to the questionnaire but expressed regret that only 14 responses had been received. She reviewed the submissions received from States and shared many specific examples of laws and programmes cited by States as examples of implementation of the Declaration. Ms. Lasimbang also noted that according to the results of the questionnaire no state has yet passed explicit laws requiring the Declaration to be considered when devising new laws, policies or other measures relating to indigenous peoples and stressed that lack of awareness of the Declaration remains one of the biggest challenges to implementing the rights of indigenous peoples.

46. Ms. Lasimbang explained that some of the best practices identified were partnerships between states and indigenous peoples, which facilitated the participation of indigenous peoples in decision making, and noted that the responses to the questionnaire had provided important insights. She further noted that, in view of the small number of States that had responded, the Expert Mechanism would make a proposal to the Human Rights Council to extend the timeframe for responses.

47. Observers underlined the importance of the Declaration noting that it was a cornerstone for the promotion and protection of indigenous peoples' rights and offered their support for the work of the Expert Mechanism in its promotion of the effective implementation of the Declaration. Many observers raised urgent concerns relating to the human rights of indigenous peoples. Observers also noted that a wide gap continues to exist between the promises of the Declaration and its application on the ground noting specifically the lack of access to justice and failure to ensure protection of indigenous peoples' rights to their lands, territories and resources.

48. Observers emphasized that they continue to face challenges in exercising the right to self-determination and noted the need for States to be willing to share power with indigenous peoples as a precondition to the effective implementation of the Declaration. Many observers called for dialogue between States and indigenous peoples to identify and address the barriers to the full implementation of the Declaration.
49. State observers described the Declaration as an important symbolic and practical step in addressing the historical injustices faced by indigenous peoples around the world. State observers shared many examples of the programmes and laws developed to implement the Declaration and highlighted efforts to enhance access to the Declaration through its translation into indigenous languages. Various State observers identified consultation and participation as areas of focus in their efforts to implement the Declaration.

50. Observers noted that the Declaration is an essential tool in the protection and promotion of indigenous peoples' rights and stressed that implementation of the Declaration remains a challenge and may require new laws. Observers also recommended that follow-up to implementation of the Declaration should be in coordination with the United Nations system.

51. Numerous observers and experts raised concerns about the militarization of indigenous peoples' lands, territories and resources. Observers and experts recommended that States abandon any policies which deny indigenous peoples' rights to lands, territories and resources or unjustly place the burden of proof on indigenous peoples to establish territorial rights based on original occupation. Observers raised concerns about the delay and high cost of seeking legal remedies to secure recognition and protection of indigenous peoples' human rights.

52. Observers raised concerns about national laws impairing the operation of indigenous judicial systems through the imposition of conditions foreign to indigenous peoples. Some observers expressed regret that some States continued to deny the presence of indigenous peoples within their borders. Observers shared concerns about the impact of discriminatory education laws and lack of funding for the protection of indigenous peoples' languages and cultures.

53. One observer expressed concern about the processes in place to designate World Heritage sites and, in particular, the lack of consultation with indigenous peoples living near or by such sites.

54. Permanent Forum on Indigenous Issues member, Mr. Saul Vicente Vazquez, noted that a great deal of work remained to be done to realize the objectives of the Declaration and cited many examples of continued violations of the human rights of indigenous peoples. He highlighted concerns about violations relating to the impact of extractive industries, including the criminalization of protest activities and the assassination of indigenous peoples' leaders.

55. Mr. Morales emphasized the need for improved relations between indigenous peoples and States through the effective implementation of the Declaration. Mr. Morales encouraged engagement from United Nations bodies in the Expert Mechanism. He also stressed the importance of the role of indigenous peoples' media in the promotion of the Declaration on the Rights of Indigenous Peoples. He welcomed the initiative to hold a conference for indigenous peoples' media to be held in Oaxaca in 2013 and to be associated with the preparations for the World Conference on Indigenous Peoples.

56. Ms. Lasimbang expressed her pleasure with the interactive dialogue. She noted that many indigenous peoples had shared examples of their efforts to implement the Declaration and made reference to submissions concerning the militarization of indigenous lands and territories. She also highlighted the submissions received related to free, prior and informed consent and calls for States to conduct reviews of national legislation and constitutional provisions to ensure conformity with the Declaration. Ms. Lasimbang also noted that indigenous peoples' access to justice should be taken seriously as it relates not only to their livelihoods, personal security and liberty, but also the recognition of indigenous peoples' customary legal systems. Denial of such access would have severe consequences. She also expressed concern that the drafting of the ASEAN Human Rights Declaration has been conducted without adequate consultations with
indigenous peoples. Ms. Lasimbang referred to the observers’ comments made in relation to the designation of World Heritage sites without the free, prior and informed consent of indigenous peoples living on or near such sites.

VIII. Interactive dialogue with the United Nations mandated mechanisms on indigenous peoples

57. Ms. Lasimbang, in her opening as the chair of the interactive dialogue, said it was the first time the Expert Mechanism was holding such a dialogue, and she hoped it would prove useful not only to States, indigenous peoples and other observers and to the panel consisting of the three mandates dealing with indigenous peoples’ rights.

58. International Chief Littlechild discussed the implementation of the Declaration on the Rights of Indigenous Peoples at the international and national levels. He explained that the Declaration is the framework for the work of the Expert Mechanism, including its reports and studies. He noted that the foundation of each of the studies and reports of the Expert Mechanism is the right to self-determination. He also outlined an initiative of numerous international agencies, a Handbook for Parliamentarians, entitled The UN Declaration on the Rights of Indigenous peoples: Understanding and implementing it in the work of Parliaments: A Handbook. He also outlined national steps towards implementation that can be considered by states and indigenous peoples, such as indigenous peoples adopting the Declaration as part of their governance and their Constitutions and national governments adopting Implementation Acts on the United Nations Declaration.

58. The Special Rapporteur described the Declaration as a testament to the sacrifices and tireless efforts of indigenous peoples. He noted that States and the international community must do more to move the standards articulated in the Declaration from an aspiration to a reality and stressed that all international standard-setting processes that affect indigenous peoples should conform fully to the standards of the Declaration.

59. Grand Chief Edward John noted the cooperative efforts of the three mechanisms to work towards the implementation of the Declaration and he encouraged those states which have not yet endorsed the Declaration to take positive and constructive steps to do so. He stressed that the right to self-determination is a fundamental baseline right which is indispensable to the survival, dignity and well-being of indigenous peoples.

60. Observers raised questions relating to good practices in relation to indigenous peoples’ rights to their lands, territories and resources and strategies for securing responses to the questionnaire seeking the views of States on best practices regarding possible appropriate measures and implementation strategies in order to attain the goals of the Declaration on the Rights of Indigenous Peoples. Processes for implementing the Declaration within indigenous peoples’ communities and within the Universal Periodic Review were also raised.

61. International Chief Littlechild noted that responses to the questionnaire continue to be received and explained that the Expert Mechanism was considering both the issue of the low number of responses and the expansion of the questionnaire to address implementation of the Declaration by indigenous peoples. He also noted examples of good practices by indigenous peoples to implement the Declaration including the endorsement of the Declaration by indigenous peoples at community, regional and national levels. He suggested that those States which are home to indigenous peoples should be asked about the implementation during the Universal Periodic Review.

62. The Special Rapporteur noted legal and constitutional recognition of indigenous peoples’ rights to lands, territories and resources as good practices. He also highlighted
conflicts between resource extraction laws and those laws which recognize indigenous peoples’ rights as a point of concern and noted that more attention needs to be paid to the Declaration in the Universal Periodic Review process.

63. Grand Chief Edward John cited strategic plans developed by indigenous peoples as an effective means of supporting indigenous peoples’ efforts to secure the recognition and protection of their rights relating to lands, territories and resources.

64. Observers raised concerns about the militarization of indigenous peoples’ lands, territories and resources. Questions were also posed concerning urban indigenous peoples, practical steps that may be taken by States to implement the Declaration, the advice that might be offered to those indigenous peoples living in States where the State asserts that they are in conformity with the Declaration despite failing to implement the Declaration and whether the mechanisms would be able to aid in the development of educational tools to assist in raising the awareness and knowledge of indigenous peoples about the Declaration.

65. The Special Rapporteur emphasised that dialogue between indigenous peoples and States should be the basis for the implementation of the Declaration and noted that the Declaration came into existence to address the failure of existing legal arrangements to secure the full enjoyment of human rights by indigenous peoples.

66. International Chief Littlechild noted the global focus of the Declaration and emphasized that the Declaration includes significant areas of agreement which may guide implementation. He noted that work is being done to develop plain language versions of the Declaration and that the translation of the Declaration into indigenous languages serves as an effective tool for enhancing its understanding. International Chief Littlechild asked those States that have asserted that they have met the standards of the Declaration offer research-based evidence. This evidence can serve as the basis for further dialogue.

67. Grand Chief John requested continued focus on the development of knowledge and understanding of the Declaration and encouraged academic centres to incorporate the Declaration into their curricula. He discussed concerns that the taking of indigenous peoples’ lands, territories and resources has forced indigenous peoples into judicial forums that are not cognisant of international laws, norms and standards applicable to indigenous peoples and he criticized the continued application of the doctrine of discovery.

68. Observers inquired as to what steps might be taken to resolve issues relating to the violation of indigenous peoples’ rights when domestic and diplomatic avenues have been exhausted and whether a new mechanism could be recommended by the Expert Mechanism, outside the context of the Universal Periodic Review, to enhance monitoring and evaluation of the implementation of indigenous peoples’ human rights. Observers also asked what steps might be taken to convince States to implement an instrument which many States consider to be aspirational and whether it is necessary to move beyond the State context to the development of international mechanisms focussed on effective implementation of indigenous peoples’ human rights. The value and approach of collaboration between the three mandates as demonstrated through the recent work on extractive industries was also raised for discussion.

69. International Chief Littlechild explained there are provisions within the Declaration which support the development of a mechanism to monitor the Declaration.

70. The Special Rapporteur expressed that cooperation between the three mechanisms on the issue of extractive industries is essential and noted that bi-annual coordination meetings are held between the three mechanisms in this regard. He also emphasized the value of moving beyond discussions concerning the legal status of the Declaration, to use by states as an authoritative statement to take decisive action to ensure that indigenous peoples benefit from the full protection of the standards established in the Declaration. He emphasised that the
Declaration does not create new rights rather it takes basic human rights laws and principles and contextualizes those rights as they apply to indigenous peoples.

71. Grand Chief John noted that Article 38 of the Declaration provides an impetus for dialogue to achieve the full and effective implementation of the Declaration. He described the Declaration as a substantive compilation of the human rights of indigenous peoples noting that human rights cannot be aspirational. He stressed that the quality of life of indigenous peoples remains a foremost concern.

72. State observers described the interactive panel as a valuable opportunity for States to learn more about the Declaration and emphasized the importance of dialogue. State observers also offered their support to extending the time period for the (questionnaire) and asked that those States which have provided responses be offered the opportunity to provide updates.

73. In closing, International Chief Littlechild noted that the interactive dialogue was a historic event. The Special Rapporteur explained that he uses the Declaration as his primary point of reference for his work. He noted that he has not encountered a single State which contests the application of the Declaration in his work and noted that in practice the Declaration stands as a common point of reference for addressing the challenges faced by indigenous peoples. Grand Chief John expressed his pleasure with the format of the interactive dialogue and noted the value of collaborative efforts to address the challenges faced by indigenous peoples.

X Proposals to be submitted to the Human Rights Council

74. The Chairperson-Rapporteur invited observers to share their recommendations regarding the Expert Mechanism’s proposals to the Human Rights Council.

75. Observers recommended the Expert Mechanism conduct studies on: access to justice; the militarization of indigenous peoples; indigenous peoples' tribal governance; the right to self-determination; climate change; best practices on women and economic development; and a follow-up study on indigenous peoples' permanent sovereignty over land and natural resources.


XI. Adoption of the reports, studies and proposals

77. At its last meeting, the Expert Mechanism adopted its follow-up report on indigenous peoples and the right to participate in decision making, with a focus on extractive industries; its study on the role of languages and culture in the promotion and protection of the rights and identity of indigenous peoples; and its report on the questionnaire to seek the views of States on best practices regarding possible appropriate measures and implementation strategies in order to attain the goals of the United Nations Declaration on the Rights of Indigenous Peoples. All proposals were adopted by consensus by the members of the Expert Mechanism.

78. The members of the Expert Mechanism also adopted a provisional agenda for the sixth session of the Expert Mechanism (see annex II).
Annex I

List of participants

States Members of the United Nations represented by observers
Algeria, Argentina, Australia, Bolivia, Brazil, Canada, Chile, China, Colombia, Costa Rica, Cuba, Denmark, Ecuador, Egypt, Finland, France, Germany, Greece, Guyana, Hungary, Honduras, India, Indonesia, Italy, Japan, Malaysia, Mexico, Morocco, Myanmar, Namibia, New Zealand, Nicaragua, Niger, Paraguay, Peru, Russian Federation, Saudi Arabia, Spain, Sri Lanka, South Africa, Thailand, Turkey, Uruguay, USA, Venezuela

Non-member States represented by an observer
Holy See

United Nations mandates, mechanisms, bodies and specialized agencies, funds and programmes represented by observers
Special Rapporteur on the rights of indigenous peoples
United Nations Permanent Forum on Indigenous Issues
United Nations Development Programme

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

National human rights institutions represented by observers
Australian Human Rights Commission
New Zealand Human Rights Commission
Navajos Nation Human Rights Commission, USA

Academic and experts on indigenous issues represented by observers of the following institutions
Hawaii Institute for Human Rights, Leuphana University Lüneburg, Structural Analysis of Cultural Systems-Berlin, Université Institut des Droits de l’Homme-Lyon France, University of Essex-UK, Seylana University Lüneburg,

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

Provisional agenda of the sixth session

1. Election of officers
2. Adoption of the agenda and organization of work
3. World Conference on Indigenous Peoples
4. Follow-up on thematic studies and advice
5. Thematic study and advice in accordance with the forthcoming resolution of the Human Rights Council
6. United Nations Declaration on the Rights of Indigenous Peoples
7. Proposals to be submitted to the Human Rights Council for its consideration and approval
8. Adoption of the report