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## Report of the Expert Mechanism on the Rights of Indigenous Peoples on its fifth session (Geneva, 9-13 July 2012)

*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 on 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 among 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 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.

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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, 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 (A/HRC/EMRIP/2012/2); its study on the role of languages and culture in the promotion and protection of the rights and identity of indigenous peoples (A/HRC/EMRIP/2012/3 and Corr.1); 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 (A/HRC/EMRIP/2012/4); 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 paragraphs 7 and 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 (A/HRC/EMRIP/2012/2);

(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 fifth session and to submit the report to the Human Rights Council at its twenty-first 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 twenty-first session;

(b) Adopts the study on the role of languages and culture in the promotion and protection of the rights and identity of indigenous peoples (A/HRC/EMRIP/2012/3 and Corr.1);

(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 fifth session and to submit the study to the Human Rights Council at its twenty-first session.

**C. Adoption of 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**

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 (A/HRC/EMRIP/2012/4);

(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 fifth session and to submit the report to the Human Rights Council at its twenty-first session.

**D. Proposals**

**Proposal 1: Indigenous peoples and access to justice**

The Expert Mechanism on the Rights of Indigenous Peoples:

(a) Refers to paragraph 1 (b) of Human Rights Council resolution 6/36;

(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. Overrepresentation of indigenous peoples in incarceration is a global concern. Good practices, particularly those associated with traditional justice systems, would be examined.

**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:

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 Human Rights Council at its twenty-fourth session and to encourage those States that 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 resolution 65/198 of the General Assembly, 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 eleventh session relating to the World Conference on Indigenous Peoples<sup>1</sup> and encourage the development of an action-oriented outcome document at the World Conference;

(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 the 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 realization 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 the Expert Mechanism's proposal 7 from its fourth session (A/HRC/18/43, p. 6) and proposal 8 from its third session (A/HRC/15/36, para. 11);

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

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<sup>1</sup> See *Official Records of the Economic and Social Council, 2012, Supplement No. 23 (E/2012/43-E/C.19/2012/13)*.

(c) Refers to the Permanent Forum on Indigenous Issues report on its tenth session, in which the Permanent Forum welcomes 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 United Nations 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**

The Expert Mechanism on the Rights of Indigenous Peoples:

Proposes that the Human Rights Council call on specialized bodies and institutions, established by States to focus on indigenous peoples, to actively engage with the Expert Mechanism.

**Proposal 7: International Day of the World's Indigenous People**

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;

(b) Also 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 United Nations Declaration on the Rights of Indigenous Peoples;

(c) Refers to proposal 2 (c) from its report of its fourth session (A/HRC/18/43, p. 4) 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 fortieth anniversary of the Convention Concerning the Protection of the World Cultural and Natural Heritage 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. annex);

(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 that 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), in which the Committee encourages States to involve indigenous peoples 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**

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

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

5. The Special Rapporteur on the rights of indigenous peoples, 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, Shankar Limbu, also participated in the session.

6. In addition, Permanent Forum on Indigenous Issues members Paul Kanyinke Sena, Saul Vicente Vazquez and Valmaine Toki attended. The Vice-Chairperson of the Committee on the Elimination of Racial Discrimination, 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 (OHCHR), and the follow-up report on indigenous peoples and the right to participate in decision-making, with a focus on extractive industries (A/HRC/EMRIP/2012/2); the study on the role of languages and culture in the promotion and protection of the rights and identity of indigenous peoples (A/HRC/EMRIP/2012/3 and Corr.1); 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 (A/HRC/EMRIP/2012/4).

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

8. Antti Korkeakivi, Chief of the Indigenous Peoples and Minorities Section, OHCHR, opened the fifth session of the Expert Mechanism and introduced the Director of the Research and Right to Development Division, OHCHR, 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 United Nations 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 OHCHR assisted 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, noted that the sessions of the Expert Mechanism provided a space for dialogue between indigenous peoples and States. She emphasized the importance of the participation of indigenous peoples in the Human Rights Council and noted that the Council had requested a detailed document from the Secretary-General examining the methods of promoting the participation of indigenous peoples at the United Nations, which will be presented at its twenty-first session. She also noted that the implementation of the United Nations Declaration on the Rights of Indigenous Peoples was a central focus of the Council.

## **D. Election of officers**

11. The Chief of the Indigenous Peoples and Minorities Section of OHCHR invited the members of the Expert Mechanism to nominate a Chairperson-Rapporteur and Vice-Chairperson-Rapporteur for its fifth session. Mr. Morales 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 thanked the other members of the Expert Mechanism for his election and also thanked the outgoing Chairperson of the Expert Mechanism, Vital Bambanze, for his contribution. The Chairperson-Rapporteur welcomed the new member of the Expert Mechanism, Mr. Titus.

13. The Chairperson-Rapporteur highlighted the importance of developing concrete national strategies to implement the United Nations Declaration on the Rights of Indigenous Peoples, noting that one of the objectives of the Expert Mechanism was 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 stated that he would elaborate further in his report to the Human Rights Council at its twenty-first session.

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<sup>2</sup> and the programme of work of the fifth session.

### **IV. The World Conference on Indigenous Peoples**

17. John Henriksen, indigenous co-facilitator of the World Conference on Indigenous Peoples, provided an update on consultations relating to the World Conference. He explained that there were 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 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 on Indigenous Peoples noted that it had undertaken consultations with States to seek support and had worked closely with the indigenous co-facilitator, Mr. Henriksen. The group also provided the Expert Mechanism with recommendations concerning the modalities of the World Conference, 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.

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.

<sup>2</sup> A/HRC/EMRIP/2012/1 and A/HRC/EMRIP/2012/1/Add.1.

20. Grand Chief John, Chairperson of the Permanent Forum on Indigenous Issues, outlined the recommendations of the Permanent Forum relating to the World Conference contained in the report on its eleventh session.<sup>3</sup>

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 Morales noted that 2014 would also mark the end of the Second International Decade of the World's Indigenous People, and the 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, noting that they would be considered in future consultations. He assured observers that he and his co-facilitator, Ambassador Luis Alfonso 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 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 to ensure free, prior and informed consent and the permanent sovereignty of indigenous peoples over natural resources.

25. The Chairperson-Rapporteur provided a brief summary of the conference room paper prepared by the Expert Mechanism entitled, "Comment on the Human Rights Council's Guiding Principles on Business and Human Rights as related to indigenous peoples and the right to participate in decision-making with a focus on extractive Industries" (A/HRC/EMRIP/2012/CRP.1). The Chairperson-Rapporteur noted the importance of ongoing and future collaboration between the Working Group on the issue of human rights and 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 United Nations 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 failed to address the power imbalance that typically existed 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 among 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

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<sup>3</sup> See *Official Records of the Economic and Social Council, 2012, Supplement No. 23 (E/2012/43-E/C.19/2012/13)*.

measures, plans and programmes that existed to engage indigenous peoples in resource development.

28. Mr. Morales 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 among 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 expressed her appreciation for interventions relating to free, prior and informed consent, as well as her 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 concern about the lack of extractive industry engagement in the United Nations bodies addressing indigenous peoples' issues and the practice of some States of leaving consultation with indigenous peoples to industry rather than engaging in, and taking responsibility for, direct consultations. Ms. Lasimbang also stated that the Expert Mechanism continued to be deeply concerned about the serious impacts that resulted from the lack of recognition of indigenous peoples' rights in relation to extractive industries, particularly mining.

30. Ms. Lasimbang made reference to the Expert Mechanism's study on lessons learned and challenges to achieving the right of indigenous peoples to education (A/HRC/12/33) and noted the ongoing need for sustained funding to develop culturally appropriate curricula and to support the realization of indigenous peoples' right to education.

31. Regarding the Expert Mechanism's study on lessons learned and challenges to achieve the right of indigenous peoples to education, the Chairperson-Rapporteur made reference to a report entitled: *Nurturing the Learning Spirit of First Nation Students: The Report of the National Panel on First Nation Elementary and Secondary Education for Students on Reserve*, an outcome of collaboration between the Government of Canada and the Assembly of First Nations. He submitted the full report for the Expert Mechanism's consideration.

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, 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 (A/HRC/EMRIP/2012/3 and Corr.1).

34. Mr. Bambanze noted that the right of indigenous peoples to languages and cultures was a facet of the right to self-determination and mentioned positive examples of the promotion and revitalization of indigenous peoples' languages and cultures. He also reflected on indigenous peoples' negative experiences of assimilationist policies, which, in some cases, were carried over to the present day. Mr. Bambanze encouraged active efforts to revitalize languages and cultural practices and to recognize that cultures were 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 relating to lands, territories and resources, noting that indigenous peoples' cultures and languages were 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 was sovereignty and sovereignty was culture, a perspective that was met with agreement from other observers.

37. Ms. Lasimbang emphasized the need for recognition and acceptance of the positive value of indigenous languages and cultures to ensure cultural flexibility in local governing structures, and to provide means to communities for protecting languages and cultures. 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. Ms. Lasimbang also expressed concern about existing patriarchal systems that discriminated against women, thus hampering their roles in transmitting linguistic and cultural values and norms.

38. Mr. Morales Morales expressed his appreciation for the open dialogue on the issue of cultures 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 had sought to learn their indigenous languages, and urged States to work with indigenous peoples who were seeking to revitalize their languages and cultures.

39. 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 languages and cultures, including by implementing the recommendations of the Expert Mechanism.

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. United Nations Declaration on the Rights of Indigenous Peoples**

41. Prior to opening discussion on the United Nations Declaration on the Rights of Indigenous Peoples, the Chairperson-Rapporteur invited Shankar Limbu, a 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 United Nations 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 Fund to support indigenous peoples' 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 Voluntary Fund for Indigenous Populations. 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 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 had 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 remained 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 submit a proposal to the Human Rights Council to extend the time frame 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 continued to exist between the promises of the Declaration and its application on the ground, noting specifically the lack of access to justice and the failure to ensure protection of indigenous peoples' rights to their lands, territories and resources.

48. Observers emphasized that indigenous peoples continued 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 peoples' 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 was an essential tool in the protection and promotion of indigenous peoples' rights, and stressed that implementation of the Declaration remained a challenge and may require new laws. Observers also recommended that follow-up to implementation of the Declaration should be carried out 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 that denied indigenous peoples' rights to lands, territories and resources or unjustly placed 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 that impaired the operation of indigenous peoples' 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 on or near such sites.

54. Saul Vicente Vazquez, a member of the Permanent Forum on Indigenous Issues, 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. He also mentioned the Permanent Forum's recommendation at its eleventh session that he prepare a consolidated report on extractive industries and their impact on indigenous peoples in coordination with the Expert Mechanism, the Special Rapporteur on the rights of indigenous peoples and the Permanent Forum on Indigenous Issues.

55. Mr. Morales Morales emphasized the need for improved relations between indigenous peoples and States through the effective implementation of the Declaration. He 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. Mr. Morales welcomed the initiative to hold a conference for indigenous peoples' media in Oaxaca in 2013, to be associated with the preparations for the World Conference on Indigenous Peoples.

56. Ms. Lasimbang expressed her appreciation for 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 peoples' lands and territories. She also highlighted the submissions received relating 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 related not only to their livelihoods, personal security and liberty, but also to the recognition of indigenous peoples' customary legal systems. Denial of such access has severe consequences. She also expressed concern that the drafting of the Association of Southeast Asian Nations Human Rights Declaration had 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 mechanisms on indigenous peoples**

57. Ms. Lasimbang, in her opening statement as the Chair of the interactive dialogue, said it was the first time the Expert Mechanism was holding such a dialogue, and she expressed hope that it would prove useful not only to States, indigenous peoples and other observers but also to the panel consisting of the three mandates dealing with indigenous peoples' rights.

58. International Chief Littlechild discussed the implementation of the United Nations Declaration on the Rights of Indigenous Peoples at the international and national levels. He explained that the Declaration was 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 was the right to self-determination. He also described an initiative of numerous international agencies, namely, a handbook for parliamentarians on implementing the Declaration into the work of Parliaments. He outlined national steps towards implementation that could be considered by States and indigenous peoples, such as the adoption of the Declaration by indigenous peoples as part of their governance and their constitutions and the adoption by States of implementation acts on the Declaration.

59. The Special Rapporteur on the rights of indigenous peoples 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 transform the standards articulated in the Declaration from an aspiration to a reality and stated that all international standard-setting processes that affected indigenous peoples should conform fully to the standards of the Declaration.

60. Grand Chief John noted the cooperative efforts of the three mechanisms to work towards the implementation of the Declaration, and encouraged those States which had 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.

61. Observers raised questions regarding good practices in relation to indigenous peoples' rights to their lands, territories and resources, as well as on 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 United Nations 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.

62. International Chief Littlechild noted that responses to the questionnaire continued 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 the implementation of the Declaration by indigenous peoples. He also noted examples of good practices by indigenous peoples to implement the Declaration, including its endorsement by indigenous peoples at the community, regional and national levels. He suggested that those States which were home to indigenous peoples should be asked about the implementation during the universal periodic review.

63. The Special Rapporteur noted legal and constitutional recognition of indigenous peoples' rights to lands, territories and resources as good practices. He also highlighted as a

point of concern conflicts between resource extraction laws and those laws which recognized indigenous peoples' rights, and noted that more attention needed to be paid to the Declaration in the universal periodic review process.

64. Grand Chief 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.

65. 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 asserted that they were 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.

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

67. International Chief Littlechild noted the global focus of the Declaration and emphasized that the text included significant areas of agreement which may guide implementation. He noted that work was being done to develop plain language versions of the Declaration and that the translation of the Declaration into indigenous languages served as an effective tool for enhancing its understanding. International Chief Littlechild asked those States that had asserted that they had met the standards of the Declaration to offer research-based evidence of that achievement. The evidence could serve as the basis for further dialogue.

68. 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 had forced indigenous peoples into judicial forums that were not cognizant of international laws, norms and standards applicable to indigenous peoples, and he was critical of continued references to and application of the doctrine of discovery.

69. 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 had 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 considered to be aspirational and whether it was necessary to move beyond the State context to the development of international mechanisms focused on the 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.

70. International Chief Littlechild explained that there were provisions within the Declaration which supported the development of a mechanism to monitor it.

71. The Special Rapporteur stated that cooperation between the three mechanisms on the issue of extractive industries was essential and noted that biannual coordination meetings were 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 its 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 emphasized that the Declaration did not create new rights, rather, it took basic human rights laws and principles and contextualized those rights as they applied to indigenous peoples.

72. Grand Chief John noted that article 38 of the Declaration provided 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 could not be aspirational. He stressed that the quality of life of indigenous peoples remained a foremost concern.

73. Many State observers indicated that the interactive panel was a valuable opportunity for States to learn more about the Declaration and emphasized the importance of dialogue. State observers also offered their support for extending the time period for the questionnaire and asked that those States which had provided responses be offered the opportunity to provide updates.

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

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

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

76. Observers recommended that the Expert Mechanism conduct studies on, inter alia: 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, as a follow-up, on indigenous peoples' permanent sovereignty over land and natural resources.

77. Observers also recommended further interactive dialogues, further involvement of the Expert Mechanism in the preparatory process for the World Conference on Indigenous Peoples and engagement of the Expert Mechanism with the Working Group on the issue of human rights and transnational corporations and other business enterprises.

## **X. Adoption of the reports, studies and proposals**

78. At the last meeting of its fifth session, 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 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. All proposals set out in the fifth session report were adopted by consensus by the members of the Expert Mechanism.

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

## Annexes

### Annex I

*[English only]*

#### **List of participants**

##### **States Members of the United Nations represented by observers**

Algeria, Argentina, Australia, Austria, Bangladesh, Bolivia (Plurinational State of), Brazil, Canada, Chile, China, Colombia, Costa Rica, Cuba, Denmark, Ecuador, Egypt, Finland, France, Germany, Greece, Guatemala, Guyana, Honduras, Hungary, India, Indonesia, Italy, Japan, Malaysia, Mexico, Morocco, Myanmar, Namibia, New Zealand, Nicaragua, Niger, Norway, Paraguay, Peru, Russian Federation, Saudi Arabia, South Africa, Spain, Sri Lanka, Thailand, Turkey, United States of America, Uruguay, Venezuela (Bolivian Republic of), Viet Nam

##### **Non-member State 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, United Nations Voluntary Fund for Indigenous Populations, International Labour Organization

##### **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, Comisión Nacional para el Desarrollo de los Pueblos Indígenas, New Zealand Human Rights Commission, Navajo Nation Human Rights Commission (United States of America)

##### **Academic and experts on indigenous issues represented by observers of the following institutions**

Hawaii Institute for Human Rights, Leuphana University of Lüneburg, Structural Analysis of Cultural Systems – Technical University of Berlin, Institut des Droits de l'Homme –

Lyon, University of Essex, University of Manitoba – Faculty of Law, National Centre for Indigenous Studies – Australian National University

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

Amnesty International, Aotearoa Indigenous Rights Trust, Asia Indigenous Peoples Pact, Agencia Internacional de Prensa Indígena, AKIN, American Indian Law Alliance, Aktionsgruppe Indianer und Menschenrechte, Association Social Culturalle ATH.Koudhia Berbere-Algeria, Bangladesh Indigenous Peoples Forum, Bangsa Adat Alifuru (Maluku), Cameroon Indigenous Women's Forum, Communauté des Potiers du Rwanda, Congrès Mondial Amazigh, doCIP (Indigenous Peoples' Center for Documentation, Research and Information), Ethnic Community Development Organization, Grupo de Trabajo Intercultural Almaciga, Guan Badhun Limited, Ideal International (Initiative d'Entreaide aux Libertés), International Work Group for Indigenous Affairs, Inuit Circumpolar Council – Greenland, Incomindios Switzerland, Indigenous World Association, International Indian Treaty Council, Indigenous Network on Economics and Trade, Institute for Ecology and Action Anthropology, Jaringan Orang Asal SeMalaysia, Kapaeeng Foundation, Koani Foundation, Kontinonhstats-Mohawk Language Custodians Association, Naga Peoples Movement for Human Rights, National Indian Youth Council, Native Women's Association of Canada, National Native Title Council, Organization Solidarité Peuples Amérindiens (SOPAM), Parbatya Chattagram Jana Samhati Samiti, PEROU (Amazonie) France, Association of Indigenous Peoples of the North, Siberia and Far East of the Russian Federation (RAIPON), Red Nacional de Organizaciones de Jóvenes Mayas (RENO'J), Rehoboth Community of Namibia, Taotaomona Native Rights, Chamoru Nation of Guahan, Réseau Amazigh pour la citoyenneté, Ti Tlanizke, Tradition pour Demain–Switzerland, New South Wales Aboriginal Land Council, Sami Parliament of Norway, Universal Esperanto Association–Lausanne, West Papua Interest Association, World Barua Organization

## **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
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