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Expert Mechanism on the Rights of Indigenous Peoples
Human Rights Bodies and Mechanisms

Report of the Expert Mechanism on the Rights of Indigenous Peoples on its Third Session

Geneva, 12 – 16 July 2010

Chairperson-Rapporteur: José Carlos Morales Morales

Preliminary Draft*Summary*

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

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

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

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I. INTRODUCTION

1. In its resolution 6/36 of 14 December 2007, the Human Rights Council decided to establish the Expert Mechanism on the Rights of Indigenous Peoples as a subsidiary expert mechanism to assist the Council in the implementation of its mandate, by providing it with thematic expertise on the rights of indigenous peoples in the manner and form requested by the Council. The thematic expertise was to focus mainly on studies and research-based advice, and the mechanism could make proposals to the Council for its consideration and approval, within the scope of its work as set out by the Council.

II. ADOPTION OF THE PROGRESS REPORT ON THE STUDY ON INDIGENOUS PEOPLES AND THE RIGHT TO PARTICIPATE IN DECISION-MAKING AND OF PROPOSALS

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

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

The Expert Mechanisms on the Rights of Indigenous Peoples:

1. Refers to paragraph 6 of Human Rights Council resolution 12/13 in which the Council requested the Expert Mechanism, in accordance with its mandate, to carry out a study on indigenous peoples and the right to participate in decision-making, and to present a progress report to the Council at its fifteenth session, and a final study to the eighteenth session;
2. Adopts the progress report on the study on indigenous peoples and the right to participate in decision-making, as contained in document A/HRC/EMRIP/2010/2;
3. Authorizes the Chairperson-Rapporteur, in consultation with the other members of the Expert Mechanism, to make the necessary revisions in the progress report in the light of discussions carried out at its third session, and to submit the final progress report to the fifteenth session of the Human Rights Council.

B. Proposals to the Human Rights Council

Proposal 1. Human Rights Institutions and Mechanisms

The Expert Mechanisms on the Rights of Indigenous Peoples:

1. Refers to proposal 2 from its second session pertaining to human rights institutions and mechanisms, as contained in the report of the Expert Mechanism on its second session (A/HRC/12/32).
2. Reiterates the important role of national human rights institutions and regional human rights mechanisms in protecting and promoting the rights of indigenous peoples and in implementing the United Nations Declaration on the Rights of Indigenous Peoples;
3. Proposes that the Human Rights Council encourage States to ensure that they have strong national human rights institutions established according to the Paris Principles, that can effectively promote and protect the rights of indigenous peoples;
4. Encourage national human rights institutions to take into consideration the results of the International meeting on the role of national human rights institutions organised by OHCHR in Bangkok from 16 – 17 December 2009, in order to strengthen their activities to promote and protect the rights of indigenous peoples, including as regards monitoring of compliance with standards contained in international treaties and the United Nations

Declaration on the Rights of Indigenous Peoples; contributing to the thematic studies of the Expert Mechanism on the Rights of Indigenous Peoples; and conducting training relevant to various stakeholders.

Proposal 2: Consideration of Indigenous Peoples' Rights in the Human Rights Council

The Expert Mechanism on the Rights of Indigenous Peoples,

1. Refers to its earlier proposal pertaining to the consideration of indigenous peoples' rights during the Human Rights Council sessions, as contained in the report on its second session (Proposal 3, contained in Document A/HRC/12/32);
2. Reiterates that the Human Rights Council should consider organizing regular panel events devoted to the rights of indigenous peoples during its future sessions, with the participation of the Expert Mechanism and other relevant experts, including regional human rights mechanisms and national human rights institutions. Such panel events could be devoted to specific themes, and they could include sessions on the follow-up of thematic studies prepared by the Expert Mechanism.
3. Proposes that the first such panel event be devoted to the review of the follow-up given to the study on the right of indigenous peoples to education and organised in close cooperation with the Expert Mechanism, in the context of the 18th session of the Human Rights Council in September 2011.
4. Proposes that a similar panel be convened by the Human Rights Council in due course on the right to participate in decision-making, following the submission of the final study on this topic.
5. Encourages the Human Rights Council to continuously pay particular attention to the rights of indigenous peoples and the Declaration on the Rights of Indigenous Peoples in its work, including in connection with the Universal Periodic Review;

Proposal 3. Human Rights Council Review

The Expert Mechanism on the Rights of Indigenous Peoples

1. Refers to General Assembly resolution 60/251 of 15 March 2006, in which the Assembly decided that the Council should review its work and functioning five years after its establishment and report back to the Assembly, and to A/HRC/RES/12/1 related to this review
 2. Proposes that the Human Rights Council include the Expert Mechanism on the Rights of Indigenous Peoples and representatives of indigenous peoples in the Human Rights Council Review from the earliest possible stage of the process, with a view to ensure that the results of the review are such that they help to further strengthen the work of the Expert Mechanism and the Human Rights Council's capacity to promote and protect the rights of indigenous peoples.
- Proposal 4: Review of developments pertaining to the promotion and protection of the rights of indigenous peoples pursuant to the provisions of the UN Declaration on the Rights of Indigenous Peoples**

The Expert Mechanism on the Rights of Indigenous Peoples,

1. Refers to Article 42 of the UN Declaration on the Rights of Indigenous Peoples which obliges the United Nations, its bodies, specialized agencies and States to promote respect for and full application of the provisions of the Declaration and follow up the effectiveness of the Declaration;
2. Proposes that the Human Rights Council authorize the Expert Mechanism to, on an annual basis, review developments pertaining to the promotion and protection of the rights of indigenous peoples pursuant to the provisions of the UN Declaration on the Rights of Indigenous Peoples, and to give the Human Rights Council thematic advice on possible steps to take to achieve the ends of the Declaration.

Proposal 5: Measures to achieve the ends of the UN Declaration on the Rights of Indigenous Peoples

The Expert Mechanism on the Rights of Indigenous Peoples.

1. *Refers* to Article 38 of the UN Declaration on the Rights of Indigenous Peoples which establishes a duty for States, in consultation and cooperation with indigenous peoples, to take appropriate measures, including legislative measures, to achieve the ends of the Declaration;
2. *Proposes* that the Human Rights Council encourages States, in consultation and cooperation with indigenous peoples, to adopt appropriate measures, including administrative and legal measures as well as overall implementation strategies and follow up these measures and strategies in order to ensure respect for and full application of the Declaration.

Proposal 6: Mandate of the Voluntary Fund on Indigenous Populations

The Expert Mechanism on the Rights of Indigenous Peoples.

1. *Welcomes* the request made by the Human Rights Council in September 2009 that OHCHR prepares a study on the implications of the expansion of the mandate of the UN Voluntary Fund on Indigenous Populations;
2. *Proposes* that the Human Rights Council takes further steps in its forthcoming resolution on the rights of indigenous peoples towards the implementation of the earlier proposal of the Expert Mechanism to expand the mandate of the Fund.

C. Other proposals

Proposal 7

Compilation of recommendations issued within the UPR process

The Expert Mechanism on the Rights of Indigenous Peoples.

1. *Refers* to its earlier proposal, as contained in Proposal 3 from its 2nd session (A/HRC/12/32);
2. *Reiterates* that in order to ensure enhanced attention to the rights of indigenous peoples in the context of the Human Rights Council's Universal Period Review, the UN Office of the High Commissioner for Human Rights should consider preparing a compilation of the recommendations issued so far in respect of indigenous peoples in the context of the UPR process as a useful resource.

Proposal 8. International Expert Seminar on Truth and Reconciliation Processes

The Expert Mechanism on the Rights of Indigenous Peoples.

1. *Recognize* that national truth and reconciliation processes provides an important model and mechanism for improved relations between States and indigenous peoples, and that such processes have the potential to facilitate strengthened recognition and implementation of the rights of indigenous peoples;
2. *Encourages* the Office of the UN High Commissioner for Human Rights to consider the possibility of preparing an international expert group seminar on the relevance of national truth and reconciliation processes as mechanism for conflict resolution and reconciliation between States and indigenous peoples.

Proposal 9

Secretarial support to the Expert Mechanism on the Rights of Indigenous Peoples

The Expert Mechanism on the Rights of Indigenous Peoples,
Recognizes and welcomes the assistance provided by OHCHR to the EMRIP and encourages Member States and OHCHR to ensure that adequate human and financial resources are made available to EMRIP

Proposal 10. United Nations specialized agencies

The Expert Mechanism on the Rights of Indigenous Peoples:

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

III. ORGANIZATION OF THE SESSION

A. A. Attendance

3. The Expert Mechanism on the Rights of Indigenous Peoples held its third session in Geneva from 12 to 16 July 2010. The members who participated in the session were Catherine Odimba Kombe (Democratic Republic of Congo), Jannie Lasimbang (Malaysia), John B. Henriksen (Norway), José Carlos Morales Morales (Costa Rica) and José Mención Molintas (Philippines). The participants in the session of the Expert Mechanism include representatives of Member States, the Holy See, six United Nations organizations and programmes, national human rights institutions and a large number of indigenous delegates and non-governmental organizations. Approximately 500 participants were accredited (see annex I). The Special Rapporteur on the situation of the human rights and fundamental freedoms of indigenous people, Mr. James Anaya, and the Chairperson of the Permanent Forum on Indigenous Issues, Mr. Carlos Mamani, also participated in the session. In addition, the United Nations Voluntary Fund for Indigenous Populations was represented by Mr. Tegegn Melakou.

B. B. Documentation

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

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

C. C. Opening of the session

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

7. In her statement, the High Commissioner highlighted the fact that support for the UN Declaration on the Rights of Indigenous Peoples keeps expanding. She welcomed the endorsement of the Declaration by New Zealand earlier this year, which, together with the endorsement of the Declaration by Australia in 2009, further strengthens the role of the Declaration as our shared tool and framework for action both at the international and national level. She recalled that indigenous peoples continue to face discrimination, violations of their right to land and, all too often, to the fundamental right to life and that in search for solutions, expert guidance is always crucial and that the Expert Mechanism can play a

key role by providing sound and constructive thematic expertise, studies and research-based advice to the Human Rights Council. She encouraged all stakeholders present to put the results of the Expert Mechanism's first study, devoted to the right to education to active use. She also stressed that the current thematic focus of the Expert Mechanism - the right to participate in decision-making - is a topic of paramount importance and called for active participation of States, indigenous peoples and others concerned in the finalisation of the study.

8. In his opening statement, the President of the Human Rights Council, Ambassador Sihasak Phuangketkeow, welcomed the fact that the Expert Mechanism has been able to build a constructive approach in the implementation of its mandate, always aiming to achieve concrete results and engaging constructively with the Human Rights Council. He also recalled that the Council will be reviewing its work and functioning pursuant to GA resolution 60/251 and welcomed any input or contribution from the Expert Mechanism on the review.

In his remarks on behalf of the United Nations Voluntary Fund for Indigenous Populations was represented Mr. Tegegn Melakou welcomed the beneficiaries of the Fund and expressed support for the proposal to expand the mandate of the Fund to cover treaty bodies and session of the Human Rights Council.

D. D. Election of officers

9. The outgoing Chairperson-Rapporteur invited the experts to nominate a Chairperson for its third session. Ms Catherine Odimba Kombe announced that the members had decided, by consensus, to nominate Mr. José Carlos Morales Morales and Mr José Mencia Molintas as Chairperson-Rapporteur and Vice-Chair respectively. Thereafter, the outgoing Chairperson-Rapporteur declared the two experts as elected by acclamation.

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

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

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

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

E. E. Adoption of the agenda

13. The agenda of the session, as contained in document (A/HRC/EMRIP/2009/1), was adopted. It contained the following items: (1) Election of officer, (2) Adoption of the agenda and organisation of work, (3) Study on indigenous peoples and the right to participate in decision-making, (5) United Nations Declaration on the Rights of Indigenous Peoples, (4) Proposals to be submitted to the Human Rights Council for its consideration and approval and (6) Adoption of the report.

Following the adoption of the agenda, the Chairperson-Rapporteur opened the agenda item 3.

IV. STUDY ON INDIGNEOUS PEOPLES AND THE RIGHT TO PARTICIPATE IN DECISION-MAKING

14. The Chairperson-Rapporteur invited Mr. John B. Henriksen, Member of the Expert Mechanism, to introduce the first part of the progress report on the study on indigenous peoples and the right to participate in decision-making, contained in document A/HRC/EMRIP/2010/2. Mr Henriksen stressed that one of the main concerns of indigenous peoples around the world is that they have limited, and in some cases no opportunities to effectively determine priorities for their own development, and to effectively participate in decision-making processes affecting their rights and lives. He thanked the Human Rights Council for authorizing the Expert Mechanism to undertake a study on the right to participate in decision-making, following a related proposal by the Expert Mechanism, and for the very constructive and positive working relationship between the Expert Mechanism and the Council

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

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

17. Mr Henriksen noted that for the purpose of the study, the Expert Mechanism distinguishes between indigenous peoples' internal-decision making processes and institutions, and external decision-making processes which affect indigenous peoples. The latter category refers to decision-making where others than indigenous peoples themselves are making decisions. This distinction has largely been applied throughout the entire progress report, as we feel this corresponds with the underlying logic of the UNDRIP.

18. He noted that while the current version of the progress report does not specifically elaborate on the element of "consent" in the principle of free, prior and informed consent, the members of the Mechanism will continue to address this issue when working on the final study. He stated that the principle of free, prior and informed consent must be interpreted and understood in light of the fact that contemporary international human rights law affirms that indigenous peoples' have the right to self-determination and this must have an implication on how the requirement of "consent" is understood.

19. Mr Henriksen recalled that the Declaration on the Rights of Indigenous Peoples contains more than 20 provisions either affirming their right to participate in external decision-making - or their right to develop and maintain

their own decision-making institutions. This underscores that indigenous peoples' right to participation is a core principle and right under international human rights law. Mr Henriksen concluded by saying that, while some progress has been made, there remains an urgent need to foster more inclusive participation in governance through initiatives that strengthen the capacity of governments to be more responsive to indigenous peoples, and the capacity of indigenous peoples to claim their rights.

20. The Chairperson-Rapporteur then invited Ms. Jannie Lasimbang to introduce two other chapters in the progress report relating to indigenous peoples' internal decision-making processes and institutions, and on participation in decision-making mechanisms linked to both State and relevant non-State institutions and processes affecting indigenous peoples. Ms Lasimbang noted that it is difficult to cover the characteristics of indigenous peoples' internal decision-making processes and institutions globally in view of the diversity of situations in which indigenous peoples find themselves. The report however tries to capture the principles of decision-making processes upheld by indigenous societies in both traditional and contemporary settings.

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

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

23. As regards "external" decision-making or participation by indigenous peoples, Ms Lasimbang underscored, *inter alia*, that representation in parliaments is both practically and symbolically particularly important for indigenous communities. The parliamentary representation has improved over recent years because of increasing political awareness of indigenous peoples or special measures. However, she also pointed to many challenges, including lack of leadership influence by indigenous representatives.

24. Ms Lasimbang further noted that indigenous peoples worldwide are struggling to maintain control over their lands and many decisions connected to development projects drastically affecting indigenous peoples rights are taken without consultation and implementation of the principles of free prior and informed consent.

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

26. Mr. Carlos Mamani, Chairperson of the Permanent Forum on Indigenous Issue commended the progress report by stressing the key importance of the right to participate in decision-making in the realization of the collective and individual rights of indigenous peoples. Mr. Mamani recommended the Expert Mechanism to consider in further detail the challenges for the realization of the rights of indigenous peoples, in particular in relation to participatory and decision-making mechanisms. He further provided information on the work of the Permanent Forum on Indigenous Peoples, in particular in relation to the issue of development with culture and identity, linked to articles 3 and 32 of the United Nations Declaration on the Rights of Indigenous Peoples. He went on to comment the achievements made in

terms of indigenous peoples participating in bodies in the United Nations through such bodies as the Expert Mechanism and the Permanent Forum. He also referred to the development of policies and participative mechanisms in various intergovernmental institutions. Despite these positive developments, the Chairperson of the Permanent Forum stressed that progress is still needed in particular in achieving meaningful participation through well established consultative mechanisms.

27. The Special Rapporteur on the situation of the human rights and fundamental freedoms of indigenous people, Mr. James Anaya, noted that the progress report of the Expert Mechanism aptly identifies relevant provisions of various international instruments, including the United Nations Declaration on the Rights of Indigenous Peoples, ILO Convention No. 169, the Convention on the Elimination of All Forms of Racial Discrimination, and the International Covenant on Civil and Political Rights, as well as regional human rights instruments, including the American Convention on Human Rights. In this regard he recalled that a number of basic human rights principles undergird the right to participation and inform its content. Without being exhaustive, these include the right to self-determination, the right to equality, the right to culture and the right to property. He stated that in his work as Special Rapporteur he has seen that a lack of participation of indigenous peoples in the design and delivery of programs that affect them can undermine the effective enjoyment of other key rights, such as the right to education and the right to health.

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

29. In the concluding discussion, Mr. Henriksen thanked observers for their very valuable comments and suggestions aimed at improving the study. He said that while only the most pressing adjustments could be made in the progress report given, the Members of the Mechanism will continue to work on other issues and concerns could be dealt with in the context of the final study, which will be developed before the 4th session of the Mechanism.

30. He further noted that the discussions on the draft progress report demonstrated that the right to participation is of crucial importance in relation to the full spectrum of matters that affect the lives of indigenous peoples, and that this right forms the fundamental basis for the enjoyment of the full range of human rights. Mr Henriksen welcomed the fact there seemed to be broad agreement that the distinction between internal and external decision-making is a useful approach when elaborating on indigenous peoples' right to participate in decision-making. He stressed that UNDRIP establishes a good balance between indigenous peoples right to autonomy and self-government in matters relating to their internal and local affairs, and their participation in the society at large. The Declaration does therefore not promote isolation. Mr Henriksen also welcomed the suggestions that the study should also address the issue of constitutional arrangements for the protection of indigenous peoples' rights, including their right to participate in decision-making, as well as suggestions to expand the content of section 2 D of the report beyond the process of consultations.

31. Ms Lasimbang commented on the requests to collect case studies and good practices on Indigenous peoples and the right to participate in decision-making, and recalled that those that were already received and footnoted in the progress report are available on the OHCHR website linked to the documentation of this progress report. She stated that it would not be possible to go into the details of any additional case studies and good practices received in the course of finalising the report, but the experts would will consider including additional references to relevant submissions and also make these available on the website. She also noted the request to refer explicitly to pastoral and nomadic people and urged experts on these subjects to make written submissions.

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

V. DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

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

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

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

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

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

The Chair of the Permanent Forum, Mr Carlos Mamani, recalled that the Expert Mechanism, the Special Rapporteur and the Permanent Forum are the three United Nations mechanisms dealing specifically with indigenous issues and recommended that they continue to have regular meetings to strengthen the collaboration and coordination of their work in promoting the rights of indigenous peoples. In relation to the support to the United Nations Declaration on the Rights of Indigenous Peoples, he commended the recent developments toward universal endorsement while acknowledging the existing challenges for the effective implementation of the Declaration. He further mentioned some positive developments such as the exchange of experience that took place with the support of the Permanent Forum and the ILO.

37. The report on the seminar on treaties, agreements and other constructive arrangements between States and indigenous peoples, and recommendation contained therein, was presented by OHCHR and the Co-Rapporteurs Wilton Littlechild and Andrea Carmen in the light of its relevance for the implementation of Article 37 and other pertinent provisions of the United Nations Declaration on the Rights of Indigenous Peoples (A/HRC/EMRIP/2010/5).

38. In concluding the discussion, Mr Henriksen expressed his agreement with the calls to make the Declaration more accessible to people at the national and local levels. He also welcome the fact that the discussion demonstrated that in addition to problems and challenges we are in a position to welcome information about positive achievements. Ms Lasimbang welcomed the concrete examples given about the use of the Declaration, and she stressed in particular the support to enhancing the role of national human rights institutions in the implementation of the Declaration.

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

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

VI. PROPOSALS TO BE SUBMITTED TO THE HUMAN RIGHTS COUNCIL

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

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

VII. ADOPTION OF THE REPORT AND PROPOSALS

41. At its last meeting, the Expert Mechanism adopted the progress report on the study on indigenous peoples and the right to participate in decision-making and several proposals, contained in section II of the present report. All proposals were adopted by consensus by the members of the Expert Mechanism.

F. ANNEXES

Annex I

G. List of participants

State members of the United Nations represented by observers:

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

Donors represented by observers:

United Nations mandates, mechanisms, bodies and specialized agencies, funds and programmes represented by

observers:

Intergovernmental organizations, regional organizations and mechanisms in the field of human rights represented by observers:

National human rights institutions represented by observers:

Academics and experts on indigenous issues represented by observers of the following institutions:

Non-governmental organizations represented by observers:

Indigenous nations, peoples and organizations represented:

Annex II

H. Provisional agenda of the fourth session

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