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Annual report of the Expert Mechanism 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 might put forward proposals to the Council for its consideration and approval.
2. In September 2016, the Human Rights Council adopted resolution 33/25 amending the mandate of the Expert Mechanism to provide the Council with expertise and advice on the rights of indigenous peoples as set out in the United Nations Declaration on the Rights of Indigenous Peoples and to assist Member States, upon request, in achieving the ends of the Declaration through the promotion, protection and fulfilment of the rights of indigenous peoples. The specific elements of the new mandate are set out in the resolution.
3. The Expert Mechanism held its fifteenth session in Geneva from 4 to 8 July 2022. The summary of the discussions set out in sections V to XIV below is not intended to be a verbatim record, but rather an overview of the main points raised by expert members and other participants. The individual contributions of all participants can be viewed on the webcast of the session.¹

II. Intersessional activities

4. Since its fourteenth session, held in July 2021, the Expert Mechanism has undertaken several official intersessional activities. On 28 and 29 September 2021, it held an interactive dialogue with the Human Rights Council at its forty-eighth session on the annual report of the Expert Mechanism,² on its study on the rights of the indigenous child³ and on its report on the right to self-determination.⁴ On 28 September 2021, the Chair of the Expert Mechanism served as moderator of the annual half-day discussion on the rights of indigenous peoples held by the Human Rights Council, which focused on the situation of the human rights of indigenous peoples facing the COVID-19 pandemic with a special focus on the right to participation.⁵
5. The Expert Mechanism held its intersessional meeting virtually from 29 November to 1 December 2021. The meeting comprised a three-day expert seminar on treaties, agreements and other constructive arrangements between indigenous peoples and States, including peace accords and reconciliation initiatives, and their constitutional recognition and a two-day private working meeting of the Expert Mechanism. The main objective of the expert seminar was to obtain substantive input to the Expert Mechanism's annual study. The seminar brought together approximately 35 participants, including members of the Expert Mechanism, practitioners from several regions, indigenous human rights advocates, academics and staff of the Office of the United Nations High Commissioner for Human Rights (OHCHR).⁶
6. In February 2022, the University of British Columbia held a seminar entitled "The militarization of indigenous land: a human rights focus" in support of the ongoing work of the Expert Mechanism on the topic. With the support of the Expert Mechanism, in March 2022 the University of Manitoba launched a virtual international academic forum on implementing the United Nations Declaration on the Rights of Indigenous Peoples, with a focus on the right to self-determination.

¹ See <https://media.un.org/en/webtv>.

² [A/HRC/48/73](#).

³ [A/HRC/48/74](#).

⁴ [A/HRC/48/75](#).

⁵ See [A/HRC/50/48](#).

⁶ See <https://www.ohchr.org/en/hrc-subsiaries/expert-mechanism-on-indigenous-peoples/un-seminar-expert-mechanism-rights-indigenous-peoples>.

7. The Expert Mechanism took part in the twenty-first session of the Permanent Forum on Indigenous Issues. In addition, several members of the Expert Mechanism engaged with United Nations agencies, regional human rights mechanisms, Member States and civil society organizations at the country level.

8. Several members of the Expert Mechanism attended a meeting of the Global Task Force for Making a Decade of Action for Indigenous Languages, coordinated by the United Nations Educational, Scientific and Cultural Organization (UNESCO).

9. Owing to the constraints of the COVID-19 pandemic, the Expert Mechanism could not undertake country engagement missions during the reporting period. However, it has kept up a sustained dialogue with several stakeholders to prepare for country visits in the coming months.

III. Adoption of studies, reports and proposals

A. Studies and reports

10. At its fifteenth session, the Expert Mechanism adopted its study on the theme of treaties, agreements and other constructive arrangements between indigenous peoples and States, including peace accords and reconciliation initiatives, and their constitutional recognition prepared pursuant to paragraph 2 (a) of Human Rights Council resolution 33/25.⁷

11. The Expert Mechanism agreed that, in consultation with the other members, the Chair-Rapporteur could make revisions to the document mentioned above in the light of the discussions at its fifteenth session and that it would be submitted to the Council at its fifty-first session.

B. Proposals

Proposal 1: Participation of indigenous peoples in the Human Rights Council

12. The Expert Mechanism invites the Human Rights Council to continue to facilitate, in consultation with indigenous peoples, the participation of representatives and representative institutions of indigenous peoples in the work of the Council, in accordance with the United Nations Declaration on the Rights of Indigenous Peoples and to commit to reducing as much as possible the barriers, such as language barriers, to the participation of indigenous peoples in the work of the Council, and to promote the Internet access and in person attendance of indigenous representatives.

13. The Expert Mechanism welcomes Human Rights Council resolution 48/11, in which the Council decided to continue to discuss further steps to facilitate the participation of representatives and representative institutions of indigenous peoples in the work of the Council, in particular during the dialogue with the Expert Mechanism and the Special Rapporteur on the rights of indigenous peoples and the annual half-day discussion on the rights of indigenous peoples. The Expert Mechanism invites the Council to reiterate that decision. It also welcomes the request to OHCHR to convene a four-day expert workshop that will be held from 21 to 24 November 2022 on possible ways to enhance the participation of indigenous peoples in the work of the Council, including by inviting the submission of written contributions, to prepare a summary report on the discussions and the resulting recommendations and to submit it to the Council.

14. Based on the model of the 2021 Human Rights Council round table on the same theme, the Expert Mechanism strongly encourages the Council to appoint two co-facilitators in advance of the expert workshop. One should be nominated by Member States and one by indigenous peoples, in order to assist the President of the Council before and during the workshop, to participate in the negotiation process and conduct timely, inclusive and

⁷ [A/HRC/EMRIP/2022/2](#).

transparent consultations with Member States, indigenous representatives and institutions from all regions of the world.

15. The Expert Mechanism proposes that the Council suggest that the United Nations Voluntary Fund for Indigenous Peoples facilitate participation in the workshop of several representatives of indigenous peoples for each of the sociocultural regions represented in the expert workshop, as recommended in Council resolution 48/11 (para. 17), ensuring to the extent possible balanced regional and gender representation.

16. The Expert Mechanism puts forward the present proposal without prejudice to and to reinforce and complement the ongoing consultative process referred to in General Assembly resolution 71/321, aimed at enhancing the participation of the representatives and institutions of indigenous peoples in United Nations meetings.

Proposal 2: Human Rights Council panel discussion

17. The Expert Mechanism proposes that the Human Rights Council hold a panel discussion on the impact of militarization on the rights of indigenous women and children in the light of article 30 of the Declaration, during its fifty-fourth session, to be held in September 2023. During its thirteenth session, the Expert Mechanism decided to prepare a report, pursuant to paragraph 2 (b) of Council resolution 33/25, on the militarization of indigenous lands, territories and resources. The report was scheduled to be presented to the Council at its fifty-first session in September 2022. Pursuant to Human Rights Council resolution 33/25, during its fourteenth session in 2021, the Expert Mechanism confirmed its decision to prepare a report on the militarization of indigenous land in 2022. A call for contributions was opened in late 2021. A decision for postponement was made and at its fifteenth session, the Expert Mechanism decided that its next annual study would focus on the impact of militarization on the rights of indigenous peoples. To that end, the Expert Mechanism will hold an expert meeting in December 2022 to inform the study.

18. The Expert Mechanism invites the Human Rights Council to take into account the recommendations put forward during the half-day panel discussion held during its forty-eighth session, in September 2021, on the human rights of indigenous peoples in the context of the global coronavirus disease (COVID-19) pandemic, with a special focus on land rights.

Proposal 3: Protection of human rights defenders and indigenous leaders

19. Considering the critical situation that indigenous human rights defenders continue to face on a daily basis worldwide, especially when defending their rights to land, territories and natural resources, the Expert Mechanism urges the Human Rights Council to call upon States to ensure that indigenous human rights defenders and indigenous leaders, without any discrimination, are guaranteed a safe living and working environment, security and due protection. That includes public recognition of the key role played by indigenous human rights defenders, the revision of laws that restrict and or criminalize their work, abstention from any act aimed at inhibiting their activities and or putting at risk their integrity and the adoption of appropriate measures to protect them from any form of threats, intimidation, harassment and attacks.

20. The Expert Mechanism welcomes the final draft of general recommendation No. 39 of the Committee on the Elimination of Discrimination against Women, which highlights the additional risks faced by indigenous women human rights defenders and proposes that the Council call upon States to adopt gender-sensitive responses and culturally appropriate measures aimed at preventing and addressing any kind of attack to their physical or psychological integrity, avoiding revictimization and ensuring no repetition.

21. The Expert Mechanism also proposes that the Council request Member States to ensure prompt and effective investigation and accountability for any human rights violations against indigenous peoples, indigenous human rights defenders and indigenous leaders, including against indigenous women, to ensure effective remedies and guarantee the principle of non-repetition in case of violation of their rights.

Proposal 4: Reprisals against human rights defenders, mandate holders and indigenous leaders

22. The Expert Mechanism emphasizes and recalls that the United Nations system has committed to ensuring events where everyone can participate in an inclusive, respectful and safe environment, without fear of intimidation, harassment or reprisals of any sort, as clearly established in the Code of Conduct to Prevent Harassment, Including Sexual Harassment, at UN System Events. The Expert Mechanism urges the Human Rights Council to call upon States to behave with integrity and respect towards all participants attending or involved with any meeting of the Expert Mechanism and to ensure the highest ethical and professional standards. The Expert Mechanism urges the Human Rights Council to strongly reaffirm that any act of harassment and reprisals is inadmissible and that it will be dealt with promptly.

23. The Expert Mechanism calls upon the Human Rights Council to reiterate the concerns and proposed action set out in Council resolutions 42/19 (paras. 27–28) and 48/11 (paras. 31–32), including the concern about the increase in cases of reprisals against indigenous human rights defenders, among others. It also calls upon the Council to urge States to adopt emergency responses to ensure due protection of indigenous leaders and their communities and to address all allegations and condemn all reprisals against indigenous human rights defenders, including United Nations mandate holders working on the rights of indigenous peoples and representatives of indigenous peoples attending the sessions of the Expert Mechanism.

Proposal 5: Increased engagement of Member States with the Expert Mechanism

24. The Expert Mechanism proposes that the Council continue to encourage Member States to engage actively with the Expert Mechanism's activities, including by submitting contributions to its studies and reports, attending and participating in its annual sessions and providing input and oral comments on its reports and studies.

25. The Expert Mechanism proposes that the Human Rights Council strongly encourage States and indigenous peoples to increase their engagement with it under its amended mandate, pursuant to Council resolution 33/25, by submitting requests for technical assistance and dialogue facilitation, including for the implementation of the recommendations and conclusions pertaining to indigenous peoples arising from the universal periodic review, the treaty bodies and special procedures. States should also be encouraged to respond positively to requests made by indigenous peoples under paragraph 2 (c) and (e) of resolution 33/25, seize the opportunity for dialogue provided by such requests and facilitate country engagement mission arrangements to enable the Expert Mechanism to properly implement its mandate.

Proposal 6: Impact of development projects on indigenous women

26. Echoing the considerations and concerns expressed by indigenous women and men during its fifteenth annual session, with regard to the specific impact faced by indigenous women in context of development projects on their territories, the Expert Mechanism proposes that the Human Rights Council urge States to respect and guarantee the fulfilment of the right of indigenous peoples to be consulted, with a view to obtaining their free, prior and informed consent as well ensuring respect for and full implementation of agreements resulting from fair and equitable negotiations, if any. States should take all the appropriate measures, including through legislation, to ensure that business enterprises in or from their jurisdiction act with due diligence and comply with the full body of human rights, including the Guiding Principles on Business and Human Rights.

27. The Expert Mechanism also calls for the Human Rights Council to recommend that States adopt preventive measures, such as the promotion of the political, social and economic empowerment of indigenous women and girls, reaffirming their right to land ownership and control over natural resources, in particular water, in their territories and protecting them from dispossession, land encroachment and contamination. States should also be called upon to pay particular attention to and take appropriate gender-sensitive responses and actions to address such impacts.

Proposal 7: International Decade of Indigenous Languages

28. The Expert Mechanism proposes that the Human Rights Council encourage States to engage in fruitful and sustained dialogue with indigenous peoples, scholars, civil society and other public and private actors to adopt and implement the Global Action Plan of the International Decade of Indigenous Languages, taking into account the broad spectrum of human rights entailed in the promotion and fulfilment of indigenous language rights. That includes ensuring the legal recognition of indigenous languages, the formulation of laws, legislation and programmes for social cohesion, participation and inclusion of indigenous language speakers and promotion of the functional usage of indigenous languages in all public domains and services.

29. The Expert Mechanism invites the Council to encourage States to take concrete measures for the implementation of the Global Action Plan at local and national levels, in a culturally appropriate manner and in close consultation and cooperation with indigenous peoples. To that effect, States should allocate the appropriate funding, including ensuring the full and meaningful participation of indigenous peoples in the process of designing and subsequent implementation of strategies, initiatives, policies and legislation.

Proposal 8: Right of indigenous peoples in the non-self-governing territories

30. The Expert Mechanism welcomes the process of the Special Committee on Decolonization, established in 1961 by the General Assembly, to review the list of non-self-governing territories.

31. With this in mind, the Expert Mechanism urges the Human Rights Council to call upon Member States to ensure that the rights of indigenous peoples within the non-self-governing territories, or those waiting to be inscribed on the list, are fully recognized and respected, in particular the right to self-determination and self-government as recognized in the United Nations Declaration on the Rights of Indigenous Peoples.

Proposal 9: Development of national action plans, effective national and regional monitoring mechanisms and legislation for the implementation of the United Nations Declaration on the Right of Indigenous Peoples

32. The Expert Mechanism welcomes the positive developments in a number of States, which have developed or are in the process of developing national action plans and domestic legislation for the implementation of the United Nations Declaration on the Rights of Indigenous Peoples with the full and meaningful participation of indigenous peoples. That includes the full and effective participation of indigenous peoples in the implementation of the measures included in national action plans and legislative measures and the establishment of effective mechanisms for monitoring and adequately funding the measures and activities in national action plans.

33. The Expert Mechanism calls upon the Human Rights Council to encourage more States to take concrete measures for the development of national action plans and domestic legislation for the implementation of the United Nations Declaration on the Rights of Indigenous Peoples.

IV. Organization of the session.

A. Attendance

34. The Expert Mechanism held its fifteenth session in Geneva from 4 to 8 July 2022. All seven members, Binota Moy Dhamai (Bangladesh, Chair-Rapporteur), Sheryl Lightfoot (Canada, Vice-Chair), Margaret Lokawua (Uganda, Vice-Chair), Anexa Brendalee Alfred Cunningham (Nicaragua), Antonina Gorbunova (Russian Federation), Valmaine Toki (New Zealand) and Laila Susanne Vars (Norway), attended the session.

35. Representatives of States, parliaments, indigenous peoples, United Nations programmes, bodies and specialized agencies, national and regional human rights

institutions, non-governmental organizations and academic institutions took part in the session as observers.

36. Also taking part in the session were a member of the Board of Trustees of the United Nations Voluntary Fund for Indigenous Peoples, Dev Kumar Sunuwar, the Special Rapporteur on the rights of indigenous peoples, José Francisco Cali Tzay and the Chair of the Permanent Forum on Indigenous Issues, Dario José Mejía Montalvo.

37. A total of 24 side events were held virtually during the session on a broad array of themes relating to the rights of indigenous peoples. A full listing is available on the web page of the Expert Mechanism.⁸

B. Opening of the session and adoption of the agenda

38. Thaay Bermudez Flores and Ta Damishi, from the Otomi people in Mexico, performed a musical performance and Brennen Ferguson, Tuscarora, one of the Six Nations of the Haudenosaunee, conducted a ceremonial opening prayer, after which the Chair of the Expert Mechanism, Binota Moy Dhamai, opened the fifteenth session and welcomed the President of the Human Rights Council. The agenda of the session was adopted.⁹

39. The President of the Human Rights Council recognized the important role indigenous peoples play in the United Nations and noted that the Council had decided to continue to discuss further steps and measures necessary to enable and facilitate the participation of the representatives and institutions of indigenous peoples in the work of the Council. In that regard, the Council requested the OHCHR to convene a four-day expert workshop in 2022, open to the participation of States and indigenous peoples from the seven indigenous sociocultural regions, including by inviting the submission of written contributions, on possible ways to enhance the participation of indigenous peoples in the work of the Council. He also stated that the Council recalled the proclamation by the General Assembly of the period 2022–2032 as the International Decade of Indigenous Languages to draw attention to the critical loss of indigenous peoples' languages and the urgent need to preserve, revitalize and promote those languages and take urgent steps at the national and international levels. The President of the Council called upon States to promote the effective and meaningful participation of indigenous peoples in leading and holding activities to mark the Decade. He concluded by reaffirming that the Council also strongly encouraged States to participate actively in the sessions and to engage in dialogue with the Expert Mechanism, including during intersessional activities and country engagement.

40. The United Nations High Commissioner for Human Rights emphasized that indigenous peoples were increasingly recognized as agents of change and solution holders in matters ranging from climate change to desertification, land degradation and drought. They were increasing their resilience to environmental challenges through traditional knowledge and sustainable land practices that had evolved over generations. However, the impact of the COVID-19 pandemic had disproportionately affected indigenous peoples, deepening pre-existing social inequalities. It also negatively impacted the transmission of indigenous languages and traditional knowledge. The High Commissioner welcomed the encouraging recent developments for indigenous peoples and provided some concrete examples at the national level. She welcomed the decisive support provided by the Expert Mechanism to the ongoing process of repatriation of the Yaqui *Maaso Kova* (ceremonial deer head) from the National Museum of World Culture in Sweden to the Yaqui people in Mexico, which had yielded very concrete results. In that regard, she recalled that the country engagement mandate of the Expert Mechanism represented another valuable tool for Member States and indigenous peoples to work together towards the implementation of the Declaration. She encouraged further requests for country visits from both Member States and indigenous peoples.

⁸ <https://www.ohchr.org/en/events/sessions/2022/15th-session-expert-mechanism-rights-indigenous-peoples>.

⁹ [A/HRC/EMRIP/2022/1](#).

C. Election of officers

41. The Vice-Chair of the Expert Mechanism, Binota Moy Dhamai, invited the members of the Expert Mechanism to nominate a Chair-Rapporteur and Vice-Chairs for the period 2022–2023. Laila Susanna Vars nominated Mr. Dhamai as Chair-Rapporteur and Sheryl Lightfoot and Margaret Lokawua as Vice-Chairs. All three were appointed by acclamation.

V. Study on treaties, agreements and other constructive arrangements between indigenous peoples and States, including peace accords and reconciliation initiatives, and their constitutional recognition

42. Opening agenda item 3, the Chair-Rapporteur stated that the Expert Mechanism looked forward to receiving the views of indigenous peoples, States and United Nations mechanisms and agencies on the draft study on treaties, agreements and other constructive arrangements between indigenous peoples and States, including peace accords and reconciliation initiatives, and their constitutional recognition. He welcomed the recommendations of indigenous peoples, States and other stakeholders as essential to completing the study.

43. The Chair-Rapporteur introduced the draft study. He reported that the Expert Mechanism had received over 30 submissions from indigenous peoples' organizations, Member States, academics and other stakeholders for the completion of the study. He noted that the Expert Mechanism had received only two contributions from Member States, despite sending out a reminder of its call for input, which had been insufficient to reflect the diversity of views and experiences of States on the subject matter of the study.

44. The Chair-Rapporteur noted that the topic of the study had been internationally discussed since the early 1970s and had been addressed in the final report of Special Rapporteur Miguel Alfonso Martínez, in 1999¹⁰ and in three expert seminars held in 2003, 2006 and 2012, as recommended in the Special Rapporteur's report. The Chair-Rapporteur recalled article 37 of the Declaration on Indigenous Peoples that points out the right of indigenous peoples to have recognized, observed and enforced treaties, agreements and other constructive arrangements concluded with States or their successors.

45. The Chair-Rapporteur noted that the study seeks to contribute to an understanding of article 37 of the Declaration, of the rights enshrined therein and the obligations of States arising therefrom. Analysing the experience of indigenous peoples and the practice of States in implementing those rights, the study attempts to identify the principles and conditions, as well as the broader gaps and challenges, in the realization and exercise of the right of indigenous peoples to conclude treaties, agreements and other constructive arrangements with States and have them respected and enforced.

46. The Chair-Rapporteur introduced the link that article 37 maintains with other rights, such as the right to self-determination, to participation and the principle of free, prior and informed consent. He stressed the diversity of instruments used to establish partnerships between indigenous peoples and States, to promote cooperative relations, build peaceful coexistence and regulate, by consent, issues of common concern on the basis of consensus. He pointed out that the study gives a brief overview of the types of such instruments, from the historical treaties established between indigenous peoples and European powers/settlers, as sovereignty agreements between nations or governments, to more recent agreements addressing land and self-government issues.

47. In the study the enabling conditions for the establishment of treaties, agreements and other constructive arrangements are analysed: first, the recognition of indigenous peoples as such and the recognition of their rights, which are a key precondition for the enjoyment of all the rights enshrined in the Declaration. That recognition may not be effective if it is not accompanied by structural reforms, the recognition of juridical personality and power-

¹⁰ [E/CN.4/Sub.2/1999/20](#).

sharing. Particularly important is the constitutional recognition, including of treaties, agreements and other constructive arrangements. Another enabling condition identified in the study, is the balance of power in negotiation processes, which is linked with the possibility of indigenous peoples having the means to participate according to their own decision-making processes and institutions and having the means to do that, without suffering any form of pressure or coercion.

48. The study identifies the conditions for and obstacles to the effective implementation of treaties, agreements and other constructive arrangements. Essential conditions include a common understanding and good faith in the interpretation of such instruments, while some of the challenges encountered are the lack of technical and financial means, political will and harmony with other regulations. The study further addresses the need to have appropriate mechanisms supporting the process of negotiation and establishment of agreements, mechanisms dedicated to monitoring and enforcing their implementation and mechanisms to handle and resolve conflicts and redress, and remedy grievances when agreements are not fully implemented or are breached. The Chair stressed that mechanisms should be independent and adequately funded to be effective, and should be provided with an explicit and broad mandate with the power and the means to make binding decisions and have them enforced. They should be pluralist in their composition and operate with deep and comprehensive knowledge and understanding of international human rights law and the rights of indigenous peoples.

49. The study concludes with Expert Mechanism advice No. 15, in which the Expert Mechanism puts forward some measures that States, indigenous peoples and other stakeholders could take for the enjoyment of article 37 as contained in the Declaration.

50. Participants added recommendations and concerns, such as the need for including a best practice of effective funding mechanisms, such as independent funding bodies. Some others focused on the importance of implementing existing constructive agreements signed with indigenous peoples. Participants also pointed out that the report contained references regarding significant cases of peace accords in some of the focus countries, but the consideration of peace accords and agreements had not been addressed in depth. It was therefore requested that the Expert Mechanism conduct a separate study and report on peace agreements and accords in conflict and post-conflict situations involving or affecting indigenous peoples.

51. The Expert Mechanism was asked to pay particular attention to the importance of the greater presence of indigenous women and girls in studies on treaties, agreements and other constructive arrangements between indigenous peoples and States. In addition, participants stated that the study was expected to be an important tool for justice for indigenous peoples. As such, truth and reconciliation initiatives could be mentioned in the study as examples of constructive arrangements paving the way for rebuilding trust, partnerships and relations between nations.

52. Other participants focused on the need to include a call for OHCHR to launch an international repository of indigenous people treaties to ensure access for all parties to relevant texts, including those in the original spirit and intent as understood by the indigenous peoples concerned. Some others requested the Expert Mechanism to work with OHCHR to host a fourth treaty seminar in 2023 to review implementation and recommendations from the original United Nations treaty study, the three follow-up seminars and the current study.

VI. Coordination meeting of United Nations indigenous rights mechanisms

53. Under agenda item 4, the members of the Expert Mechanism held a private meeting with the Chair of the Permanent Forum on Indigenous Issues, the Special Rapporteur on the rights of indigenous peoples and a representative of the Board of Trustees of the United Nations Voluntary Fund for Indigenous Peoples. Participants considered the following issues: updates on planned joint activities for the period 2022–2023; selection and coordination of thematic studies; coordination of country engagements; and collaboration on upcoming expert workshops, including the four-day expert workshop organized by OHCHR

on possible ways to enhance the participation of indigenous peoples in the work of the Human Rights Council.

VII. Intersessional activities and follow-up to thematic studies and advice

54. Before opening item 5 on the agenda, the Vice-Chair of the Expert Mechanism, Ms. Lokawua, recalled that the Mechanism would monitor closely any allegation of acts of reprisal and intimidation committed against persons in connection with their contribution to the work of the Expert Mechanism and would liaise with the office of the President of the Human Rights Council as needed. All complaints for acts of reprisal and harassment would be dealt with promptly.

55. Ms. Lokawua opened item 5, explaining that the aim of the follow-up to previous thematic studies and advice of the Expert Mechanism was to identify good practices in applying them for the implementation of the Declaration on the Rights of Indigenous Peoples. She stressed that the studies and advice of the Expert Mechanism were intended to provide a better understanding of the provisions of the Declaration and to propose concrete actions that States, indigenous peoples, civil society, international organizations, national human rights institutions and others could take to promote its implementation.

56. States, indigenous peoples and other participants commented on the previous studies undertaken by the Expert Mechanism, namely the 2021 study on the rights of the indigenous child¹¹ and the report on the right to self-determination.¹² Some participants pointed out the lack of recognition of indigenous children, disconnecting them from their unique culture and ancestral lands. Others expressed their agreement with the conclusions of the study that the main factor that leads to the situation of indigenous peoples is the lack of access to quality education.

VIII. Country engagements

57. Member of the Expert Mechanism, Ms. Vars, opened item 6 by recalling the country engagement component of the Expert Mechanism's mandate, which was to provide technical advice to States and indigenous peoples, at their request, on the implementation of the Declaration on Indigenous Peoples, or facilitating dialogue between the parties. She acknowledged the engagement of those States that had already collaborated with the Expert Mechanism under its current mandate set out in Human Rights Council Resolution 48/11, as well as the encouragement of the Council to all parties to consider the Expert Mechanism's initiation of country engagements at the request of States and indigenous peoples.

58. Since the last session in 2021, the Expert Mechanism had not been able to undertake any missions under the new mandate owing to the persistence of the COVID-19 pandemic. However, it had maintained a sustained dialogue with requesters and Member States to advance the definition and organization of the country engagement missions to be carried out in the coming months.

59. The Expert Mechanism had followed up on previous and ongoing country engagements, including on the repatriation of a spiritual object, the *Maaso Kova*. In May, the National Museum of World Culture in Sweden communicated approval of the Government of Sweden of its recommendation to repatriate the sacred *Maaso Kova*, to the Yaqui people. The first step of the repatriation had been undertaken and the *Maaso Kova* was handed over to the Mexican Embassy in Stockholm on 3 June 2022 in the presence of all stakeholders. The International Indian Treaty Council, as the requesters of the country engagement, had underscored the importance of the Expert Mechanism's follow up on the engagement and reported that the Expert Mechanism had sent a letter to the governments involved, also stressing the need for direct return of the *Maaso Kova* object to the Yaqui people. The

¹¹ [A/HRC/48/74](#).

¹² [A/HRC/48/75](#).

representative of Sweden stated that the qualified and skilled guidance of the Expert Mechanism throughout the process had been crucial and was highly appreciated by all the Swedish parties involved. The representative of Mexico stated that the engagement on the return of the spiritual object was now at the presidential level and would lead to the legitimate return of the sacred artifact to the Yaqui people.

60. The Expert Mechanism also thanked Finland and the requesters, who participated as panellists to share lessons learned and follow up on the mission undertaken by the Expert Mechanism in 2018 to Finland. The President of the Sami Parliament of Finland explained the contribution of the Expert Mechanism regarding the country engagement, where it had provided very important comments to the proposed amendments to the Act on the Sami Parliament (1995), ensuring that the proposal was in line with the Declaration on the Rights of Indigenous Peoples. As President of the Sami parliament in Finland he was waiting to learn how the proposal was moving forward. The representative of the Government of Finland, explained how it would continue to work towards the renewal of the Act on the Sami Parliament. Although a committee had been created to that end and had drafted a new legislative proposal, the Committee was facing some challenges.

61. The representative of Brazil also provided an update about the country engagement of the Expert Mechanism regarding indigenous peoples in Brazil during the COVID-19 crisis, focusing on measures in the health-care sector and also in territorial protection for Brazilian indigenous peoples.

IX. International Decade of Indigenous Languages

62. Under item 7 of the agenda, member of the Expert Mechanism, Ms. Gorbunova, noted that since the proclamation of the International Decade of Indigenous Languages, the Expert Mechanism had joined the efforts led by UNESCO to draw global attention to the critical situation of many indigenous languages worldwide and that it had actively participated as a designated member of the Global task Force for Making a Decade of Action for Indigenous Languages. It was with awareness of the relevance of the topic and of the opportunities offered by this initiative that the Mechanism had decided to dedicate a discussion to the topic during its fifteenth session.¹³

63. The representative of UNESCO explained how they worked with a wide range of stakeholders to implement the Global Action Plan for the International Decade of Indigenous Languages. It provided a strategic framework and outlined major actions and guidelines on implementation, monitoring and evaluation of at all levels. A number of national governments and professional organizations had already taken concrete measures to adopt the Global Action Plan at local and national contexts. She encouraged participants to identify strategies to ensure its localization at the national and local levels taking into account a human rights-based approach.

64. Belkacem Lounes from the World Amazigh Congress recalled the need for indigenous languages to be legally recognized and protected by law. He stressed that after the International Year of Indigenous Languages in 2019, the Decade of Indigenous Languages could be a real opportunity to halt the dramatic decline of indigenous languages. For that, new, multidimensional and high-level efforts were needed from all, starting with States and intergovernmental organizations. Antonia Agreda, adviser in the Colombian Ministry of Culture, presented the process that led to the elaboration of the 10-Year Plan for Native Languages of Colombia and shared its aims, strategies and the current advances in its implementation.

65. Participants were invited to share examples and good practices as to how the Global Action Plan could be integrated into strategic and policy national and organizational plans taking a human-rights based approach. Some participants showed concern about the increasing number of languages in danger of extinction and hence the importance of contributing and supporting the International Decade. Others noted that in April 2021, the Ibero-American Institute of Indigenous Languages had been created. To date, 10 countries

¹³ See https://www.ohchr.org/sites/default/files/2022-06/EMRIP-15-Concept_note_IDIL.pdf.

had joined this intergovernmental initiative, namely the Plurinational State of Bolivia, Colombia, Ecuador, El Salvador, Guatemala, Mexico, Nicaragua, Panama, Paraguay and Peru.

66. The UNESCO representative concluded by recalling that the objectives of the International Decade could only be achieved through the joint efforts of all stakeholders and invited all partners to localize the Global Action Plan and launch new projects to revitalize indigenous languages and mobilize the necessary human, institutional and financial resources.

X. Panel discussion on the impact of development projects on indigenous women

67. Under item 8 of the agenda, the Expert Mechanism decided to hold a panel discussion on the theme of the impact of development projects on indigenous women. The panel focused on the impact, challenges and measures taken by indigenous women in contexts where development projects are implemented by both State and non-State actors without the free, prior and informed consent of the indigenous people concerned.¹⁴

68. The Vice-Chair, Ms. Lokawua, opened the discussion on item 8 and emphasized that indigenous women had historically experienced additional and specific challenges and obstacles worldwide because of socially constructed identities, attributes and roles and discriminating stereotypes as women, and historical, structural and systemic discrimination as indigenous women. She then introduced the moderator, the Chief Executive Officer of the Seventh Generation Fund for Indigenous Peoples, Tia Oros, who provided an introduction, reflecting on her own experiences and then introduced the panellists:

- Joan Carling, an activist and environmentalist on the rights of indigenous peoples. She has served as Secretary-General of the Asia Indigenous Peoples Pact.
- Vera Kondratyeva, an indigenous musician representing the Khanty people, she holds key positions in indigenous organizations in the Khanty-Mansi Autonomous District.
- Ragnhild Marit Sara, a Sami from Norway and a lawyer specializing in the rights of indigenous peoples and business and human rights relating to land encroachment cases in traditional Sami territories.
- Sandra Creamer, a Wannyi/Kalkadoon, Chair of the Global Board of Directors, Indigenous Peoples Rights International, lawyer and Adjunct Professor of Public Health at the University of Queensland, Australia.
- Rosa Marina Flores Cruz, an Afro-Binnizá from the Isthmus of Tehuantepec, Oaxaca, Mexico, member of the Assembly of Indigenous Peoples of the Isthmus in Defense of Land and Territory and of the Indigenous Futures Network.
- Adija Adamu, Programme Coordinator at Leading from the South.

69. The panellists shared some of their personal experiences and those of their communities. Some referred to the importance of distinguishing between the impact of development projects and that of land loss. Others to the impact of development projects on indigenous women environmental and human rights defenders opposing destructive development projects and the indispensable roles of indigenous women as the practitioners of sustainable development. Other panellists explained how indigenous communities are faced with land grabbing and forced eviction because individual business owners promote their investments through seizures of and eviction from their land. Intimidation and armed conflicts linked to development projects also contribute to the eviction of indigenous peoples from their land, particularly affecting indigenous women.

70. The panel and participants recalled the duty of States to protect and the fact that indigenous women were agents of change and peacemakers. They also made several recommendations, including the need to take an affirmative and active stand against human

¹⁴ See <https://www.ohchr.org/sites/default/files/2022-06/session15-concept-note-women-web.pdf>.

strengthening the functions of the mechanisms for indigenous peoples within the framework of the United Nations. Secondly, he focused on strengthening work with governments on promoting the respect of the rights of indigenous peoples. He concluded by providing an overview of the studies being undertaken by the Permanent Forum, which it will put forward at the next session.

77. The member of the Board of Trustees of the Voluntary Fund for Indigenous Peoples gave a briefing on how the fund is providing support to United Nations meetings and processes. He gave an overview of the upcoming support the Fund will provide to various forums, including, among others, the fifty-first session of the Human Rights Council in September 2022, the workshop on the enhanced participation of indigenous peoples that will be held in November and several sessions of the treaty bodies.

78. Ms. Reddock introduced the work done by the Committee on the Elimination of Discrimination against Women and reported on the regional consultations organized in 2022 by the working group established to lead the drafting of the Committee's general recommendation No. 39 on the rights of indigenous women and girls and on the first reading on 29 June 2022. She also stated that in October or November 2022 there would be the final reading and adoption of general recommendation No. 39. The general recommendation aims to provide guidance to States on legislative policy and relevant measures to ensure the implementation of their obligations under the Convention on the Elimination of All Forms of Discrimination against Women in relation to the rights of indigenous women and girls. It also provides guidance to indigenous women and girls in relation to their rights and is to be implemented both within and outside the territories of indigenous peoples.

79. Ms. Tigroudja introduced the work done by the Human Rights Committee and shared, among other things, recent concluding observations and Views adopted by the Committee, in which the Committee referred several times to the Declaration. She also highlighted the importance of engaging in a dialogue with United Nations mechanisms pertaining to indigenous peoples to have a holistic approach and feed into each other's work in order to have a broader interpretation of existing instruments in the light of today's challenges.

80. The Special Rapporteur on the rights of indigenous peoples underscored the importance of the work on indigenous women done by the Committee on the Elimination of Discrimination against Women and shared information on the thematic reports he would be presenting in 2022. He hoped that the coordinated efforts would get stronger and that mechanisms would have deeper coordination, which would allow them not only to complement each other's work but also to move forward in interactions to protect the rights set out in the Declaration.

XIII. Enhancing the participation of indigenous peoples in the United Nations

81. Under item 11 of the agenda, the Expert Mechanism held an interactive dialogue to follow up on the process started during the World Conference on Indigenous Peoples in 2014 to enhance the participation of the representatives and institutions of indigenous peoples in meetings of relevant United Nations bodies on issues affecting them.

82. Vice-Chair of the Expert Mechanism, Ms. Lightfoot, gave an update on the efforts and actions taken by the United Nations to advance this agenda, such as the progress on the organization of a four-day expert workshop by OHCHR, as requested by the Human Rights Council in resolution 48/11. She recalled that in accordance with the resolution, a call for the submission of written contributions on possible ways to enhance the participation of indigenous peoples in the work of the Human Rights Council would be issued and encouraged States, indigenous peoples, national human rights institutions and relevant United Nations bodies and mechanisms to share their inputs.

83. The President of the Human Rights Council emphasized that the participation of indigenous peoples in United Nations processes affecting them, and especially in the Human Rights Council, was fundamental to advancing the rights of indigenous peoples. The active participation of all rights holders in the work of the Council was essential to the fulfilment of

its mandate. The representative of Finland recalled that Finland was fully committed to advancing the enhanced participation of the representatives and institutions of indigenous peoples in the work of the Council, including in annual panels, interactive dialogues with special procedure mandate holders and other relevant discussions. In referring to the outcome of the four-day expert workshop, the representative of Guatemala recommended the appointment of co-facilitators by States and indigenous peoples to conduct consultations and negotiations in an open, inclusive and transparent manner. She further recommended that a new status be defined that would allow indigenous peoples to participate, as distinct from civil society institutions, national human rights institutions, non-governmental organizations or local communities.

84. Kenneth Deer, a member of the Haudenosaunee External Relations Committee, noted that enhanced participation had been described as the right to participate in meetings of the Human Rights Council, speaking on relevant issues, supporting recommendations by States and other activities pertaining to such a status. Questions, such as who would qualify for the new status, who would decide which indigenous representative institutions would be granted that status, or which meetings of subsidiary bodies of the Human Rights Council or of the committees would be involved was still to be resolved. The four-day workshop would be the place to debate these issues.

XIV. Future work of the Expert Mechanism, including the focus of future thematic studies

85. Member of the Expert Mechanism, Ms. Toki, led the discussion on item 10, during which participants suggested different thematic studies the Expert Mechanism could carry out, including on peace agreements and accords, the protection of indigenous human rights defenders, indigenous peoples and citizenship, the right to development and indigenous peoples, or the mental health and trauma of indigenous peoples based on colonial practices. The Expert Mechanism took note of the proposals.

86. The Expert Mechanism decided that its next annual study on the status of the rights of indigenous peoples worldwide in the achievement of the ends of the Declaration on the Rights of Indigenous Peoples, mandated by the Human Rights Council in its resolution 33/25, paragraph 2 (a), would focus on the theme of the impact of militarization on the rights of indigenous peoples. To that end, the Expert Mechanism would send out a new call for contributions in the autumn and would hold an expert seminar in December 2022 to inform the study.

87. The Expert Mechanism also decided to prepare a report for the Human Rights Council on good practices and lessons learned regarding efforts to achieve the ends of the Declaration, as authorized in Council resolution 33/25, paragraph 2 (b). The focus of the report would be on establishing effective monitoring mechanisms at the national and regional levels for the implementation of the Declaration.
