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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. Owing to the coronavirus disease (COVID-19) crisis, the Expert Mechanism conducted its fourteenth session virtually, from 12 to 16 July 2021.

II. Intersessional activities

4. Since its thirteenth session, held from 30 November to 4 December 2020, the Expert Mechanism has carried out several official intersessional activities. The University of Manitoba, with the support of Expert Mechanism, launched a virtual seminar on the right to self-determination, in February 2021, which informed the Expert Mechanism's report on the subject adopted during its fourteenth session.
5. Several members of the Expert Mechanism attended the first and second meeting of the Global Task Force for Making a Decade of Action for Indigenous Languages, in March and June 2021, coordinated by the United Nations Educational, Scientific and Cultural Organization (UNESCO). On 24 June 2021, the Chair of the Expert Mechanism took part virtually in the day of discussion that the Committee on the Elimination of Discrimination against Women held on its general recommendation on the rights of indigenous women and girls. The Expert Mechanism subsequently transmitted a written submission on the subject for the Committee's consideration. The Expert Mechanism also sent a written submission to the Committee on Economic, Social and Cultural Rights on its draft general comment on land and economic, social and cultural rights. The Expert Mechanism took part in the twentieth session of the Permanent Forum on Indigenous Issues, held virtually in April 2021.
6. Despite the constraints of the COVID-19 pandemic, the Expert Mechanism finalized an advisory note requested by indigenous peoples in Brazil which was provided pursuant to its country engagement mandate under Human Rights Council resolution 33/25 (para. 2).¹

III. Adoption of studies, reports and proposals

A. Studies and reports

7. At its fourteenth session, the Expert Mechanism adopted its study entitled "Rights of the indigenous child under the United Nations Declaration on the Rights of Indigenous Peoples",² prepared pursuant to paragraph 2 (a) of Human Rights Council resolution 33/25. The Expert Mechanism also adopted its report entitled "Efforts to implement the United Nations Declaration on the Rights of Indigenous Peoples: indigenous peoples and the right to self-determination",³ prepared pursuant to paragraph 2 (b) of Council resolution 33/25. The Expert Mechanism agreed that, in consultation with the other members, the Chair-

¹ See www.ohchr.org/EN/Issues/IPeoples/EMRIP/Pages/RequestsUnderNewMandate.aspx.

² A/HRC/EMRIP/2021/3.

³ A/HRC/EMRIP/2021/2.

Rapporteur could make revisions to the two documents mentioned above in light of the discussions at its fourteenth session, and agreed to submit them to the Council at its forty-eighth session.

8. The Expert Mechanism decided to postpone its study entitled “Right to land under the United Nations Declaration on the Rights of Indigenous Peoples: a human rights focus” in order to include information on the responses to and aftermath of the COVID-19 pandemic, until it has a clear view of the recovery process.⁴ Instead, it will prepare a study in 2022 on treaties and constructive arrangements and include ongoing processes on finding a constitutional basis for implementing treaties. It also decided that its study for 2023 would be on the impact of development policies on indigenous heritage, focusing on indigenous women, and that its report for 2023 would be on establishing effective monitoring mechanisms at the national and regional levels for the implementation of the United Nations Declaration on the Rights of Indigenous Peoples.

B. Proposals

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

9. The Expert Mechanism invites the Human Rights Council to facilitate, in consultation with indigenous peoples, the participation of indigenous peoples’ representatives and representative institutions in the work of the Council, in accordance with the United Nations Declaration on the Rights of Indigenous Peoples, and, in the context of the COVID-19 pandemic, to commit to reducing as much as possible the barriers to indigenous peoples’ online participation in the work of the Council.

10. The Expert Mechanism welcomes Human Rights Council resolution 45/12, in which the Council decided to continue to discuss further steps to facilitate the participation of indigenous peoples’ representatives and representative institutions 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 in the annual half-day discussion on the rights of indigenous peoples. The Expert Mechanism invites the Council to reiterate that decision.

11. The Expert Mechanism proposes that the Human Rights Council take note of the second dialogue meeting organized by indigenous organizations and institutions on enhanced participation of indigenous peoples at the United Nations, held in Quito from 27 to 30 January 2020, and that it call upon States to support ongoing efforts to provide meaningful, effective and enhanced participation of indigenous peoples in the United Nations through their own representative institutions in all meetings relevant to the rights of indigenous peoples, including meetings of the Council, on issues affecting them. The Expert Mechanism proposes that the Council take effective measures to follow up on the outcome of the round table, mandated in Council resolutions 42/19 and 45/12, which took place virtually during the fourteenth session of the Expert Mechanism, in July 2021, while maintaining a close dialogue with the Expert Mechanism, to ensure the continuation of the dialogue on enhanced participation of indigenous peoples. The Expert Mechanism proposes that the Human Rights Council request the Office of the United Nations High Commissioner for Human Rights to convene an expert workshop with equal participation of States and indigenous peoples and also the participation of relevant institutions and organizations with the objective of proposing recommendations for possible ways to ensure the enhanced participation of indigenous peoples in the work of the Council. The Expert Mechanism further proposes that written contributions from States, indigenous peoples and other stakeholders should be requested, collected and discussed in order to ensure broad input into the process of enhancing the participation of indigenous peoples in the work of the Council.

12. The Expert Mechanism puts forward the present proposal without prejudice to the ongoing consultative process referred to in General Assembly resolution 71/321, aimed at

⁴ A/HRC/46/72, para. 34.

enhancing the participation of representatives and institutions of indigenous peoples in United Nations meetings.

2. Proposal 2: Indigenous peoples' situation in the context of the global COVID-19 pandemic

13. The Expert Mechanism proposes that the Human Rights Council hold a panel discussion on food security and food sovereignty and social and economic recovery in the post COVID-19 context, to call attention to the impact of economic recovery plans on indigenous peoples, during its fifty-first session, to be held in September 2022.

14. The Expert Mechanism proposes that the Human Rights Council call upon all member States to address the ongoing situation of COVID-19 urgently and in doing so to ensure appropriate consultation with indigenous peoples' representatives and representative institutions, and respect for their rights in the response to and recovery from the COVID-19 crisis, in accordance with the United Nations Declaration on the Rights of Indigenous Peoples and other international standards. The Expert Mechanism proposes that the Council call upon States and United Nations entities and agencies to ensure that economic recovery measures in response to COVID-19 are taken with due regard for the rights of indigenous peoples, including their rights to their lands, territories and natural resources, in accordance with the United Nations Declaration on the Rights of Indigenous Peoples. It proposes that the Council urge States to refer to the recommendations in its previous annual report,⁵ to the guidelines developed by the Office of the United Nations High Commissioner for Human Rights⁶ and to the report of the Special Rapporteur on the rights of indigenous peoples on protecting the rights of indigenous peoples during the COVID-19 pandemic.⁷

3. Proposal 3: Increased engagement of member States and coordination between the mechanisms of indigenous peoples and the treaty bodies with the Expert Mechanism

15. The Expert Mechanism proposes that the Human Rights Council urge States to engage more actively in the activities of the Expert Mechanism and, in particular, that they attend and participate in its annual sessions and provide input and oral comments on its reports and studies, as fundamental elements in the development of the expertise of and advice provided by the Expert Mechanism.

16. The Expert Mechanism further proposes that the Human Rights Council welcome the coordination efforts between the mechanisms working on the rights of indigenous peoples, and the increased collaboration between the Expert Mechanism and the treaty bodies, including the Committee on the Elimination of Discrimination against Women, the Committee on the Elimination of Racial Discrimination, the Committee on the Rights of the Child, the Committee on Economic, Social and Cultural Rights and the Human Rights Committee, which are increasingly using the United Nations Declaration on the Rights of Indigenous Peoples to inform their work. In that regard, the Expert Mechanism proposes that the Council encourage further collaboration between the treaty bodies and the Expert Mechanism to ensure that indigenous peoples' human rights are properly addressed.

17. The Expert Mechanism also proposes that the Human Rights Council encourage member States to continue to promote the United Nations Declaration on the Rights of Indigenous Peoples and the participation of indigenous peoples in global mechanisms that may benefit from their contributions, in particular those mechanisms dealing with issues that threaten indigenous peoples' lives, such as climate change, migration and COVID-19.

4. Proposal 4: Promotion of the country engagement mandate of the Expert Mechanism

18. The Expert Mechanism proposes that the Human Rights Council encourage States and indigenous peoples to engage more proactively with the Expert Mechanism under its amended mandate, pursuant to Council resolution 33/25, by submitting requests for technical

⁵ A/HRC/46/72.

⁶ See www.ohchr.org/Documents/Issues/IPeoples/OHCHRGuidance_COVID19_IndigenouspeoplesRights.pdf.

⁷ A/75/185.

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 the resolution and seize the opportunity for dialogue provided by such requests.

19. The Expert Mechanism also proposes to the Human Rights Council that it acknowledge States and indigenous peoples that have already engaged with it under its amended mandate and made progress towards the realization of the aims of the United Nations Declaration on the Rights of Indigenous Peoples.

5. Proposal 5: Protection of human rights defenders

20. The Expert Mechanism urges the Human Rights Council to call upon States to ensure that indigenous human rights defenders, including child human rights defenders, are guaranteed due protection during the COVID-19 pandemic and thereafter, including a safe working environment and security, and to review laws that criminalize the work of indigenous human rights defenders, in compliance with the United Nations Declaration on the Rights of Indigenous Peoples and other international standards. In light of the information set out in the report by the Special Rapporteur on the rights of indigenous peoples, on attacks against and criminalization of indigenous human rights defenders,⁸ the Expert Mechanism proposes that the Council request States to ensure that all human rights violations against indigenous communities and human rights defenders, including against indigenous women, are investigated and that the perpetrators are brought to justice.

6. Proposal 6: Reprisals against human rights defenders, mandate holders and indigenous leaders

21. The Expert Mechanism calls upon the Human Rights Council to reiterate the concerns and proposed action set out in Council resolution 42/19 (paras. 27–28), including the concern about the increase in cases of reprisal 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 experiencing further pressure by the COVID-19 pandemic and by global economic crises and to address all allegations of reprisal and condemn all reprisals against indigenous human rights defenders, as well as against United Nations mandate holders working on the rights of indigenous peoples, and representatives of indigenous peoples, including children, attending sessions of the Expert Mechanism.

7. Proposal 7: Indigenous peoples and the International Decade of Indigenous Languages

22. The Expert Mechanism proposes that the Human Rights Council note with appreciation the proclamation by the General Assembly of the period 2022–2032 as the International Decade of Indigenous Languages (see General Assembly resolution 74/135, para. 24), and that it also note the progress, outcomes and lessons learned from the International Year of Indigenous Languages, in 2019, through the activities led by the United Nations Educational, Scientific and Cultural Organization (UNESCO). The Expert Mechanism also proposes that, in preparing for the Decade, the Council urge UNESCO, States and other stakeholders to ensure the effective and meaningful participation of indigenous peoples in leading and holding activities to mark the Decade through their own representative institutions, and, especially, that the Council urge States to notify and provide funding to indigenous peoples to ensure their participation in that process.

8. Proposal 8: International repatriation of indigenous peoples' sacred items and human remains

23. Recalling paragraph 27 of the outcome document of the World Conference on Indigenous Peoples (see General Assembly resolution 69/2), articles 11 and 12 of the United

⁸ A/HRC/39/17.

Nations Declaration on the Rights of Indigenous Peoples and the recommendations of the Permanent Forum on Indigenous Issues, the Expert Mechanism proposes that the Human Rights Council encourage the development of a mechanism to facilitate the international repatriation of indigenous peoples' sacred items and human remains and that the development of such a mechanism be informed by the report of the Expert Mechanism entitled "Repatriation of ceremonial objects, human remains and intangible cultural heritage under the United Nations Declaration on the Rights of Indigenous Peoples".⁹

9. Proposal 9: Indigenous peoples in voluntary isolation or initial contact

24. The Expert Mechanism proposes that the Human Rights Council prepare a specific expert report on the human rights situation of indigenous peoples in voluntary isolation or initial contact, taking into account the relevant international and regional human rights standards and expert advice on the legislative, administrative and policy measures and actions to be adopted at all levels to ensure their protection.

10. Proposal 10: National action plans, effective national and regional monitoring mechanisms and legislation to achieve the ends of the United Nations Declaration on the Rights of Indigenous Peoples

25. The Expert Mechanism proposes that the Human Rights Council remind States of the commitment undertaken in the outcome document of the high-level plenary meeting of the General Assembly known as the World Conference on Indigenous Peoples to cooperate with indigenous peoples to develop and implement national action plans, effective national and regional monitoring mechanisms, legislation or other measures to achieve the ends of the United Nations Declaration on the Rights of Indigenous Peoples. In that regard, it proposes that the action plans be used as tools to implement the recommendations of international human rights mechanisms, including the universal periodic review, the treaty bodies and special procedures, and that States consider seeking the collaboration and support of their national human rights institutions and of the Expert Mechanism in the elaboration of those action plans.

11. Proposal 11: United Nations Voluntary Fund for Indigenous Peoples

26. The Expert Mechanism reiterates its proposal that the Human Rights Council continue to urge States to contribute to the United Nations Voluntary Fund for Indigenous Peoples.

12. Proposal 12: Collaboration with the universal periodic review process

27. The Expert Mechanism reiterates its proposal that the Human Rights Council and member States continue to draw increasingly on the United Nations Declaration on the Rights of Indigenous Peoples in the universal periodic review process. It also reiterates its proposal that, in future universal periodic review cycles, the Declaration be explicitly included in the list of standards on which the universal periodic review process is based.

IV. Organization of the session

A. Attendance

28. The Expert Mechanism held its fourteenth session virtually from 12 to 16 July 2021. All seven members, Megan Davis (Australia, Chair-Rapporteur), Sheryl Lightfoot (Canada), Margaret Lokawua (Uganda), Binota Moy Dhamai (Bangladesh, Vice-Chair), Rodion Sulyandziga (Russian Federation, Vice-Chair), Laila Vars (Norway) and Erika M. Yamada (Brazil), attended the session virtually.

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

⁹ A/HRC/45/35.

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

30. A total of 10 side events were held virtually during the session on a broad array of themes relating to the rights of indigenous peoples.

B. Opening of the session and adoption of the agenda

31. Three Amazigh women, living in Algeria, Mali and Morocco, performed traditional indigenous spiritual songs, after which Ms. Vars, the outgoing Chair of the Expert Mechanism, opened the fourteenth session.

32. The President of the Human Rights Council recognized the important role that indigenous peoples played in the United Nations, and thus stressed the essential nature of their full and effective participation in the Human Rights Council, noting the collective responsibility for ensuring their meaningful engagement. She noted that the Council would be holding an intersessional round table on enhancing the participation of indigenous peoples in the Council, and also that the theme of the annual half-day panel discussion on the rights of indigenous peoples in 2021 would be the human rights situation of indigenous peoples in the context of the COVID-19 pandemic, with a special focus on the right to participation. She also highlighted the fact that the right to indigenous languages was an important aspect of indigenous peoples' right to participate in decisions affecting them, and drew attention to the International Decade of Indigenous Languages, scheduled to take place from 2022 to 2032. She concluded by emphasizing that the Expert Mechanism was a valuable tool for States and indigenous peoples to better promote and protect the human rights of indigenous peoples and to work towards the full implementation of the United Nations Declaration on the Rights of Indigenous Peoples. This was particularly true for the Expert Mechanism's country visits.

33. The Director of the Thematic Engagement, Special Procedures and Right to Development Division of the Office of the United Nations High Commissioner for Human Rights focused her address on the right to self-determination and emphasized: (a) that the participation of indigenous peoples in the development of the United Nations Declaration on the Rights of Indigenous Peoples had been an example of the exercise of "external" self-determination, which referred to indigenous peoples' participation in the international community based upon the principle of equal rights; and (b) that self-determination remained the most controversial term in international law, and expressed indigenous peoples' right to decide on their own political status, within their own institutions, to take part in the political life of the State and to direct their political, economic, social and cultural development. She stated that the expressions of self-determination set out in the Expert Mechanism's report,¹⁰ from treaties to various types of self-governing arrangements, engendered real improvements in the lives of indigenous peoples. She referred to the COVID-19 crisis as an example of indigenous peoples having exercised their self-determination, for example by reviving self-reliance measures including traditional practices and isolation measures before national governments had. She said that indigenous peoples needed to be allowed to define their own futures through meaningful consultation, that their capacity to meet their children's needs depended on their ability to exercise their right to self-determination, and that self-determination was the foundation of all indigenous peoples' human rights upon which other rights such as the rights to consultation and participation, the requirements of free, prior and informed consent, and language rights, were based, and also linked this to implementing Sustainable Development Goals 10 and 16.

C. Election of officers

34. The outgoing Chair of the Expert Mechanism, Ms. Vars, invited the members of the Expert Mechanism to nominate a Chair-Rapporteur and Vice-Chairs for the period 2021–2022. Ms. Lightfoot nominated Ms. Davis as Chair-Rapporteur and Mr. Moy Dhamai and Mr. Sulyandziga as Vice-Chairs. All three were appointed by acclamation. Ms. Davis adopted

¹⁰ A/HRC/48/75.

the agenda of the session¹¹ and provided an outline of the work undertaken by the Expert Mechanism since its last session.

V. Regional meetings

35. Given the virtual nature of the fourteenth session, which took place from 12 to 16 July, the Expert Mechanism held four regional meetings on the draft study and advice entitled “Rights of the indigenous child under the United Nations Declaration on the Rights of Indigenous Peoples”¹² and the draft report entitled “Efforts to implement the United Nations Declaration on the Rights of Indigenous Peoples: indigenous peoples and the right to self-determination”.¹³ Both reports were amended after the session on the basis of comments and suggestions made by all participants.¹⁴

A. Africa and North America Region

36. This regional meeting (items 3 and 8 of the provisional agenda) was chaired by Ms. Lightfoot and Ms. Lokawua, members of the Expert Mechanism. Several participants addressed the recent discovery of indigenous children’s remains in residential schools and noted that the effects of the abuse experienced in these schools remained. Despite progress in reforming child welfare systems, participants stressed that much work still needed to be done, for example on the need for accountability. Participants also emphasized that indoctrination of indigenous children continued today, and called upon States to be vigilant in this regard.

37. Participants warned that indigenous children faced discrimination and marginalization. Limited access to education in their native languages remained a challenge, and the International Decade of Indigenous Languages was seen as an opportunity to address this, along with the matter of legislation on bilingual education. In the context of COVID-19, interruptions to indigenous children’s education due to a lack of access to the Internet were reported. Participants also emphasized that both indigenous children and persons with disabilities faced particular challenges in accessing quality education, and called for a review of education policy to address the needs of all indigenous children without discrimination.

38. Participants stressed that indigenous girls and young women were particularly vulnerable to poverty, barriers to education, harmful cultural practices, early pregnancy, and barriers to accessing health care and reproductive health services and products, among other things. These risks were intensified in contexts of conflict. States were called upon to protect the rights of indigenous girls and young women in accordance with national and international standards. A recommendation was also made for the Expert Mechanism to address in its reports the limited options that indigenous women had when giving birth and the need to protect traditional practices.

39. In addition, concern was expressed about the limited implementation of the United Nations Declaration on the Rights of Indigenous Peoples on matters concerning women in many countries and about the stigmatization and criminalization of indigenous peoples when demanding their right to self-determination. Several participants reported that indigenous peoples did not have effective political participation and were not consulted on matters affecting them, such as the exploitation of natural resources.

40. Participants called upon States to recognize indigenous peoples’ right to self-determination over indigenous territories and to recognize indigenous law on an equal footing with domestic laws. In order to move forward efforts on the right to self-determination, the Expert Mechanism was requested to facilitate dialogue, capacity-building and cooperation.

¹¹ A/HRC/EMRIP/2021/1.

¹² A/HRC/EMRIP/2021/3.

¹³ A/HRC/EMRIP/2021/2.

¹⁴ Statements made during the session can be found at <https://bit.ly/docipdoc-emrip14-en>.

B. Asia and Pacific Region

41. This regional meeting (items 3 and 8 of the provisional agenda) was chaired by Ms. Davis, Chair of the Expert Mechanism, and Mr. Moy Dhamai, Vice-Chair of the Expert Mechanism. Several participants stressed the need to increase indigenous children's access to bilingual education, higher education opportunities, and health services, including sexual and reproductive health and education services. In the context of COVID-19, indigenous children's education had reportedly been interrupted because they lacked access to electricity, smartphones and/or the Internet, and some had dropped out of school to support their families financially. Risks associated with sexual violence, trafficking and child labour, particularly among indigenous girls and young women, were also raised, and States were called upon to establish culturally appropriate responses and prevention measures.

42. Some participants expressed concern about child removal policies and practices and about the overrepresentation of indigenous children in the youth justice system, youth suicide, child protection services and out-of-home care services. Participants called for an end to child removal practices and compensation for survivors. Concern was also expressed about risks faced by indigenous children who work as human rights defenders, and a recommendation for the Expert Mechanism's study to address the civil and political rights of indigenous children was made. More broadly, risks faced by indigenous human rights defenders were elevated by participants, with a request for the Expert Mechanism to provide guidance to States on protection measures for those at risk.

43. Furthermore, participants emphasized that some indigenous peoples were not recognized by Member States, and that self-determination was not fully exercised. Development projects were authorized without the free, prior and informed consent of indigenous peoples, causing the destruction of sacred sites, displacement, and toxic contamination, among other things. Concerns about the impact of toxic contamination on the health of indigenous children were raised repeatedly, and States were called upon to protect the rights of indigenous children and the right to land in accordance with national and international standards. Participants emphasized that limited recognition of self-determination could increase risks associated with climate change, including droughts and floods, which had resulted in food deficits impacting children's development. A request for progress on climate change policies in consultation with indigenous peoples was made.

44. Finally, States were called upon to implement the United Nations Declaration on the Rights of Indigenous Peoples, and the Expert Mechanism was called upon to continue its mandated country engagements, to provide States with technical assistance and to continue the dialogue on self-determination.

C. The Arctic, Central and Eastern Europe, the Russian Federation, Central Asia and Transcaucasia

45. This regional meeting (items 3 and 8 of the provisional agenda) was chaired by Ms. Vars, member of the Expert Mechanism, and Mr. Sulyandziga, Vice-Chair of the Expert Mechanism. A number of participants highlighted the importance of continuing to devote attention to multiple and intersectional vulnerabilities affecting indigenous children. Many participants referred to various forms of historical and current physical and psychological abuse against indigenous children. Some participants observed that the report should emphasize the racism and hate crimes experienced by indigenous children, and address the structural causes of this problem, and its potential remedies.

46. Other participants spoke to the current challenges facing the right to education of indigenous children, particularly as regards the language of instruction, and the availability of study materials and qualified teachers. They agreed that the remote mode of learning, induced by the COVID-19 pandemic, had made inequalities relating to access to digital resources more noticeable. Indigenous children, especially those living in remote areas, had been disproportionately affected by the absence of appropriate digital equipment.

47. A number of participants emphasized that although there were legal provisions in some States acknowledging the rights of indigenous peoples to autonomy and self-

governance, those provisions had tended to be at odds with industrial and extractive activities in their homelands. They also expressed concern about the prospect of ensuring that indigenous peoples were able to enjoy their natural resources.

48. In the context of truth and reconciliation processes established in some countries, some participants agreed about the importance of ensuring that these processes were not restricted to the State and indigenous communities. They suggested that all sectors of the population should be involved in these processes, in order to ensure broad social acceptance of the findings arising from them and an acknowledgement of the past.

D. Central and South America and the Caribbean

49. This regional meeting (items 3 and 8 of the provisional agenda) was chaired by Ms. Lightfoot and Ms. Lokawua, members of the Expert Mechanism. A number of participants agreed on the importance of emphasizing the increased vulnerability of indigenous girls, and violations of their rights, in particular their right to protection against all forms of gender-based violence and against discrimination based on their indigenous status, and their right to participation. The need to protect indigenous women and girls with disabilities from discrimination was also raised.

50. Some participants underscored the importance of the right to access to education in the relevant indigenous language, which included the availability of teachers and the production of adequate study materials in the language concerned. They also emphasized the challenges introduced by the pandemic with regard to access to health care, and the difficulties of distance learning. Some called for the progressive reimplementation of face-to-face and blended learning.

51. Many participants commented on the challenges faced regarding the implementation of free, prior and informed consent. Some participants claimed that despite there being favourable legal environments for the exercise of this right, it nevertheless became ineffective in practice when the law was not applied by State agencies. Other participants commented that in some countries there was still a reluctance on the part of the State to recognize indigenous peoples as indigenous and their legal claims to autonomy and self-determination. One participant claimed that the rights of indigenous peoples in his country simply “do not exist.” The Expert Mechanism was urged to include in its report on self-determination observations applicable to the rights of indigenous peoples in situations of generalized violence or armed conflict.

VI. Interactive dialogue with the treaty bodies

52. Mr. Sulyandziga, Vice-Chair of the Expert Mechanism, opened item 5 of the agenda, on the interactive dialogue, by welcoming members of four treaty bodies: the Committee on the Elimination of Discrimination against Women, the Committee on the Elimination of Racial Discrimination, the Committee on the Rights of the Child and the Human Rights Committee. He noted the increased activity around indigenous peoples’ rights among the treaty bodies in the past few years, and the increased collaboration between the treaty bodies and the Expert Mechanism particularly with respect to the latter’s country engagement mandate with Finland and upcoming engagement with Canada. He also noted the rise in references to the United Nations Declaration on the Rights of Indigenous Peoples in treaty body decisions, and welcomed the fact that for the first time, the Human Rights Committee had made a specific reference to “internal” self-determination in the context of individual peoples under article 1 of the International Covenant on Civil and Political Rights, in decisions under the communications procedure in 2019. Finally, he highlighted how the Expert Mechanism had drawn on the treaties and the work of the treaty bodies in its reports in the past year.

53. The Chair of the Committee on the Elimination of Discrimination against Women set out the parameters and process for the drafting of its general recommendation on the rights of indigenous women and girls. She referred to the day of general discussion taking place on 24 June 2021 and to the expectation that the final draft would be adopted at the end of 2022.

She referred to all of the consultations that the Committee had had to date and would continue to have, including with many indigenous women leaders. She highlighted some of the parameters of the general recommendation, as follows: (a) that the Committee is guided by the principle of self-identification and that indigenous women and girls' rights are to be respected wherever they are, irrespective of whether they are located in their own territories; (b) the notion of intersectionality of rights; (c) the various forms of discrimination, such as that experienced by indigenous women with disabilities, or those who express diverse ways of life; and (d) the important role that indigenous women and girls play in their communities, as leaders, sharing their culture and knowledge, ensuring food security, and protecting water and biodiversity, as well as their important role in social movements and organizations and as human rights defenders at the local, national, regional and international levels.

54. A member of the Committee on the Elimination of Racial Discrimination indicated that the Committee dealt with indigenous peoples' rights under the reporting procedure, the follow-up procedure and the early warning and urgent action procedures. She indicated that under its early warning and urgent action procedures in 2020 and 2021, the Committee had considered 19 situations globally, 13 of which addressed the rights of indigenous peoples. She referred to the Committee's general recommendation No. 23 (1997) on the rights of indigenous peoples, which was the Committee's guiding tool. She then focused on three areas to illustrate the Committee's recent practice. Firstly, on the rights to consultation and free, prior and informed consent, she observed that in 2020 and 2021, States had continued to fail to implement these rights fully. She reaffirmed the Committee's position that free, prior and informed consent should be obtained prior to taking any measure that may affect the rights of indigenous peoples, particularly in cases where their rights over their territories, lands and resources may be jeopardized. Secondly, on violence against indigenous communities and human rights defenders, the Committee had observed that indigenous communities were suffering more and more violence, and threats of violence, directed against indigenous communities and more often against indigenous human rights defenders. Thirdly, with regard to the effects of the COVID-19 pandemic on indigenous peoples, she observed that the pandemic had worsened the situation of isolated indigenous peoples, who had been paying a high price in terms of deaths and effects on their health. She said that the Committee had called upon States to address the health and economic challenges of the pandemic, in consultation with indigenous peoples. The Committee had further called upon States to address the specific needs of indigenous women, including access to adequate employment, education and health-care services, including sexual and reproductive health-care services. Moreover, the Committee had called for the collection of data and reliable information on the impact of the pandemic on indigenous peoples, in order to assess their situation and to elaborate and implement specific policies.

55. The Vice-Chair of the Committee on the Rights of the Child emphasized that certain groups required particular protection of their rights, and that this was the case for the indigenous child. She referred to the rights in the Convention that specifically related to indigenous children, and indicated that the Committee had addressed this topic in its general comment No. 11 (2009), and had adopted observations and recommendations for States parties to inform the Committee about measures taken for the benefit of the indigenous child. She referred to the vulnerabilities of indigenous children displayed during the COVID-19 crisis. By way of recommendations, she noted that in order to better guarantee the rights of the indigenous child, it was necessary: (a) to improve data-collection systems, to ensure the visibility of indigenous children within policies; (b) to consider indigenous children's special needs due to intersectional and multiple vulnerabilities and discrimination; (c) to ensure the spread of awareness of the rights of the indigenous child and of the rights of those who work to promote these; (d) to combat violence against indigenous girls, and harmful traditional practices; (e) to develop forms of community-based justice, to reinforce the role of children as actors in the promotion of their own rights; and (f) to guarantee the justiciability of the rights of the indigenous child by means of their access to justice (including via extrajudicial complaints).

56. The Chair of the Human Rights Committee indicated that she saw much scope for deepening this coordination and cooperation between the Expert Mechanism and the treaty bodies, and for mutual reinforcement of each body's key recommendations to member States. She indicated that the Committee had been mindful of the vulnerability of indigenous

populations to the effects of the COVID-19 pandemic and had, for example, asked countries, such as Cambodia and Nepal, about the measures that had been taken to protect indigenous peoples from COVID-19. The Committee had adopted two sets of concluding observations, following online interactive dialogues with Finland and Kenya, in March 2021, addressing issues affecting indigenous peoples in both States and requesting both to report on the implementation of these recommendations in 2023. Under the individual communications procedure, the Committee had found violations of the International Covenant on Civil and Political Rights in relation to issues including violence against indigenous women, the political participation of indigenous peoples, access to justice, the impact of environmental degradation on the right to life, and the arbitrary arrest and detention of indigenous women. In 2019, in *Portillo Cáceres and others v. Paraguay*,¹⁵ the Committee had found violations by the State party of articles 6 (right to life) and 17 (right to privacy) with respect to the death of a complainant due to the failure of the State to enforce environmental controls which led to his death. As regards general comments, the Chair pointed to general comment No. 37 on the right of peaceful assembly, which the Committee had adopted during its session held virtually in July 2020. In paragraph 25 of that general comment, the Committee made it clear that laws and their interpretation and application should not result in discrimination in the enjoyment of the right of peaceful assembly on any basis, including indigenous status.

VII. Country engagement

57. Ms. Vars, member of the Expert Mechanism, opened agenda item 6 and introduced the following matters: (a) the Expert Mechanism's country engagement mission to New Zealand on the development of a plan of action; (b) the country engagement with Sweden on repatriation of the Yaqui Maaso Kova from the National Museum of World Culture in Sweden; and (c) the finalization of an advisory note requested by indigenous peoples in Brazil. She also reported that the Expert Mechanism was currently discussing the focus of a mission to Canada with indigenous peoples and was engaging in follow-up to its mission to Finland in 2018. Several other country engagement requests remained open, including in regard to the Democratic Republic of the Congo, which had had to be cancelled for security reasons in 2020, as well as to Kenya, the Russian Federation and Australia.

58. The representative from New Zealand complimented the Expert Mechanism and its secretariat on its inclusive approach to the mission to that country, stating that both the process and the advice provided had encouraged a spirit of partnership between the Government, Maori and other stakeholders and had provided New Zealand with valuable technical advice. She noted that a technical working group had been set up. She said that further progress on the development of a Declaration plan had slowed in 2020, due to resources being prioritized to respond to COVID-19. In July 2021, the Minister for Maori Development had announced that the next steps for developing a Declaration plan would first target engagement with Maori, and then the wider public once there was a draft Declaration plan. It was hoped that a final plan would be confirmed by the end of 2022.

59. The Aotearoa Independent Monitoring Mechanism and the New Zealand Human Rights Commission, as the requesters of the mission, stated that the Expert Mechanism had provided valuable guidance and that the country engagement was very beneficial and had prompted good progress, particularly in regard to a Declaration Working Group. He Puapua – the report from this working group – was focused strongly on self-determination and *tino rangatiratanga*. Although the requesters recognized that Government needed to respond to the pandemic, they were particularly frustrated that the He Puapua report had not been released, as it provided useful information and ideas for discussion. They welcomed the Government's agreement to a process that was largely consistent with the advice of the Expert Mechanism and the Declaration Working Group.

60. The Director-General of the National Museums of World Culture in Sweden spoke of the history of her relationship with the return of the Yaqui Maaso Kova. She indicated that the dialogue had been very positive and constructive, and appreciated the Expert Mechanism's skilled ways of moving the dialogue forward. She could not stress enough the

¹⁵ CCPR/C/126/D/2751/2016.

importance of the informal, personal meeting with members of the Expert Mechanism that had taken place in February 2020. She indicated that a return of the Maaso Kova (ceremonial deer head) could be carried out on the basis of article 15 of the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, of 1970, and article 12 of the United Nations Declaration on the Rights of Indigenous Peoples. She reported that in February 2021, Sweden had received a formal request through the Embassy of Mexico in Sweden for the return of 24 Yaqui objects, among them the sacred Maaso Kova. In May 2021, the National Museums of World Culture had submitted a recommendation to the Government of Sweden to agree to return all 24 objects to the Yaqui peoples in Mexico. The recommendation was currently being reviewed by the Government and it was hoped that a positive decision would result, in the near future.

61. The representative of Mexico confirmed that the Government of Mexico had presented an official restitution request for the return of the Maaso Kova, under article 15 of the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property and articles 11 and 12 of the United Nations Declaration on Rights of Indigenous Peoples. Once a response was received from Sweden, representatives of the Yaqui people would travel to Sweden to take ownership of this object of spiritual significance. The Chairman representing the Yaqui peoples thanked everybody involved in this process. The Executive Director of the International Indian Treaty Council recounted the history of the Maaso Kova, indicating that it was a central element of Yaqui culture and considered a living being. She described how she had found it in the museum in 2003 and had been trying to have it returned ever since. She highlighted the following key outcomes: (a) that Yaqui laws had been recognized and upheld by the Expert Mechanism on an equal basis with State laws, in accordance with article 11 of the United Nations Declaration on the Rights of Indigenous Peoples; (b) that the first international seminar had taken place in Vancouver, Canada, in connection with the country engagement; and (c) that the Swedish museum had agreed to begin the process of repatriation of the Maaso Kova.

62. The representative of Brazil focused on three main issues – participation, health and vaccination against COVID-19, and protection – and described the additional steps that the Government of Brazil had taken to ensure participation of indigenous peoples in policy decisions affecting them. He also indicated that the Ministry of Health had adopted accountability measures under the indigenous health-care programme. He stated that the Government had established a dedicated body to set up and supervise a plan to erect physical barriers to protect indigenous peoples in voluntary isolation and initial contact from disease. He said that the country's programme for a safe environment had recently adopted high-end satellite technology. He also described efforts by the federal police to repress violent acts by illegal miners against local leaders, and its operation which had dismantled five illegal mining areas and destroyed equipment and tools.

63. The legal representative of the umbrella organization coordinating indigenous organizations in the Brazilian Amazon¹⁶ reported that its experience of working with the Expert Mechanism had been very positive despite the pandemic. She said that the Expert Mechanism had responded in an effective manner to the country engagement and technical assistance request. She reported that the Expert Mechanism had been able: (a) to identify the most serious problems that affected indigenous peoples' rights to health and land in the context of the COVID-19 pandemic; (b) to speak directly with officials of different agencies of the Government of Brazil to obtain detailed information; and (c) to draft valuable recommendations that the Government needed to adopt in order to address the situation. She expressed concern at draft bill PL 490, which she said sought to reform the application process for the demarcation of indigenous land and would allow mining activity in indigenous territory. This, she said, ran counter to all the valuable recommendations that the Expert Mechanism had included in its advisory note. She requested that the Expert Mechanism monitor the implementation by Brazil of the recommendations and urged the Government not to adopt measures that ran counter to these recommendations.

64. The representative of Japan stated that since the country engagement mission requested by the Expert Mechanism was an initiative aimed at improving the rights of

¹⁶ Coordenação das Organizações Indígenas da Amazônia Brasileira.

indigenous peoples, Japan believed it was important to respect the wishes of the indigenous people concerned when arranging such missions. Therefore, Japan was continuously communicating with the Hokkaido Ainu Association and other relevant stakeholders on the Expert Mechanism's request to carry out a mission. He said that, in cooperation with relevant ministries and agencies and indigenous groups, and taking into account the situation with COVID-19, Japan would continue to consider this matter.

VIII. Coordination meeting of United Nations indigenous rights mechanisms

65. Under agenda item 4, the members of the Expert Mechanism held a private meeting with the Chair and other members 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. The participants considered the following issues: (a) updates on planned joint activities for the period 2021–2022; (b) selection and coordination of thematic studies; and (c) coordination of country engagement.
