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Permanent Forum on Indigenous Issues

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Human rights: dialogue with the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people and other special rapporteurs

Structures, procedures and mechanisms that currently exist or that might be established to effectively address the human rights situation of indigenous peoples

Paper prepared by two members of the Permanent Forum on Indigenous Issues

Summary

The Permanent Forum on Indigenous Issues has been mandated by the Economic and Social Council to provide expert advice and recommendations to the Council, programmes, funds and agencies of the United Nations on a range of indigenous issues, including human rights. The Forum addresses this issue as a separate agenda item at its annual sessions in New York, in close collaboration with the Office of the United Nations High Commissioner for Human Rights and the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples.

Since its establishment and according to its mandate, the Forum has repeatedly considered the challenges of addressing the human rights of indigenous peoples within the United Nations system in view of the serious violations against indigenous peoples worldwide. The Forum has followed the establishment of the Human Rights Council and its institution-building discussion with great interest and looks forward to developing close collaboration in order to further the implementation of the human rights of indigenous peoples. The mandate of the Council is to address violations of human rights, including gross and systematic violations, and make recommendations thereon. Its role is also to promote the full implementation of human rights obligations undertaken by States and provide follow-up to goals and commitments related to the promotion and protection of human rights. At its last



session in May 2007, the Forum debated the role of the newly established Human Rights Council with regard to the promotion and protection of the rights of indigenous peoples and made a number of concrete recommendations in this respect.* In the context of that discussion, the Forum decided to appoint two of its members, Ida Nicolaisen (Vice-Chair) and Wilton Littlechild, to undertake a study on the structures, procedures and mechanisms that presently exist or that might be established to effectively address the human rights situation of indigenous peoples, to arrange for indigenous representation and inclusion in such structures, procedures and mechanisms and to submit a report on the subject to the Forum by 31 December 2007.

The Forum, the Special Rapporteur and international institutions with first-hand knowledge of the situation of indigenous peoples have time and again expressed their concern at the persistent, and in many cases widening, implementation gap between the international legal frameworks and the effective protection of the human rights of indigenous peoples at the country level. It is crucial, therefore, that the Human Rights Council take action to bridge this gap and ensure the implementation and monitoring of the human rights of indigenous peoples.

The present study has found that, with the adoption of the United Nations Declaration on the Rights of Indigenous Peoples by the General Assembly, the international community has significant new opportunities by which to motivate States to comply with human rights standards, including those set forth in the Declaration. The study calls on the Human Rights Council and the Permanent Forum on Indigenous Issues to seize this historic opportunity to establish mechanisms that can strengthen the protection of the rights of indigenous peoples and to focus on their attainment.

* E/C.19/2007/12.

Contents

	<i>Paragraphs</i>	<i>Page</i>
I. Commission on Human Rights and indigenous peoples	1–12	4
A. Working Group on Indigenous Populations	5–6	4
B. Working Group on the draft Declaration on the Rights of Indigenous Peoples	7–9	5
C. Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people	10–12	6
II. General Assembly and indigenous peoples	13–23	6
A. International Year and the Decades of the World's Indigenous People	13–17	6
B. United Nations Funds for indigenous peoples	18–19	7
C. 2005 World Summit	20–22	8
D. Adoption of the United Nations Declaration on the Rights of Indigenous Peoples	23	8
III. Permanent Forum on Indigenous Issues	24–47	8
A. Impact of the adoption of the United Nations Declaration on the Rights of Indigenous Peoples on the work of the Permanent Forum on Indigenous Issues: a Committee on the United Nations Declaration on the Rights of Indigenous Peoples within the Forum	34–39	10
B. Establishment of the Human Rights Council and its interface with the Permanent Forum on Indigenous Issues	40–47	11
IV. Institution-building of the Human Rights Council	48–66	13

I. Commission on Human Rights and indigenous peoples

1. Since its formation, the United Nations has given special priority to the promotion and protection of human rights. Article 1, paragraph 3, of the Charter of the United Nations defines one of its main objectives as the promotion and encouragement of respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.

2. In 1947, the General Assembly created the Commission on Human Rights as the main organ of the United Nations devoted to the protection and promotion of human rights and the coordination of human rights activities within the United Nations system. The Commission worked to give overall political direction to the human rights agenda. As part of its mandate, the Commission developed and codified new international standards, undertook studies and promoted observance of human rights; in addition, it examined and monitored the human rights situation in many parts of the world. The Commission also reviewed information coming from States and non-governmental organizations.

3. Of particular relevance to indigenous peoples has been the adoption by the United Nations of a series of human rights covenants to grant greater protection to particularly vulnerable groups. Among these are the 1965 International Convention on the Elimination of all Forms of Racial Discrimination, the 1979 International Convention on the Elimination of All Forms of Discrimination against Women, the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the 1989 Convention on the Rights of the Child, the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the 1992 Convention on Biological Diversity and the 2001 Universal Declaration on Cultural Diversity of the United Nations Educational, Scientific and Cultural Organization.

4. The Commission on Human Rights created a number of important human rights mechanisms and procedures for the promotion and protection of the rights of indigenous peoples. In 1995, the Commission decided to include indigenous issues as a new item in its work programme, in order to give particular attention to the human rights problems of indigenous peoples. Under that agenda item, entitled "Indigenous issues", the Commission considered reports and resolutions of the Working Group on the draft Declaration on the Rights of Indigenous Peoples, the Working Group on Indigenous Populations, the Permanent Forum on Indigenous Issues and the International Decade of the World's Indigenous People. Many indigenous organizations actively participated in the Commission sessions, presenting oral and written interventions under that agenda item.

A. Working Group on Indigenous Populations

5. In 1982, the Working Group on Indigenous Populations was established as a subsidiary body of the Sub-Commission on Prevention of Discrimination and Protection of Minorities (later renamed the Sub-Commission on the Promotion and Protection of Human Rights), pursuant to Economic and Social Council resolution 1982/34. The Working Group basically had a two-fold mandate: to review developments pertaining to the promotion and protection of the human rights and fundamental freedoms of indigenous peoples and to give attention to the evolution

of international standards concerning indigenous rights. In addition, the Working Group facilitated dialogue between Governments and indigenous peoples. The Working Group consisted of five independent expert members of the Sub-Commission — one from each of the world's geopolitical regions. It established flexible rules of procedure from the start, enabling the representatives of indigenous communities and organizations to participate in the deliberations of the Working Group. As a subsidiary body of the Sub-Commission and the Commission on Human Rights, the Working Group ceased to exist with the creation of the Human Rights Council in 2006.

6. In 1985, the Working Group commenced work on the draft United Nations Declaration on the Rights of Indigenous Peoples. In 1994, the Sub-Commission on the Promotion and Protection of Human Rights, in its resolution 1994/45, adopted the draft Declaration on the Rights of Indigenous Peoples and forwarded it to its parent body, the Commission on Human Rights, for further consideration.

B. Working Group on the draft Declaration on the Rights of Indigenous Peoples

7. In 1995, by its resolution 1995/32, the Commission on Human Rights established the open-ended inter-sessional working group to elaborate the draft Declaration on the Rights of Indigenous Peoples. The Working Group ended its work at its eleventh session, held from 5 to 16 December 2005, and its resumed session, from 30 January to 3 February 2006. The Chairperson/Rapporteur presented the draft declaration to the Human Rights Council at its first session, in June 2006. The United Nations Declaration on the Rights of Indigenous Peoples was adopted by the Human Rights Council at its first session.¹ On 13 September 2007, the General Assembly adopted the Declaration,² by 143 votes to 4, with 11 abstentions.

8. The Declaration recognizes the wide range of basic human rights and fundamental freedoms of indigenous peoples. Among these are their right to self-determination, use and control of lands, territories and other natural resources, as well as their rights in terms of maintaining and developing their own political, religious, cultural and educational institutions along with the protection of their cultural and intellectual property. The Declaration highlights the requirement for free, prior and informed consent, as well as indigenous peoples participation in activities of any kind that have an impact on them. The Declaration also provides for fair and mutually acceptable procedures to resolve conflicts between indigenous peoples and States.

9. The adoption of the Declaration was a historical step forward in the consolidation of international mechanisms for the protection of human rights and fundamental freedoms.

¹ General Assembly resolution 61/295.

² *Ibid.*, annex.

C. Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people

10. In 2001, the Commission on Human Rights adopted resolution 2001/57 to appoint a Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people. By that resolution, the Commission requested the Special Rapporteur to gather, request, receive and exchange information and communications from all relevant sources, including Governments, indigenous people themselves and their communities and organizations, on violations of their human rights and fundamental freedoms; to formulate recommendations and proposals on appropriate measures and activities to prevent and remedy violations of the human rights and fundamental freedoms of indigenous people; and to work closely with other special rapporteurs, special representatives, working groups and independent experts of the Commission on Human Rights (currently the Human Rights Council) and of the Sub-Commission on the Promotion and Protection of Human Rights. In order to fulfil his mandate, the Special Rapporteur has concentrated on three areas of work: thematic research, country visits and communications. The focus of his work is thus on evaluating specific situations and themes and proposing recommendations for appropriate measures or remedies.

11. In April 2004, the Commission on Human Rights renewed the Mandate of the Special Rapporteur for a further three-year period.³

12. In September 2007, the Human Rights Council, during its sixth session, decided to renew for an additional period of three years the mandate of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people.

II. General Assembly and indigenous peoples

A. International Year and the Decades of the World's Indigenous People

13. The General Assembly, by its resolution 45/164, proclaimed 1993 the International Year of the World's Indigenous People. That was also the year of the World Conference on Human Rights.

14. Following a recommendation of the World Conference on Human Rights, in December 1993 the General Assembly, by its resolution 48/163, proclaimed the International Decade of the World's Indigenous Peoples (1994-2004). The goal of the Decade was to strengthen international cooperation to solve the problems faced by indigenous peoples in such areas as human rights, the environment, development, education and health. The key to achieving that goal was to be found in the theme of the Decade, "Indigenous people: partnership in action". The United Nations committed itself to developing new partnerships between indigenous peoples and States and between indigenous peoples and the United Nations.

15. In 1995, the General Assembly adopted an ambitious programme of activities and identified a number of specific objectives for the Decade, first and foremost

³ Commission on Human Rights resolution 2004/62.

being the establishment of a permanent forum on indigenous issues and the adoption of the United Nations Declaration on the Rights of Indigenous Peoples.

16. In December 2004, the Assembly renewed its commitment to promote and protect the rights of indigenous peoples, and, by its resolution 59/174, proclaimed the Second International Decade of the World's Indigenous People (2005-2014). The goal of the Second Decade was to further strengthen international cooperation to resolve the problems faced by indigenous peoples in such areas as culture, education, health, human rights, the environment and social and economic development, by means of action-oriented programmes and specific projects, increased technical assistance and relevant standard-setting activities. The five objectives set for the new Decade were to:

- Promote non-discrimination and inclusion of indigenous peoples in all phases of the policy process, from design through implementation and evaluation;
- Promote full and effective participation of indigenous peoples in the decisions that affect their lives, based on the principle of free, prior and informed consent;
- Promote development policies respectful of the culture and identity of indigenous peoples;
- Adopt targeted programmes and budgets for the development of indigenous peoples, with special emphasis on indigenous women, children and youth;
- Strengthen monitoring of, and accountability for, commitments regarding the protection of indigenous peoples and improvement of their lives.

17. By its resolution 60/142, the General Assembly adopted the Programme of Action of the Second Decade⁴ and agreed that "Partnership for action and dignity" would be the theme of the new Decade.

B. United Nations Funds for indigenous peoples

18. In 1985, the General Assembly, by its resolution 40/131, established the United Nations Voluntary Fund for Indigenous Populations, with the purpose of assisting representatives of indigenous communities and organizations to participate in the sessions of the Working Group on Indigenous Populations and, since 2002, those of the Permanent Forum on Indigenous Issues. The Fund is administrated by a five-member Board of Trustees. The current members are all indigenous experts appointed by the Secretary-General.

19. In 1995, the General Assembly established the Voluntary Fund for the International Decade of the World's Indigenous People, which provided small grants, mostly to indigenous communities. In 2002, the General Assembly established the Trust Fund in Support of the Permanent Forum on Indigenous Issues and, in 2005, established the Trust Fund on Indigenous Issues relating to the Second International Decade of the World's Indigenous People. The two latter funds have been merged into the Trust Fund on Indigenous Issues. The Bureau of the Permanent Forum on Indigenous Issues acts as the advisory group to the Secretary-General in connection with the small grants programme during the Second Decade period.

⁴ A/60/270, sect. II.

C. 2005 World Summit

20. In 2005, more than 170 Heads of State gathered at Headquarters in New York for the World Summit to mark the sixtieth anniversary of the United Nations.

21. The Summit injected new energy and momentum into the work of promoting the rights of indigenous peoples. World leaders committed themselves to the sustainable development of indigenous peoples and their communities as “crucial in our fight against hunger and poverty”.⁵ The 2005 World Summit Outcome underscored the need to adequately and urgently address food security and rural and agricultural development, not least by enhancing the contributions of indigenous and local communities. The Summit also decided on a range of specific policy and institutional measures to strengthen integrated and effective implementation of the internationally agreed development goals, including the Millennium Development Goals.⁵

22. The 2005 World Summit Outcome contains a number of decisions and recommendations for action. It represents an important step forward for indigenous peoples as it consolidates recognition of the term “indigenous peoples” and reaffirms the commitment of States to uphold the human rights of indigenous peoples. The Outcome reaffirms the commitment of States to advance the human rights of the world’s indigenous peoples at the local, national, regional and international levels, including through consultation and collaboration with them, and to present for adoption a final draft United Nations Declaration on the Rights of Indigenous Peoples.⁶

D. Adoption of the United Nations Declaration on the Rights of Indigenous Peoples

23. On 13 September 2007, the General Assembly, by its resolution 61/295, adopted the United Nations Declaration on the Rights of Indigenous Peoples. This marked a historic achievement for the General Assembly in its unique function as a global parliament.

III. Permanent Forum on Indigenous Issues

24. In July 2000, the Economic and Social Council took a historic decision when it adopted resolution 2000/22, establishing the Permanent Forum on Indigenous Issues.

25. This decision marked a fundamental milestone in the indigenous struggle to gain a position within the international community. The new body was unique in several ways, perhaps most importantly in its parity composition. The Forum is made up of 16 experts, each acting in an individual capacity as independent expert on indigenous issues. Of its 16 experts, 8 are nominated by Governments and the other 8 by indigenous organizations. The name “Forum” came into use as a generic name within the United Nations system to indicate the broad mandate of the

⁵ General Assembly resolution 60/1.

⁶ *Ibid.*, para. 127.

Permanent Forum on Indigenous Issues and its inclusiveness of all issues related to indigenous peoples.

26. The Forum is an advisory body to the Economic and Social Council, with six mandated areas: economic and social development, culture, environment, education, health and human rights.

27. According to its mandate, the Forum will:

- Provide expert advice and recommendations on indigenous issues to the Economic and Social Council and to programmes, funds and agencies of the United Nations, through the Economic and Social Council;
- Raise awareness and promote the integration and coordination of activities related to indigenous issues within the United Nations system;
- Prepare and disseminate information on indigenous issues.

28. The Forum holds two-week sessions annually. Its first session was held in May 2002, and yearly sessions take place in New York.

29. Its main objective is to influence and watch over the interests of indigenous peoples throughout the whole United Nations system. For this reason, the Forum is highly committed to the promotion and practical implementation of the human rights of indigenous peoples.

30. Since the very first session of the Forum, the issue of human rights has been a separate item on the agenda. The Forum has developed close collaboration with the Office of the High Commissioner for Human Rights and the Special Rapporteur. At the annual sessions in New York, the Special Rapporteur has presented his reports and engaged fully in the discussions of the Forum about the human rights situation of indigenous peoples. Upon the establishment of the Human Rights Council, the Forum expressed the wish that its Chairperson participate in the programmed activities of the Council related to issues of indigenous peoples, in order to promote collaboration and avoid duplication between the two mandates.

31. On the basis of the information and reports provided by indigenous peoples, United Nations agencies and States, and the ensuing debates during its sessions, the Forum has developed a substantial number of recommendations addressing the pertinent human rights problems of indigenous peoples. It has also worked with determination between sessions to further the rights of indigenous peoples. This is clearly reflected in a review of its recommendations at its sixth session.⁷ The review demonstrates a concerted effort to address the wide range of human rights problems facing indigenous peoples.

32. At the sixth session of the Permanent Forum, following a request of the Forum, Victoria Tauli-Corpuz presented the report of the Forum entitled "Implementation of the human rights mandate of the Permanent Forum on Indigenous Issues".⁸ The report provided a historic perspective on the engagement of indigenous peoples with the United Nations system, an overview of the human rights mandate of the Forum and how it has discharged it until now, and the challenges and future prospects of its work on human rights. The latter part of the

⁷ E/C.19/2007/5.

⁸ E/C.19/2007/6; also available at www.un.org/esa/socdev/unpfii.

report constitutes a vision whose implementation will enrich the work of the Forum and impact on the promotion of respect and implementation of the rights of indigenous peoples.

33. A fair number of recommendations of the Forum have been addressed to the Commission on Human Rights and, since 2006, to the Human Rights Council. These deal with issues such as special procedures and the implementation and monitoring of human rights standards; the inclusion of experts of indigenous peoples in the work of the Council; and the adoption of creative methods of work, with particular regard for the full participation of indigenous peoples.

A. Impact of the adoption of the United Nations Declaration on the Rights of Indigenous Peoples on the work of the Permanent Forum on Indigenous Issues: a Committee on the United Nations Declaration on the Rights of Indigenous Peoples within the Forum

34. Article 42 of the United Nations Declaration on the Rights of Indigenous Peoples specifically mentions the Permanent Forum on Indigenous Issues, stating:

“The United Nations, its bodies, including the Permanent Forum on Indigenous Issues, and specialized agencies, including at the country level, and States, shall promote respect for and full application of the provisions of this Declaration and follow up the effectiveness of this Declaration”.

35. This important responsibility constitutes a new function for the Forum under its overall human rights mandate, under resolution 2000/22 of the Economic and Social Council, by which the Forum was established.

36. In the past six years the Forum has been developing its work in the area of human rights in a number of ways, responding to the needs the Forum has identified within the United Nations system, keeping in mind its role of promoting coordination as well as the requirement of complementarity.

37. In discharging its new function under article 42 of the Declaration, the Forum would rely on its special characteristics as envisaged in Economic and Social Council resolution 2000/22, including its mandate, composition and consensus procedures that characterize the work of the Forum. In addition to the human rights mandate that the Forum has clearly been given, the Forum has a significant convening power, which has developed as one of its most important features. The Forum gathers and galvanizes the momentum of Governments, the United Nations system and indigenous organizations into a cooperative forum that is solution-oriented towards practical results on the ground. Under article 42 of the Declaration, the Forum would:

(a) Ensure that the Declaration is integrated into the recommendations of the Forum on the six substantive mandated areas of the Forum — economic and social development, environment, health, education, culture and human rights;

(b) Ensure that the Declaration is integrated into the work of the Forum under the special theme for each session as well as its ongoing themes and priorities.

38. In addition to integrating the Declaration into its regular work, the Forum will have to promote its implementation and follow up its effectiveness. It will have to

promote a constructive dialogue with Governments on the challenges, achievements and priorities that indigenous issues require in each country. Such dialogue would take place periodically and enlist the participation of indigenous organizations and the United Nations system. The discussion and the role of the Forum would create an enabling environment of partnership and cooperation at the national and international levels, aiming at practical results on the ground. The example of a number of United Nations bodies in the human rights area provides a good guideline in that regard.

39. This study thus recommends that the Forum consider the establishment of a methodology that would provide it with the capacity to discharge this new mandate under the Declaration. The creation of a Forum Committee on the United Nations Declaration on the Rights of Indigenous Peoples seems an appropriate way of proceeding, as it would provide the time frame and specificity required for this function.

B. Establishment of the Human Rights Council and its interface with the Permanent Forum on Indigenous Issues

40. The proposal to establish the Human Rights Council at the same level as the other main bodies of the United Nations (such as the Security Council and the Economic and Social Council) came amid recognition of the weaknesses of the Commission on Human Rights to effectively address human rights violations across the world.

41. On 21 March 2005, the Secretary-General launched a report entitled “In larger freedom: towards development, security and human rights for all”⁹ and proposed upgrading the Commission on Human Rights and establishing the Human Rights Council. An explanatory note to that report dated 23 May 2005 outlined the vision of the Secretary-General for the proposed Human Rights Council.¹⁰

42. In follow-up to the report of the Secretary-General and ensuing governmental negotiations, the Assembly decided, by its resolution 60/251, to establish the Human Rights Council. It also decided that the Council should “address situations of violations of human rights, including gross and systematic violations, and make recommendations thereon”¹¹ and that “the work of the Council shall be guided by the principles of universality, impartiality, objectivity and non-selectivity, constructive international dialogue and cooperation, with a view to enhancing the promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development”.¹²

43. General Assembly resolution 60/251 contains many new elements that differentiate the Human Rights Council from the Commission on Human Rights, including the following:

(a) Establishment of the Council as a subsidiary body of the General Assembly;

⁹ A/59/2005.

¹⁰ A/59/2005/Add.1.

¹¹ General Assembly resolution 60/251, para. 3.

¹² *Ibid.*, para. 4.

(b) Time period for meeting annually: while the Commission on Human Rights used to meet for 6 weeks annually, the Human Rights Council and the working group on the universal periodic review will meet for at least 32 weeks, excluding special sessions, which can be organized at the request of a member of the Council with the support of one third of the membership of the Council;

(c) Greater emphasis on human rights education and learning, as well as advisory services, technical assistance and capacity-building;

(d) Provision for a mechanism to examine the human rights records of all United Nations Member States — the universal periodic review — which aims at meeting the criticism of, and overcoming, politicization and double standards;

(e) Formal recognition of the role of civil society, which was formalized at the Commission on Human Rights through customary practices;

(f) No life membership; no member of the Human Rights Council shall be eligible for immediate re-election after two consecutive terms;

(g) Provision for the suspension of membership of any member of the Human Rights Council that commits gross and systematic violations of human rights and suspension to be implemented by the General Assembly, by a two-thirds majority of those members present and voting;

(h) A review of the status of the Council itself to be undertaken by the General Assembly within five years.

44. The Forum has followed the establishment of the Human Rights Council and its institution-building discussion with great interest and looks forward to developing close collaboration in order to further the implementation of the human rights of indigenous peoples. This was one reason why the Forum decided at its sixth session to undertake the present study. Recommendations had been made at the fifth session of the Forum, immediately after the establishment of the Human Rights Council, in order to draw the attention of the Council to the urgent need to address the human rights of indigenous peoples.

45. In 2006, the Forum urged the newly established Council to maintain and improve relevant mechanisms, mandates, special procedures, expert advice mechanisms and complaint procedures pertaining to the promotion and protection of the human rights of indigenous peoples.¹³

46. The Forum also urged the Council to ensure the active participation of organizations of indigenous peoples at its sessions when matters affecting their rights were being discussed, as well as in any subsidiary body or processes that the Council may decide to establish.¹³

47. Recalling that the Human Rights Council will assume, review and, where necessary, improve and rationalize all mandates, mechanisms, functions and responsibilities of the Commission on Human Rights in order to maintain a system of special procedures, expert advice and complaint procedures, the Forum has also urged the Council to ensure the full participation of representatives of indigenous peoples in that review process.¹³

¹³ *Official Records of the Economic and Social Council, 2006, Supplement No. 23 (E/2006/43).*

IV. Institution-building of the Human Rights Council

48. On 18 June 2007, one year after its first meeting, and in compliance with the mandate given it by the General Assembly,¹⁴ the Human Rights Council agreed on an institution-building package¹⁵ that lays out the basic structure for the new institutional machinery of the Council, including: (a) the universal periodic review mechanism; (b) the special procedures (Special Rapporteurs and working groups), the Human Rights Council Advisory Committee (which replaces the Sub-Commission on the Promotion and Protection of Human Rights); and (c) the complaints procedure.

49. The document also sets out an agenda and framework for a programme of work, and lays down the rules of procedure of the Council. Its agenda and programme of work provide the opportunity to discuss all thematic human rights issues and situations that require the attention of the Council throughout the year. Its rules of procedure and working methods ensure transparency, predictability and impartiality, and enable genuine dialogue and a results-oriented approach.

50. The creation of the universal periodic review is a significant innovation of the Human Rights Council. For the first time, the human rights records of all United Nations Member States will be regularly examined through a common mechanism. Indigenous peoples have called for specific reference in the universal periodic review, for example, where treaties exist.

51. The Human Rights Council working group on the universal periodic review will review the country concerned on the basis of three key documents: (a) a submission from the State concerned not to exceed 20 pages; (b) a compilation of information not to exceed 10 pages prepared by OHCHR based on the information contained in the treaty bodies, special procedures and other relevant United Nations documents; and (c) additional credible and reliable information from stakeholders to be prepared by OHCHR not to exceed 10 pages.¹⁴

52. It is clearly stated in the annex to Human Rights Council resolution 5/1 that the subsequent review shall focus, *inter alia*, on the implementation of the preceding outcome. The universal periodic review provides an opportunity to scrutinize countries that refuse to ratify international human rights treaties or submit periodic reports after ratification. It remains to be seen whether the rights of indigenous peoples will be properly reflected in the reports and results of the universal periodic review. It is highly important that the universal periodic review mechanism ensure that indigenous peoples have an opportunity to present their cases and be a part of the overall universal periodic review process.

53. The Human Rights Council has assumed the special procedures of the Commission on Human Rights and, although a review and rationalization of the special procedures has been taking place, it has decided to renew the mandate of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people.

54. The decision to renew the mandate of the Special Rapporteur on the situation of the human rights and fundamental freedoms of indigenous people reaffirms and

¹⁴ General Assembly resolution 60/251.

¹⁵ A/HRC/5/21 of 7 August 2007.

reinforces the mandate of the Special Rapporteur, as described in previous resolutions of the Commission on Human Rights, regarding areas such as the official visits, communications, and annual reporting of the Special Rapporteur.

55. Human Rights Council resolution 5/1 further includes a number of important innovations in relationship to previous resolutions, including the following. The mandate of the Special Rapporteur includes the promotion of the implementation and follow-up of the United Nations Declaration on the Rights of Indigenous Peoples, along with other relevant international standards, and invites the Special Rapporteur to work in close cooperation with the United Nations Permanent Forum on Indigenous Issues and to participate in its annual session. The Special Rapporteur is also invited to identify, exchange and promote best practices in the promotion and protection of the rights of indigenous peoples. This has been an important step towards promoting the rights of indigenous peoples and is fully in line with the recommendations of the Forum.

56. Unfortunately, the Human Rights Council has not maintained “indigenous issues” as a separate agenda item on its programme of work. The Council has, however, expressed its commitment to finding appropriate mechanisms to deal with issues formally addressed by the Working Groups on Indigenous Populations, Contemporary Forms of Slavery, Minorities and the Social Forum.¹⁶ It is in line with this commitment that this study advocates for the establishment of an expert body on the rights of indigenous peoples.

Expert body on the rights of indigenous peoples

57. The human rights of indigenous peoples are relevant to almost all mandates of the Human Rights Council. This is an issue that requires special attention, expertise and insights, owing to the urgency and complexity of the situation of indigenous peoples. In order to ensure such expertise and further the implementation of human rights standards, avoid duplication and increase coordination among United Nations bodies and mechanisms, this study advocates for the establishment of an expert body on the rights of indigenous peoples as a subsidiary organ of the Human Rights Council.

58. The mandate of the expert body on the rights of indigenous peoples should be to provide the Council with expert advice on the human rights of indigenous peoples in relation to all mandates of the Council, especially on the best means to develop and mainstream international standards that promote and protect the human rights of indigenous peoples. The body would provide advice on measures to ensure the implementation of the rights of indigenous peoples, and review and evaluate best practices in and obstacles to the promotion and protection of the rights of indigenous peoples. The expert body would work closely with other bodies of the Human Rights Council, such as other Special Rapporteurs, special representatives, independent experts and advisory committees, the Permanent Forum on Indigenous Issues and national human rights commissions and institutions on indigenous peoples. The expert body would also facilitate the universal periodic review of the Council.

¹⁶ A/HRC/5/21, para. 84.

Composition and placement within the United Nations system

59. The expert body on the rights of indigenous peoples would consist of four members, i.e., the representative of the Human Rights Council Advisory Committee, the Chair of the Permanent Forum on Indigenous Issues, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, and an indigenous expert to be nominated following the same model as that of the special procedures. The expert body should be placed directly under the Human Rights Council.

Procedures for nomination/election

60. The indigenous expert to the expert body would be nominated following the same procedure as that of the special procedures.

Terms of the members

61. The members of the expert body would serve for a period of three years. They would be eligible for re-election once.

Organization of work

62. The expert body would hold an annual workshop to feed into the work of the Council. It could organize panel discussions during the sessions of the Council with the Permanent Forum and the Special Rapporteur for an exchange of views regarding the human rights of indigenous peoples under the agenda item entitled "Vulnerable groups". The discussion could be linked and fed into the topic of the upcoming session of the Forum and/or the thematic reports of the Special Rapporteur.

Participation

63. Member States, United Nations bodies and organs, intergovernmental organizations and non-governmental organizations in consultative status with the Economic and Social Council could participate as observers; organizations of indigenous people could equally participate as observers, in accordance with the procedures that have been applied in the Permanent Forum on Indigenous Issues.

Rules of procedure

64. The expert body would be guided by the rules of procedure of the Human Rights Council and would be able to develop its own rules of procedure.

65. United Nations institutions and mechanisms would benefit in a number of ways from the advice offered by the new expert mechanism on the rights of indigenous peoples. The advice and input provided by the expert body to the work of the Council would:

(a) Ensure that the issue of the rights of indigenous peoples is given appropriate space within the Human Rights Council;

(b) Provide relevant information on the situation of the rights of indigenous peoples that can be included in the universal periodic review;

(c) Promote further cooperation within the United Nations system regarding the implementation of the rights of indigenous peoples;

(d) Identify best practices and effective measures to protect the rights of indigenous peoples and assist States to achieve implementation;

(e) Ensure the engagement of indigenous peoples by providing an interactive human rights mechanism for regular exchange of information between the Council and indigenous peoples.

66. In short, the establishment of an expert body on the rights of indigenous peoples would be consistent with the Council objectives of rationalizing the human rights mechanisms, promoting effective coordination and mainstreaming human rights.
