



# Economic and Social Council

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## Permanent Forum on Indigenous Issues

Twentieth session

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### Draft report

*Rapporteur:* Ms. Tove Søvndahl Gant

### Chapter I

### Matters calling for action by the Economic and Social Council or brought to its attention

#### B. Matters brought to the attention of the Council

##### Recommendations of the Permanent Forum

##### Human rights dialogue with the Special Rapporteur on the rights of indigenous peoples, the Expert Mechanism on the Rights of Indigenous Peoples and the United Nations Voluntary Fund for Indigenous Peoples (item 5 (d))

1. The Permanent Forum welcomes the ratification on 15 April 2021 by the Bundestag of Germany of the Indigenous and Tribal Peoples Convention, 1989 (No. 169) of the International Labour Organization (ILO) and reiterates its recommendation to all Member States that have not ratified said Convention to do so as early as possible.
2. Effective access to justice for indigenous peoples implies access to both the State legal system and their own systems of justice. Without accessible State courts or other legal mechanisms through which they can protect their rights, indigenous peoples become vulnerable to actions that threaten their lands, natural resources, cultures, sacred sites and livelihoods. Concurrently, the recognition of indigenous peoples' own justice systems is pivotal in ensuring their rights to maintain their autonomy, culture and traditions.
3. The lack of effective recognition of the indigenous justice systems by State institutions, as well as the ongoing discrimination against them in the State justice system and inadequate access to redress and reparation, are among the key challenges faced by indigenous peoples around the world. Strengthened support for indigenous justice systems is key to promoting human rights, the rule of law, the



achievement of justice for all and the promotion of effective, accountable and inclusive institutions, as set out in Sustainable Development Goal 16.

4. The Permanent Forum is dismayed by continuing disproportionately high rates of incarceration of indigenous individuals, especially indigenous men, in many countries around the world. Even more troubling are the accounts of all too many deaths in custody.

5. With few commendable exceptions, indigenous peoples have been neglected in large part in the contingency measures of government authorities in response to the coronavirus disease (COVID-19) pandemic. As a result, their needs and requirements are not taken adequately into account or addressed by national programmes and policies. The Permanent Forum agrees with the United Nations Special Rapporteur on the rights of indigenous peoples that effective responses to the pandemic and recovery measures need to be a collaborative effort between indigenous institutions and State institutions. Combining indigenous knowledge of what is best for indigenous communities with State services and financial support will ensure effective outcomes.

6. The Permanent Forum underlines that necessary response measures to epidemics or pandemics can never justify the repression of the exercise of human rights and fundamental freedoms, including freedom of expression and assembly in the context of legitimate protests in the defence of lands, territories, resources and the environment.

7. The Permanent Forum welcomes national engagement of the Expert Mechanism on the Rights of Indigenous Peoples with Brazil, Finland, Mexico, New Zealand and Sweden on projects related to, among others, the development of national action plans for the implementation of indigenous peoples' rights, processes related to land demarcation and land titling, and facilitating the repatriation of sacred ceremonial objects. The Forum highlights the agreement facilitated by the Expert Mechanism among the Museum of World Culture in Sweden, the Yaqui people in Mexico and the United States of America on the repatriation of the *Maaso Kova* as a commendable best practice. The Forum encourages States and indigenous peoples to build on the successful country engagement practices and avail themselves of the Expert Mechanism's unique analytical capacity and potential to support dialogue between indigenous peoples and Governments.

8. The Permanent Forum is concerned by the high number of indigenous children being removed from their families and placed into public social care, in particular in developed countries. In this regard, the Forum noted with satisfaction the Expert Mechanism's engagement on the rights of the indigenous children. The report of the Expert Mechanism on the indigenous child will be discussed at its forthcoming session, in July 2021.

9. The Permanent Forum expresses its grave concern about the lack of observance and implementation of indigenous peoples' rights, as enshrined in the Indigenous and Tribal Peoples Convention, 1989 (No. 169), the American Declaration on the Rights of Indigenous Peoples and the United Nations Declaration on the Rights of Indigenous Peoples. This underscores the need for more awareness-raising and capacity-building regarding indigenous peoples' rights, not only for indigenous peoples themselves, but also for government and justice officials, as well as for private sector actors and civil society at large. In this regard, the Forum welcomes the e-learning course on indigenous peoples' rights developed by the Office of the United Nations High Commissioner for Human Rights (OHCHR), with the support of the Expert Mechanism and United Nations Voluntary Fund for Indigenous Peoples. The course, which is available on the OHCHR website, is a

small but important contribution towards building capacities for the promotion and protection of indigenous peoples' rights.

**[NEW PARAGRAPH] The Permanent Forum recalls its invitation to the Committee on Economic, Social and Cultural Rights (CESCR) to initiate a general comment on the collective rights of indigenous peoples to lands, territories and natural resources. The Permanent Forum welcomes the decision of the CESCR to draft a general comment on Land and Economic, Social and Cultural Rights. However, the Permanent Forum expresses its concern with the limited participation of Indigenous Peoples in drafting the general comment and invites the CESCR to consider facilitating participation of Indigenous peoples. The Permanent Forum invites the Voluntary Fund for Indigenous Peoples to provide support in this regard.**

10. The Permanent Forum recommends that the Organization of American States establish a consultation mechanism, composed of experts from indigenous **peoples communities**, as part of the effort to ensure national implementation of the American Declaration on the Rights of Indigenous Peoples, the United Nations Declaration on the Rights of Indigenous Peoples and the Indigenous and Tribal Peoples Convention, 1989 (No. 169).

11. The Permanent Forum urges States to address the stark inequality between indigenous and non-indigenous people in all aspects of life, which has been heightened as a result of COVID-19, by implementing in full the Indigenous and Tribal Peoples Convention, 1989 (No. 169), the United Nations Declaration on the Rights of Indigenous Peoples and the American Declaration on the Rights of Indigenous Peoples in all their legal norms and public policies related to indigenous peoples.

12. Given increased violence against indigenous peoples in the Amazon region, the Permanent Forum urges the Member States of the region to take urgent, extraordinary and coordinated measures to protect the individual and collective rights of indigenous peoples, with the aim of maintaining their ownership and use of their territories. The Forum also calls upon the United Nations system and specialized agencies, including OHCHR, the United Nations Environment Programme, the United Nations Development Programme, the Food and Agriculture Organization of the United Nations and ILO, to support Member States in the protection of indigenous peoples' habitats and cultures in the Amazon region in cooperation with indigenous peoples.

13. The Permanent Forum recommends that all indigenous peoples make use, whenever appropriate, of the early warning measures and urgent procedures established by the Committee on the Elimination of Racial Discrimination. These early warning measures and procedures are aimed at preventing existing situations from escalating into conflicts and respond to problems requiring immediate attention to prevent or limit the scale or number of serious violations of the International Convention on the Elimination of All Forms of Racial Discrimination. The Forum also recommends that the Committee's Working Group on Early Warning and Urgent Action Procedures urgently address the serious human rights violations and the criminalization of indigenous peoples in the Amazon in order for the Committee to take effective measures.

14. Member States must urgently address violence against indigenous peoples, including State violence, gender-based violence, forced assimilation and forced child removals, discrimination in the justice system and other forms of discrimination, including discrimination based on gender, religion, disability, age and **sexual-LGBTIQ** identity. The Forum encourages the Expert Mechanism, at its earliest convenience, to engage with the Governments of Australia and New

Zealand, and with the participation of indigenous peoples, regarding the removal of indigenous children.

15. The Permanent Forum invites the secretariat of the Committee on the Elimination of Discrimination against Women to share information, at its twenty-first session, in 2022, regarding the progress made in incorporating the rights of indigenous women into the work of the Committee. It also invites States parties to the Convention on the Elimination of All Forms Discrimination against Women to incorporate specific rights-based indicators and information on indigenous peoples, in particular indigenous women, in their periodic progress reports on the implementation of the Convention.

16. The Permanent Forum recommends that the Human Rights Council mandate the United Nations Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, with the contribution of the United Nations Special Rapporteur on the rights of indigenous peoples, to undertake a study on incarceration, deaths in custody and indigenous peoples.

17. The Permanent Forum notes that, over the course of the global COVID-19 pandemic, opportunities for consultations and participation in decision-making have increasingly moved online. Although in-person meetings and interaction should always be the preferred option, on-line consultations and decision-making present opportunities for enhanced participation. However, these online options expose existing inequalities and a digital divide that is especially detrimental to the participation of indigenous peoples in many parts of Africa, Latin America, the Pacific and in rural areas around the world. Recognizing that virtual dialogues, consultations and other events will continue beyond the pandemic, the Forum emphasizes that existing mechanisms to support the participation of indigenous peoples in processes that affect them must adapt to this new environment and support the online participation of indigenous peoples. This includes purchasing data packages and facilitating access to electricity and necessary hardware and in-country travel to gain access to stable Internet connections. The Forum notes that current administrative processes of the United Nations do not facilitate such participation and therefore requests that the Secretary-General instruct relevant United Nations entities to make the necessary arrangements as a matter of urgency.

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