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**DEPARTMENT OF ECONOMIC AND SOCIAL AFFAIRS**  
**Division for Social Policy and Development**  
**Secretariat of the Permanent Forum on Indigenous Issues**

**Concept Note**

**Expert Group Meeting**

**Dialogue on an optional protocol to the United Nations Declaration on the Rights of  
Indigenous Peoples**

**27-29 January 2015**

Prepared by Permanent Forum members and the Secretariat of the United Nations  
Permanent Forum on Indigenous Issues  
Division for Social Policy and Development  
Department of Economic and Social Affairs  
United Nations

## **A. Introduction**

At its thirteenth session from 12 to 23 May 2014, the United Nations Permanent Forum on Indigenous Issues<sup>1</sup> recommended that the Economic and Social Council authorize an international expert group meeting (EGM) on the theme “Dialogue on an optional protocol to the United Nations Declaration on the Rights of Indigenous Peoples”, based on the study prepared by the Permanent Forum on that topic (E/C.19/2014/7). *The study on an optional protocol to the United Nations Declaration on the Rights of Indigenous Peoples* focused on a voluntary or optional mechanism to serve as a complaints body at the international level, in particular for claims and breaches of indigenous peoples’ rights to lands, territories and resources at the domestic level.

On 16 July 2014, on the basis of the Permanent Forum’s recommendation, the Economic and Social Council authorized the international expert group meeting on the theme “Dialogue on an optional protocol to the United Nations Declaration on the Rights of Indigenous Peoples.” The recommendation specified that the meeting would focus on land, territories and resource rights, as well as all of the rights contained in the United Nations Declaration, in particular the right to self-determination, self-government and autonomy, and issues raised at the thirteenth session of the Permanent Forum on Indigenous Issues.

While the title of the expert group meeting, as well as the adopted study, use the term ‘optional protocol’, the focus of the discussion is on a voluntary or optional mechanism. For ease of reference, this concept note will refer to such a mechanism as an optional protocol, although this is not intended to limit the meeting to a discussion of a formal, traditional optional protocol model.

The expert meeting will explore the following questions:

- 1) Why is an optional protocol required in relation to the UN Declaration? Is there an implementation gap?
- 2) What are the limitations of the current international human rights law system in regard to monitoring of rights? Does it encourage ‘rights ritualism’?
- 3) What are some of the problems with the implementation of the UN Declaration pertaining to lands, territories and resources?

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<sup>1</sup> The UN Permanent Forum serves as an advisory body to ECOSOC with a mandate 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. It is also mandated to promote the integration and coordination of activities related to indigenous issues within the UN system, and to prepare and disseminate information on indigenous issues.

- 4) What are the models to consider for an oversight mechanism? Who would be subject to review and what would the admissibility requirements be?
- 5) What are the lessons that can be learned from other mechanisms?
- 6) Is there any existing UN body that could do the work of an oversight body?

It is important to underscore that this concept note should be read in conjunction with the “Study on an optional protocol to the United Nations Declaration on the Rights of Indigenous Peoples focusing on a voluntary mechanism”.  
<http://undesadspd.org/IndigenousPeoples/UNPFIIISessions/Thirteenth/Documents.aspx>

## **B. Background and context**

The United Nations Declaration on the Rights of Indigenous Peoples was adopted by the UN General Assembly in 2007. As a UN Declaration of the General Assembly, the general view is that the Declaration, as a whole, is not in a strict sense, legally binding. However, various legal scholars and commentators have advanced the view that there are a range of norms affirmed by the UN Declaration of a legally binding nature. The study on the optional protocol to the UN Declaration reflects some of this commentary on this issue (paragraphs 26-37). As noted in that study, these views consolidate around three main arguments: 1) that the UN Declaration, or at least certain provisions of it, constitute general principles of international law and customary international law norms or peremptory norms; 2) that the provisions of the UN Declaration contextualize and build upon rights that are binding upon States contained in international human rights treaties; and 3) that declarations of the General Assembly can and do have legal implications and in any case represent a consensus regarding the minimum human rights standards specifically concerning indigenous peoples.

Since the adoption of the Declaration in 2007 every single report of the Special Rapporteur on the Rights of Indigenous Peoples to the Human Rights Council has emphasized the importance of implementation of the UN Declaration. Notwithstanding its legal status, indigenous representatives have – nearly since its adoption – lobbied for the establishment of measures within the United Nations to review State compliance with the UN Declaration and the implementation of the standards set therein. In 2009, the Permanent Forum focused its Expert Group Meeting on the issue of a “new mandate” under article 42 of the UN Declaration, which would authorize the Permanent Forum to review implementation of the UN Declaration on the Rights of Indigenous Peoples. Despite the energy invested into this issue, the recommendations regarding a ‘new mandate’ for the Permanent Forum never took root.

In 2011, the development of an optional protocol was a recommendation made to the Permanent Forum, which resulted in the appointment of Dalee Dorrough and Megan Davis to undertake a study on an optional protocol to the UN Declaration focusing on a potential voluntary mechanism to serve as a complaints body at the international level, in particular for claims and breaches of indigenous peoples' rights to lands, territories and resources at the domestic level. The study was submitted and introduced to the Permanent Forum at its Thirteenth Session.

The issue arose again during the preparatory process leading up to the high level plenary meeting to be known as the World Conference on Indigenous peoples. The outcome document of the Global Indigenous Preparatory Conference for the World Conference on Indigenous Peoples (A/67/994, annex), held in Alta, Norway, in June 2013 (the Alta Declaration) and the Lima Declaration of the World Conference of Indigenous Women, held in Lima in October/November 2013, recommend a mechanism to review, monitor and report on the UN Declaration. The Alta Declaration recommended the creation of a new United Nations body with a mandate to promote, protect, monitor, review and report on the implementation of the rights of indigenous peoples, including but not limited to those affirmed in the UN Declaration, and that such a body be established with the full, equal and effective participation of indigenous peoples.

These proposals were eventually reflected in the Outcome Document adopted at the high level plenary meeting (World Conference on Indigenous Peoples) on 22 September 2014. In paragraph 28 of that document, the General Assembly “invite[d] the Human Rights Council, taking into account the views of indigenous peoples, to review the mandates of its existing mechanisms, in particular the Expert Mechanism on the Rights of Indigenous Peoples ... with a view to modifying and improve the Expert Mechanism so that it can more effectively promote respect for the Declaration, including by better assisting Member States to monitor, evaluate and improve the achievement of the ends of the Declaration.”

The next session of the Human Rights Council is set for March 2015. The time of this expert group meeting, to take place from 27 to 29 January 2015 will provide a timely opportunity for indigenous experts and others to provide thoughts on this issue and potentially provide input for eventual discussions in other fora.

### **C. Current oversight mechanisms**

Although there is currently no specific “optional protocol” or complaint mechanism affiliated with the United Nations Declaration on the Rights of Indigenous Peoples, various human rights bodies, both at the international and the regional level, carry out

oversight or authoritative interpretations of the rights enshrined in the UN Declaration in some way. In fact, such practice was being undertaken when the UN Declaration was still only in draft form. The comments, decisions or recommendations issued by these bodies are both legally and non-legally binding, depending on the instrument and the procedure to which they are linked.

The following provides a brief summary of the existing oversight mechanisms that monitor the implementation of the rights of indigenous peoples and the main features of affiliated complaint procedures in terms of composition, legal status and admissibility. Any eventual mechanism linked with the UN Declaration may reflect in some way aspects of these existing models. [See Annex “Comparative Table of Existing Procedures].

### International Mechanisms within the United Nations

The principal complaint mechanisms at the international level within the United Nations that are relevant to indigenous peoples are before both charter based and treaty based bodies. With respect to charter based human rights bodies, the most relevant complaints procedures are (1) the Special Rapporteur on the Rights of Indigenous Peoples and other special procedures mandates of the Human Rights Council; and (2) the Universal Periodic Review procedure.<sup>2</sup> With respect to treaty based human rights bodies, a number of treaty monitoring bodies have complaint and other procedures in place to monitor implementation of the rights of indigenous peoples. Those that have developed jurisprudence most relevant to indigenous peoples include the monitoring bodies linked with the International Covenant on Civil and Political Rights and the International Convention on the Elimination of all forms of Racial Discrimination. The various processes of these bodies are discussed in more detail below.

#### **Special Rapporteur on rights of Indigenous peoples**

The Special Rapporteur carries out human rights monitoring principally through her/his mandate to examine specific cases of human rights violations. Other special procedures mandates of the Human Rights Council also look into issues that are relevant to the rights of indigenous peoples, including the Working Group on Business and Human Rights, and the Special Rapporteurs on Human Rights Defenders; Violence against Women; Adequate Housing; and Right to Food, among others. It should be noted that, of the current UN mechanisms that focus exclusively on the rights of indigenous peoples, only the mandate of the Special Rapporteur specifically includes engaging with States about specific cases of allegations of indigenous human rights violations.

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<sup>2</sup> In addition, the Human Rights Council, consistent with its Resolution 5/1 has a Complaints Procedure. However, its use by indigenous peoples has been rarely been invoked.

There are no strict admissibility requirements for submission of a complaint to the Special Rapporteur. That is, any individual or community may send a letter and no formal procedures must be followed. In this way, the complaint procedure before the Special Rapporteur is the most flexible of those reviewed here. The Special Rapporteur typically reviews the information and sends a letter to the Government involved, asking whether the allegations are correct and inviting it to respond to a series of questions. The letter sent and the responses received are published in the joint communications report for Special Procedures mandate holders. The former Special Rapporteur also established the practice of issuing observations and recommendations about specific cases in a report issued once a year.

In addition to sending and receiving information about specific cases of human rights violations, the Special Rapporteur also monitors State implementation of the UN Declaration during country visits. At the end of these visits, the Special Rapporteur publishes a report with an evaluation of the situation of indigenous peoples in the country, across a range of issues. Former Special Rapporteurs have also developed thematic reports, which provide authoritative interpretations of the content of the rights in the UN Declaration and other relevant instruments.

### **Universal Periodic Review**

The Universal Periodic Review (UPR) process examines State compliance with a range of human rights, including the rights of indigenous peoples, enshrined in various instruments, including declarations like the Universal Declaration on Human Rights and the UN Declaration on the Rights of Indigenous Peoples. The UPR process is not voluntary; all States, by virtue of being part of the United Nations, are subject to review once every four years. Any person may submit information on the human rights situation within the country under review. However, the ability for individuals or groups to submit specific complaints is fairly limited. Information may only be presented once every four years, and information submitted is limited to 5 pages. Further, since issues related to indigenous peoples are only one of a broad spectrum of human rights issues looked at, the level of detail given to any one issue is minimal.

### **United Nations treaty bodies**

Treaty bodies have interpreted general treaties of universal application to protect the collective rights of indigenous peoples. These treaty bodies include the Human Rights Committee, which monitors implementation of the International Covenant on Civil and Political Rights and its optional protocols; the Committee on Economic, Social and Cultural Rights, which monitors implementation of the International Covenant on Economic, Social and Cultural Rights; the Committee on the Elimination of Racial

Discrimination, which monitors implementation of the International Convention on the Elimination of All Forms of Racial Discrimination; the Committee on the Elimination of Discrimination against Women, which monitors implementation of the Convention on the Elimination of All Forms of Discrimination against Women and its optional protocol; among others. Of these it is worth making particular note of the following treaty bodies and the following procedures:

**The Human Rights Committee** has on numerous occasions referred to the rights of indigenous peoples in its examination of State compliance with the International Covenant on Civil and Political Rights. This has been done both through its periodic reporting procedure and the complaint procedure under the first optional protocol. With respect to the periodic reporting procedure, each State party to the Covenant must present periodic information on the situation of its compliance with the rights enshrined in that instrument. On the basis of information received by the State party, the treaty monitoring body issues a report with conclusions and recommendations about the status of State compliance. Indigenous issues are often featured throughout this report and the Human Rights Committee has referenced the UN Declaration on the Rights of Indigenous Peoples in the context of these periodic reports.

The first optional protocol to the International Covenant on Civil and Political Rights has a substantial body of jurisprudence related to the rights of indigenous peoples. This process is discussed in the Permanent Forum's Study on an optional protocol to the UN Declaration. The optional protocol is an additional step that States parties to the ICCPR can take to authorize the Human Rights Committee to review specific complaints from their jurisdictions. Even if a State has ratified the optional protocol, there are still a number of admissibility requirements of the Human Rights Committee to review a complaint. These include: (1) whether the claim relates to the ICCPR; (2) whether the event occurred after the ratification of the State of the first optional protocol; (3) whether domestic remedies have been exhausted; (4) whether the complaint is an abuse of process; and (5) whether the complaint is simultaneously being considered by another international settlement mechanism (with the exception of complaints submitted to special procedures mandate holders). The process results in a binding decision by the Human Rights Committee, with recommendations to the State concerned for remedies, if a violation of the ICCPR is found. Most of the cases involving indigenous peoples emerge from alleged breaches of Article 27 of the ICCPR, which guarantees the rights of minorities to enjoy their own culture.

**The Committee on the Elimination of Racial Discrimination (CERD)** likewise has made numerous recommendations to States that relate to indigenous peoples. These have mostly been done through the periodic reporting procedure and the urgent action/early

warning procedure. The periodic reporting procedure is more or less the same as that described above related to the Human Rights Committee. There is no optional protocol to the International Convention on the Elimination of all forms of Racial Discrimination, although there is a voluntary complaint procedure under article 14 of the Covenant, which functions in a similar way to the optional protocol of the ICCPR. However, to date, there is less jurisprudence related to indigenous peoples emanating from that process.

Indigenous peoples have made much more use of CERD's urgent action/early warning procedure. In fact, the majority of the pending cases before CERD under this procedure involve indigenous peoples. Some States have expressed concern with the procedure given that, unlike the optional protocol to the ICCPR, it is not a complaint process to which States parties to the Convention separately subscribe. The process does not have complex admissibility requirements. However, the complainants must demonstrate in their communications to the Committee that the situation involved has a risk of escalating into conflicts and urgent measures are needed to prevent or limit the scale of serious violations of the Convention. The action taken by CERD typically involves writing to the State concerned and asking them a series of questions, a process similar to the communications procedure of special procedures mandate holders. In certain cases, CERD will issue a full report on the case with recommendations for remedying violations.

#### International Labour Organization

Finally, the International Labour Organization has the capacity to monitor State compliance with its treaties, including Convention No. 169 on Indigenous and Tribal peoples in independent countries. Under article 22 of the ILO constitution, States parties to the various ILO treaties are subject to periodic of compliance with the relevant treaties by the Committee of Experts on the Application of Conventions and Recommendations. For its part, the complaint procedure is outlined in articles 24 and 26 of the ILO constitution. These procedures are generally not available to individual complainants - only a government, a trade union, an employees association or a delegate of the ILO may take up the case. Further, the complaint can only relate to a State that has ratified the convention. The Governing Body of the ILO can decide whether to appoint a commission of inquiry to look into the case, although this has been done in very few cases overall and in no case related to Convention 169 to date. Most cases involving Convention 169 have been brought under article 24 (called a "representation"). The Governing Body appoints a tripartite three member body to review the case, which then submits to the Governing Body a report with the legal aspects of the case. The government involved is invited to



respond, and if the response is not considered satisfactory, the Governing Body may publish its representation and the response.<sup>3</sup>

### Regional human rights systems

#### **Inter-American Human Rights System**

The Inter-American human rights system has a rich body of jurisprudence related to indigenous peoples, emanating from its interpretations of the American Declaration on the Rights and Duties of Man (a declaration) and the American Convention on Human Rights (a treaty). These bodies have interpreted human rights of general application to affirm the rights of indigenous peoples to lands, territories and natural resources; consultation and free, prior and informed consent; political participation; and right to life, among others.

The complaints procedure within the Inter-American human rights system is always initiated before the Inter-American Commission on Human Rights. Complaints can relate to any State in the Organization of American States, whether or not the State has ratified the American Convention on Human Rights. If the State has not ratified the American Convention, the Inter-American Commission evaluates the situation in accordance with the rights enshrined in the American Declaration on the Rights and Duties of Man. If the State has ratified the Convention, the case is evaluated within the framework of that instrument. There are various admissibility requirements to present a case, including exhaustion of domestic remedies, non-duplication of international procedures, and a timeframe in which a petition may be submitted. If a case is deemed admissible, the Commission reviews the information and engages in an exchange of information with the State and the petitioners. This process may result in a report by the Commission, with a series of recommendations.

If the State in question has ratified the American Convention and has made a separate declaration under its article 62 accepting the jurisdiction of the Inter-American Court, the Commission can forward the case to the Court for its review. The process before the Court ends in a binding judgment. The Court also has a mandate to follow up on compliance with its decisions, and to conduct compliance hearings towards this end.

#### **African Commission on Human and Peoples Rights**

The complaint process before the African Commission on Human and Peoples Rights is similar to that before the Inter-American System. Any group or individual coming from a State that is party to the African Charter on Human Rights (a treaty) may submit a

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<sup>3</sup> However, it must be noted that this recourse mechanism was highly constructive when invoked under the outdated, assimilationist ILO C107 (1957).

complaint. There are several requirements for admissibility including the exhaustion of local remedies and presentation of the complaint within a reasonable time after the exhaustion of remedies. The process ends in a decision by the Commission, which is called a recommendation. The recommendations take into account the information from the complainant and from the State. If a violation is found, the Commission outlines the required action to be taken by the State party to remedy the violation. The Commission also has the mandate to follow up on implementation of the recommendations. There is a growing body of important jurisprudence related to indigenous peoples of Africa, in large part consistent with the emergence of the explicit standards contained in the UN Declaration.

### **Are there limitations to an optional protocol?**

In considering the creation of an optional protocol it is prudent to acknowledge the current human rights treaty body reform process in the United Nations aimed at strengthening and enhancing the effective functioning of the human rights treaty body system.<sup>4</sup> This reform process has raised questions about workload of unpaid experts, backlogs of reports and communications, quality of expertise and secretariat support. In addition there are concerns about the inability of treaty bodies to compel compliance including submission of reports and implementation of human rights treaty obligations. These factors should be taken into account when discussing the creation of a new oversight body.

Corollary to this is the notion of ‘rights ritualism’. Rights ritualism is based on the work of sociologist Robert Merton who identified five types of adaptation to a normative or cultural order.<sup>5</sup> These types of adaptation include ritualism, conformity (acceptance of both normative goals and the institutionalized means to achieve them), innovation (acceptance of normative goals but supporting alternative (perhaps even perverse) means to fulfill them), retreatism (resistance to both normative goals and their formal institutions) and rebellion (replacing normative goals and their institutions with new ones).<sup>6</sup> John Braithwaite, Valerie Braithwaite and Toni Makkai have developed this further in the context of regulatory ritualism.<sup>7</sup>

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<sup>4</sup> See, eg, Intergovernmental Process of the General Assembly on Strengthening and Enhancing the Effective Functioning of the Human Rights Treaty Body System, G.A. Res. 66/254, U.N. Doc. A/66/254 (May 15, 2012); United Nations High Commissioner for Human Rights, Strengthening the United Nations Human Rights Treaty Body System, 44, U.N. Doc. A/66/860 (June 26, 2012); See also Christen Broecker & Michael O’Flaherty, The Outcome of the General Assembly’s Treaty Body Strengthening Process: An Important Milestone on a Longer Journey (2014), available at <http://www.universal-rights.org/component/k2/outcome-of-ga-treaty-body-strengthening-process>.

<sup>5</sup> R Merton, *Social Theory and Social Structure* (1968).

<sup>6</sup> R Merton, *Social Theory and Social Structure* (1968); J Braithwaite, T Makkai and V Braithwaite, *Regulating Aged Care: Ritualism and the New Pyramid* (2007) 7; Hilary Charlesworth “Kirby Lecture in

In relation to international human rights law Hilary Charlesworth has advanced ‘rights ritualism’ further.<sup>8</sup> On human rights, Charlesworth argues, ‘Ritualism occurs when there is no acceptance of particular normative goals, but great deference is paid to the formal institutions that support them’.<sup>9</sup> Charlesworth observes that

Rights ritualism can be understood as a way of embracing the language of human rights precisely to deflect real human rights scrutiny and to avoid accountability for human rights abuses. Countries are often willing to accept human rights treaty commitments to earn international approval, but they resist the changes that the treaty obligations require.<sup>10</sup>

In the context of indigenous peoples rights in international law, indigenous rights ritualism occurs where States (or other actors) embrace the institutionalized means for advancing indigenous peoples’ rights, but are not concerned with actually realizing those rights.<sup>11</sup> Or, to put it more simply, they outwardly commit to indigenous peoples’ rights while inwardly resisting them. In the international space, the classic example is a State endorsing the UN Declaration but taking no steps to domestically advance the norms in that instrument. Domestically for instance, it occurs where a State sets up a government department to advance indigenous peoples’ rights but then starves that institution of funding and power so that it can be of little effect. The behaviour is problematic because it can help to disguise States’ non-commitment to the rights: the States’ resistance is more subtle than an outward rejection of them. The subtlety makes it more difficult for rights claims to be both made and heard and helps to deflect deeper rights scrutiny (as many human rights monitors lack the capacity to scratch below the surface of the rights commitment).<sup>12</sup> ILO 169 is arguably an example of rights ritualism; so few ratifications of legally binding obligations when held against the backdrop of enhanced and explicit UNDRIP standards, proof of rights ritualism is revealed.

#### **D. Themes**

The proposed themes for discussion include:

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International Law: Swimming to Cambodia. Justice and Ritual in Human Rights After Conflict” (2010) 29 Australian Yearbook of International Law 1.

<sup>7</sup> J Braithwaite, T Makkai and V Braithwaite, *Regulating Aged Care: Ritualism and the New Pyramid* (2007) 7.

<sup>8</sup> Hilary Charlesworth “Kirby Lecture in International Law: Swimming to Cambodia. Justice and Ritual in Human Rights After Conflict” (2010) 29 Australian Yearbook of International Law 1.

<sup>9</sup> *Ibid.*, at 12.

<sup>10</sup> *Ibid.*, at 13.

<sup>11</sup> See Fleur Adcock, ‘The UN Special Rapporteur on the Rights of Indigenous Peoples and New Zealand: A study in compliance ritualism’ (2012) New Zealand Yearbook of International Law, Vol. 10 at 97.

<sup>12</sup> *Ibid.*, at 120.

- 1) Why is an optional protocol required in relation to the UN Declaration? Is there an implementation gap?
  - i. What are the compelling reasons for the creation of a supervisory body for the UN Declaration?
  - ii. Is there a implementation gap and is it more acute in some areas of UN Declaration i.e. lands, territories and resources?
- 2) What are the limitations of the current international human rights law system in regard to monitoring of rights? Does it encourage 'rights ritualism'?
  - i. Given the recent treaty body reform how does the creation of another body address some of the concerns States and human rights mechanisms have about the effectiveness of such bodies, the workload and issues of duplication?
  - ii. Given the burgeoning literature on the failure of the carrot and stick approach to human rights implementation including the concept of 'rights ritualism' how could this body be different?
  - iii. What are the limitations of taking this approach?
- 3) What are some of the problems with the implementation of the UN Declaration pertaining to lands, territories and resources?
  - i. What are the limitations of State based mechanisms pertaining to lands, territories and resources?
- 4) What are the lessons that can be learned from other mechanisms?
  - i. How do regional mechanisms work? Are they effective? How are they different from UN mechanisms?
  - ii. What lessons could be drawn from other optional protocol supervisory bodies?
- 5) What would be the features of an oversight mechanism? Who would be subject to review and what would the admissibility requirements be?
  - i. What types of models may be appropriate for the UN Declaration?
  - ii. How would admissibility requirements work?
  - iii. What are the benefits of a voluntary mechanism?
  - iv. How are cases selected?
  - v. How should the body be constituted?
  - vi. What should the working methods be?
- 6) Is there an existing UN body that could be adapted to do the work of an oversight body?

#### **E. Organization of the meeting**

## **Objectives and outcomes**

The Expert Group Meeting is intended to:

- Analyze the legal and practical considerations of the creation of a voluntary optional protocol to the UN Declaration on the Rights of Indigenous Peoples;
- Consider whether the creation of a new body is another form of ‘rights ritualism’;
- Brainstorm about potential models for a voluntary optional protocol and corresponding oversight mechanism;
- Solicit the views of indigenous experts, member states, academics and others regarding the potential utility of an optional protocol and oversight mechanism;
- Discuss potential next steps for the development of a voluntary complaint mechanism.

The final report and recommendations of the expert group meeting will be submitted to the Permanent Forum on Indigenous Issues at its Fourteenth Session to be held from 20 April to 1 May 2015.

## **Participants**

Indigenous experts from each of the seven indigenous socio-cultural regions<sup>13</sup> have been invited to participate in the expert group meeting. International and human rights legal experts have also been invited to the meeting, given their ability to contribute to the legal/technical context of the dialogue. Four members of the Permanent Forum, selected in consultation with the Chair; the Special Rapporteur on the Rights of Indigenous Peoples; and a representative of the Expert Mechanism on the Rights of Indigenous Peoples will also attend. In addition, the meeting is open to observers at the expert level from indigenous peoples’ organizations, member states and the UN system. Staff of the UN Office of Legal Affairs have also been invited.

## **Working Documents**

Experts invited to participate in the expert group meeting are requested to submit brief papers on the above themes drawing from their expertise, work and experience at the international, national and community level or within agencies other inter-governmental regimes.

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<sup>13</sup> Arctic; Africa; Asia; Central and South America and the Caribbean; Central and Eastern Europe, Russian Federation, Central Asia and Transcaucasia; North America and the Pacific.

Other documents:

- Study on an optional protocol to the United Nations Declaration on the Rights of Indigenous Peoples focusing on a voluntary mechanism (E/C.19/2014/7).
- Report of the Special Rapporteur to the Human Rights Council of 2008 (A/HRC/9/9).
- H. Steiner, P. Alston and R. Goodman, International Human Rights in Context: Law, Politics and Morals, 3<sup>rd</sup> edition.
- J. Donnelly, The relative universality of Human Rights, Human Rights Quarterly, vol. 29, No 2 (May 2007).

**Comparative table of existing procedures**

Body	Procedure	Main Instrument	Optional process	Formal admissibility requirements	Outcome	Composition
Special Rapporteur	Communications	UNDRIP + others relevant	No	None	Exchange of letters; Report with recommendations	One independent expert
UN Human Rights Council	Universal Periodic Review	Universal Declaration + others relevant	No	None	Report with recommendations	Member States of Human Rights Council
Human Rights Committee	First optional protocol	ICCPR	Yes *	Yes	Decision by Human Rights Committee	18 independent experts
Committee on the Elimination of Racial Discrimination	Urgent action/early warning	ICERD	No	No	Exchange of letters; Report with recommendations	18 independent experts
UN treaty bodies (e.g. HR Committee and CERD)	Periodic reporting	Relevant treaty	No	No	Report with recommendations	18 independent experts
Inter-American Commission on Human Rights	Complaint procedure	American Declaration on Rights and Duties of Man	No	Yes	Report with recommendations	7 independent experts
Inter-American Court of Human Rights	Complaint procedures	American Convention on Human Rights	Yes **	Yes	Judgment by court	7 judges
African Commission on Human and Peoples Rights	Complaint procedure	African Convention on Human Rights	No	Yes	Recommendation by the Commission	11 independent experts
International Labour Organization	Articles 24/26 complaint procedure	ILO Convention 169	No	Yes	Report and recommendations	Tripartite group of 3 assigned to each case
International Labour Organization	Article 22 periodic reporting procedure	ILO Convention 169	No	No	Report and recommendations	20 independent experts

\* To be subject to this procedure, the State in question must have ratified the first optional protocol, which is separate from the ratification of the International Covenant on Civil and Political Rights

\*\* To be subject to review before the Inter-American Court of Human Rights, the State in question must have accepted the jurisdiction of the Inter-American Court in accordance with Article 62 of the American Convention on Human Rights