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### **Permanent Forum on Indigenous Issues**

**Seventh session**

New York, 21 April -2 May 2008

Item 5. of the provisional agenda

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

**Study on the structures, procedures and mechanisms that presently exist and that might be established to effectively address the human rights situation of indigenous peoples and to arrange for indigenous representation and inclusion in such structures, procedures and mechanisms**

**By Ms. Ida Nicolaisen and Mr. Wilton Littlechild**

#### *Summary*

The UN Permanent Forum on Indigenous Issues has been mandated by ECOSOC 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 High Commissioner on Human Rights and the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Mr. Rodolfo Stavenhagen.

Since its establishment and according to its mandate, the Permanent Forum has repeatedly considered the challenges of addressing the human rights of indigenous peoples within the UN system in view of the serious violations against indigenous peoples worldwide. The UN Permanent 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 indigenous peoples' human rights. 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 Permanent Forum debated the role of the newly-established Human Rights Council with regard to the promotion and protection of indigenous peoples' rights and made a number of concrete recommendations in this respect.<sup>1</sup> In the context of this discussion, the Forum decided to appoint two of its members, Ms Ida Nicolaisen (Vice-chair) and Mr. Wilton Littlechild "to undertake a study on the structures, procedures and mechanisms that presently exist and that might be established to effectively address the human rights situation of indigenous peoples, to arrange for indigenous representation and inclusion in

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<sup>1</sup> E/C.19/2007/12

such structures, procedures and mechanisms and to submit a report on the subject to the Permanent Forum by 31 December 2007".<sup>2</sup>

The UN Permanent Forum, the UN 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 even widening, implementation gap between the international legal frameworks and the effective protection of indigenous peoples' human rights at country level. It is crucial, therefore, that the Human Rights Council take action to bridge this gap and ensure the implementation and monitoring of indigenous peoples' human rights.

The present study has found that, with the adoption of the UN Declaration on the Rights of Indigenous Peoples (UN-DECRIPS) by the UN 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 and establish mechanisms that can strengthen the protection of indigenous peoples' rights and focus on their attainment.

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<sup>2</sup> E/C.19/2007/12

Article 42 of the UN-DECRIPS stipulates that:

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.

In order to enhance the work of the Permanent Forum on Indigenous Issues under its new mandate provided in Article 42 of the UN-DECRIPS, the study calls on the Forum to:

- a) Ensure that the Declaration is integrated in the Forum's own recommendations on the six substantive mandated areas of the Forum – economic and social development, environment, health, education, culture and human rights-- as well as in the Forum's work under the special theme for each session and in its ongoing themes and priorities.
- b) Promote a constructive dialogue with Governments on the challenges, achievements and future action that indigenous issues require in each country under the UN-DECRIPS. Such dialogue, would take place periodically and enlist the participation of indigenous organizations as well as the UN system. The discussion and the UNPFII's "Chamber on the UN Declaration on the Rights of Indigenous Peoples" would create an enabling environment of

cooperation at national and international level, aiming at practical results on the ground, including through the international development agenda.

The Permanent Forum on Indigenous Issues is expected to discuss its new work under Article 42 of the UN-DECRIPS and it is hoped that this study will facilitate this process.

In order to enhance the work of the Human Rights Council on implementing and monitoring indigenous peoples' human rights, along with its mandate to ensure "the effective coordination and mainstreaming of human rights within the United Nations system", and to avoid duplication, this study suggests that the Council establish an "Expert Body on Indigenous Peoples' Rights" as a subsidiary organ of the Human Rights Council.

a) The "Expert Body on Indigenous Peoples' Rights" would provide specific advice to the Council on indigenous peoples' rights, in relation to all the Council's mandates. It would also support the Universal Periodic Review in connection with indigenous peoples' rights.

b) The "Expert Body on Indigenous Peoples' Rights" would consist of four members: a representative of the Human Rights Council's 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 appointed following the same nomination process as that of the Special Procedures.

The Human Rights Council is scheduled to decide on the establishment of an appropriate mechanism to deal with indigenous peoples' rights at its resumed sixth session in December 2007. A draft of this study will therefore be circulated in order to offer a constructive contribution to the current discussion in the Council. The study will also be sent to indigenous organizations.

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## **I. The UN Commission on Human Rights and Indigenous Peoples (1947-2006)**

1. Since its formation, the United Nations has given special priority to the promotion and protection of human rights. Article 1 (3) of the 1945 UN Charter 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 UN 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 International Convention on the Elimination of all Forms of Racial Discrimination (1969), the International Convention on the Elimination of all Forms of Discrimination against Women (1979), the Convention



against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (1984), the Convention on the Rights of the Child (1989), the International Convention for the Protection of the Rights of all Migrant Workers and Members of Their Families. Of significance also are the Convention on Biological Diversity (1992) and UNESCO's Universal Declaration on Cultural Diversity (2001).

4. The Commission on Human Rights created a number of human rights mechanisms and procedures of importance for the promotion and protection of indigenous peoples' rights. In 1995, it 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 this agenda item, entitled "Indigenous Issues", the Commission considered reports from 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's sessions, presenting oral and written interventions under this agenda item.

#### **a) The Working Group on Indigenous Populations –WGIP- (1982 –2006)**

5. In 1982, the WGIP 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 WGIP 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 WGIP 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 WGIP ceased to exist with the creation of the Human Rights Council in 2006.

6. In 1985, the WGIP 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 UN Commission on Human Rights for further consideration.

## **b) The Working Group on the Draft Declaration (1995 – 2006)**

7. In 1995, by means of 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 WGDD ended its work at its 11<sup>th</sup> session held from 5 to 16 December 2005 and its resumed session from 30 January to 3 February 2006. Based on the agreements reached, the Chairperson Rapporteur prepared his final text and presented it at the 1<sup>st</sup> session of the UN Human Rights Council. The text was then adopted by the 1<sup>st</sup> session of the Human Rights Council in June 2006. On 13 September 2007, the UN General Assembly finally adopted the Declaration on the Rights of Indigenous Peoples. One hundred and forty-four States voted for, eleven abstained and four voted against.

8. The Declaration adopted by the UN General Assembly 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 is a historical step forward in the consolidation of international mechanisms for the protection of the human rights and fundamental freedoms.

**c) The UN 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. The Commission's resolution 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 (now 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 Special Rapporteur's mandate for a further three-year period<sup>3</sup>.

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. The General Assembly and Indigenous Peoples**

### **a) The International Year and the Decades of the World's Indigenous People**

13. 1993 was proclaimed by the UN General Assembly as the International Year of the World's Indigenous People. This was also the year of the World Conference on Human Rights.

14. Following a recommendation of the World Conference of Human Rights, in December 1993 the UN General Assembly proclaimed the International Decade of the World's Indigenous Peoples (1994 - 2004). The UN goal for 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 this goal was to be found in the UN's theme for the Decade "Indigenous

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<sup>3</sup> Commission on Human Rights Resolution 2004/62

People: Partnership in Action”. The UN committed itself to developing new partnerships between indigenous peoples and states and between indigenous peoples and the UN.

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 the establishment of a UN Permanent Forum on Indigenous Issues and the adoption of the UN Declaration on the Rights of Indigenous Peoples.

16. In December 2004, the United Nations General Assembly renewed its commitment to promote and protect the rights of indigenous peoples and proclaimed the Second International Decade of the World’s Indigenous People. The goal of the Second Decade was to further encourage international cooperation to solve 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;
- To 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;
- To promote development policies respectful of the culture and identity of indigenous peoples;

- To adopt targeted programmes and budgets for the development of indigenous peoples, with special emphasis on indigenous women, children and youth;
- To strengthen monitoring of, and accountability for, commitments regarding the protection of indigenous peoples and improvement of their lives.

17. In its 60<sup>th</sup> session held in December 2005, the General Assembly adopted the program of action for the Second Decade<sup>4</sup> and agreed that “Partnership for Action and Dignity” would be the theme of the new Decade.

## **b) The United Nations Funds for Indigenous Peoples**

18. In 1985, the United Nations Voluntary Fund for Indigenous Populations was established with the purpose of assisting representatives of indigenous communities and organizations to participate in the sessions of the Working Group 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 UN 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 to Support the UN Permanent Forum on Indigenous Issues** and in 2005 the

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<sup>4</sup> A/RES/59/174 of 22 December 2004

**Trust Fund for 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 UN 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.

**c) The 2005 World Summit**

20. In 2005, more than 170 Heads of State gathered at the UN Headquarters in New York for the World Summit to mark the 60th anniversary of the UN.

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”. They 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. And they 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.

22. At the summit, a final outcome document was adopted. The document contained 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. This is stated in paragraph 27 of the outcome document, which 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.

**d) The adoption of the UN Declaration on the Rights of Indigenous Peoples**

23. On 13 September 2007, the General Assembly, through overwhelming majority (144 votes in favour, 4 against, 11 abstentions) adopted the UN Declaration on the Rights of Indigenous Peoples (General Assembly resolution 61/295). This marked a historic achievement for the General Assembly in its unique function as a global parliament.

### **III. The UN Permanent Forum on Indigenous Issues and Indigenous Peoples’ Rights**

24. In July 2000, the Economic and Social Council of the United Nations took an historic decision when it adopted a resolution to establish a “Permanent Forum on Indigenous Issues”( ECOSOC Resolution 2000/22).

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 Permanent Forum is made up of 16 experts, each acting in an individual capacity as independent expert on indigenous issues. Of its sixteen experts, eight are nominated by governments and the other eight by indigenous organizations. The name *Forum* came into use as a generic name within the United Nations system to indicate the UN Permanent Forum's broad mandate and its inclusiveness of all issues related to indigenous peoples.

26. The Permanent 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 Permanent Forum will:

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

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

29. The main objective of the Permanent Forum is thus to influence and watch over the interests of indigenous peoples throughout the whole United Nations system. For this reason, the Permanent 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 UN Permanent Forum, human rights have been a separate item on the agenda. The Permanent Forum has developed close collaboration with the Office of the High Commissioner on Human Rights and the Special Rapporteur, Mr. Rodolfo Stavenhagen. At its 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 Permanent Forum expressed a wish for its Chairperson to participate in the programmed activities of the Council in relation to indigenous peoples' issues 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, UN agencies and states, and the ensuing debates during its sessions, the Permanent Forum has developed a substantial number of recommendations addressing the pertinent human rights problems of indigenous peoples. The Forum has also worked determinedly

between sessions to further the rights of indigenous peoples. This is clearly reflected in a review of the recommendations made by the Permanent Forum at its sixth session.<sup>5</sup> 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, Ms Victoria Tauli-Corpuz presented a report on the “Implementation of the human rights mandate of the Permanent Forum on Indigenous Issues”<sup>6</sup>. 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 Permanent Forum and how the Forum has discharged it until now, and the challenges and future prospects of the Forum’s work on human rights. The latter part of the report constitutes a vision whose implementation will enrich the work of the Forum and impact on the promotion of respect and implementation of indigenous peoples’ rights.

33. A fair number of recommendations of the Permanent Forum have been addressed to the Commission on Human Rights and, since 2006, to the Human Rights Council.

These deal with issues such as:

#### The Special Procedures

- Implementation and monitoring of human rights standards

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<sup>5</sup> E/C.19/2007/5 “Analysis and state of implementation of the recommendations of the Permanent Forum at its fourth session”

<sup>6</sup> E/C.19/2007/6, also available at [www.un.org/esa/socdev/unpfi](http://www.un.org/esa/socdev/unpfi).

- Inclusion of indigenous peoples' experts in the Council's work
- Adoption of creative methods of work, with particular regard for the full participation of indigenous peoples.

**a) The impact of the adoption of the United Nations Declaration on the Rights of Indigenous Peoples on the work of the United Nations Permanent Forum on Indigenous Issues: a “Chamber on the UN 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 United Nations Permanent Forum on Indigenous Issues by 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 UNPFII under its overall human rights mandate, under resolution 2000/22 of the Economic and Social Council which established the Forum.

36. In the last six years the UNPFII has been developing its work in the area of human rights in a number of ways, responding to the needs the Forum has identified in 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 DECRIPS, the Forum would rely on its special characteristics as foreseen in ECOSOC resolution 2000/22, including its mandate, composition and consensus procedures that characterize the work of the Forum. In addition to a 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 UNPFII gathers and galvanizes the dynamic of Governments, the UN system and indigenous organizations into a cooperative forum which 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 in the Forum's own recommendations 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 intergrated in the Forum's work under the special theme for each session as well as its ongoing themes and priorities.

38. In addition to integrating the Declaration in its regular work, the Forum will have to promote its implementation and follow up its effectiveness. The Forum 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 as well as the UN system. The discussion and the Forum's role would create an enabling environment of partnership and cooperation at national and international level, 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 Permanent Forum consider the establishment of a methodology that would provide the Forum with the capacity to discharge this new mandate under the Declaration. The creation of a "Chamber on the UN Declaration on the Rights of Indigenous Peoples" of the Forum in that regard seems as an appropriate way of proceeding, as it would provide the timeframe and specificity required for this function.**

**b) The establishment of the United Nations Human Rights Council and its interface with the United Nations 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 amidst recognition of the weaknesses of the United Nations

Commission on Human Rights to effectively address human rights violations across the world.

41. On 21 March 2005, then Secretary-General Kofi Annan launched a report entitled “*In Larger Freedom: Towards Development, Security and Human Rights for All*” and proposed upgrading the UN Commission on Human Rights and establishing the Human Rights Council. An Explanatory Note to *In Larger Freedom* dated 23 May 2005 outlines the Secretary-General’s visions for the proposed Human Rights Council.

42. In continuation of Kofi Annan’s report and the ensuing governmental negotiations that led to the so-called “Outcome Document” prepared by the President of the General Assembly, the UN General Assembly decided, by means of Resolution A/RES/60/251 dated March 15, 2006, to establish a new body: the Human Rights Council. The resolution, while “addressing situations of violations of human rights, including gross and systematic violations, and make[ing] recommendations thereon” also decided 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”.



43. The resolution on the Human Rights Council<sup>7</sup> contains many new elements that differentiate it from the Commission on Human Rights:

- The Council is established as a subsidiary body of the General Assembly;
- While the Commission on Human Rights used to meet for 6 weeks annually, the Human Rights Council and 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”;
- The resolution on the establishment of the Human Rights Council provides more emphasis on “human rights education and learning as well as advisory services, technical assistance and capacity-building”;
- The resolution provides for a mechanism to examine the human rights records of all United Nations member states. This innovative mechanism – the Universal Periodic Review (UPR) – aims at meeting the criticism of, and overcoming, politicization and double standards;
- The role of civil society that was formalized at the Commission on Human Rights through customary practices is formally recognized in the resolution;
- There is no life membership. No member of the Human Rights Council shall be eligible for immediate re-election after two consecutive terms;

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<sup>7</sup> A/RES/60/251 of 15 March, 2006

- The resolution provides for the suspension of membership of any member of the Human Rights Council that commits gross and systematic violations of human rights and suspension can be implemented by the General Assembly, by a two-thirds majority of those members present and voting;
- A review of the status of the Council itself shall be undertaken by the General Assembly within five years.

44. The UN Permanent 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 indigenous peoples' human rights. This was one of the reasons why the Permanent Forum decided to undertake this present study at its Sixth Session. Recommendations had already been made at the Permanent Forum's Fifth Session, immediately after the establishment of the Human Rights Council, in order to draw the attention of the Council to the urgent need to address indigenous people's human rights.

45. In 2006, the Permanent 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.<sup>8</sup>

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<sup>8</sup> E/C.19/2006/11

46. The Forum also urged the Council to ensure the active participation of indigenous peoples' organizations 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.<sup>9</sup>

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 Permanent Forum has also urged the Council to ensure the full participation of indigenous peoples' representatives in that review process.<sup>10</sup>

#### **IV. Institutional 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,<sup>11</sup> the Human Rights Council agreed on an institution building package<sup>12</sup> that lays out the basic structure for the Council's new institutional machinery, including:

- The Universal Periodic Review Mechanism,

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<sup>9</sup> E/C.19/2006/11

<sup>10</sup> E/C.19/2006/11

<sup>11</sup> General Assembly Resolution 60/251 of 15 March 2006

<sup>12</sup> A/HRC/5/21 of 7 August 2007

- 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),
- 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 for the Council. Its agenda and programme of work provide the opportunity to discuss all thematic human rights issues and situations that require the Council's attention 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 UN Member States will be regularly examined through a common mechanism. Indigenous peoples have called for specific reference in the Universal Periodic Review, for example were Treaties exist.

51. The HRC Working Group on the UPR will review the country concerned on the basis of three key documents: (1) a 20-page submission from the state concerned; (2) a 10-page compilation of information prepared by the Office of the High Commissioner for Human Rights (OHCHR) based on the information contained in the treaty bodies, Special

Procedures etc. and other relevant UN documents and (3) an additional 10 pages of credible and reliable information from stakeholders prepared by the OHCHR.<sup>13</sup>

52. The resolution clearly states that the subsequent review shall focus *inter alia* on the implementation of the preceding outcome. The UPR 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 indigenous peoples' rights will be properly reflected in the reports and the final Outcome Document. This study stresses that it is highly important that the UPR mechanism ensures indigenous peoples have an opportunity to present their cases and be a part of the overall UPR 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 UN 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 reinforces the Special Rapporteur's mandate as described in previous resolutions of the

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<sup>13</sup> A/HRC/5/21 of 7 August 2007

Commission on Human Rights, in areas such as the Special Rapporteur's official visits, communications, and annual reporting.

55. The Council's resolution further includes a number of important innovations in relationship to previous resolutions, including the following: The Special Rapporteur's mandate includes the promotion of the implementation and follow up of the UN 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 UN Permanent Forum on Indigenous Issues, and to participate in its annual session. The resolution also invites the Special Rapporteur to identify, exchange and promote best practices in the promotion and protection of the rights of indigenous peoples.

56. This decision of the Human Rights Council is an important step towards promoting the rights of indigenous peoples and is fully in line with the recommendations of the UN Permanent Forum.

57. Unfortunately, the Human Rights Council has not maintained "indigenous issues" as a separate agenda item on its programme of work.

58. 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.<sup>14</sup> It is in line with this commitment that this study advocates for the establishment of an “Expert Body on Indigenous Peoples’ Rights”.

**a) An “Expert body on Indigenous Peoples’ Rights”**

59. Indigenous peoples' human rights are relevant to almost all mandates of the Human Rights Council. It is an issue that requires special attention, expertise and insights due to the urgency and complexity of the indigenous peoples' situation. In order to ensure such expertise and further the implementation of human rights standards, avoid duplication and increase coordination among UN bodies and mechanisms, this study advocates for the establishment of an “Expert Body on Indigenous Peoples’ Rights” as a subsidiary organ of the Human Rights Council.

60. The nature and scope of the suggested “Expert Body on Indigenous Peoples’ Rights” should be the following:

**Scope:**

This study suggests that the scope and mandate of the “Expert Body on Indigenous Peoples’ Rights” should be to provide the Council with expert advice on indigenous peoples’ human rights issues in relation to all the Council’s mandates, and especially on the best means to develop and mainstream

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<sup>14</sup> A/HRC/5/21 para. 84

international standards that promote and protect the human rights of indigenous peoples. The body would provide advice on measures to ensure implementation of the rights of indigenous peoples and review and evaluate best practices in and obstacles to the promotion and protection of indigenous peoples' rights. The expert body would work in close relation with other bodies of the Human Rights Council such as other Special Rapporteurs, special representatives, independent experts and advisory committees, the UN 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.

**Composition and placement within the UN system:**

The "Expert Body on Indigenous Peoples' Rights" would consist of four members i.e. Representative of the Human Rights Council Advisory Committee, Chair of the Permanent Forum on Indigenous Issues, 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 study proposes that this expert body be placed directly under the Human Rights Council.



**Procedures for nomination /election:**

The indigenous expert to the “Expert Body on Indigenous Peoples’ Rights” would be nominated following the same procedure as that of the Special Procedures.

**Terms of the members:**

The members of the “Expert Body on Indigenous Peoples’ Rights” would serve for a period of three years. They would be eligible for re-election once.

**Organization of work:**

The “Expert Body on Indigenous Peoples’ Rights” would hold an annual workshops to feed into the work of the Council. The expert body could organize panel discussions during the sessions of the Council with the Permanent Forum and the UN Special Rapporteur for an exchange of views regarding the human rights of indigenous peoples under agenda item: “Vulnerable Groups”. The discussion could be linked and fed into the topic of the upcoming session of the UN Permanent Forum and/or the thematic reports of the UN Special Rapporteur.

**Participation:**

Member States, United Nations bodies and organs, inter-governmental 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 UN Permanent Forum on Indigenous Issues.

**Rules of Procedure:**

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.

61. **This study concludes that UN institutions and mechanisms would benefit from the advice offered by the new expert mechanism on indigenous peoples' rights in a number of ways. The advice and input provided by the expert body to the work of the Council would:**

- **Ensure that the issue of indigenous peoples' rights is given appropriate space within the UN Human Rights Council**
- **Provide relevant information on the situation of indigenous peoples' rights that can be included in the Universal Periodic Review (UPR).**
- **Further cooperation within the UN system regarding the implementation of the rights of indigenous peoples.**
- **Identify best practices and effective measures to protect the rights of indigenous peoples and assist states to achieve implementation.**

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

61. In short, the establishment of the Expert Body on Indigenous Peoples' Rights would be consistent with the Council objectives of rationalizing the human rights mechanisms as well as promoting effective coordination and mainstreaming human.