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Human rights

Information received from the United Nations system and other intergovernmental organizations

Office of the United Nations High Commissioner for Human Rights (OHCHR) **

Summary

This report from the Office of the United Nations High Commissioner for Human Rights (OHCHR) responds to the recommendations of the United Nations Permanent Forum on Indigenous Issues at its sixth session. It also draw attention to two important developments related to the rights of indigenous peoples that occurred since the last session of the Permanent Forum, namely the adoption by the General Assembly of the United Nations Declaration on the Rights of Indigenous Peoples and the establishment by the Human Rights Council of an Expert mechanism on the rights of indigenous peoples to provide thematic expertise. The report also provides information regarding the promotion and

* E/C.19/2008/1
** The submission of the present report is delayed in order to ensure the inclusion of the most recent information.

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realization of the United Nations Declaration on the Rights of Indigenous Peoples and implementation of the objectives of the second Decade of the World's Indigenous People.

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I. Introduction

1. In its report on its sixth session (E/2007/43), the Permanent Forum on Indigenous Issues made recommendations to the United Nations system including to the Office of the High Commissioner for Human Rights and human rights mechanisms. This report provides information, as requested by the Permanent Forum, on recommendations addressed to the Office as well as other information of relevance.

II. Follow-up to the recommendations of the Permanent Forum on Indigenous Issues addressed to the Human Rights Council

2. The Permanent Forum made a series of recommendations to the Human Rights Council. These included recommendations to maintain the mandate of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people,[1] and maintain and strengthen the Council's expertise on indigenous peoples' human rights issues.[2]

Extension of the mandate of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people

3. The Human Rights Council renewed the mandate of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people at its sixth session. The mandate of the Special Rapporteur was expanded to include, in particular, the promotion of the United Nations Declaration on the Rights of Indigenous Peoples and

[1] E/2007/43 para 86
[2] E/2007/43 para 87

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other international instruments relevant to the advancement of the rights of indigenous peoples. Human Rights Council resolution 6/12 renewing the mandate of the Special Rapporteur can be found on the website of OHCHR.

Establishment of an Expert mechanism on the rights of indigenous peoples

4. In its resolution 6/16, the Human Rights Council requested the Office of the United Nations High Commissioner on Human Rights to convene an informal meeting in Geneva, for a day and a half, open to the participation of States, indigenous peoples and other stakeholders to exchange views on the most appropriate mechanisms to continue the work of the Working Group on Indigenous Populations. The meeting took place on 5 December and on the morning of 6 December 2007.

5. At its resumed sixth session, the Human Rights Council adopted resolution 6/36 establishing a subsidiary expert mechanism to provide the Council with thematic expertise on the rights of indigenous peoples. The mechanism is mandated to focus its thematic expertise mainly on studies and research-based advice, and to suggest proposals to the Council for its consideration and approval.

6. The mechanism will consist of five independent experts and will meet annually three days in its first year and thereafter for up to five days. The resolution recommends that due regard is given to experts of indigenous origin during the selection process.

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7. The resolution further decides that the mechanism will be open to the participation, as observers, of States, United Nations mechanisms, bodies and specialized agencies, funds and programmes, intergovernmental organizations, regional organizations and mechanisms in the field of human rights, national human rights institutions and other relevant national bodies, academics and experts on indigenous issues, and non-governmental organizations in consultative status with the Economic and Social Council. The meeting shall also be open to indigenous peoples' organizations and non-governmental organizations, whose aims and purposes are in conformity with the spirit, purposes and principles of the Charter of the United Nations, based on arrangements, including Economic and Social Council resolution 1996/31 of 25 July 1996, and practices observed by the Commission on Human Rights, through an open and transparent accreditation procedure in accordance with the rules of procedure of the Human Rights Council, which will provide for the timely information on participation and consultation with States concerned.

8. The resolution includes a standing invitation to the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people and a member of the Permanent Forum to contribute to the meeting. The expert mechanism is expected to meet for three days in October 2008.

Inclusion of indigenous rights and expertise in the work of the Council

9. As far as the recommendation to include indigenous peoples' rights in the work of the Human Rights Council is concerned, it may be noted that the agenda items of the Council are broad and allow for relevant information on indigenous peoples' issues to be provided

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and absorbed. The rights of indigenous peoples can specifically be addressed under Item 3 of the Council agenda entitled "Rights of peoples, and specific groups and individuals".

10. The Human Rights Council is also undertaking a review of the human rights situation of all Member States under the so-called Universal Periodic Review process. Information provided by relevant stakeholders, including non-governmental and indigenous organizations, may be submitted for consideration in the preparation of these reports. Further information on the procedures for submitting information may be found on the OHCHR website.

II. Follow-up to recommendations addressed to specific Special Procedures mandate-holders

11. The recommendations addressed to the Special Procedures mandate holders were forwarded to individual mandate-holders for their consideration. These included recommendations calling on the Special Rapporteurs on counter-terrorism and on migrants to pay particular attention to the situation of indigenous peoples[3], the recommendation to the Special Rapporteurs on trafficking and violence against women to hold regional consultations with indigenous women of Asia[4], and the recommendations to the Special Rapporteurs on counter-terrorism and indigenous peoples to conduct thematic studies.[5]

[3] E/2007/43 para 89 and 117
[4] E/2007/43 para 105

[5] E/2007/43 para 76 and 111.

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Counter-terrorism and indigenous peoples

12. The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism included a whole section on the impact of counter-terrorism measures on the economic, social and cultural rights of indigenous peoples in his annual report to the Human Rights Council[6]. The Special Rapporteur analyzed a number of specific cases in the context of his correspondence with Governments, and noted with concern that in various parts of the world Governments have invoked their counter-terrorism laws in response to claims and social movements emanating from the indigenous peoples of those countries, and that such measures may wrongly stigmatize as terrorism the activities of indigenous communities in respect of conflicts over land rights and natural resources. In his concluding recommendations, the Special Rapporteur urged States not to apply their counter-terrorism laws and measures to social movements or protest by indigenous peoples or minority communities who claim recognition and full protection for their economic, social and cultural rights, including the right to enjoy their own distinctive culture, which is often associated with lands and specific forms of livelihood.[7] The Special Rapporteur is expected to address the issue in his forthcoming country visits.

Urban and migrant indigenous peoples

13. The Special Rapporteur on the human rights of migrants notes the Permanent Forum's recommendation to pay special attention to the vulnerability of urban and migrant indigenous peoples and would welcome receiving information from different sources, and

[6] A/HRC/6/17 paras. 57-63
[7] A/HRC/6/17 para. 73 (d)

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particularly from indigenous organizations, regarding the situation of cross-border indigenous migrants. The Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people will consider the possibility of undertaking a study on the rights of urban indigenous peoples and migration, paying particular attention to their ability to exercise and enjoy their economic and social rights, in his future activities.

Violence against women, trafficking, and indigenous peoples

14. The Special Rapporteur on violence against women took note of the Permanent Forum's recommendation to hold a regional consultation with indigenous women in Asia and will make arrangements to implement it in the context of the next Asia-Pacific regional consultation on violence against women, generally organized in cooperation with the Asia Pacific Forum for Women, Law and Development. UNIFEM has been contacted in this regard. The Special Rapporteur on trafficking has unfortunately been unable to include the consultation in her annual programme of activities but the recommendation will be taken into consideration in future activities.

Special Rapporteur on on the situation of human rights and fundamental freedoms of indigenous peoples

15. The Special Rapporteur welcomes the Permanent Forum’s recommendation calling on States to invite the Special Rapporteur to undertake country visits. In this regard, the Special Rapporteur refers to resolution 6/12 renewing his mandate, whereby the Council encourages all Governments “to give serious consideration to the possibility of inviting the

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Special Rapporteur to visit their countries so as to enable him/her to fulfill the mandate effectively." The Special Rapporteur has noted that he will continue to take into account the concerns expressed by indigenous peoples in the identification of potential country visits.

16. Regarding the Permanent Forum recommendation which "encourages analysis by States, the specialized agencies, academics, indigenous peoples and their organizations of the implementation of free, prior and informed consent principles and mechanisms regarding projects on indigenous lands and territories"[8], the Special Rapporteur would like to draw the attention of the Permanent Forum to the annual report he submitted to the Human Rights Council that includes a section on Human rights principles in indigenous development that underlines the importance of these principles.[9]

III. Recommendations addressed to the Office of the High Commissioner for Human Rights

17. Recommendations were made to continue to disseminate information and to conduct capacity-building activities on the United Nations human rights mechanisms[10], to prepare guidelines on the protection of indigenous peoples in voluntary isolation and initial contact[11] and inform on the results of the High Commissioner's study on the scope and

[8] E/2007/43 para 19.

[9] A/HRC/6/15

[10] E/2007/43 para 75.

[11] E/2007/43 para 40.

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content of the relevant human rights obligations related to equitable access to safe drinking water and sanitation under international human rights instruments.[12]

Capacity-building on human rights mechanisms

18. The Office continues to strengthen the capacity-building of indigenous representatives on the human rights mechanisms through its Fellowship Programme. In 2007, a total of 19 participants (11 women and 8 men) participated in the programme. They were from 15 different countries including Cameroun, Ukraine, Finland, Bangladesh, the Philippines, Mexico, Chile, Panama, Ecuador, Chad, Morocco, Algeria, Canada, Republic of Congo and the Russian Federation. Some parts of the programme have been reinforced, particularly the Russian speaking programme with a training session of an additional two weeks duration organized by the OHCHR presence in Moscow in cooperation with the United Nations Country Team.

19. In addition, some of the trained fellows undertook paid internships or consultancies both at the office and at the International Labour Office in Geneva, as well as in UN field or regional offices in the Philippines, Mexico, Chile, Panama and Cameroun. These short-term assignments further empowered trained fellows by enabling them to put into practice the knowledge gained during the Fellowship Programme as well as participate directly in the activities of United Nations organizations and specialized agencies in their respective countries, thus also contributing to improving the understanding on indigenous issues of these agencies. In addition to the information that can be found on the office's website, a

[12] E/2007/43 para 55.

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leaflet available in the four languages of the programme, namely English, Russian, Spanish and French, has been prepared to allow a greater dissemination and awareness on the content of the programme.

Isolated indigenous peoples

20. In November 2006, the OHCHR organized in cooperation with the Government of Bolivia, the Confederación de Pueblos Indígenas de Bolivia (CIDOB), and the International Work Group on Indigenous Affairs, an expert seminar on indigenous peoples in voluntary isolation and initial contact of the Amazon and Chaco Region of South America. One of the recommendations of the expert meeting was that guidelines should be prepared that could provide guidance and best practices to policy makers, officials, non-governmental organizations and other relevant actors. Draft guidelines have been prepared and are presently under review by the Governments of the region and other partners.

21. The Office has also organized, jointly with the International Committee for the Protection of Indigenous Peoples in Voluntary Isolation and Initial Contact in the Amazon and Chaco Regions (CIPIACI) and with the support of the Spanish Cooperation for Development and the Danish International Development Agency (DANIDA), a workshop on the right to health of indigenous peoples in voluntary isolation and initial contact which was held in Quito, Ecuador, 21-22 October 2007. The conclusions are available on the OHCHR website.

Access to water and indigenous peoples

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22. Pursuant to Human Rights Council decision 2/104 of 27 November 2006 on human rights and access to water, the High Commissioner submitted a reportin September 2007 to the sixth session of the Human Rights Council on the human rights obligations related to equitable access to safe drinking water and sanitation under international human rights instruments, taking into account the views of States and other stakeholders.[13] The drafting of the study was informed by contributions received from indigenous organizations as part of the consultation process that OHCHR carried out in relation to the study.

IV. Other relevant activities of the Office of the High Commissioner for Human Rights

United Nations Declaration on the Rights of Indigenous Peoples

23. The adoption by the General Assembly of the United Nations Declaration on the Rights of Indigenous Peoples on 13 September 2007 constitutes the culmination of more than two decades of discussion first within the Working Group on Indigenous Populations and later the Commission on Human Rights working group and finally at the first session of the Human Rights Council in June 2006.

24. The United Nations system as a whole including advisory bodies such as the Permanent Forum on Indigenous Issues or other monitoring bodies such as those responsible for the international human rights treaties are enjoined to promote the implementation of the Declaration in particular, Articles 41 and 42.

[13] A/HRC/6/3

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25. The OHCHR considers that the adoption of the Declaration on the Rights of Indigenous Peoples offers an opportunity to renew efforts to improve the situation of indigenous peoples worldwide, establishing for the first time universal standards that can guide public policy. Together with ILO Convention 169 on indigenous and tribal peoples, the Declaration should also provide a framework for the UN's country teams.

26. On 26 and 27 February 2008, the OHCHR and ILO will organize in Geneva a special meeting of the Inter-Agency Support Group on Indigenous Peoples Issues aimed at integrating the United Nations Declaration along with ILO Convention 169 into the policies, operational programmes and activities of the UN system including at the country level.

27. An advocacy workshop on the Declaration was conducted in Brazzaville from 17 and 18 November 2007 in cooperation with the Indigenous Peoples of Africa Coordinating Committee (IPACC) with the participation of indigenous and non-indigenous representatives of non-governmental organizations from the Democratic Republic of Congo, Rwanda, Burundi, Mali and Congo, to enhance awareness, knowledge and understanding on the rights of indigenous peoples contained in the United Nations Declaration.

Second International Decade of the World's Indigenous People

28. The Programme of Action for the Second International Decade of the World's Indigenous People recommended that "cooperation be developed with the Working Group

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on the Rights of Indigenous Populations/Communities in Africa of the African Commission on Human and Peoples' Rights with a view to increasing the participation of indigenous peoples from Africa in the implementation of the Second Decade Programme of Action and to enhancing the understanding of indigenous issues in Africa."[14] The OHCHR organized an Expert meeting on indigenous peoples and the implementation of the second Decade of the World's Indigenous People in cooperation with the African Commission on Human and Peoples' Rights and the International Work Group for Indigenous Affairs (IWGIA).

29. The Expert meeting brought together the expert members of the African Commission Working Group on indigenous populations/communities, 35 indigenous representatives from Kenya, Tanzania, Burundi, Uganda, Ethiopia, Congo, Morocco, Cameroon, Democratic Republic of Congo and Mali, the Regional Representative of the United Nations Centre for Human Rights and Democracy in Central Africa, a representative of the African Union Department for Political Affairs, representatives of the Government of Burundi, South Africa and the Republic of Congo, two expert members of the United Nations Permanent Forum on Indigenous Issues, and representatives of the International Labour Office in Geneva and of UNICEF in Brazzaville. Representatives of Minority Rights Group International and the Forest Peoples Project also participated in the meeting.

30. The meeting took place in Brazzaville on 12-13 November 2007. The recommendations of the meeting provide a framework for a Plan of Action for Africa to be

[14] A/60/270 para 48

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implemented by the United Nations system and other stakeholders. The recommendations are contained in the Annex 1.

Climate change and indigenous peoples

31. The Permanent Forum on Indigenous Issues has as its principal theme for its seventh session the theme of climate change and indigenous peoples. In this regard, the Office draws attention to its ongoing work in this area aimed at advocating greater integration of human rights in climate change discussions. The statement made by the United Nations Deputy High Commissioner for Human Rights at the Conference of the Parties to the United Nations Framework Convention on Climate Change and its Kyoto Protocol held in Bali, Indonesia, on 3-14 December 2007, underlines that indigenous peoples are also among the groups that could be particularly vulnerable to the impacts of climate change and that emerging evidence suggests that the livelihoods and cultural identities of indigenous peoples of North America, Europe, Latin America, Africa, Asia and the Pacific are already being threatened by the impact of climate change. The Office, together with other members of the Inter-Agency Support Group, have submited an inter-agency paper on this matter to the seventh session of Permanent Forum.[15]

[15] E/C.19/2008/CRP2

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Annex

Expert meeting on indigenous peoples and the implementation of the second Decade of the World's Indigenous People

Brazzaville, Republic of Congo

12-13 November 2007

Recommendations

Objective (i): Promoting non-discrimination and inclusion of indigenous peoples in the design, implementation and evaluation of international, regional and national processes regarding laws, policies, resources, programmes and projects;

Recommendations to the UN system:

- **To continue building the capacities of indigenous peoples' organizations and develop their knowledge and skills to defend their rights through trainings and consultations;**
- **To ensure consistency of UN system's approach to the promotion of indigenous peoples' rights in the field;**
- **To promote the understanding of the UN Declaration on the rights of indigenous peoples among decision-makers, public officials, justice system, NHRIs and NGOs.**

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Recommendations to civil society organizations:

- **To lobby and advocate policy makers and development partners, including local governments, to integrate indigenous peoples' rights in all development initiatives.**

Recommendations to Member States:

- **To recognize the existence of indigenous peoples on their territory and mainstream indigenous peoples' rights in national policies;**
- **To ensure the full and effective participation of indigenous peoples in the process of development of laws, policies and programmes affecting them;**
- **To elaborate and implement, in consultation with indigenous peoples, laws to promote the human rights of indigenous peoples;**
- **To establish consultative mechanisms both at the local and national level to enable indigenous peoples through their own representative institutions to participate in the design, decision-making and implementation of laws, policies and programmes affecting them.**

Recommendations to the African Commission:

- **To review the state party reporting guidelines for all the regional instruments in force, and require that states specifically report on the situation of indigenous peoples in their territories;**

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- **To develop an additional protocol to the Charter for the protection of indigenous peoples in the continent;**
- **To launch a Decade for the promotion and protection of the rights of indigenous peoples in Africa;**

Recommendations to the National Human Rights Institutions:

- **To promote the rights of indigenous peoples and monitor the implementation of the UN Declaration of the rights of indigenous peoples;**
- **To ensure that the international standards on indigenous peoples' rights are translated into national laws.**

Objective (ii): Promoting full and effective participation of indigenous peoples in decisions which directly or indirectly affect their lifestyles, traditional lands and territories, their cultural integrity as indigenous peoples with collective rights or any other aspect of their lives, considering the principle of free, prior and informed consent

Recommendations to the African Commission:

- **To promote its jurisprudence concerning indigenous peoples, in particular the right of indigenous peoples to their traditional lands;**
- **To call upon conservation agencies to respect the internationally agreed conservation principles that uphold indigenous peoples' rights to land and**

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control over their resources, in particular the need to ensure the full and effective participation of indigenous peoples;

- **To recommend conservation agencies to develop partnership with indigenous communities based upon the free, prior and informed consent regarding all conservation initiatives and policy developments on their lands;**
- **To recommend States and conservation agencies to ensure that indigenous peoples that have been displaced by protected areas regain access to their traditional lands and uphold their rights;**
- **To develop partnership with States and civil society to ensure that indigenous peoples are provided with training on the concept of free, prior and informed consent.**

Recommendations to Member States:

- **To respect the right to self-determination of indigenous peoples as guaranteed in the African Charter;**
- **To involve indigenous peoples in the decision-making processes concerning the « use » of their culture when engaging with tourism activities;**
- **To adapt their decision-making processes to the culture and of indigenous peoples;**
- **To recognise customary rights of indigenous peoples as well as their collective rights to their traditional lands;**
- **To ensure that development projects take into consideration the specific needs of indigenous peoples;**

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- **To ensure that international and regional financial authorities respect their directives on indigenous peoples when financing development projects;**
- **To ensure that forest authorities respect indigenous peoples' customary land rights and systematically consult them on projects to be implemented on their ancestral lands;**
- **To map out the forest reserves and review the impact on the lifestyle and livelihood of indigenous peoples.**

Recommendations to the UN system:

- **To provide training workshops to States, including decentralized authorities, but also civil society actors, on the concept of free, prior and informed consent;**
- **To carry out a comprehensive study on the activities of extractive industries carried out on the traditional lands of indigenous peoples and study the impact on the human rights of indigenous peoples.**

Objective (iii): Redefining development policies that depart from a vision of equity and that are culturally appropriate, including respect for the cultural and linguistic diversity of indigenous peoples;

Recommendations to Member States:

- **To recognize the existence, identity, languages and rights of indigenous peoples in their Constitutions;**

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- **To ensure that the education curricula are compatible and respectful of the cultural identity of indigenous peoples;**
- **Ensure participation of indigenous peoples in the development, implementation and follow-up of activities related to education;**
- **Consult and facilitate the participation of indigenous peoples in the formulation of policies, in particular concerning indigenous languages within primary compulsory school;**
- **To adopt positive measures in view of the historical marginalization of indigenous peoples in designing and implementing nation state policies;**
- **To mainstream cultural diversity in national and local government;**
- **To adopt a national day to celebrate the cultural diversity of all peoples.**

Recommendations to the UN system and the African Union:

- **To assist State parties with technical cooperation to implement all the above recommendations.**

Objective (iv): Adopting targeted policies, programmes, projects and budgets for the development of indigenous peoples, including concrete benchmarks, and particular emphasis on indigenous women, children and youth

Recommendations to Member States:

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- **To revise and adapt Poverty Reduction Strategy Papers of relevant countries to the situation and specific needs of indigenous peoples, with special attention to indigenous women, children and youth;**
- **To define specific policies regarding education which are culturally adapted to indigenous children and youth;**
- **To elaborate development projects for indigenous populations taking into account their own priorities in consultation with them;**
- **To include women, children and disabled indigenous persons in development of projects taking into account their culture;**
- **To define specific policies for indigenous peoples within each ministry, in consultation with them, and allocate appropriate funds for projects related to indigenous peoples.**

Recommendations to the UN system:

- **To multiply the number of programmes aimed at the strengthening of indigenous peoples' capacities, in particular women and youth;**
- **To strengthen capacities of organizations of indigenous populations for the development of programmes and projects.**

Objective (v): Developing strong monitoring mechanisms and enhancing accountability at the international, regional and particularly the national level, regarding the implementation of legal, policy and

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operational frameworks for the protection of indigenous peoples and the improvement of their lives

Recommendations to Member States:

- **To create national inter-ministerial commissions to follow-up on national programmes and policies concerning indigenous peoples rights;**
- **To elaborate specific national policies in order to effectively improve the living conditions of indigenous peoples;**
- **To produce regular reports on the implementation of these programmes and policies according to a pre-established agenda.**

Recommendations to the African Commission:

- **To sensitize the member states to the importance of the ratification of ILO169 and create regional commissions to follow-up;**
- **To strengthen the Working Group on indigenous populations/communities, in particular regarding its research, information and communication mechanisms.**

Recommendations to the UN system:

- **To integrate indigenous peoples in the regional offices of the OHCHR.**
- **To provide financial support to activities aiming at the improvement of the human rights situation of indigenous peoples;**
- **To establish mechanisms to follow-up on national and regional programmes.**

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Recommendations to the Permanent Forum:

- **To reinforce the participation of indigenous peoples during the sessions of the UNPFII;**

  To establish follow-up mechanisms to indigenous peoples' recommendations

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