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DEPARTMENT OF ECONOMIC AND SOCIAL AFFAIRS
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Secretariat of the Permanent Forum on Indigenous Issues

**International Expert Group Meeting on Combating violence
against indigenous women and girls: article 22 of the United
Nations Declaration on the Rights of Indigenous Peoples**

18 - 20 January 2012, New York

Concept Note

Prepared by 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

1. At its tenth session in May 2011, the United Nations Permanent Forum on Indigenous Issues (UNPFII) recommended that the Economic and Social Council authorize a three-day international expert group meeting on the theme: **‘Combating violence against indigenous women and girls: article 22 of the United Nations Declaration on the Rights of Indigenous Peoples’**.

2. At its regular session on 28 July 2011, the Economic and Social Council approved the Permanent Forum’s recommendation in decision 2011/266.

3. This *United Nations International Expert Group Meeting on Combating violence against indigenous women and girls: article 22 of the United Nations Declaration on the Rights of Indigenous Peoples* hereinafter will be referred to as the “Expert Group Meeting”.

4. The Expert Group Meeting will be held at the United Nations Headquarters in New York from 18 - 20 January 2012.

B. Context/Background on the Meeting:

Introduction

5. Indigenous women and girls face multiple forms of discrimination associated especially with their indigenous identity, their gender, culture, religion and language. This is a significant obstacle to the capacity and potential of indigenous women and girls to exercise their rights to participate fully in society. It also limits their access to opportunities to equal and better education, healthcare and justice along with their participation in socio-economic, cultural and political decision-making and capacity-building processes. As a result, many indigenous women and girls live in precarious conditions and in many cases, extreme poverty. Throughout the world, indigenous women and girls are exposed to diverse forms of physical, psychological and sexual violence.

6. The most widely used definition of violence against women and girls is provided in the United Nation's (UN) General Assembly Declaration of the Elimination of Violence against women as "any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life. Violence against women shall be understood to encompass, but not limited to, the following:

(a) Physical, sexual or psychological violence occurring in the family, including battery, sexual abuse of female children in the household, dowry-related violence, marital rape, female mutilation and other traditional practices harmful to women, non-spousal violence related to exploitation;

(b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution;

(c) Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs." Economic exploitation was later added to this definition.¹ The UN General Assembly through Resolution 58/147 recognizes that "domestic violence can include economic deprivation and isolation and that such conduct may cause imminent harm to safety, health or well-being of women."²

7. Indigenous organizations around the world have long spoken out against an epidemic of violence against indigenous women and children. The UN Declaration on the Rights of Indigenous Peoples (2007) specifies State obligation to guarantee and protect indigenous women and girls whether violence is perpetrated by private or public actors. While States have a responsibility to uphold standards of due diligence and take steps to fulfill their responsibility to protect their citizens from human rights abuses, there is still an urgent need for State officials to better understand and address violence against indigenous women and girls.

¹ (Resolution 48/104 of December 1993). This same definition was recalled in the Elimination of violence against women (resolution 2003/45) of the UN, where economic exploitation is added to the definition of violence against women.

² *Violence against women: harmful traditional and cultural practices in the Asian and Pacific region*: ESCAP 2007

8. Violence against indigenous women and girls is rarely understood as one of the most pervasive human rights abuses. Instead it is often described by governments, the media and the public as a criminal concern or a social issue. Violence against indigenous women and girls is a complex phenomenon that needs to be understood as part of a broader spectrum of social stress and turmoil that has resulted from government policies imposed on indigenous peoples. The report *Mairin Iwanka Raya: Indigenous Women Stand Against Violence*, details the global experiences of indigenous women and makes the point that violence against indigenous women and girls is not solely related to gender inequality. It states that violence “must be understood not as a pathology of individual and generic perpetrators and victims, but as a human rights violation of near-universal scope, which is mediated in each case by aspects of identity beyond gender, including race, class, caste, religion, sexual orientation, geography, and ethnicity”.³ For indigenous women and girls, “gender-based violence is shaped not only by gender discrimination within [i]ndigenous and non-[i]ndigenous arenas, but by a context of ongoing colonization and militarism; racism and social exclusion; and poverty-inducing economic and ‘development’ policies. These phenomena are interactive and mutually reinforcing, as are the various aspects of identity that shape women’s experience of violence and their strategies of resistance”.⁴

International Human Rights Standards

9. The UN Declaration on the Rights of Indigenous Peoples (2007) stipulates the minimum standards for the recognition and protection against all forms of violence and discrimination against women and children. Article 22 (2) of the Declaration says that “States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination”.

10. Other human rights standards specific to indigenous peoples include the 1989 International Labour Organization Convention concerning Indigenous and Tribal Peoples in Independent Countries (ILO Convention No.169) and the UN Declaration on the Rights of Indigenous Peoples (2007).

³ *Mairin Iwanka Raya: Indigenous Women Stand Against Violence*, FIMI 2006, p6

⁴ *Ibid*

Specific rights of indigenous peoples have also been affirmed by the expert bodies charged with the monitoring of state obligations under key human rights treaties. These evolving norms and standards are consistent in recognizing that indigenous peoples have the right to maintain their distinct collective identities and the need to have greater control over their own lives and futures. The Committee on the Elimination of Racial Discrimination, which monitors states' compliance with the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), has called on states to “recognize and respect indigenous peoples' distinct culture, history, language and way of life as an enrichment of the State's cultural identity and to promote its preservation” and ensure that “no decisions directly relating to their rights and interests are taken without their informed consent”.⁵

11. In the preamble of the Convention on the Rights of the Child, State parties take “due account of the importance and cultural values of each people for the protection and harmonious development of the child”. While all the rights contained in the Convention apply to all children, the Convention on the Rights of the Child was the first core human rights treaty to include specific reference to indigenous children in a number of provisions. The specific reference to indigenous children is indicative of the recognition that they require special measures in order to fully enjoy their rights. Several articles in the Convention refer specifically to special protection measures including children in armed conflict and refugee children, economic exploitation and sexual exploitation and trafficking. The Committee on the Rights of the Child, the body responsible for reviewing progress made by States in implementing the Convention, has consistently taken into account the situation of indigenous children in its reviews of periodic reports of States parties to the Convention. The Committee has observed that indigenous children face significant challenges in exercising their rights and has issued specific recommendations to this effect.⁶

12. In addition to the Convention on the Rights of the Child, various human rights treaties have played an important role in addressing the situation of indigenous children and their right not to be discriminated, namely, CERD, the International Covenant on Civil and

⁵ Committee on the Elimination of Racial Discrimination, General Recommendation 23 (1997)

⁶ Committee on the Rights of the Child. General Comment No. 11 (2009)

Political Rights (ICCPR) 1966, and International Covenant on Economic, Social and Cultural Rights (ICESCR).⁷

13. The human rights of women are an inalienable, integral and indivisible part of universal human rights. Article 1 of the Convention on the Elimination of All Forms of Discrimination against Women defines discrimination against women as “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women... on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field”.

14. This fundamental principle was reaffirmed in the Beijing Platform for Action adopted at the Fourth UN World Conference on Women held in 1995 in Beijing, People’s Republic of China. Delegates from 189 countries committed themselves to promoting and protecting the full enjoyment of all human rights and fundamental freedoms of all women..

15. The Committee on the Elimination of Discrimination against Women, which monitors implementation of the rights enshrined in the Convention, has recognized gender-based violence against women as a form of discrimination.⁸ The Beijing Platform for Action, which was unanimously reaffirmed in 2000 and 2005, explicitly recognizes that indigenous women face particular barriers to full equality. It urges states to address the forms of violence that indigenous women face, and calls for a holistic approach, including working with judicial, legal, medical, social and educational systems. Nevertheless, a critique of the Beijing Platform for Action by indigenous women point out the Platform’s over-emphasis on gender discrimination to the detriment of the interplay between gender and other aspects of indigenous women’s identities.⁹

16. The Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará) deals explicitly with the issue of

⁷ Ibid

⁸ Committee on the Elimination of Discrimination against Women, General Recommendation 19.

⁹ Beijing Declaration of Indigenous Women, NGO Forum United Nations Fourth World Conference on Women, Beijing, People’s Republic of China, September 1995

violence against women. It requires states not only to condemn, prevent and punish violence against women, but also to undertake specific measures to deal with its root causes. The Convention of Belém do Pará has been more widely ratified than any other Inter-American treaty.

Contextualizing Violence

17. Indigenous traditions and indigenous women themselves identify women with the earth, and therefore perceive degradation of the earth as a form of violence against women. This conviction is more than a metaphorical allusion to Mother Earth. It is rooted in indigenous cultural and economic practices in which women both embody and protect the health and well-being of the ecosystems in which they live. As the traditional stewards of the natural environment, indigenous women are particularly threatened by market-driven approaches that deregulate corporate conduct, destroy agricultural subsistence and other traditional ways of life, deplete non-renewable resources and threaten biodiversity.¹⁰ Indigenous women and girls also face physical and sexual violence perpetrated by governments or controlling groups as a tactic to drive out indigenous communities from their territories.

18. Indigenous women stand at the intersection of gender (being women) and racial inequality (because they are indigenous). In this respect, indigenous women experience at least five layers of discrimination; on the basis of gender, ethnicity, poverty, often being rural, and increasingly as migrants. As a result, they confront a dual task in their human rights struggle: one of defending their rights as members of an excluded group within a dominant society with its repressive or indifferent state apparatuses, discriminatory laws and institutions, and prejudiced public opinion, while at the same time questioning and resisting the patriarchal perceptions of culture and tradition within their own communities, which are used to justify gendered subordination and violence.¹¹

19. Violence against women can take many forms. It includes forced marriages, dowry-related violence, marital rape, sexual harassment, intimidation at work and in educational

¹⁰ Mairin Iwanka Raya: *Indigenous Women Stand Against Violence*, FIMI 2006, p16

¹¹ *Defending the Rights of Indigenous Women in Asia Pacific: Towards an Inclusive and Violence-Free Future*, 2008 VAW Consultation, New Delhi, India

institutions, forced pregnancy, force abortion, forced sterilization, trafficking and forced prostitution. Such practices often cause trauma, injuries and death.¹²

20. Customary law and practices in some indigenous communities are based on patriarchal gender hierarchies, influencing community norms and practices that monitor and control women's lives and which reinforce male domination. These discriminative and harmful practices include forced marriages, dowry-related violence, frequent domestic violence, polygamy female genital mutilation and child rape, dispossessions of property and limited access to land ownership. Harmful cultural and traditional practices create tension between the assertion of cultural relativism and women's human rights.¹³

21. Indigenous women and girls are also affected by armed conflict and militarization. The militarization of indigenous territories tears at the social fabric of the community at large divides families and has particularly devastating effects on women. UN Security Council Resolution 1325 acknowledges that in armed conflict situations, most victims are civilians and not combatants. Among those civilians, women and children account for the majority of those badly affected. Militarization of indigenous lands, affects indigenous women in disproportionate of different ways from men. In the past decade some progress has been made in documenting and publicizing sexual violence against women in conflict zones, which has been described as the extension of the battlefields onto women's bodies. Rape continues to be used as a weapon of war by armed forces. Indigenous women and girls are subjected to harassment, torture, rape, humiliation, forced prostitution, pregnancies as a result of rape and compulsory servitude.¹⁴

22. Prostitution and sex trafficking of women and girls is a problem faced by many indigenous communities around the world. Militarization, armed conflict situations, gang involvement, homelessness and poverty-impacted communities are just some of the reasons that cause or contribute to these situations. Some are enticed by the portrayal of the sex

¹² *Taking on Violence against women in Africa*,

¹³ *Violence against women: harmful traditional and cultural practices in the Asian and Pacific region*: ESCAP 2007

¹⁴ *Rights & Democracy*, 2007, AIWN and the Indigenous Peoples' Alliance of the Archipelago, in partnership with Rights & Democracy, p 2-4

trade as a quick path to empowerment and financial independence.¹⁵ The UN General Assembly in resolution 63/156, highlighted the need to protect and assist all victims of trafficking, with full respect for their human rights. It outlined concrete measures, addressing them to States and other stakeholders, to prevent and eliminate trafficking in persons, especially women and children.¹⁶

23. Despite further action and initiatives regarding gender-based violence, and a strong call for States to criminalize and punish acts of violence against women some States continue to wage a concerted campaign of violence against indigenous women.¹⁷ Indigenous women and girls are still subject to discrimination and violence by governments through government-sponsored family planning programmes that result in forced sterilizations,¹⁸ failure of officials to investigate and prosecute cases due to race and gender-bias and other government tactics that primarily target indigenous women and girls. The call for States was re-iterated in resolution 63/155, the UN General Assembly reaffirmed the obligation of all States to promote and protect all human rights and fundamental freedoms and recognized that all forms of violence against women constituted a major impediment to the ability of women to make use of their capabilities.

24. It is widely recognized that domestic violence against women occurs in every country of the world and in every sector. It is also well-known that domestic violence becomes more widespread when communities, families and couples are subjected to poverty, armed conflict, or social upheaval, particularly of the kind that upsets conventional gender roles. The correlation between domestic violence and other human rights violations puts indigenous women at particular risk of battering, rape and other forms of violence perpetrated by male partners and family members. Every abuser – regardless of the human rights abuse or traumatic historical processes he himself may have endured- is responsible

¹⁵ *New language, old problem: Sex trafficking of American Indian women and girls*, VAWnet. Org, 2011

¹⁶ Also see: Report of the Secretary-General (*Trafficking in women and girls*), A/65/209

¹⁷ *Mairin Iwanka Raya: Indigenous Women Stand Against Violence*, FIMI 2006, p26

¹⁸ http://articles.cnn.com/2011-11-17/americas/world_americas_peru-sterilizations_1_human-rights-peruvian-authorities-peruvian-officials?_s=PM:AMERICAS (CNN US)

for his actions and accountable to the body of international instruments and national laws won through the efforts of women's rights advocates.¹⁹

25. The policing and prosecution of violent crimes against indigenous women and girls, whether physical, sexual, psychological or economic is a challenging issue regardless of whether it is committed within the privacy of their homes or in public. Factors such as who the perpetrator(s) is, whether a family member, member of armed or security forces, corporate developer, government and/or non-government actors; where it takes place, whether in their homes/plantations where they plant and gather food, indigenous territory (including natural resources) or across borders; role of governments and other institutions; existing resources within the law enforcement and judicial systems and existing national laws to name a few, are factors that affect the proper and effective policing and prosecution of these violence crimes.

26. There are a range of barriers to reporting acts of violence against indigenous women and girls. These include threats and intimidation from families of the alleged perpetrators to threats from officials, military, civilian groups and other institutions involved in violent crimes. This does not only include sexual violent cases, but also physical, psychological and economic violence. For example, in countries terrorised by war and conflict, civilians, in particular women and girls are primarily the targets, since many of the men are mobilized in armed groups, or flee to escape conscription or violence. Today, a disproportionate number of armed conflicts are being waged on resource-rich indigenous territories, placing indigenous women and children at particular risk of militarized violence. In these instances, reporting, investigation and prosecution of such violence is difficult or even impossible.

27. Confidentiality is of prime importance because of the stigma that surrounds acts like physical or sexual violence and because of the dangers of further violence, especially if the perpetrator or abuser remains at large after the crime has been reported. Where the privacy of the survivors is compromised, it threatens their right to survive.

¹⁹ *Mairin Iwanka Raya: Indigenous Women Stand Against Violence*, FIMI 2006, p28

28. Violence against women and girls as a result of tradition are also a barrier. Acts such as female genital mutilation, widow burning and honor killing are considered culturally legitimate.²⁰ Such incidents are considered “normal” therefore, the likelihood of it being reported to the authorities can be very little to none. Such harmful traditional and cultural practices violate the basic human rights of indigenous women and girls and in most cases, there is no recourse for the survivors.

29. Community-based anti-violent strategies can provide the much-needed support for indigenous women and girls who are survivors of violent acts.

Objectives and Outcomes of the Meeting:

30. The Expert Group Meeting is intended to:

- To analyze enshrined human rights within international standards and policies and how these could be more responsive to advancing the rights of indigenous women and girls;
- Promote an opportunity to exchange information and analysis on the manifestation of violence against indigenous women and girls;
- Draw attention to the ongoing issues of jurisdiction and policing when dealing with violence and its impact on indigenous women and girls and other family and community members;
- Identify options and further plans to build the necessary conditions for developing anti-violence strategies including empowering and strengthening indigenous peoples’ organizations and governance systems and other capacity enhancement programs for indigenous women and girls.

The final report and recommendations of the Expert Group Meeting will be to be submitted to the eleventh session of the UNPFII.

Proposed Themes for discussions

31. The proposed four major themes for discussion are proposed as follows. Under each of the themes are some preliminary questions that have been identified for consideration and to stimulate discussion.

²⁰ *Mairin Iwanka Raya: Indigenous Women Stand Against Violence*, FIMI 2006, p22

Theme 1 Addressing violence against indigenous women and girls as a Human Rights Issue

- Analysis of human rights international standards that could be applied to advancing the rights of indigenous women and girls e.g. United Nations Declaration on the Rights of Indigenous Peoples, ILO Convention No. 169, Convention on the Elimination of All Forms of Discrimination against Women, Convention on the Rights of a Child, The Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará), case law and comments of the International Convention on the Elimination of All Forms of Racial Discrimination, The Beijing Platform for Action;
- Analysis of how the rights and priorities of indigenous women and girls may differ from the rights and priorities of non-indigenous women and girls.

Theme 2 Contextualizing Violence

- Highlight existing institutional structures that contribute to economic violence against indigenous women and girls;
- Outline how state policies and practices may adversely affect indigenous women and girls;
- Outline how corporate practices on indigenous lands and territories adversely affect indigenous women and girls;
- Outline examples of good practices that can help safeguard the rights of indigenous women and girls to economic survival.

Theme 3 Manifestations of Violence

- Discuss examples violence against indigenous women and girls in the name of traditional and cultural practices;
- Discuss examples of violence against indigenous women and girls through Armed Conflict and Militarization;
- Discuss examples of violence against indigenous women and girls through Migration and Displacement;
- Discuss ways that indigenous women and girls at risk through State Violence and Domestic violence.

Theme 4 Issues of Jurisdiction and Policing

- Provide an overview of the problems associated with different jurisdictional authorities of policing;
- Highlight the persistent barriers for reporting violence for example, response to complaints, difficulty with policing etc;
- Highlight the persistent barriers to prosecution of perpetrators at the local, state and federal levels and discrimination in state and federal prosecutions;
- Outline examples of restorative justice.

Theme 5 Anti-Violence Strategies.

- Highlight examples of indigenous women’s community-based Anti-violence strategies;
- Highlights ways for developing indicators and improving data collection methods in order to measure violence against indigenous women and girls;
- Highlight measures to incorporate human rights in anti-violence programmes and projects;
- Highlight measures to strengthen indigenous women’s and girl’s advocacy and leadership skills.

Participant Contributions:

32. The Expert Group Meeting seeks to draw on the expertise of indigenous peoples; United Nations Permanent Forum members; relevant United Nations and other intergovernmental agencies; national and local governments; indigenous peoples’ organizations and other groups that are active in the area of violence against indigenous women and girls.

33. International indigenous experts will represent each of the seven UNPFII regions²¹. They will be required to prepare papers to present at the meeting on **one or more of the themes listed above**.

34. Experts are requested to submit their papers (8 pages maximum) to the organizers by 9th December 2011 so that the papers can be distributed before the meeting. Experts will also be informed in due course of the Program of Work for the Expert Group Meeting and the appropriate time to present their papers during the meeting.

Working Language:

35. The working languages will be the UN working languages.²²

Contact Information:

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²¹ Africa; Asia; Central and South America and the Caribbean; the Arctic; Central and Eastern Europe, Russian Federation, Central Asia and Transcaucasia; North America; and the Pacific

²² English, Spanish, French, Chinese, Arabic and Russian.