

UN EXPERT MECHANISM ON THE RIGHTS OF INDIGENOUS PEOPLES

In December 2007, the UN Human Rights Council decided to establish the Expert Mechanism on the Rights of Indigenous Peoples.

The Expert Mechanism reports directly to the Human Rights Council (the main human rights body of the United Nations). Its mandate is to assist the Council in the implementation of its mandate by providing thematic expertise on the rights of indigenous peoples and making related proposals to the Human Rights Council for its consideration and approval.

The Expert Mechanism consists of five independent experts. They are appointed by the Human Rights Council for staggered terms of from one to three years and may be re-elected for one additional period. In June 2008, the Council appointed five independent experts for the period 2008-2010.

The Expert Mechanism meets once a year for up to five days and is open to representatives of indigenous peoples, states, NGOs, United Nations bodies and agencies etc. The sessions of the Expert Mechanism provide a unique space for focused multilateral discussions on the scope and content of the rights affirmed to indigenous peoples under international law, and how the implementation of these rights can be advanced.

Introduction

In 2010, the main activities of the Expert Mechanism on the Rights of Indigenous Peoples were: writing of the progress report for the study on indigenous peoples and the right to participate in decision-making; its 3rd annual session, which took place from 12 to 16 July 2010; reporting to the Human Rights Council at its September session; and participation in other relevant international meetings.

The right to participate in decision-making

In 2009, the Human Rights Council asked the Expert Mechanism to carry out a study on indigenous peoples and the right to participate in decision-making.¹ The Human Rights Council also requested the submission of a progress report at its September session in 2010 and a final study in 2011.

Research and methodology

Following the same methodology as its first study on the right of indigenous peoples to education,² the Expert Mechanism made a call for written contributions as the basis for drafting an advanced version of its report, which was then discussed at its annual session. The progress report on indigenous peoples and the right to participate in decision-making was submitted, in its final version, to the Human Rights Council and orally presented at its 15th session in September 2010.³

The contributions to the study submitted by states, indigenous peoples and other human rights organisations and institutions proved fundamental in drawing up evidence-based studies that reflect the diversity of realities in which indigenous peoples live. Accordingly, it is worth mentioning the large number of written contributions received by the Expert Mechanism in 2010.⁴ The Expert Mechanism's research was further supported by two specific activities: an international seminar on the right of indigenous peoples to participate in decision-making, which was organised by the International Work Group for Indigenous Affairs (IW-GIA) and the Asia Indigenous Peoples Pact Foundation (AIPP), and a technical workshop on indigenous peoples and the right to participate in decision-making organised by the Office of the High Commissioner for Human Rights (OHCHR).

Key features of the study's content

The progress report for the study on indigenous peoples and the right to participate in decision-making "examines the international human rights framework as it relates to indigenous peoples, their internal decision-making processes and institutions, and participation in decision-making mechanisms linked to both state and non-state institutions, and processes affecting indigenous peoples."⁵

In the progress report, the Expert Mechanism presents the international human rights framework as it relates to indigenous peoples and the right to participate in decision-making. It elaborates on key provisions of the United Nations Declaration on the Rights of Indigenous Peoples⁶ and other international and regional human rights instruments, in particular International Labour Organisation Convention 169. The report also develops an analysis of the right to self-determination as the normative international human rights framework for the collective right to participate in decision-making. A specific sub-chapter on the right of free, prior and informed consent concludes the presentation of the international human rights framework.

Furthermore, taking into account the contributions made from various countries, the study presents general principles defining what can be considered indigenous peoples' internal decision-making processes and institutions, including indigenous parliaments, organisations and legal systems. Specific sub-chapters address the importance of indigenous women's participation in decision-making and the challenges faced by indigenous governance. Finally, the progress report covers a wide range of state and non-state institutions and related processes affecting indigenous peoples' rights where mechanisms for the participation of indigenous peoples should be guaranteed.

The third annual session of the EMRIP

The annual session is the main activity of the Expert Mechanism as it allows for its members to formally meet, discuss their work with participants and take decisions appropriate to its mandate. As previously mentioned, the 3rd annual session took place from 12 to 16 July 2010.

Increasing participation

At the opening, the United Nations High Commissioner for Human Rights and the President of the Human Rights Council commended the work of the Expert Mechanism in contributing to the Council's mandate to advance the rights of indigenous peoples. Welcoming speeches were also given by a Board member of the United Nations Voluntary Fund for Indigenous Populations and an indigenous representative. Then, in accordance with the rotating principle, Mr. José

Carlos Morales and Mr. José Molintas were elected as the new Chairperson-Rapporteur and Vice-Chairperson-Rapporteur, respectively.

The third session attracted increasing attention, with around 600 accreditations, including indigenous representatives, state delegations, national human rights institutions, non-governmental organisations and universities as well as representatives of United Nations agencies.⁷ Notably, the Special Rapporteur on the Rights of Indigenous Peoples, Mr. James Anaya, and the Chairperson of the United Nations Permanent Forum on Indigenous Issues, Mr. Carlos Mamani, participated in the session, making substantive contributions to the discussions. Furthermore, a full programme of side-events was organised on topics relating to the session's discussions.⁸

In addition to the study on indigenous peoples and their right to participate in decision-making, the session included additional items open to plenary discussion: the United Nations Declaration on the Rights of Indigenous Peoples and the proposals to be submitted by the Expert Mechanism to the Human Rights Council.

Promoting the United Nations Declaration on the Rights of Indigenous Peoples

Firstly, the discussion focused on the use of the United Nations Declaration on the Rights of Indigenous Peoples to promote and protect the rights of indigenous peoples. In accordance with Article 42, the Expert Mechanism has a duty to promote the Declaration in the context of its mandate. Indeed, the discussion gave an opportunity for indigenous and governmental representatives to share good practices and achievements in promoting and implementing the Declaration. The need to disseminate information about the Declaration at the national and local levels and to strengthen the role of national human rights institutions were identified as being among the challenges that emerged from the discussions.

Submitting proposals to the Human Rights Council

Secondly, at the end of the session and reflecting the session's discussions, the Expert Mechanism adopted several proposals that were subsequently submitted to the Human Rights Council. Some of them were partially or fully approved

by the Council through its annual resolution on human rights and indigenous peoples.⁹

Proposal No. 1 focused on the important role of regional and national human rights institutions in promoting and protecting the rights of indigenous peoples. Accordingly, it was proposed that the Council formally invite states to establish and strengthen national human rights institutions, in accordance with the Paris Principles, as regards their capacity to promote and protect indigenous peoples' human rights. As a result, the Council encouraged national human rights institutions to develop and strengthen their capacity to advance indigenous issues.¹⁰

Proposal No. 2 concerned the Human Rights Council's consideration of the rights of indigenous peoples at its regular sessions, including panel discussions on the rights of indigenous peoples as a mechanism to follow up the Expert Mechanism studies. In this case, the Council only partially approved the proposal. The Council did agree to organise a panel discussion on the role of languages and culture in promoting and protecting the well-being and identity of indigenous peoples. However, the Council did not consider such panel as a space for discussing the follow-up to the Expert Mechanism's studies. Instead, the Council indicated that such follow-up discussions should continue to take place in the annual sessions of the Expert Mechanism.¹¹

Proposal No. 3 proposed that the Council should foresee the participation of the Expert Mechanism and indigenous representatives in its review process in order to ensure the strengthening of the Expert Mechanism and the Council's ability to promote and protect the rights of indigenous peoples.¹² Without specifying how this would be undertaken, the Council nevertheless recognized the importance of the contribution of all relevant stakeholders in this process.¹³

Proposals No. 4 and 5 were based on the United Nations Declaration on the Rights of Indigenous Peoples. With specific reference to Article 42, the Expert Mechanism requested authorization to annually review developments relating to the promotion and protection of the rights of indigenous peoples and, within the framework of its mandate, to advise the Council on possible measures to be taken to achieve the objectives of the Declaration. While the Council has not yet taken up this proposal, its content is in line with the current practice to discuss the Declaration at the annual session of the Expert Mechanism. Indeed, the second and third sessions showed that these discussions represent a construc-

tive contribution to identifying appropriate ways and means of promoting and implementing the provisions of the Declaration effectively.

Furthermore, the Expert Mechanism considered it important to recall the scope of Article 38 of the Declaration, which provides that states, in consultation and cooperation with indigenous peoples, shall take appropriate measures, including legislation, to achieve the purposes of the Declaration itself. On this basis, the Expert Mechanism proposed that the Human Rights Council call upon states to follow up on strategies and measures aimed at full implementation of the Declaration. Albeit only partially, the Council has taken up this proposal in its annual resolution on human rights and indigenous peoples by “encouraging States that have endorsed the Declaration on the Rights of Indigenous Peoples to adopt measures to pursue the objectives of the Declaration in consultation and cooperation with indigenous peoples, where appropriate”.¹⁴

The last proposal for the Human Rights Council, Proposal No. 6, referred to the extension of the mandate of the United Nations Voluntary Fund for Indigenous Populations. The Council, and subsequently the General Assembly, have given a positive response. Henceforth, indigenous peoples can seek support through the Voluntary Fund to participate in Treaty Bodies and Council sessions.

Finally, the Expert Mechanism adopted other proposals that reflect various concerns, such as the necessary attention to indigenous peoples’ rights in the Universal Periodic Review, indigenous peoples and truth and reconciliation commissions, further strengthening of the Expert Mechanism Secretariat and cooperation with United Nations agencies.

Coordination and cooperation building

The United Nations mechanisms with a specific mandate on indigenous peoples

In 2010, the Human Rights Council welcomed the cooperation and coordination between the three United Nations’ mechanisms with a specific mandate on indigenous peoples, namely the Special Rapporteur, the Permanent Forum and the Expert Mechanism.¹⁵ As good practice, the Expert Mechanism attended the Permanent Forum expert meeting and annual session while the Permanent Forum and the Special Rapporteur participated in the third session of the Ex-

pert Mechanism, in addition to contributing substantively to its study. In a complementary manner to the Expert Mechanism's mandate, the Special Rapporteur, as in previous sessions, held parallel meetings with indigenous representatives who wished to submit a complaint of human rights violations.

Other human rights mechanisms and institutions

Cooperation has been expanding with other human rights institutions as well, such as the national human rights institutions and the Working Group on Indigenous Populations/Communities of the African regional human rights system. The Expert Mechanism also participated in other international meetings, such as the Forum on Minority Issues and the International Parliamentary Conference on "Parliaments, minorities and indigenous peoples: effective participation in politics", organised by the Inter-Parliamentary Union.

Visibility and outreach

Another noteworthy collaboration was IWGIA's production, in cooperation with the OHCHR, of a video on the Expert Mechanism, aimed at contributing to awareness raising of its mandate and encouraging indigenous peoples to actively participate in its work and annual sessions.¹⁶

Conclusion

In 2010, the constructive relationship between the Expert Mechanism and the Council reached a new stage. The inclusion of a specific discussion on human rights and indigenous peoples in the Human Rights Council's programme of work was further consolidated. Indeed, all the reports on human rights and indigenous peoples are now discussed at the same annual session of the Council, in September. Indigenous peoples' participation is thereby facilitated and will be supported in future by the extended mandate of the Voluntary Fund for Indigenous Populations. From 2011 on, the Expert Mechanism will report to the Council through an interactive dialogue, like the Special Rapporteur. Finally, the Council agreed to the idea of holding panel discussions on specific issues related to the rights of indigenous peoples.

Moreover, the Expert Mechanism has contributed to an understanding of indigenous peoples' right to participate in decision-making through its research and thematic work in 2010. This represents a new step forward in advancing the rights of indigenous peoples as recognized by the United Nations Declaration on the Rights of Indigenous Peoples.

In this context, a new membership will take over the work of the Expert Mechanism in 2011 in order to further advance the rights of indigenous peoples.¹⁷ On 23 March 2011, the Human Rights Council appointed the following members: Ms. Jannie Lasimbang (Malaysia) and Mr. Wilton Littlechild (Canada) for a three-year term; Mr. José Carlos Morales Morales (Costa Rica) and Ms. Anastasia Chukhman (Russian Federation) for a two-year term; and Mr. Vital Bambanze (Burundi) for a one-year term. ○

Notes

- 1 Human Rights Council resolution 12/13.
- 2 A/HRC/12/33.
- 3 A/HRC/15/35.
- 4 For the full list of contributions and information on the International seminar and OHCHR workshop, see document A/HRC/EMRIP/2010/4. Available at: <http://www2.ohchr.org/english/issues/indigenous/ExpertMechanism/3rd/index.htm>
- 5 A/HCR/15/35, Summary.
- 6 Arts. 3-5, 10-12, 14, 15, 17-19, 22, 23, 26-28, 30-32, 36, 38, 40 and 41.
- 7 See annex 1 to the Report of the Expert Mechanism on the Rights of Indigenous Peoples on its third session, Geneva, 12-16 July 2010 (A/HRC/15/36).
- 8 <http://www2.ohchr.org/english/issues/indigenous/ExpertMechanism/3rd/docs/ProgLunch-TimeEvents.pdf>
- 9 See the report of the third session for the full and detailed content of each proposal (A/HRC/15/36) and the Human Rights Council resolution 15/7.
- 10 Human Rights Council resolution 15/7, para 12. For more information on national human rights institutions and the Paris Principles, see <http://www.nhri.net>.
- 11 Human Rights Council resolution 15/7, para 6 and 8.
- 12 For more information on the Human Rights Council's review, see: http://www2.ohchr.org/english/bodies/hrcouncil/HRC_review.htm
- 13 Human Rights Council resolution 15/7, para 11.
- 14 Human Rights Council resolution 15/7, para 15.
- 15 Human Rights Council resolution 15/7, para 13.
- 16 <http://www.iwgia.org/sw37812.asp>.

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