

HUMAN RIGHTS COUNCIL  
*10th session*  
*Agenda item 5*

17 March 2009

John B. Henriksen  
Chairperson-Rapporteur  
Expert Mechanism on the Rights of Indigenous Peoples

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Mr. President,  
Distinguished Members of the Council,  
Distinguished observer delegations,  
Ladies and Gentlemen,

The historical first session of the Expert Mechanism on the Rights of Indigenous Peoples was held in Geneva from 1-3 October 2008. It is an honor for me to present its first report to the Council. The report is contained in Council Document No. 10/56.

The first session was a historic moment representing the start of a new phase in the promotion and protection of indigenous peoples' rights. The UN Declaration on the Rights of Indigenous Peoples, adopted by the General Assembly in September 2007 with an overwhelming majority, is a vital instrument providing a normative framework to guide the work of the Mechanism. A total of 368 participants were accredited for the session.

Council resolution 6/36 establishes the Mechanism as a subsidiary expert body to provide the Council with thematic expertise on the rights of indigenous peoples in the manner and form requested by the Council. The resolution stipulates that the thematic expertise shall focus mainly on studies and research-based advice.

The thematic focus at the first session, as set by Council resolution 9/7 was twofold. (1) to assist the Preparatory Committee of the Durban Review Conference by undertaking a review and submitting recommendations as contributions to the outcome of the Durban Review Conference; and (2) to prepare a study on lessons learned and challenges to

achieve the implementation of the right of indigenous peoples to education, to be concluded by 2009.

In addition to deliberations on these two thematic issues, the Mechanism also conducted discussions regarding the scope of its mandate, methods of work and possible future thematic areas of focus. In this context, the need for coordination and cooperation between the Mechanism, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, and the Permanent Forum on Indigenous Issues was reiterated by many delegations. The question of which thematic issues the Mechanism should focus on was one of the core issues discussed at the first session. This question presents many challenges as there are many equally pressing issues to address.

It was suggested that in deciding the future thematic focus of the Mechanism one should seek to identify global and cross-cutting issues of significance to indigenous peoples. In this regard, the Indigenous Caucus proposed a number of possible thematic issues which the Mechanism should address, including the right to self-determination and the principle of free, prior and informed consent.

For the Mechanism to become an effective vehicle and process for the advancement of indigenous peoples' rights it is vital that it is perceived as useful for indigenous peoples and member states alike. For this to happen, the Mechanism should address issues that are truly important for indigenous peoples and communities, issues that are fundamental to their survival, dignity and well-being.

It is my hope and belief that the future thematic focus of the Mechanism will emerge naturally through a process of discussions, consultations and inter-action between indigenous peoples and governments. In addition to being a thematic subsidiary expert body of the Council, EMRIP also has the potential of becoming an important multilateral forum for dialogue on the rights of indigenous peoples; effectively contributing to the critical work of the Human Rights Council in the promotion and protection of all human rights.

Mr. President,

At its first session, the Mechanism adopted five recommendations which are reflected in chapter two of its report.

Proposal 1 concerns the organization of work. In its resolution 6/36, the Council decides that the Mechanism shall meet once annually three days in its first year and thereafter for up to five days. The Mechanism understands this as a *standing authorization* from the Council to meet annually for up to five days. Therefore, the operative part of this proposal is the request for two additional working days for preparatory meetings prior to the session. Alternatively, the Mechanism will consider using one of the already authorized annual working days for preparatory purposes, as it is deemed difficult to plan and conduct an annual session without having the opportunity for undertaking internal discussions and consultations with indigenous peoples and Member States prior to the annual session.

Proposal 2 was adopted in response to the Council's request to the Mechanism to undertake a review and to submit recommendations as contributions to the outcome of the Durban Review Conference. These recommendations were submitted to the Second Substantive Session of the Preparatory Committee of the Durban Review Conference in October 2008.

Proposal 3 relates to the Council's request in resolution 9/7, in which the Mechanism is requested to prepare a study on lessons learned and challenges to achieve the implementation of the right of indigenous peoples to education. The Mechanism designated two of its members, Jannie Lasimbang and José Molintas, to have the overall responsibility for preparing this study. The Mechanism conducted initial consultations and discussions on this topic during its first session.

The Mechanism has through its Secretariat invited indigenous peoples' organizations, Members States, and relevant stakeholders to submit information related to this study, including lessons learned, case studies, challenges and recommendations.

Mr. President,

Proposal 3 also contains a proposal requesting the Council to authorize a two-day technical workshop on the right to education. The Mechanism would welcome the Council's consideration of this proposal. Alternatively, I hope that the Office of the High Commissioner for Human Rights will be able to provide technical and financial assistance for the organization of such a workshop within its existing budgetary resources.

Mr. President,

In my view, strong and broad indigenous peoples' participation is of outmost importance for the work of the Mechanism, as borne out by earlier UN experience in similar situations. I note with great satisfaction that the General Assembly at its 63<sup>rd</sup> session decided to adjust the mandate of the UN Voluntary Fund for Indigenous Populations so as to facilitate the participation of representatives of indigenous peoples' organizations in the Expert Mechanism.

The Mechanism hopes that the Council is in a position to consider proposing to the General Assembly to also extend the mandate of the Fund to help indigenous peoples to participate in the sessions of the Council and the treaty bodies, as reflected in proposal 4. This would indeed facilitate stronger and broader indigenous peoples' involvement in the work of the United Nations.

Mr. President,

In its resolutions 6/36 and 9/7, the Council requests the Mechanism to establish and enhance its cooperation with the Special Rapporteur and the Permanent Forum, and to avoid duplicating the work of the two other indigenous peoples specific mandates. I am pleased to inform the Council that the Mechanism has already established good cooperation with these two mandates, and that it is seeking to establish cooperation with other relevant UN mandates.

Severe financial constraints are the greatest challenge for the Mechanism in its efforts to carry out coordination with other UN mandates. As of today, the regular UN budget funding which is allocated to the Mechanism is limited to the organization of its annual

session. There are no funds available for inter-sessional activities. This greatly hampers the work of the Mechanism.

The Mechanism has however been able to undertake some inter-sessional activities, including activities aimed at strengthening cooperation with other UN mandates, thanks to a voluntary grant of NOK 200,000 (approximately USD 28,000) to OHCHR from the Norwegian Ministry of Foreign Affairs in 2008, earmarked for the Mechanism's inter-sessional work. I would like to use this opportunity to extend my gratitude to the Norwegian Government for this important financial support.

Mr. President,

In conclusion, allow me briefly to refer to the next session of the Mechanism. In the proposed provisional agenda for the next session, the UN Declaration on the Rights of Indigenous Peoples appears as a separate agenda item. This reflects the fact that Article 42 of the Declaration requests all relevant UN mandates and agencies to promote respect for and full application of the provisions of the Declaration and follow up its effectiveness. Under this agenda item, the Mechanism intends to focus on possible national and regional processes and mechanisms for the implementation of the Declaration, including processes and mechanisms identified in the Declaration itself aimed at providing remedies for infringements of rights, as specified in articles 8, 10, 11, 12, 20, 27, 28, 32, 37 and 40.

Finally, allow me also briefly to refer to the recommendation made by the High Commissioner for Human Rights, as contained in Council Document 10/51, that all reports on indigenous peoples, including those of the Special Rapporteur and the Mechanism, be grouped at one Council session in the year. The Mechanism supports this proposal. It is our belief that the Council, States and indigenous peoples, would benefit from having all reports on indigenous peoples discussed at the same inter-active dialogue session.

Thank you, Mr. President.