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## NEW YORK UPDATE PERMANENT FORUM ON INDIGENOUS ISSUES 7<sup>TH</sup> SESSION 21 APRIL – 2 MAY 2008

### FORUM'S 7<sup>TH</sup> SESSION: KEY OUTCOMES AND RECOMMENDATIONS

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#### Overview

The 7<sup>th</sup> session of the United Nations Permanent Forum on Indigenous Issues (the Forum) was significant for several reasons, not least of which was the record participation of some 3,000 people.<sup>1</sup> This dramatic increase in attendance may have been related in part to the interest in its special theme on ‘climate change, bio-cultural diversity and livelihoods: the stewardship role of indigenous peoples and new challenges.’ It was probably also due to the fact that the Forum provided an opportunity for the world’s indigenous peoples to officially welcome and celebrate the adoption of the Declaration on the Rights of Indigenous Peoples (the Declaration), following its adoption by the United Nations General Assembly in September 2007.<sup>2</sup>

<sup>1</sup> This represented nearly a 40 percent increase on participation at the 6<sup>th</sup> session of the Forum. Participants included representatives of indigenous peoples’ organisations, NGOs, academics and other experts. In addition, the Forum was attended by some 30 UN agencies, about 70 States, and approximately 30 indigenous Parliamentarians.

<sup>2</sup> The Declaration on the Rights of Indigenous Peoples was adopted by the General Assembly on 13 September 2007 under GA Resolution 61/295. For more information see <http://www2.ohchr.org/english/issues/indigenous/declaration.htm>

The adoption of the Declaration meant that the Forum needed to develop strategies and practices that will allow it to take up its mandate to promote the implementation of the Declaration, and monitor its effectiveness in improving indigenous peoples' enjoyment of their rights.<sup>3</sup> As a result, references to the minimum standards contained in the Declaration are peppered throughout the Forum's recommendations (the outcome document of the session). So too are suggestions to States, United Nations (UN) agencies, inter-governmental bodies, corporations, and indigenous peoples, about their role in making the Declaration 'a living document'. Some of these are quite innovative, such as the encouragement that indigenous peoples use the Human Rights Council's new 'universal periodic review' process to draw attention to States' compliance with the Declaration.

Key among the Forum's strategies to operationalise its mandate is its adoption of the Declaration as its legal framework and the establishment of a standing agenda item on the implementation of the Declaration. Also significant is the Forum's decision to invite six UN agencies and funds to report to each session on their work with indigenous peoples, and then engage with Forum members in an in-depth examination of their respective reports. This approach has the potential to help mainstream the rights of indigenous peoples across the work of the UN system by ensuring that *all* relevant UN agencies and funds actively participate in the work of the Forum and improve their accountability to indigenous peoples.<sup>4</sup> Further, several of the Forum's recommendations incorporate suggestions from the Special Rapporteur on indigenous peoples, addressing the need for UN country teams and UN agencies<sup>5</sup> working in developing countries with indigenous peoples to improve coordination amongst themselves, and to ensure that indigenous peoples are active participants in the design and implementation of policies and programs that affect them, as required by the Declaration.

Recognising that it is at an important crossroads in its evolution, the Forum also decided to hold a three-day expert meeting to give further consideration to the implementation of its new mandate. The recommendations from this meeting will be reported to the Forum's next session, indicating that further initiatives or actions will be taken in the coming years to assist in the implementation of the Declaration.

Other changes to the Forum's agenda and methods of work reflect its desire to take a more proactive approach to the implementation of its own recommendations. Key here is the Forum's decision to make each even calendar year a 'policy year' (where a 'special theme' is discussed), and each odd calendar year a 'review year' (where the implementation of past recommendations on specific themes is reviewed). This should have the added benefit of reducing the number of recommendations produced each year, an ambition the Forum has held for some time.

This year's session commenced with a rousing and historic address from Bolivia's President Evo Morales, the first time a Head of State has attended the Forum. This set the scene for more heated discussions and passionate interventions throughout the course of this session, as compared to previous years. This was due in part to the fact that indigenous peoples and members of the Forum made greater use of the opportunity to directly pose questions to States and frequently referred to specific articles from the Declaration to frame these questions.<sup>6</sup> Feeling the need to monitor and promptly respond to these questions, this contributed to

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<sup>3</sup> Article 42 of the Declaration provides that 'The United Nations, its bodies, including the Permanent Forum on Indigenous Issues, and specialised 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.'

<sup>4</sup> Some agencies, such as the International Labour Organisation (ILO), have performed well in this regard; others, such as the World Health Organisation (WHO), are yet to submit a report to the Forum about their work with indigenous peoples.

<sup>5</sup> The agencies include the UN Development Program (UNDP), the Food and Agriculture Organisation (FAO) and the ILO.

<sup>6</sup> The Arctic Caucus was particularly strong in this respect, asking very direct questions of the Canadian, Danish, Finnish, Norwegian, Russian, Swedish and US representatives. Several participants representing the Hmong people and the Khmer Kampuchea-Krom Federation expressed their frustration at their respective governments' ongoing denial of their indigenous status, eliciting critical responses from the Laotian and Vietnamese representatives. Libya also took exception to comments from the Indigenous Youth Caucus and warned its members not to threaten UN Member States or make demands about civil rights when some indigenous peoples did not have enough food to eat.

more States being present throughout more meetings of the Forum than in previous years.<sup>7</sup> It also led Indonesia to warn of concern among the States that the Forum will be politicised if indigenous peoples' organisations continue to bring 'separatist' messages to its meetings, and this 'may erode the involvement of States in the Forum's work and undermine its ability to implement the objectives of the Second Decade.'<sup>8</sup> The Chairperson advised that all registered indigenous peoples' organisations have speaking rights at the Forum's meetings, and in recognition of the right to self-determination and the right to self-identify as indigenous, the Forum was not in a position to sanction particular speakers. Rather she expressed the hope that all participants would take advantage of the opportunity to engage in a constructive dialogue with States, and made a point of welcoming the increased interest of States in the Forum's work.

Increased tension at this year's Forum was also due in part to frustration of many indigenous participants that States were being preferenced on the speakers' lists, with the result that some indigenous peoples' organisations were not able to contribute under particular agenda items.<sup>9</sup> The Chairperson took these criticisms on board and sought to ensure that equal opportunity for interventions was provided to indigenous peoples' organisations, States and UN agencies. However, it was unfortunate that proceedings on the final day of the session were almost derailed when UN security guards sought to remove an apparent 'ringleader' of a protest from the Latin American Indigenous Caucus, which was stridently objecting to two of the Forum's recommendations regarding climate change.<sup>10</sup> The Chairperson managed to alleviate the concerns of the protestors and the Forum's report was adopted as orally amended.<sup>11</sup>

This session also provided a timely opportunity for the Forum and indigenous peoples to pay tribute to and farewell the outgoing Special Rapporteur on human rights and fundamental freedoms of indigenous peoples, Mr Rodolfo Stavenhagen (Mexico), and to welcome his successor, Mr James Anya (USA). The Forum's interactive dialogue with the Special Rapporteurs affirmed the status of the Declaration as 'part of the normative framework' that *all* States and other 'authors of development' must comply with.<sup>12</sup> The dialogue also revealed that there was considerable anticipation about the new expert mechanism on the rights of indigenous peoples and how its work will complement that of the Forum and the Special Rapporteur.<sup>13</sup> To

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Among Forum members, Mr Bartolomé Clavero Salvador (Spain) asked probing questions of the Governments of Nicaragua and Columbia. Forum members also asked challenging questions of the Governments of Australia, Bolivia, France, Mexico, Russian Federation, Nepal, New Zealand and Libya.

<sup>7</sup> Some 70 States participated in the 7<sup>th</sup> session of the Forum. Among those States regularly in attendance during the meetings were Australia, Canada, China, Indonesia, Iran, Myanmar, Norway, Slovenia, Spain, New Zealand.

<sup>8</sup> The Indonesian representative was referring to the representatives of the Hmong people, West Papuans and the Khmer, who had addressed the 7<sup>th</sup> session of the Forum. Representatives of the Basque people also addressed the Forum several times.

<sup>9</sup> For example, at the close of the Forum's meeting on Friday 25 April 2008, a Canadian indigenous peoples' organisation expressed concern that States were dominating the speakers' list, and that some indigenous people who were given the floor were speaking as representatives of their government, not indigenous organisations. The Chairperson was asked to facilitate a more constructive dialogue and ensure indigenous organisations were allocated their full three minutes per intervention to avoid any more organisations returning home in frustration that they had not been able to speak.

<sup>10</sup> The criticism was that the Forum's recommendations on the 'Clean Development Mechanism' and other carbon abatement schemes did not reflect the views of indigenous participants at the Forum, but the views of Forum members. However following a lengthy clarification from the Chairperson about the reasoning behind these paragraphs, the Forum agreed to the adoption of the report of the 7<sup>th</sup> session without further objection.

<sup>11</sup> The 7<sup>th</sup> session's report, including the Forum's recommendations, is contained in eight separate UN documents: E/C.19/2008/L.1 through to E/C.19/2008/L.8. Note that the Forum made multiple oral amendments to most of these documents before adoption. At the time of publishing, these 'L' documents were not available electronically, however the 'advance unedited version' of the report is available in English at [http://www.un.org/esa/socdev/unpfii/documents/UNPFII\\_7session\\_report\\_advance.pdf](http://www.un.org/esa/socdev/unpfii/documents/UNPFII_7session_report_advance.pdf). This report contains many of the amendments made by the Special Rapporteur on Friday May 2 when the report was adopted.

<sup>12</sup> Mr Stavenhagen emphasised the need for the Forum and the Special Rapporteur to work more closely with UN country teams to mainstream indigenous rights into their work. Further, he suggested that the adoption of the Declaration opens a new avenue for collaboration between the UN system and its agencies, States and indigenous peoples.

<sup>13</sup> The expert mechanism was established by Human Rights Council *Resolution 6/36* of 14 December 2007, effectively replacing the Working Group on Indigenous Populations that was set up under the former Commission on Human Rights. The Human Rights Council will appoint the expert mechanism's five expert members during its 8<sup>th</sup> session in June 2008, and the expert mechanism's

assist in this regard, the Forum made a number of recommendations to suggest concrete ways in which the three indigenous mechanisms can work collaboratively to implement their distinct mandates and the rights contained in the Declaration.

The Forum's recommendations also reflect its expanding program of research and advocacy between sessions. An important new addition here is the theme of climate change. For example, to build on the international research and consultations undertaken in preparation for the Forum's consideration of the special theme, it agreed to undertake a further study to determine whether climate change policies and projects adhere to the standards in the Declaration.

By organising expert meetings and preparing its own analytical research papers, the Forum also plans to take up a number of new issues over the course of the next year. These include:

- corporate accountability in relation to indigenous peoples' rights as set out in the Declaration (with a particular focus on the accountability of extractive industries like mining and forestry);
- the UN decolonisation process (particularly the lack of progress in the Pacific region);
- the vulnerability of indigenous human rights defenders to serious human rights violations;<sup>14</sup> and
- the need for indigenous mobilisation and representation at the local government level.<sup>15</sup>

### **Key recommendations from the Forum's 7<sup>th</sup> session**

#### ***Declaration on the Rights of Indigenous Peoples***<sup>16</sup>

Below are some of the key recommendations from the Forum indicating how it will give effect to its mandate to promote the implementation of the Declaration and monitor its effectiveness.<sup>17</sup> However, it is important to note that many more of the Forum's recommendations refer to key provisions of the Declaration and how they should be implemented by States, corporations, UN agencies and others in specific situations. Other recommendations promote key principles and rights contained in the Declaration, such as the right of self-determination and indigenous peoples' right to exercise their 'free, prior and informed consent' in relation to decisions that impact on their lives. The detailed nature and broad scope of the recommendations on the Declaration indicate that the Forum takes its new mandate seriously and is committed to integrating the Declaration into all aspects of its work. This is further reflected in the Forum's decision to adopt the Declaration as the legal framework for its future work.

Of particular importance is the Forum's draft decision to hold a three-day international expert group meeting on the implementation of article 42 of the Declaration, and to report on this matter at its next session.<sup>18</sup> This indicates that although the Forum has been quick to make a number of significant changes to the structure and

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first meeting is scheduled for October 2008 in Geneva. Mr Stavenhagen, commented that he hoped the new expert mechanism would 'cooperate with the Permanent Forum from the very beginning.'

<sup>14</sup> The Forum requested that the Special Rapporteur on human rights defenders submit a report to its next session on the situation of indigenous human rights defenders See para.153 of the 'advance unedited report.

<sup>15</sup> See para.73 of the 'advance unedited version' of the report, in which the Forum calls on the UN Department of Economic and Social Affairs (DESA), the UN Development Programme (UNDP), Member States and donor agencies to establish 'a network of indigenous local governments for information exchange and capacity-building on public administration, local socio-economic governance and participatory approaches to facilitate the implementation of the Millennium Development Goals (MDGs) and the UN development agenda at the local level among indigenous peoples in all regions' before the next session of the Forum.

<sup>16</sup> For more information, see ISHR's *New York Monitor* on the Forum's implementation of the UN Declaration on the Rights of Indigenous Peoples, 21 April to 2 May 2008, available at <http://www.ishr.ch>

<sup>17</sup> These are mostly drawn from paras.126-155 of the 'advance unedited version' of the report of the session (relating to 'implementation of the Declaration'). See also paras.16-45 (which relate to the special theme of climate change).

<sup>18</sup> Note this was one of three draft decisions of the Forum which is yet to be approved by its parent body, the Economic and Social Council (ECOSOC).

content of future meetings so they focus on the implementation of the Declaration (outlined below), it wants to consult with experts and consider what additional measures might be needed to best serve its new mandate, rather than making any hasty decisions.

Other recommendations of note in relation to the implementation of the Declaration are:

- It adopted a draft decision to revise its agenda and include amongst other changes, a standing agenda item on the implementation of the Declaration.<sup>19</sup>
- The Forum's 31 recommendations related to the theme of climate change 'must be implemented in accordance with the principles and rules of the Declaration'.
- All States were encouraged to submit reports on measures taken to implement the Declaration.
- The special theme for the 10<sup>th</sup> session is 'Indigenous Peoples' development with culture and identity: Articles 3 and 23 of the UN Declaration on the Rights of Indigenous Peoples'.<sup>20</sup>

### ***Climate Change***<sup>21</sup>

'Climate change, biocultural diversity and livelihoods: the stewardship role of indigenous peoples and new challenges' was the special theme of the session. Over the course of the first two days of the session, the Forum held a series of dialogues on the theme with indigenous peoples, UN agencies and States. To inform these discussions, numerous reports and expert papers were prepared, some of which were produced by UN agencies and expert bodies, others were generated by international and regional preparatory meetings involving indigenous peoples.

Indigenous peoples from all regions reported that they were already being impacted by the effects of climate change, but those living on small island States and in the Arctic are experiencing accelerated climate change. This disproportionate burden of the effects of climate change was further exacerbated by the fact that some of the mitigation strategies widely regarded as solutions to climate change, were negatively impacting on indigenous peoples.<sup>22</sup> Among the common criticisms was the failure to consult with indigenous peoples about the design and implementation of these strategies, even when their land, natural resources and lifestyles will be directly impacted. Indigenous peoples emphasised that as the stewards of the world's biodiversity and cultural diversity with the 'smallest ecological footprint', they had an enormous wealth of information and experience to contribute to the development of sustainable mitigation and adaptation measures. They are already implementing innovative responses to cope with the effects of climate, which are renewable, low-carbon and decentralised in nature. Indigenous peoples stressed that they wanted to share this expertise with the global community, and to contribute to global climate change discussions and decisions at the highest levels. To do this, they appealed to States to value their input and support their participation at relevant international meetings on climate change and biodiversity conservation.<sup>23</sup>

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<sup>19</sup> Note this was one of three draft decisions of the Forum which is yet to be approved by its parent body, ECOSOC.

<sup>20</sup> Article 3 relates to the right to self-determination. Article 23 relates to indigenous peoples' right to determine and develop priorities and strategies for exercising the right to development.

<sup>21</sup> For more information, see ISHR's *New York Monitor* on the Forum's special theme of climate change, 21-22 April 2008, available at <http://www.ishr.ch>

<sup>22</sup> The World Bank's Reduced Emissions from Deforestation and Degradation (REDD) scheme came under particular criticism as a 'centralised top-down' framework for the management of forests that 'undermines indigenous peoples' rights' and 'is not supported by most indigenous peoples.' See paras.44 and 45 of the 'advance unedited version' of the Forum's report.

<sup>23</sup> See for example the intervention from the Pacific Indigenous Peoples Caucus on the special theme of climate change, available at [http://kaahapono.com/pacific/interventions/ClimateChange\\_Pacific\\_Final.pdf](http://kaahapono.com/pacific/interventions/ClimateChange_Pacific_Final.pdf)

The urgency to achieve the full implementation of the Declaration was particularly evident in the Forum's recommendations on the special theme of climate change.<sup>24</sup> Prefacing its 31 recommendations on this issue is the statement that the Declaration 'should serve as a key and binding framework in the formulation of plans for development and should be considered fundamental in all processes related to climate change at the local, national, regional and global levels.' Further, all recommendations 'must be implemented in accordance with the principles and rules of the Declaration' The Forum's recommendations are directed at some of the most high-level inter-governmental institutions tasked with coordinating the global response to climate change,<sup>25</sup> reflecting the Forum's conviction that no institutions should be allowed to shirk their responsibilities under the Declaration. Among the Forum's other key recommendations are the following:

- Two Forum members will undertake a study to determine whether climate change policies and projects adhere to the standards in the Declaration. The expert mechanism on the rights of indigenous peoples and the Inter-Agency Support Group (IASG)<sup>26</sup> are invited to participate in the study. They are requested to provide the Forum with an outline of the study at its next session and a report at its 9<sup>th</sup> session.
- Based on this study and consultations with indigenous peoples, the two designated Forum members will prepare a draft declaration of action on climate change and indigenous peoples that will include a roadmap for indigenous peoples to help facilitate their input into key intergovernmental meetings and related climate change responses.
- The Forum recommended that the UNFCCC establish mechanisms to enhance indigenous participation, including a working group on local adaption measures and traditional knowledge of indigenous peoples.
- The Forum requested the Intergovernmental Panel on Climate Change (IPCC)<sup>27</sup> to undertake an assessment of the opportunities and threats for indigenous peoples arising from current and future greenhouse gas emission mitigation strategies, and further requested that this assessment be undertaken with the full and effective participation of indigenous peoples around the world.
- The Forum recommended that the UNFCCC and States provide adaption funds to indigenous peoples affected by climate change-related disasters, and where they have been rendered 'environmental refugees or displaced persons' as a result of climate change, that they be 'provided with appropriate relocation with the support of the international community'.
- The Forum called on States to ensure that indigenous peoples who are undertaking their own mitigation measures are provided with policy support, technical assistance, funding and capacity-building in order to deepen their knowledge of climate change and develop more effective mitigation and adaption strategies. Further, indigenous peoples 'should gain benefits from the environmental services derived from their territories and resources'.

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<sup>24</sup> See paras.4-47 of the 'advance unedited version' of the Forum's report for its recommendations on the special theme.

<sup>25</sup> Specific recommendations address the UN Framework Convention on Climate Change (UNFCCC) and the Inter-governmental Panel on Climate Change.

<sup>26</sup> The IASG was established to support and promote the mandate of the Forum within the UN system. Its mandate was later expanded to include support indigenous related mandates throughout the inter-governmental system. It allows the UN system and other intergovernmental organizations to analyse recommendations made by the Forum with a view to facilitating comprehensive and coordinated responses to the UNPFII. The IASG is currently chaired by UNESCO and has 31 member agencies. Further information is available at <http://www.un.org/esa/socdev/unpfii/en/iasg.html>

<sup>27</sup> The Intergovernmental Panel on Climate Change (IPCC) is a scientific intergovernmental body set up by the World Meteorological Organization (WMO) and by the United Nations Environment Programme (UNEP). The IPCC was established to provide decision-makers and others interested in climate change with an objective source of information about climate change. More information is available at <http://www.ipcc.ch/about/index.htm>

- The Forum recommended that States, the World Bank and other financial institutions consider alternative systems beyond the perpetuation of highly centralized fossil-fuel-based energy supplies and large-scale bioenergy and hydropower dams, instead increasing their support for renewable, low-carbon and decentralized systems that indigenous peoples can manage at the local level.

### ***Decolonisation***

During the Forum's half-day discussion on the Pacific, a number of powerful statements were delivered on behalf of indigenous peoples' caucuses expressing their complete lack of faith in the capacity of the UN's Special Committee on Decolonisation to advance this process in the Pacific.<sup>28</sup> In response, the Forum adopted several of the recommendations put forward by indigenous peoples, indicating its interest in more effectively engaging the UN's Special Committee on Decolonisation on this issue, and in setting up a range of mechanisms to monitor progress. Key among its recommendations are the following:<sup>29</sup>

- An expert seminar will examine 'the impact of the UN decolonisation process on indigenous peoples' of the Non-Self-Governing Territories which are on the UN list of Non-Self-Governing Territories (ie the extent to which indigenous peoples have been excluded from the decolonisation process).
- The Forum invited the Special Committee on Decolonisation to submit a report on the decolonisation process within the Pacific region to its next session.
- The Forum called on the Human Rights Council to create a mandate for a Special Rapporteur on the situation of indigenous peoples in the Non-Self-Governing Territories in the Pacific region.
- The Forum invited the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people to report on the situation of human rights of indigenous peoples in Non-Self-Governing Territories of the Pacific region.

### ***Corporate accountability***<sup>30</sup>

During the 6<sup>th</sup> session of the Forum, held in 2007, the special theme of 'lands, territories and natural resources' was discussed. For many indigenous peoples, this was a welcome opportunity to bring to the Forum's attention some of the adverse social, cultural, environmental and economic impacts of development projects occurring on or adjacent to their lands and territories, often without their informed consent and without access to effective legal remedies. Following this session, two international meetings were held to explore in greater detail the relationship between indigenous peoples and corporations, both the better practice examples, as well as where action is needed to close protection gaps at the national and international levels.<sup>31</sup> This session of the Forum endorsed the recommendations contained in the reports from both meetings, including the suggestions that the Forum and its Secretariat join the UN Global Compact, and appoint a special rapporteur on private sector projects affecting indigenous peoples in all regions of the world.

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<sup>28</sup> The statement by the Pacific Caucus condemned the Special Committee on Decolonisation as 'at best lamentably ineffective and at worst an active participant in the systemic denial of the indigenous peoples of the non-self-governing territories to the most basic human right of self-determination.' Available at [http://kaahapono.com/pacific/interventions/UNPFII08\\_Pacific.pdf](http://kaahapono.com/pacific/interventions/UNPFII08_Pacific.pdf)

<sup>29</sup> See paras.52-55 and para.58 of the 'advance unedited version' of the Forum's report for its recommendations on decolonisation.

<sup>30</sup> The recommendations on this theme are dispersed in the Forum's report. See paras.26, 62, 74, 116,117,135 of the 'advance unedited version' of the report.

<sup>31</sup> The report from the workshop held in July 2007 in Salekhard, Russian Federation, is available at <http://daccessdds.un.org/doc/UNDOC/GEN/N08/236/49/PDF/N0823649.pdf?OpenElement> The report from the seminar in August 2007, also in the Russian Federation, is available at [http://www.un.org/esa/socdev/unpfii/en/session\\_seventh.html#Documents](http://www.un.org/esa/socdev/unpfii/en/session_seventh.html#Documents)

The Forum's recommendations on corporate accountability indicate its desire to develop a constructive working relationship with the private sector to highlight how corporations can work with indigenous peoples for their mutual benefit. This is a challenging issue for the Forum to tackle because its mandate does not extend to making recommendations for implementation by non-State actors such as corporations. However the Forum has always maintained that the private sector has a responsibility to 'assist' in the implementation of its recommendations,<sup>32</sup> reflecting the Forum's acute awareness that the operations of the private sector impact on all of its mandated areas. Further, in her closing remarks, the Chairperson flagged the Forum's intention to raise awareness amongst the private sector that it too has a responsibility to use the Declaration as a framework for its activities with indigenous communities. To begin its work on corporate responsibility in earnest, the Forum recommended the following initiatives:

- A three-day international expert group workshop on indigenous peoples' rights, corporate accountability and the extractive industries, which would report to its next session.
- A study by two Forum members on indigenous peoples and corporations, examining how existing mechanisms, practices and policies impact on indigenous peoples. The report will identify good practices and be submitted to the Forum's next session.
- A joint report prepared by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people and the Special Representative of the Secretary General (SRSG) on the issue of human rights and transnational corporations and other business enterprises, identifying the actions of transnational corporations (TNCs) which may breach the inherent rights detailed in the Declaration.
- In the context of climate change, the Forum called on States to in turn call on TNCs to respect the Declaration and 'the principles of sustainability'. It further advised that this 'applies particularly to highly industrialized States and the transnational corporations that engage in development activities in those States.'

### ***Collaboration with the Human Rights Council and its mechanisms<sup>33</sup>***

The questions asked by Forum members during their interactive dialogue with the Special Rapporteur on indigenous peoples indicated their interest in ensuring they forge a collaborative tripartite relationship with the new expert mechanism on the rights of indigenous peoples. Members of the Forum expressed their acute awareness that all three indigenous mechanisms need to avoid duplication and quickly develop innovative methods of work that help to translate the Declaration into a 'living document' that enhances the well-being of indigenous peoples. Switzerland echoed the need for the three mechanisms to avoid duplication and contributed suggestions about how they could collaborate.<sup>34</sup> One of the Forum's recommendations designed to foster collaboration amongst the three bodies proposes that they jointly evaluate whether existing and proposed climate change policies and projects comply with the standards set by the Declaration.

Several of the Forum's recommendations indicate that in addition to ongoing close collaboration with the Special Rapporteur on indigenous peoples, it would like to work in partnership with a broad range of other special procedures of the Human Rights Council (the Council). As noted above, these include the SRSG on transnational corporations, as well as the Special Rapporteurs on human rights defenders, violence against women, the right to food, and the right to development. This reflects the Forum's concern that indigenous

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<sup>32</sup> The Forum has always prefaced its reports with the recommendation that the private sector (amongst others) assist in the realisation of 'the proposals, objectives, recommendations and areas of possible future action'. See chapter I (B)(2) of the PFII, Report on the 6<sup>th</sup> session, 14-25 May 2007, E/C.19/2007/12, available at <http://daccessdds.un.org/doc/UNDOC/GEN/N07/376/75/PDF/N0737675.pdf?OpenElement>

<sup>33</sup> See paras.125, 150-152 of the 'advance unedited version' of the report for recommendations on this theme.

<sup>34</sup> Switzerland suggested that the expert mechanism could submit expert reports to the Human Rights Council and these reports could be written in collaboration with the Special Rapporteur and the Forum.

peoples' organisations regularly report serious human rights violations that are beyond the scope of the Forum's mandate, and it needs to develop effective links with other UN mechanisms, like Special Rapporteurs, that have a mandate to accept individual human rights complaints, address systemic violations, undertake country visits and communicate directly with the State concerned.

The UN Office of the High Commissioner for Human Rights (OHCHR) and indigenous peoples' organisations drew the Forum's attention to the fact that for various reasons, indigenous peoples did not make a significant contribution to the first session of the new universal periodic review (UPR) mechanism of the Council. Some indigenous peoples' organisations felt this was a missed opportunity to promote the implementation of the Declaration and to improve the accountability of States to indigenous peoples within their borders.<sup>35</sup> These suggestions prompted the Forum to make the following recommendations to enhance indigenous input into the UPR mechanism:

- States should include representatives of indigenous peoples in the national consultation process for the preparation of national reports to be submitted to the Council for the UPR;
- The Council should include the Declaration as a normative basis for the UPR; and
- OHCHR, the UN Institute for Training and Research (UNITAR) and other relevant UN agencies should provide the necessary information and training on the UPR process for and with indigenous peoples.

### ***Indigenous languages***<sup>36</sup>

The Forum held a half-day discussion on indigenous languages and considered the report from the international expert group meeting on indigenous languages, held in New York from 8 to 10 January 2008.<sup>37</sup> In their interventions at both the expert meeting and the Forum, indigenous peoples emphasised that their languages are not only a communication tool, but at the very heart of indigenous identity because they convey traditional knowledge, indigenous laws and practices, world views and value systems. The need for urgent and concerted action by States, UN agencies, educators and indigenous communities is reflected in the Forum's recommendations. For example, the Forum's report noted that 'up to 90 percent of the world's indigenous languages will become extinct within the next 100 years if current trends continue.' Further, States are called on to 'immediately' support and adequately fund indigenous peoples' language revitalization efforts, and to use the Declaration as the basis on which to develop laws and policies with this objective. In addition, the Forum:

- invited UNESCO to jointly call for a world conference on linguistic diversity, indigenous languages, identity and education;
- recommended that States and UN agencies engage with indigenous peoples to develop strategies to implement the recommendations in the report of the international expert group meeting on indigenous languages, particularly the recommendations that:
  - the international community 'begin drafting a convention to protect indigenous languages, identities and rights'; and consider establishing a rapporteur on language discrimination 'to collect information and pursue violations related to language, cultural and indigenous rights';

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<sup>35</sup> These organisations included the International Work Group on Indigenous Affairs (IWGIA) and the Canadian Assembly of First Nations (FNA). IWGIA undertook an analysis of the reports submitted to the first UPR session. This revealed indigenous peoples live in eight of the 16 States up for review, yet there was 'hardly any mention' of indigenous peoples in the reports that were submitted for review, including the civil society report compiled by OHCHR, to which indigenous peoples can make direct contributions.

<sup>36</sup> See paras.93-99 of the 'advance unedited version' of the report for recommendations on this theme.

<sup>37</sup> See E/C.19/2008/3 available at <http://daccessdds.un.org/doc/UNDOC/GEN/N08/213/56/PDF/N0821356.pdf?OpenElement>

- the new expert mechanism on the rights of indigenous peoples conduct a study on the deliberate destruction of indigenous languages as a gross human rights violation;
- States ‘raise the prestige of indigenous languages by ...establishing indigenous universities and promoting the use of indigenous languages in public administration’;
- recommended that UNESCO develop strategies to promote local media in indigenous languages; and
- called for the text of the Declaration to be made available in indigenous languages as an ongoing project to assist in raising awareness amongst indigenous peoples about their rights and the obligations that States and others have under the Declaration.

### **Other recommendations of note<sup>38</sup>**

Now that the Declaration has the status of an international human rights instrument adopted by the UN General Assembly, the Forum has a tool to make inter-governmental bodies more accountable for the protection of indigenous rights. As the recommendations below indicate, the Forum is not afraid to apportion responsibility for action to the most high-level international institutions to ensure that they implement the Declaration. It looks set to be particularly vigilant in relation to the requirement that these institutions effectively involve indigenous peoples in the design and implementation of policies and programs that will impact on them. For example, the Forum:

- urged Member States of the General Assembly to organise a world conference on indigenous peoples, as recommended in a resolution of the Ibero-American Summit of Heads of State;
- recommended that the Pacific Islands Forum create a mechanism for contributions by and participation of indigenous peoples’ representatives in its meetings and activities;
- recommended that the ILO raise indigenous peoples’ issues with the Organisation for Economic Cooperation and Development (OECD) to further the inclusion of indigenous peoples’ rights in high-level development policies and poverty reduction strategies; and
- requested assistance from the Secretariat of the *Convention on Biological Diversity* (CBD) and the World Intellectual Property Organisation (WIPO) to complete the Forum’s study on *sui generis* systems based on customary laws for the protection of tradition knowledge.

### **Looking forward**

This year the Forum broke with its practice of announcing decisions only about its upcoming session and foreshadowed some of the issues that will feature in its 8<sup>th</sup> and 9<sup>th</sup> sessions. The next session will be held later in next year’s calendar from 18 to 29 May 2009, again in New York. Due to the new structure of the Forum’s agenda, 2009 will be a ‘review year’ to assess the implementation of past recommendations in relation to economic and social development, indigenous women, and the Second International Decade of the World’s Indigenous Peoples. The practice of a specific geographic focus for each session will continue, with the next session to examine the situation of indigenous peoples in the Arctic. The Forum did not announce which six UN agencies and funds will be invited to attend its next session, but some of its recommendations regarding the WHO suggest that it could be a strong candidate. Invitations to address the next session were extended to the three Special Rapporteurs on violence against women, food, and the right to development.

The Forum’s 9<sup>th</sup> session in 2010 will be the next opportunity for consideration of a special theme, which will be ‘indigenous peoples’ development with culture and identity: articles 3 and 23 of the UN Declaration on the

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<sup>38</sup> These recommendations are from paras.70, 75, 83 and 123 of the ‘advance unedited version’ of the Forum’s report.

Rights of Indigenous Peoples'. This choice of theme, particularly the way in which specific articles from the Declaration will be used to frame both the discussions and the eventual recommendations, provides an indication of how the Forum intends to breathe life into the Declaration and assist others to do the same. To further assist in forward planning, the Forum also announced that its 9<sup>th</sup> session will hold a half-day discussion on North America as well as a half-day discussion on indigenous peoples and forests.

Finally, the Chairperson also drew participants' attention to the likelihood that later this year, the Bolivian and other supportive governments are expected to submit a draft resolution to the General Assembly to support the organisation of a world conference on indigenous peoples. The Forum's recommendation on this matter as well as the Chairperson's supportive closing remarks both indicate that the Forum strongly supports such an initiative, but ultimately it will be a decision for Member States of the General Assembly.

## Background

The UN Permanent Forum on Indigenous Issues (the Forum) was established as a subsidiary organ of the UN Economic and Social Council (ECOSOC) on 28 July 2000. The fact that the Forum was established at such a senior level within the UN system is a testament to the concerted lobbying efforts of indigenous peoples over many years. Their success is one of the most significant achievements of the first International Decade for the World's Indigenous people (1994–2004).

The Forum is made up of 16 members, each appointed for a three year term. Eight members are nominated by governments and elected by ECOSOC, and eight are appointed by the President of ECOSOC following consultations with indigenous peoples' organisations. This makes the Forum unique within the UN system because it is the only body of the ECOSOC whose members are not solely determined by States.

The functions of the Forum are to:

- 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 relating to indigenous issues within the United Nations system; and
- prepare and disseminate information on indigenous issues.

The Forum meets in New York once every year for two weeks, usually in May. Indigenous peoples' organisations are welcome to attend and participate in the meetings of the Forum, along with States, UN agencies and subsidiary bodies, inter-governmental organisations and non-governmental organisations in consultative status with ECOSOC. Although they are classed as observers and have no voting rights, all participants have speaking rights during the Forum's meetings. This offers indigenous peoples unprecedented scope to contribute to the programming and policy directions of the agencies of the United Nations, and to hold UN agencies and States accountable for their performance on indigenous issues. This may mean that with time, the Forum helps to mainstream indigenous peoples' rights throughout the work of the UN system.

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