

A new mechanism on indigenous peoples:

The question of “Added Value”
and possible options

A submission to the informal meeting on the most
appropriate mechanisms to continue the work of the WGIP

(6-7 December 2007)



ASIAN INDIGENOUS & TRIBAL PEOPLES NETWORK

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First published 1st December 2007

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Price Rs.: 95/-

Published by:

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I. Introduction

The United Nations Human Rights Council (HRC) in its resolution 6/16 of 28 September 2007 decided to hold one and half day informal meeting to discuss the most appropriate mechanisms to continue the work of the Working Group on Indigenous Populations (WGIP) - a subsidiary body of now defunct Commission on Human Rights.

This informal meeting is scheduled to be held in Geneva on 6-7 December 2007. Indigenous peoples' representatives will hold a caucus at the Palais des Nations on 4 and 5 December 2007.

As the States, indigenous peoples and other stakeholders prepare for the informal meeting, two issues figure prominently – the need for a new mechanism to continue the work of the WGIP and its “Added Value” considering the existence of the United Nations Permanent Forum on Indigenous Issues and the Special Rapporteur on the situation of human rights and fundamental freedom of indigenous peoples.

In this briefing paper, Asian Indigenous and Tribal Peoples Network (AITPN) provides the justification for such a new mechanism, its added value and various options available for the establishment of such a new mechanism.

2. The need for a new mechanism

With the deletion of "indigenous issues" as a separate agenda item of the Human Rights Council, the focus/emphasis on the rights of indigenous peoples has substantially reduced. The new mechanism of the Human Rights Council - Universal Periodic Review (UPR) which focuses on the implementation of rights - will virtually remain inaccessible to majority indigenous peoples because of range of factors including the lack of capacity conditioned by discrimination.

The UN Under-Secretary-General for Economic and Social Affairs, José Antonio Ocampo, while addressing the sixth session of the Permanent Forum on Indigenous Issues referred to the *"huge implementation gap between legislation and the daily realities of indigenous peoples"*.¹ The UN Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples also repeatedly stated that *"the vacuum between existing legislation and administrative, legal and political practice constitutes a violation of the human rights of indigenous people"*.

The "implementation gaps" for the realisation of human rights in general and the rights of indigenous peoples in particular have been universally recognised. But the existing mechanisms relating to indigenous peoples remain ineffective to bridge or reduce the implementation gaps. Therefore, there is a need for a new mechanism on indigenous peoples in the Human Rights Council which shall contribute towards achieving the objectives of the Human Rights Council on the implementation of rights because of the shortcomings of the existing mechanisms as explained below.

First, the Permanent Forum on Indigenous Issues (PFII) with governmental and indigenous experts should have ideally been the UN body to reduce the implementation gap. It has been mandated to "promote the integration and coordination of activities relating to indigenous issues within the United Nations system". With an under-staffed Secretariat headed by a P-5 level officer, the promotion of "integration and coordination of activities" by the PFII has been effectively reduced to the exercise of submission of the annual sessional reports to the ECOSOC. The annual sessional reports are deeply flawed - they consist of "ONLY" recommendations without reflecting the ground realities of the indigenous peoples, the statements of experts and the governments.

Second, the Special Rapporteur on the situation of human rights and fundamental freedoms as a mechanism of the Human Rights Council does not have the necessary mandate to reduce the implementation gap or take indigenous peoples' world view. The Special Rapporteur has no interactive

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mechanism with indigenous peoples. Its mandate is to intervene in urgent cases of human rights violations of indigenous peoples and therefore interaction is only limited to the victims or the State authorities² and not with the indigenous communities *per se*. The Special Rapporteur's presence in Geneva is episodic. The Special Rapporteur cannot undertake country visits without the invitation from the member States and he was allowed to visit only 10 countries in the last six years.³

Third, the Human Rights Council in the establishment of the Advisory Committee failed to take indigenous peoples worldview in its work. The resolution 5/1 on institutional building states that for the nomination of experts of the Advisory Committee "gender balance and appropriate representation of different civilisations and legal systems" should be ensured. There is no reference to "indigenous world view". The United Nations has rightly been accused of not including "indigenous peoples" in its Charter and subsequent human rights standards. It is essential that the Human Rights Council creates a mechanism to take indigenous peoples' world view in its work – which can only be done through participation of indigenous peoples and unfortunately that can not be ensured by the Special Rapporteur.

Fourth, the Office of the High Commissioner for Human Rights (OHCHR) too failed to incorporate "indigenous issues" in the implementation of rights through technical cooperation projects. Until now, the inclusion of indigenous issues in the technical cooperation projects had been episodic. It not only depended on the predilections of those who developed the projects but the State's relations with indigenous peoples. There exist no policy guidelines in the OHCHR to include indigenous peoples' issues in the technical cooperation projects. But, the OHCHR will play a more critical role than ever for implementation of rights through technical cooperation projects. The General Assembly Resolution (A/RES/60/251) establishing the Human Rights Council stated that the Council, among others, shall be guided by "constructive international dialogue and cooperation" and that the Council shall focus on "advisory services, technical assistance and capacity-building," for "the full implementation of human rights obligations undertaken by States and follow-up to the goals and commitments related to the promotion and protection of human rights emanating from United Nations conferences and summits".

Nonetheless, given the limitations of the existing mechanisms on indigenous peoples to ensure "implementation" of rights, there is a need to create a new mechanism in the Human Rights Council, which shall focus on the implementation of the rights of indigenous peoples with their full participation as the stake-holders.

3. The possible options on the new mechanism

i. Name: Working Committee on Indigenous Rights

The name of the new mechanism of the Human Rights Council to be created in place of Working Group on Indigenous Populations may be "Working Committee on Indigenous Rights". The title "Working Committee on Indigenous Rights" distinguishes it from the Permanent Forum on Indigenous Issues, Working Group on Indigenous Populations and the Advisory Committee of the Human Rights Council. Moreover, it conveys the sense and purpose of the new body - to promote and implement "rights".

ii. Composition / membership

Option 1:

The "Working Committee on Indigenous Rights" of the Human Rights shall consist of 5 independent experts of which at least three shall be indigenous experts and that the experts be nominated from five geographical regions of the United Nations.

Option 2:

The Special Procedure of the Human Rights Council i.e. Special Rapporteur on the situation of human rights and fundamental freedom of indigenous people be expanded from one expert to five experts of which three shall be indigenous experts and be renamed as "Working Committee on Indigenous Rights". It will submit a report on its annual session as well as the annual report as submitted by the Special Procedures.

Precedence on Option 2: In 2005, then Commission on Human Rights created the "Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the rights of peoples to self-determination" to succeed the mandate of one member Special Rapporteur on the use of mercenaries, which had been in existence since 1987.

iii. Procedures for nomination /election

The experts of the "Working Committee on Indigenous Rights" shall be nominated by the President of the Human Rights Council following the same procedure as for the nomination of the Special Procedures

iv. Terms of the members

The experts of the "Working Committee on Indigenous Rights" shall serve for a period of three years. They shall be eligible for re-election once.

v. Functions/mandate

The main mandate of the "Working Committee on Indigenous Rights" shall be to implement the rights of indigenous peoples through providing of expertise and bringing indigenous peoples' worldview within the work of the Human Rights Council and other UN human rights mechanisms through studies, research and interactive dialogue; mainstreaming indigenous peoples rights; providing advice during the development of technical cooperation projects including identifying and promoting best practices through technical cooperation projects; working in close relation with other bodies of the Human Rights Council such as other Special Rapporteurs, special representatives, independent experts and Advisory Committees, the UN Permanent Forum on Indigenous Issues and National Institutions on Indigenous Peoples.

vi. Sessions

The "Working Committee on Indigenous Rights" shall hold one annual session for 5 working days per year. Additional sessions may be scheduled in the regions on an ad hoc basis with prior approval of the HRC.

vii. Subsidiary organs

The "Working Committee on Indigenous Rights" can establish subsidiary bodies with the authorisation of the Council.

viii. Participants

Member States, United Nations bodies and organs, inter-governmental organisations and non-governmental organizations in consultative status with the Economic and Social Council may participate as observers; organizations of indigenous people may equally participate as observers in accordance with the procedures which have been applied in the Working Group on Indigenous Populations and the Permanent Forum on Indigenous Issues.

ix. Rule of Procedures

The "Working Committee on Indigenous Rights" will be guided by the rules of procedures of the Human Rights Council and can develop its own rules of procedures.

4. Precedents in other main bodies of the UN

The main functioning bodies of the United Nations namely General Assembly and Economic and Social Council established more than one Committee or Commission depending on the priorities of the body concerned.

For example apart from Credential Committee and General Committee, the UNGA has six main committees i.e. the Disarmament and International Security Committee (First Committee) which deals with disarmament and related international security questions; the Economic and Financial Committee (Second Committee) which deals with economic questions; the Social, Humanitarian and Cultural Committee (Third Committee) which deals with social and humanitarian issues; the Special Political and Decolonization Committee (Fourth Committee) which deals with a variety of political subjects not dealt with by the First Committee, as well as with decolonization; the Administrative and Budgetary Committee (Fifth Committee) which deals with the administration and budget of the United Nations; and the Legal Committee (Sixth Committee) which deals with international legal matters.

Human Rights Council must be innovative for promoting inclusive approaches to protection and promotion of rights of specific groups. Within the Human Rights Council, there are four Special Procedures involving more than one expert. These are: Working Group of Experts on People of African Descent, Working Group on Arbitrary Detention, Working Group on Enforced or Involuntary Disappearances and Working Group on the question of the use of the mercenaries as a means of violating human rights and impeding the exercise of the right of people to self-determination. In fact, in 2005, the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the rights of peoples to self-determination was created to succeed the mandate of the Special Rapporteur on the use of mercenaries, which had been in existence since 1987.

The Human Rights Council must not limit its subsidiary bodies only to the Advisory Council or the Special Procedures, and it must develop more than one subsidiary body to fulfill its mandate.

5. Background on the mechanisms on indigenous rights at the UN

The United Nations Commission on Human Rights gradually created a number of mechanisms pertaining to the indigenous peoples and these were endorsed by the Economic and Social Council and the General Assembly.

The Working Group on Indigenous Populations (WGIP) was created as a subsidiary body of the Sub-Commission on Prevention of Discrimination and Protection of Minorities pursuant to the Economic and Social Council resolution 1982/34. The WGIP basically had the mandate for standard setting - to review developments pertaining to the promotion and protection of human rights and fundamental freedoms of indigenous peoples and to give attention to the evolution of international standards concerning indigenous rights.

In 1985, the United Nations Voluntary Fund for Indigenous Populations was established with the purpose of assisting representatives of indigenous communities and organizations to participate in the deliberations of the Working Group.

In 1985, the WGIP started drafting the Draft United Nations Declaration on the Rights of Indigenous Peoples. In 1994, the Sub-Commission on Human Rights in its resolution 1994/45 adopted the Draft Declaration on the Rights of Indigenous Peoples as adopted by the WGIP.

In 1995, the Commission on Human Rights in its resolution 1995/32 established the Open Ended Inter-Sessional Working Group to elaborate the Draft Declaration on the Rights of Indigenous Peoples. At its 11th session held from 5 to 16 December 2005 and its resumed session from 30 January to 3 February 2006, the WGDD adopted the Draft Declaration.

In 2001, the Commission on Human Rights adopted a resolution 2001/57 to appoint a Special Rapporteur on the situation of the human rights and fundamental freedoms of indigenous people. Since 2002, "indigenous issues" became an item of the agenda of the Commission on Human Rights.

With the establishment of the Permanent Forum on Indigenous Issues in 2002 as a subsidiary body of the ECOSOC, the WGIP which is often described as the parent organisation of all the mechanisms created so far in the United Nations on indigenous issues increasingly became directionless because of the lack of specific mandate.

Endnotes:

- 1 . http://www.un.org/News/briefings/docs/2006/060515_Ocampo.doc.htm
- 2 . The Special Rapporteur, among others, is mandated to:
 - (a) To gather, request, receive and exchange information and communications from all relevant sources, including Governments, indigenous people themselves and their communities and organizations, on violations of their human rights and fundamental freedoms;
 - (b) To formulate recommendations and proposals on appropriate measures and activities to prevent and remedy violations of the human rights and fundamental freedoms of indigenous people;
 - (c) To work in close relation with other special rapporteurs, special representatives, working groups and independent experts of the Commission on Human Rights and of the Sub-Commission on the Promotion and Protection of Human Rights, taking into account the request of the Commission contained in resolution 1993/30;
3. The Special Rapporteur so far received invitations to visit Guatemala, the Philippines, Mexico, Chile, Colombia, Canada, South Africa, New Zealand, Kenya and Bolivia.

The Asian Indigenous and Tribal Peoples Network (AITPN) is an alliance of indigenous and tribal peoples' organisations and individual activists across the Asian region. It seeks to promote and protect the rights of indigenous and tribal peoples in Asia:

- by providing accurate and timely information to national human rights institutions, the United Nations and its specialised mechanisms, as appropriate;
- by conducting research, campaigning and lobbying on country situations or individual cases;
- by increasing the capacity of indigenous peoples through relevant training programmes for indigenous peoples' rights activists and community leaders;
- by providing legal, political and practical advice to indigenous peoples organisations;
- by providing input into international standard-setting processes on the rights of indigenous peoples; and
- by securing the economic, social and cultural rights of indigenous peoples through rights-based approaches to development.

AITPN has Special Consultative Status with the United Nations Economic and Social Council (ECOSOC).

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