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DEPARTMENT OF ECONOMIC AND SOCIAL AFFAIRS
Division for Inclusive Social Development
Indigenous Peoples and Development Branch - Secretariat of the Permanent Forum on Indigenous Issues

International Expert Group Meeting on the theme
“Truth, transitional justice and reconciliation processes”
15 to 17 November 2022, Santiago, Chile

Concept Note

Prepared by the Indigenous Peoples and Development Branch -
Secretariat of the United Nations Permanent Forum on Indigenous Issues
Division for Inclusive Social Development
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A. Introduction

The United Nations Permanent Forum on Indigenous Issues (Permanent Forum) is an advisory body of the Economic and Social Council, mandated to discuss economic and social development, culture, the environment, education, health and human rights. The Forum promotes respect for and full application of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and follows up on its effectiveness (Art. 42 UNDRIP).

At its twenty-first session in April-May 2022, the Permanent Forum recommended a three-day international expert group meeting on the theme “Truth, transitional justice and reconciliation processes”, approved by the Economic and Social Council (decision 2022/352).

UN DESA/ Indigenous Peoples and Development Branch - Secretariat of the United Nations Permanent Forum on Indigenous Issues (IPDB-SPFII) is therefore organizing the international expert group meeting on “Truth, transitional justice and reconciliation processes” (expert group meeting), at the headquarters of the Economic Commission for Latin America and the Caribbean (ECLAC) in Santiago, Chile from 15 to 17 November 2022. This is the second international expert group meeting focusing on themes related to peace, justice, agreements and accords organized by IPDB/DISD/UN DESA. It will build upon the findings and recommendations of the 2019 expert group meeting on “Peace, justice and strong institutions: the role of indigenous peoples in implementing SDG 16” which discussed the potential of indigenous peoples in peace processes as a means of development, the benefits of legal pluralism and attempted to prepare a toolkit as guidance¹.

Since its inception, the Permanent Forum has expressed its great concern over the continuation of conflicts in different parts of the world that negatively affect indigenous peoples, including where treaties, agreements and other constructive arrangements have been entered into. The Permanent Forum has repeatedly urged dialogue and consensus-building to resolve such conflicts, guided by the principles of the UNDRIP. It has also urged the United Nations system, including country teams, to actively support and promote such processes of dialogue and consensus-building².

The Permanent Forum has also recognized and promoted indigenous peoples’ role and their prevention initiatives/efforts, as well as their contributions to a durable and lasting peace. Furthermore, the Permanent Forum has expressed concern at the lack of implementation by Member States of the agreements reached in peace accords and has encouraged States to engage in constructive dialogue with indigenous peoples. The Forum has also invited States to provide information during its annual sessions on the status of implementation of such agreements.³

The Permanent Forum devoted two sessions in 2016 and 2021 on the special themes: “*Indigenous peoples: Conflict, Peace and Resolution*” and “*Peace, justice and strong*

¹ For more details see report E/C.19/2020/7.

² E/C.19/2012/13, para. 11

³ E/C.19/2016/11, para. 63

institutions: the role of indigenous peoples in implementing Sustainable Development Goal 16” respectively. Expert members prepared studies specifically related to the topic entitled “*Study on the rights of indigenous peoples and truth commissions and other truth-seeking mechanisms on the American continent*”⁴ in 2013 and “*Study on the status of implementation of the Chittagong Hill Tracts Accord of 1997*”⁵ in 2011.

In recognition of the need to galvanize greater action for progress in implementing the existing truth, transitional justice and reconciliation processes and to further implement SDG 16, peace, justice and strong institutions, this expert group meeting will aim to reduce the implementation gap between the extensive work and recommendations made by the three UN mechanisms related to indigenous peoples (Special Rapporteur on the Rights of Indigenous Peoples, the Expert Mechanism on the Rights of Indigenous Peoples and the Permanent Forum) in this area and the work of peace and security framework and entities at the UN and regional and national levels.

B. Background and context

Indigenous Peoples are often found in the middle of violent conflicts and militarization that occur as a result of different factors. Most recurrent conflicts are related to economic interests over indigenous peoples’ lands, territories and resources, but a common denominator is that indigenous peoples fail to have their rights guaranteed as set in the UNDRIP, the ILO Indigenous and Tribal Peoples Convention 169 and other international human rights standards.

These conflicts and militarization directly affect Indigenous Peoples’ lives, causing human rights violations, including displacement from their ancestral lands, extrajudicial executions, sexual violence and forced recruitment of children denying their basic means for survival as distinct peoples and cultures. Conflicts cause poverty, reverse development and have contributed to the out-migration and displacement of Indigenous Peoples to urban areas, where they are no longer under the protection of traditional justice systems and become particularly vulnerable to discrimination and marginalization. Although people face common challenges from these conflicts, displacements from their land and from the negative environmental health impacts of the extractive sectors, indigenous women and children are often more vulnerable and suffer more in times of conflict. In some countries, Indigenous Peoples become victims of violence, massacres or even genocide due to their distinct identities. The continued denial and violation of Indigenous Peoples’ right to self-determination is the root cause of many conflicts faced by Indigenous Peoples.

Conflict prevention initiatives, peace processes and agreements have formed the basis of peaceful negotiation to address social unrest and conflicts. However, most negotiated peace accords remain unimplemented or only partially implemented often due to political and economic interests derived from conflicts or the lack of political will to conduct prosecutions. Some agreements are not negotiated in good faith by Member States and Indigenous Peoples sometimes lack the legal and financial resources to ensure a good outcome. This failure results in

⁴ See E/C.19/2013/13

⁵ See E/C.19/2011/6

continued widespread human rights violations, violent conflicts and military control. In the end, the poor quality and or implementation record of peace agreements is a missed opportunity for building trust between the State, and Indigenous Peoples, who suffer in the middle of warring parties.

Examples of past and present processes

Some peace accords, truth, transitional justice and reconciliation processes identified and addressed cases of violence against Indigenous Peoples such as in Chittagong Hill Tracts in Bangladesh (1997)⁶ Guatemala (1997-1999), Peru (2001-2003) and Paraguay (2004-2008) even though their original mandate did not include this. More recently, other truth commissions have addressed specific serious human rights violations experienced by Indigenous Peoples such as in Chile (2000-2004), Canada (2009 - 2015) and the State of Maine, United States (2012 - present)⁷.

Canada also established the National Inquiry into Missing and Murdered Indigenous Women and Girls (2016–2019). In Australia, two commissions were established, the Human Rights and Equal Opportunity Commission and the Yoo-rrook Justice Commission, the former to investigate the separation of Aboriginal and Torres Strait Islander children from their families (1995–1997), and the latter to examine the impact of European colonization on the Aboriginal communities of Victoria State (2021 to date). In Scandinavia, three processes have been established the Greenlandic Reconciliation Commission (2014–2017); the Commission to Investigate the Norwegianization Policy and Injustice against the Sámi and Kven/Norwegian Finnish Peoples (2018 to date); and the Truth and Reconciliation Commission for the Tornedalians, Kvens and Lantalaïset in Sweden (2020 to date)⁸. In the case of Colombia (2018-2022), the peace accords include an “ethnic chapter” offering a central reference point for the implementation of a culturally appropriate approach. Even though truth, transitional justice and reconciliation processes have been established⁹, the social, political, and economic conditions for Indigenous Peoples have often not changed much and in some cases, the situations are worse.

For Indigenous Peoples, truth commissions have a potentially important role to play to help redress the abuses suffered and strengthen their rights. To achieve this desire the various characteristics of the traditional model of truth commissions must be reviewed to ensure that it is adapted to the needs and perspectives of Indigenous Peoples.¹⁰ Formal transitional justice processes often neglect Indigenous justice systems and their conflict resolution practices, which incorporate restoration and retributive justice dimensions. In some instances, transitional justice processes overlook Indigenous Peoples, failing to provide adequate justice that is meaningful and culturally relevant to the communities. Further, Indigenous Peoples must have the possibility that their truth -from their visions and narratives as individuals, and collectivities- could be heard at all levels. Consequently, these processes can lead to fulfilling the “broken promises”.

⁶ For more information read E/C.19/2011/6

⁷ For more information read E/C.19/2013/13

⁸ A/76/180, para. 41 and 42

⁹ Comisión de la Verdad de Colombia. <https://www.comisiondelaverdad.co/pueblos-etnicos>

¹⁰ E/C.19/2013/13, para. 19

United Nations System

The three UN mechanisms related to Indigenous Peoples, the Permanent Forum on Indigenous Issues, the Expert Mechanism on the Rights of Indigenous Peoples and the Special Rapporteur on the rights of Indigenous Peoples, have given voice to indigenous peoples' perceptions that transitional justice mechanisms and peace agreements are not fulfilling the expectations and visions of Indigenous Peoples. Further, allegations of collusion between states and non-state actors, including the private sector have been highlighted.¹¹

Other mechanisms such as the Special Procedures in particular the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, prepared a report on transitional justice measures and addressing the legacy of gross violations of human rights and international humanitarian law committed in the colonial context.¹² The International Criminal Court announced an investigation into crimes against humanity that could include indigenous peoples in the Philippines.¹³ Indigenous peoples have also brought a case to the International Criminal Court to investigate possible acts within its competence in Brazil.¹⁴

In addition, some of the funds, programmes and specialized agencies of the United Nations that are engaged in advocacy and policy development on truth, transitional justice and reconciliation processes are including the participation of indigenous peoples into their work, for instance UN Women¹⁵.

Access to justice to indigenous peoples remains limited and indigenous peoples continue facing many challenges in this regard. A particular dimension of access to justice is related to overcoming long-standing historical injustices and discrimination, including in relation to colonization and dispossession of their lands, territories, and resources. This contributes to continued mistrust towards the perpetrators, especially when it is the State that claims authority over indigenous peoples because of that same historical wrong.¹⁶

The intention of establishing truth, transitional justice and reconciliation processes has been to reverse the grave abuses committed against indigenous peoples, improve relations between States and Indigenous Peoples, and facilitate the recognition and implementation of their right. Ensuring Indigenous Peoples' right to participate in decision-making is a key component to achieve this reconciliation. While these processes are implemented, there is an urgent need to rethink a new social contract to combat the legacy of exclusion and marginalization affecting Indigenous Peoples — through their meaningful and effective participation through their free, prior and informed consent.

¹¹ <https://www.nytimes.com/2020/03/09/world/americas/central-america-indigenous-conflicts.html>

¹² A/76/180

¹³ See <https://bit.ly/3BfW9Yz>

¹⁴ See <https://www.lifegate.com/bolsonaro-crimes-against-humanity-icc-interview>;

¹⁵ See <https://bit.ly/3LyT5KB>

¹⁶ Expert Mechanisms on the Rights of Indigenous Peoples. Access to justice in the promotion and protection of the rights of indigenous peoples. A/HRC/EMRIP/2013/2, para 6.

Ultimately, the role of the government is an essential component to reduce the negative outcomes for Indigenous Peoples while the process of truth, transitional justice and reconciliation processes are implemented.

C. Normative Framework

United Nations Declaration on the Rights of Indigenous Peoples

The United Nations Declaration on the Rights of Indigenous Peoples¹⁷ (the Declaration) was adopted by the General Assembly in 2007. Article 1 refers to the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms recognized under international human rights law. Article 7 recognizes that indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.

In the context of military activities, Article 30 of the Declaration affirms that they shall not take place in the lands or territories of indigenous peoples, unless justified by a relevant public interest or otherwise freely agreed with or requested by the indigenous peoples concerned. Further, it requires States to undertake effective consultations with the indigenous peoples concerned, through appropriate procedures and in particular through their representative institutions, prior to using their lands or territories for military activities. Article 10 affirms that indigenous peoples “shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.” Article 28 states that “indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.”

On resolution of conflicts and disputes, Article 40 states that indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights.

ILO Indigenous and Tribal Peoples Convention 169

ILO Convention 169 was adopted by the International Labour Organization in 1989 (The Convention). In terms of participation and consultation through their representative institutions, the Convention states that Governments shall have the responsibility for developing, with the participation of the peoples concerned, coordinated and systematic action to protect the rights of these peoples and to guarantee respect for their integrity. Article 6 requires States, among other things, to consult indigenous and tribal peoples through appropriate procedures, particularly

¹⁷ A/RES/61/295 adopted by the UN General Assembly, 13 September 2007.

through their representative institutions when legislative or administrative measures that may directly affect them are being considered. Article 16 states that where the relocation of these peoples is considered necessary as an exceptional measure, such relocation shall take place only with their free and informed consent.

In relation to indigenous peoples' legal systems and customs, Article 8 requires States to take indigenous and tribal custom and customary law into account when applying national laws and regulations to the peoples concerned. In accordance with Article 9 the customs regarding penal matters shall be taken into consideration by the authorities and courts dealing with such cases.

In terms of remedies, Article 12 states that the peoples concerned shall be safeguarded against the abuse of their rights and shall be able to take legal proceedings, either individually or through their representative bodies, for the effective protection of these rights.

The United Nations has adopted other principles, guidelines that are applicable to all related to the right to truth and transitional justice such as the Principles for the Protection and Promotion of Human Rights through action to combat impunity¹⁸; the Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law¹⁹; the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity²⁰. In 2006, the United Nations Human Rights Commission determined that there was an "inalienable and autonomous right" to truth²¹.

D. Objectives of the Meeting:

The aim of the expert group meeting is to build on the recommendations and policy advances and identify the barriers and gaps by:

1. Documenting United Nations mechanisms/bodies or others that support national efforts to address conflicts, implementation of peace processes and accords, truth, transitional justice and reconciliation processes.
2. Identifying key considerations based on good practices when establishing truth, transitional justice, and reconciliation processes to include Indigenous Peoples and uphold their rights, taking into account the vulnerabilities of indigenous women and children.
3. Assessing structural/ institutional barriers that prevent the participation of Indigenous Peoples in conflict prevention, conflict resolution, peace-making and peacebuilding processes.
4. Identifying indigenous-led consultation protocols/legislative initiatives toward achieving consensus on implementing peace processes and accords.

¹⁸ E/CN.4/2005/102/Add.1

¹⁹ A/RES/60/147

²⁰ UN General Assembly Resolution 2391

²¹ Study on the right to truth. E/CN.4/2006/91

5. Preparing policy recommendations for all relevant stakeholders.

The final report and recommendations of the expert group meeting will be submitted to the Permanent Forum on Indigenous Issues at its April 2023 session.

E. Proposed Themes for discussions:

Four major themes of discussion that will guide the agenda are proposed as follows. Under each of the themes are some preliminary questions that have been identified for consideration and to stimulate discussion.

1. Truth, transitional justice, conflict resolution and reconciliation: International law in the United Nations system.
 - *Which Indigenous customary laws and legal traditions need to be better integrated in transitional justice processes?*
 - *How can the UN Declaration on the Rights of Indigenous Peoples and other UN principles and guidelines be incorporated into conflict resolution and peace and reconciliation processes?*
 - *What support could the UN provide to indigenous peoples in negotiating peace accords, or other peacemaking processes?*
 - *are existing guidelines and protocols guiding transitional justice and peacebuilding exercises utilized by practitioners, and if so, would specific guidelines for indigenous peoples be useful?*
 - *How is the UN system working in this area including indigenous peoples?*
2. Barriers preventing indigenous peoples' participation.
 - *How have transitional justice processes engaged indigenous peoples and addressed or failed to address their needs?*
 - *What shifts within government and in partnership with indigenous peoples will create the conditions for moving from denial to recognition, replacing conflict with cooperation?*
 - *What public sphere voices focus on fears/confusion/mistrust that are opposed to aspects of reconciliation?*
 - *Why have indigenous peoples often been excluded from national peacebuilding processes?*
3. Examples of lessons learned from work carried out by and with Indigenous Peoples
 - *What three key lessons have been learned from your work with Indigenous peoples?*
 - *What lessons have been learned from Indigenous peoples working in conflict resolution, reconciliation, and transitional justice?*
 - *What measures have been identified to ensure the implementation of approaches based on ethnic and gender equality?*
4. Standards and policies for conflict resolution, truth, transitional justice, and reconciliation

As of 1 October 2022

- *What processes, both judicial and non-judicial, can be identified to provide recognition to victims and reinforce respect for indigenous peoples' human rights?*
- *Which ethnic gender-sensitive dimensions can be considered to deal with the victims, their families and communities?*
- *How to provide justice, recognition and dignity to the victims and ensure the implementation of agreed standards to find peace?*

5. Recommendations to all relevant stakeholders.

F. Participant Contributions:

The Expert Group Meeting will include Indigenous Peoples, United Nations agencies, programmes and funds, Member States, non-governmental organizations and academics.

International experts will prepare papers to present at the meeting on one or more of the themes listed above.

Experts are requested to submit their papers (8-12 pages maximum) to the organizers by 4 November 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.

G. Working Languages:

The working languages will be English and Spanish.

H. Contact Information:

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