**United Nations Seminar of the Expert Mechanism on the Rights of Indigenous Peoples**

“Treaties, agreements and other constructive arrangements, between indigenous peoples and States, including peace accords and reconciliation initiatives, and their constitutional recognition.”

*Virtual Seminar*

*29 November -1 December 2021*

*(Interpretation in English, Spanish and Russia)*

*Private meeting*

***Concept Note***

***(as at 19 October)***

**Background**

1. Established by the United Nations Human Rights Council in 2007, the Expert Mechanism on the Rights of Indigenous Peoples is a subsidiary body composed of seven independent members that provides the Council with expertise and advice on the rights of indigenous peoples as set out in the United Nations Declaration on the Rights of Indigenous Peoples (the Declaration). The seven members serve in their individual capacities.

2. In September 2016, the Human Rights Council amended the mandate of the Expert Mechanism, to include inter alia the preparation of an annual study on the status of the rights of indigenous peoples worldwide in the achievement of the ends of the Declaration, focusing on one or more interrelated articles of the Declaration.

3. In this framework, the Expert Mechanism will hold a virtual seminar, on 29 and 30 November and 1 December 2021, on the theme of its next annual study: “Treaties, agreements and other constructive arrangements, between indigenous peoples and States, including peace accords and reconciliation initiatives, and their constitutional recognition”.

4. The studies and advice of the Expert Mechanism provide a better understanding of the provisions of the Declaration and propose concrete actions that States, indigenous peoples, civil

society, national human rights institutions, international organizations, businesses and others can take in order to further its implementation.[[1]](#footnote-1) The Office of the United Nations High Commissioner for Human Rights (OHCHR) provides technical and substantive support to the Expert Mechanism.

**Objectives**

* Hold an in-depth discussion on the topic to give input to the Expert Mechanism’s 2021 study
* Identify good practices and challenges from different regions relating to the theme
* Contribute to a human rights-based approach to the issue of treaties, agreements and other constructive arrangements between indigenous peoples and States, as defined by the UN Declaration on the Rights of Indigenous Peoples

**Participants**

5. The 3-day expert seminar (**29 and 30 November, 1 December**) will be attended by approximately 25 participants including:

* Members of the UN Expert Mechanism on the Rights of Indigenous Peoples
* Expert indigenous people on the theme from different regions
* Academics
* Staff of the UN Human Rights Office of the High Commissioner

**Focus of study**

6. “Treaties, agreements and other constructive arrangements”, between States and indigenous peoples are referred to throughout the preamble, as well as article 37, of the UN Declaration on the Rights of Indigenous People.

7. The preamble recognises “the urgent need to respect and promote the rights of indigenous peoples affirmed in treaties, agreements and other constructive arrangements with States…”. It considers, “that the rights affirmed in treaties, agreements and other constructive arrangements between States and indigenous peoples are, in some situations, matters of international concern, interest, responsibility and character”, and that, “the relationship they represent, are the basis for a strengthened partnership between indigenous peoples and States…”

8. Article 37, states that:

“1. Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors and to have States honour and respect such treaties, agreements and other constructive arrangements.

2. Nothing in this Declaration may be interpreted as diminishing or eliminating the rights of indigenous peoples contained in treaties, agreements and other constructive arrangements.”

9. The Expert Mechanism notes that the right of indigenous peoples to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States, relates to the right to the recognition of, and actual compliance with, all agreements indigenous peoples have made with States, either in the past or with present governments and includes ongoing processes. The Expert Mechanism notes that this right has no equivalent in the human rights treaties, and that it emphasises national mechanisms having the competence to resolve conflicts between States and indigenous peoples about treaties, agreements, and other constructive arrangements[[2]](#footnote-2).

10. The Expert Mechanism recognises that there is an urgent need to respect and promote the rights of indigenous peoples affirmed in treaties, agreements, and other constructive arrangements made between State and indigenous peoples, the implementation of which can contribute to the implementation of the Declaration at the domestic level.

11. The purpose of this Study is to assess the extent to which article 37 of the UN Declaration has been and is being implemented or considered nationally. It will focus on the use of historic and contemporary treaties, agreements and other constructive arrangements, which includeconstitutional arrangements[[3]](#footnote-3), peace accords[[4]](#footnote-4) and reconciliation initiatives, and ongoing processes, to implement the UN Declaration. In will demonstrate the connection between article 37 and other rights notably the right to self-determination, the right to maintain and strengthen their distinct political, legal, economic, social, cultural institutions, the right to lands, territories and resources, and the right to redress, as outlined in the UN Declaration and interpreted in studies and reports of the Expert Mechanism on these topics[[5]](#footnote-5).

12. To assist all parties in contributing to this seminar, the Expert Mechanism sets out below some of the elements it intends to focus on, but is not limited to, in its study.

* Consider the types of treaties, agreements and other constructive arrangements that indigenous peoples have made or are making with States, including peace accords and reconciliation initiatives, and their constitutional recognition.
* Examine the barriers (structural, political, economic and social) to, and the enabling conditions necessary to promote, constructive dialogue between States and indigenous peoples for the establishment of treaties, agreements and other constructive arrangements, including peace accords and reconciliation initiatives, and their constitutional recognition.
* Examine the barriers (structural, political, economic and social) to, and the enabling conditions necessary for the implementation of treaties, agreements and other constructive arrangements, including peace accords and reconciliation initiatives, and their constitutional recognition.
* National mechanisms with the competence to resolve conflicts between States and indigenous peoples about treaties, agreements, and other constructive arrangements, including peace accords and reconciliation initiatives, and their constitutional recognition.
* New joint problem solving approaches that facilitate constructive dialogue between States and indigenous peoples.

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1. To date, the Expert Mechanism has carried out studies on themes including indigenous peoples’ rights with respect to their cultural heritage; access to justice for indigenous peoples; the right to health and indigenous peoples; right to participate in decision-making; the right of indigenous peoples to education; the free, prior and informed consent and migration; the rights of the indigenous child; and land rights. [↑](#footnote-ref-1)
2. Chapter 18: Legal Implementation and International Cooperation and Assistance, articles 37-42, Willem van Genugten and Federico Lenzerini, in “The UN Declaration on the Rights of Indigenous Peoples, A commentary, edited by Jessie Hohmann and Marc Weller, Oxford. [↑](#footnote-ref-2)
3. Eg. section 35 of the Canadian Constitution Act, 1982, specifically recognizes and affirms the existing aboriginal and treaty rights of the aboriginal peoples of Canada. [↑](#footnote-ref-3)
4. Eg. The Philippines, India, and Bangladesh. [↑](#footnote-ref-4)
5. EG. Expert Mechanism Reports on: Free, prior and informed consent (<https://undocs.org/A/HRC/39/62>); Land, territories and resources (<https://undocs.org/A/HRC/45/38>); and Self-Determination ([A/HRC/48/51 - E - A/HRC/48/51 -Desktop (undocs.org)](https://undocs.org/A/HRC/48/51)) [↑](#footnote-ref-5)