**Indigenous Peoples’ Rights in the Context of Borders, Migration and Displacement**

***Concept Note***

**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 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). It is composed of seven members, serving 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. The studies and advice of the Expert Mechanism are designed to provide a better understanding of the provisions of the Declaration and to propose concrete actions that States, indigenous peoples, civil society, international organizations, national human rights institutions 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 secretariat support to the Expert Mechanism.

**Focus of study**

4. To assist all parties in contributing to this seminar, the EMRIP sets out below some of the elements it intends to focus on in its study.

1. **Reasons and factors behind the movement, including voluntary relocation, displacement, and forced relocation, of indigenous peoples**

This could include but is not limited to:

* Addressing situations in which contemporary borders divide the traditional lands of indigenous peoples, such that the expression of their lifeways now necessitates crossing transnational or

internal political boundaries, e.g., Sami reindeer herders in the Nordic countries or various peoples in the Americas

* Addressing the reasons why indigenous peoples are compelled to leave their regions or country of origin due to political, economic, social, cultural and environmental conditions, but also violence and armed conflict, e.g., pastoralists on African continent, migration across the USA/Mexico border, and the situation of climate refugees in the Arctic and elsewhere
* Situations where indigenous peoples have been either threatened with removal or forcibly relocated or evicted by State authorities, private business , and others, including both the current ramifications of historic events and ongoing issues (e.g., displacement of indigenous peoples from national parks, eco-tourism and other development projects across Asia, Africa, and elsewhere)
1. **Current challenges and developments in law, policy and practice regarding trans-border movement of indigenous peoples**

This could include but is not limited to:

* Assessing the rights that indigenous peoples have with respect to trans-border migration, under Article 36 and many other articles of the Declaration, as well as the human rights treaties and other relevant regional or international instruments.
* Identifying human rights violations in home countries that are causing or forcing indigenous peoples to migrate in search of safety and other conditions necessary to their individual and collective wellbeing
* Addressing the human rights issues faced by indigenous peoples at borders including the separation of children from parents, detention, prosecution, deportation practices, lack of due process (including lack of interpretation and consular assistance), and invisibility of indigenous status and thus lack of data.
* Addressing whether indigenous peoples’ rights are being implemented at border crossings bearing in mind that indigenous migrants could cross multiple borders.
* Addressing the implementation of indigenous peoples’ rights within the receiving State once they have left reception centres.
* Exploring the processes and procedures in place to facilitate the voluntary return of indigenous peoples to their country of origin.
1. **Current challenges and developments in law, policy and practice regarding internal movement, including voluntary relocation, displacement, forced relocation of Indigenous Peoples**

This could include but is not limited to:

* Assessing the rights that indigenous peoples have with respect to internal movement (as described above), including from rural to urban regions, under the Declaration, the international and regional human rights treaties and other relevant instruments. For example, rights to identity, nationality, security and adequate standards of living, necessary and culturally appropriate social services, decent working conditions, including as domestic workers, and non-discrimination (hate speech in public discourse etc).
* Addressing the human rights issues faced by indigenous peoples’ rights from internal movement relating to self-determination, lands, territories and resources, family, education, health, culture and language.
* Addressing whether and how the rights of indigenous peoples are being implemented.
* Addressing challenges posed by any differences among jurisdictions within States which may create conditions of inequality, deprivation and discrimination among indigenous peoples.
* Exploring the processes and procedures in place to facilitate and redress the voluntary return of indigenous peoples to their place of origin following forced or voluntary relocation.
1. **Focus on Indigenous persons in vulnerable situations**

This could include but is not limited to:

* Addressing how indigenous children, women and LGBTI persons are exposed to increased risks of human rights violations arising from trans-border and internal migration, including drug and human trafficking[[2]](#footnote-2), forced labour, violence and exploitation, including of a sexual nature.
* Addressing how persons with disabilities are exposed to increased risks of human rights violations from trans-border and internal migration, including lack of accessibility services etc.
* Addressing the human rights issues arising with respect to the smuggling[[3]](#footnote-3) of indigenous peoples.
1. **Remedies and Recommendations**

This could include but is not limited to:

* Assess the structural and historic aspects of indigenous peoples migration, including migration as a response to conquest, colonization, violence and discrimination
* Articulate general and specific means of addressing past and ongoing human rights violations in the context of borders, migration, and displacement

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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; the right of indigenous peoples to education and the free, prior and informed consent. [↑](#footnote-ref-1)
2. International law defines trafficking of persons as “the recruitment, transportation, transfer, harbouring or receipt of persons,” by means of the threat or use of force or other forms of coercion, abduction, fraud, deception, or abuse of power “for the purpose of exploitation” with exploitation referring, “at a minimum” to “the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs .” See Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Article 3. [↑](#footnote-ref-2)
3. International law defines smuggling of persons as procuring “the illegal entry of a person” into a country “in order to obtain, directly or indirectly, a financial or other material benefit.” See Protocol Against the Smuggling of Migrants by Land, Sea and Air, Article 3. [↑](#footnote-ref-3)