Mr. Chairperson,
Distinguished members of the Expert Mechanism on the Rights of Indigenous Peoples,
Delegates of Member States,
Representatives of indigenous peoples and organizations,
Ladies and gentlemen,

I am grateful to once again have the opportunity to address the Expert Mechanism and all those attending this session. Let me start by congratulating the members of the Expert Mechanism on the near completion of their second full year, and by congratulating you, Mr. Chairperson, on your election. I would also like to applaud the members of the Expert Mechanism for your work to date addressing one of the core issues concerning indigenous peoples – the right of indigenous peoples to participation in decision making affecting them. During my work as Special Rapporteur I have noticed a widespread lack of adequate implementation of this right and a need for orientation about the measures necessary to fulfill this right. I am sure that your study will be instrumental in providing guidance on this important issue, and I commend you for the work that you already have underway.

Coordination with the Expert Mechanism

Mr. Chairperson,

As you are aware, this past year, I have continued to work in cooperation with the Expert Mechanism in seeking to maximize the effectiveness of my own mandate as Special Rapporteur and avoid duplication. An important aspect of this collaboration has been to provide input to the thematic studies of the Expert Mechanism based on my experiences as Special Rapporteur, as I did in January this year, during a regional consultation in Chiang Mai, Thailand, organized by the Asia Indigenous Peoples Pact in collaboration with the Expert Mechanism. Also in January, representatives of Permanent Forum, the Expert Mechanism, and I met in New York to coordinate our work. As you are aware, Mr. Chairperson, at that meeting we shared work agendas, identified the strengths and limitations of our respective mandates and explored ways of channeling our work to be most effective.

Another key aspect of our coordination has been the parallel meetings that I have held with indigenous representatives attending the annual sessions of Expert Mechanism. As in previous sessions of the Expert Mechanisms, my staff and I are available to meet with indigenous representatives and others about matters falling within the scope of my mandate, including in
regard to situations of alleged violations the rights of indigenous peoples. Unfortunately, due to
time constraints I am not able to meet with all of those who request meetings. Nonetheless, I do
commit to examine all of the cases that have been brought to my attention, including those
situations about which I am unable to meet to discuss this week. Indigenous peoples and
organizations should be aware that I routinely consider and in appropriate cases act upon written
information submitted to me, without face to face meetings or country visits. I therefore continue
to urge indigenous peoples and organizations to submit written information to me that concerns
my mandate through the appropriate channels.

Comments of the Special Rapporteur on the right to participation

Mr. Chairperson,

Allow me at this time to provide some observations that are aimed at assisting the Expert
Mechanism in its study on the right of indigenous peoples to participate in decision making
affecting them. In its progress report on the study the Expert Mechanism aptly identifies relevant
provisions of various international instruments, including the United Nations Declaration on the
Rights of Indigenous Peoples, ILO Convention No. 169, the Convention on the Elimination of
All Forms of Racial Discrimination, and the International Covenant on Civil and Political Rights,
as well as regional human rights instruments, including the American Convention on Human
Rights. In this regard it bears mentioning that a number of basic human rights principles
undergird the right to participation and inform its content. Without being exhaustive, these
include the right to self-determination, the right to equality, the right the culture and the right to
property. Additionally, I have seen in my work as Special Rapporteur that a lack of participation
of indigenous peoples in the design and delivery of programs that affect them can undermine
their effective enjoyment of other key rights, such as the right to education and the right to
health.

The dimensions of the right to participation, both external and internal

Mr. Chairperson,

In its progress report, the Expert Mechanism elaborates up both the external and internal
dimensions of the right to participation. I see three principal aspects of the dimension involving
decision making by actors that are external to indigenous communities, and concerns regarding
each of these aspects have arisen in the course of my work as Special Rapporteur:

A first aspect has to do with the participation of indigenous peoples in the broader public life of
the State, as promoted by article 5 of the UN Declaration, and it is related to the right of all
citizens to political participation. This aspect of participation in decision-making within spheres
extending beyond indigenous communities is mostly, though not entirely, a matter of the rights
of indigenous individuals. As affirmed in particular by the Inter-American Court of Human
Rights in the case of Yatama v. Nicaragua, the right of indigenous peoples to participate in the
broader public life of the State also includes a collective element, which requires States to enact
special measures to ensure the effective participation if indigenous peoples within state political
structures and institutions.
A second aspect of the external dimension relates to the participation of indigenous peoples in decision making by State actors about measures that affect indigenous peoples’ rights or interests in particular. In this regard article 18 of the UN Declaration states that “Indigenous peoples have the right to participate in decision-making in matters which would affect their rights.” This right includes a corollary duty of States to consult with indigenous peoples in matters that affect their rights and interests in order to obtain their free, prior and informed consent, as recognized, especially, by article 19 of the Declaration. Last year, I devoted part of my annual report to the Human Rights Council to the duty of states to consult with indigenous peoples and have continued to address this issue in various aspects of my work. Given the complexity the issue, the Expert Mechanism’s examination of the matter of consultation and the right to free, prior and informed consent in connection with its study on the right to participation is extremely important.

A third aspect of the external dimension of the right of participation is the involvement of indigenous peoples in decision making in the international arena. This aspect is largely unexplored in the relevant literature but is, in my view, an important component of indigenous peoples’ right to self-determination. Indigenous peoples have achieved historic accomplishments at the international level, including in the processes leading to the adoption of the Declaration in 2007 and to the establishment of the three UN mechanisms with specific mandates concerning indigenous issues, and indigenous peoples have a greater voice at the international level than ever before. Still, much remains to be done to continue to encourage and allow for the active involvement of indigenous peoples in the development of international standards and programs that concern them, including within the United Nations and other international and regional institutions.

The internal dimension of the right of participation in decision making, explored in more detail in the Expert Mechanism’s progress report, relates to indigenous peoples’ exercise of autonomy and self-government. This dimension of the right includes a corresponding duty of the State to allow indigenous peoples to make their own decisions concerning their internal matters, and to respect those decisions. In this regard the Declaration recognizes the right of indigenous peoples to “autonomy or self-government in matters relating to their internal and local affairs.” It is apparent from experiences worldwide that the effective exercise of the right to autonomy and self-government will require a strengthening of indigenous peoples’ institutions and self-government structures, in order that they may genuinely take control of their own affairs in all aspects of their lives and to ensure that matters affecting them are aligned with their own cultural patterns, values, customs and worldviews.

**Practical guidance on the implementation of the right**

Mr. Chairperson,

Beyond identifying the normative framework for understanding the right of participation in its various dimensions, an important objective of the Expert Mechanism’s study is to provide practical guidance on implementation of the right. In my view, it will be important to include discussion of the particular problems indigenous peoples and individuals are facing in exercising
the right to participation in its various dimensions, as well as discussion of good practices and lessons learned. I would like to offer a few examples of these that I have encountered over the past couple of years.

Regarding the first aspect of external participation, through my work as Special Rapporteur I have observed that the participation of indigenous peoples in the broader public life of the State is inadequate, and generally not proportional in relation to their populations, in most countries where indigenous peoples live. Nevertheless, I have also seen numerous examples of efforts by States to increase indigenous political participation through targeted measures such as guaranteed seats in legislative bodies, redistricting and the creation special indigenous advisory bodies, and I look forward to seeing those examples further reflected in the study of the Expert Mechanism. Still, continued steps need to be taken to ensure greater indigenous participation in the process of defining State policy on indigenous issues and in reforming relevant laws and Government programs to better accord with indigenous peoples’ own aspirations. I have explored several examples of problems and solutions in this regard in my reports examining the situations of indigenous peoples in different countries.

With respect to the participation of indigenous peoples in decisions making about measures that affect their rights or interests in particular, it is evident that adequate consultation mechanisms are lacking throughout the world and that, in particular, indigenous peoples do not adequately control their territories in many cases, even when lands are demarcated and registered. I have observed numerous cases in which indigenous peoples are not provided sufficient opportunity to participate in decision making concerning natural resource extraction activities taking place within their traditional lands. Given the pervasiveness of this problem in countries throughout the world, I am devoting a portion of my annual report to the Human Rights Council this year, which will be presented in September, to examining issues related to extractive industries operating in indigenous territories.

Furthermore, in nearly all of the countries I have visited, I have heard reports of a lack of adequate participation of indigenous peoples in the design, delivery, and monitoring of programs and policies that affect them, at all levels. I would like to stress that enhancing indigenous peoples’ control over decision making that affects them has been shown to be conducive to successful practical outcomes. During my work as Special Rapporteur, I have observed numerous successful indigenous-controlled programs in place to address issues of indigenous health, education, and other areas of concern, in ways that are culturally appropriate and adapted to local needs. Measures should be taken to support these programs and increase the opportunity for indigenous peoples to provide services to their own communities.

Regarding the third aspect of external participation, I can clearly see here today a showing of the strong participation of indigenous peoples in this international forum, and I am amazed by the thousands of indigenous peoples that in many cases travel very long distances to attend the annual session of the Permanent Forum on Indigenous Issues. Over my last two years as Special Rapporteur, I have observed increased interaction by indigenous peoples with my mandate, and I see a heightened engagement by indigenous groups with all the relevant international mechanisms. At the same time, I am aware of impediments indigenous peoples continue to face to their effective participation in international conferences and meetings in which matters of vital
importance to them, such as the environment and traditional knowledge, are being discussed and decided. Certainly, there is room to strengthen education and capacity building in this regard, and potential reforms within international institutions and platforms of decision making that affect indigenous peoples’ lives should be closely examined.

Finally, with respect to indigenous decision making concerning internal matters, while there are some noteworthy examples of indigenous autonomy and self-government throughout the world, continued efforts by States are needed to promote and consolidate legal recognition and accommodation of indigenous institutions of self-governance. Additionally, I have observed a need for indigenous peoples themselves to continue to endeavour to strengthen their capacities to control and manage their own affairs and to participate effectively in all decisions affecting them, in a spirit of cooperation and partnership with government authorities at all levels, as well as a need to address any issues of social dysfunction within their communities.

Mr. Chairperson,

I look forward to offering further input on these issues, based in significant part on my experiences as Special Rapporteur and in light of the communications that I have received from indigenous peoples throughout the world expressing concerns relating to these issues. I look forward to continuing to work with the Expert Mechanism in this regard.

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Let me conclude, Ms. Chairperson, by expressing my gratitude for the opportunity to address the members of the Expert Mechanism and the indigenous peoples, States, and other actors assembled here today, in my capacity as Special Rapporteur. I reaffirm my commitment to cooperating with the Expert Mechanism in our common pursuit of securing the full enjoyment of the human rights of indigenous peoples. This pursuit is one of daunting challenges, but I am encouraged by the many challenges that already have been overcome, and by the persistence of indigenous peoples to see their aspirations realized.

I thank you for your kind attention.