

Human Rights Council – 51th Session

Interactive Dialogue with the Expert Mechanism on the Rights of Indigenous Peoples

Opening Remarks by Binota Dhamai

Chair-Rapporteur, Expert Mechanism on the Rights of Indigenous Peoples

Palais des Nations, Geneva, Switzerland

28 September 2022

President of the Human Rights Council,
Excellencies,
Indigenous leaders and representatives,

It is my pleasure to present to you the work of the Expert Mechanism on the Rights of Indigenous Peoples for which I acknowledge the contribution of my fellow experts, Ms. Laila Vars, Ms. Sheryl Lightfoot and Ms. Margaret Lokawua, as well as our new members, Ms. Annexa Alfred Cunningham, Ms. Antonina Gorbunova, and Ms. Valmaine Toki. I would also like to acknowledge the important work undertaken by our dear members, Megan Davis and Rodion Sulyandziga, who finished their mandates at the end of April this year. I once more express my gratitude to them for the trust they have placed in me by appointing me as Chair-Rapporteur of the Expert Mechanism for this year.

But before anything, let me wish you all and particularly indigenous peoples' representatives present in this room a happy fifteenth anniversary of the United Nations Declaration on the Rights of indigenous peoples.

The COVID-19 pandemic continued to disrupt our work and the lives of indigenous peoples globally. We have unfortunately witnessed how the impact of the COVID-19 pandemic disproportionately affected indigenous peoples, deepening pre-existing social inequalities. In addition, it negatively impacted the transmission of indigenous languages and traditional knowledge. Indigenous peoples are increasingly recognized as agents of change and solution-holders, in matters ranging from climate change to desertification, land degradation and drought. They are increasing their resilience to environmental challenges through traditional knowledge and sustainable land practices that have evolved over generations. Indigenous women are active change agents in society and champions of sustainability. They are custodians of a collective accumulation of scientific knowledge. This scientific knowledge has a key role to play in safeguarding ecosystems and ensuring environmental justice and equity. Indigenous women's in-depth understanding of botany and animal species is a powerful tool to mitigate against the catastrophic impacts of climate change.

Pursuant to resolutions 33/13 and 33/25, the Expert Mechanism on the Rights of Indigenous Peoples is presenting to this session of the Council the work of the Expert Mechanism over the past year. As decided during our fourteenth session, the Expert Mechanism on the Rights of Indigenous Peoples has undertaken a study on treaties, agreements and other constructive arrangements between indigenous peoples and States, including peace accords and reconciliation initiatives, and their constitutional recognition. In November of last year, the Expert Mechanism held an Expert Seminar to obtain substantive input to our study on this theme. At its fifteenth session held at Palais de Nations from 4 to 8 July this year, the Expert Mechanism adopted its study entitled “Treaties, agreements and other constructive arrangements, between indigenous peoples and States, including peace accords and reconciliation initiatives, and their constitutional recognition”¹ prepared pursuant to paragraph 2 (a) of Human Rights Council resolution 33/25.

The Expert Mechanism sees its Study on treaties, agreements and other constructive arrangements between indigenous peoples and States, including peace accords and reconciliation initiatives, and their constitutional recognition (A/HRC/51/50) as an opportunity to identify the principles and conditions, as well as the broader gaps and challenges, in the realization and exercise of the right of indigenous peoples to conclude treaties, agreements and other constructive arrangements with States and to have them respected and enforced.

The study focuses on article 37 of the UN Declaration on the rights of indigenous peoples. It analyses the enabling conditions for the establishment of treaties, agreements and other constructive arrangements; first of all, the recognition of indigenous peoples as such and the recognition of their rights, which are a precondition for the enjoyment of all the rights enshrined in the Declaration. This recognition may not be effective if it is not accompanied by structural reforms, the recognition of juridical personality and power-sharing. Particularly important is the constitutional recognition, including of these instruments.

Other enabling condition identified in this study, is the balance of power in negotiation processes, which is linked with the possibility of indigenous peoples to participate according to their own decision-making processes and institution, to have the means to do that, without suffering from any form of pressure and coercion. In this sense, the principle of free, prior and

¹ A/HRC/EMRIP/2022/2

informed consent is relevant in guiding the way a process that led to the establishment of an agreement should be undertaken. This principle represents the minimum standard and when fully applied may give greater legitimacy and strength to the instrument achieved.

The study further identifies the conditions and obstacles to the effective implementation of such instruments. Some essential conditions are a common understanding and good faith in interpretation of such instruments, while some challenges encountered are the lack of technical and financial means, political will and harmony with other regulations, just to mention a few.

The study addresses the need to have appropriate mechanisms supporting the process of negotiation and establishment of agreements, mechanisms dedicated to monitor and enforce their implementation and mechanisms to handle and resolve conflicts, redress and remedy grievances when these agreements are not fully implemented, or they are breached. When disputes related to alleged violations of treaties, agreements and other constructive arrangements do not achieve to be settled in the domestic jurisdiction, indigenous peoples should be able to rely to international bodies, as already recommended by the former Special Rapporteur at the time.

The study concludes with Expert Mechanism Advice No. 15, in which we put forward some measures that States, indigenous peoples and other stakeholders can take to the enjoyment of article 37 as contained in the UNDRIP.

The second report we adopted this year is our annual report detailing all of the activities we engaged in this year, including intersessional activities such as seminar organized by the University of British Columbia in February 2022 “The Militarization of Indigenous Land: A Human Rights Focus” in support to the Expert Mechanism ongoing work on the topic. Several members of the Expert Mechanism attended the meeting of the Global Task Force for Making a Decade of Action for Indigenous Languages in June 2022, coordinated by the United Nations Educational, Scientific and Cultural Organization (UNESCO).

During our 15th session, we had an interactive dialogue with the Chair of the Permanent Forum on Indigenous Issues, the Special Rapporteur on the rights of indigenous peoples, a representative of the Board of Trustees of the United Nations Voluntary Fund for Indigenous Peoples and representatives of two treaty bodies who provided us with updates on their work

on indigenous rights: the Committee on the Elimination of Discrimination against Women and the Committee on the Elimination of Racial Discrimination. We were excited to learn that the work the treaty bodies are doing on Indigenous Peoples' rights is increasing exponentially, as are references to the UN Declaration in their work. We also welcome the final stages of the CEDAW General Recommendation 39, which will soon be adopted.

We also held a discussion on the critical situation of many indigenous languages worldwide, joining a series of activities in the framework of the International Decade of Indigenous Languages and a thematic discussion on violence against indigenous women, with the participation of the Special Rapporteur on violence against women, its causes and consequences, who has prepared for the ongoing session of the Council a thematic report focusing on violence against indigenous women and girls.

In addition, the Expert Mechanism included in its 15th session a panel discussion of the theme of the impact of development projects on indigenous women. This panel focused on the impact, challenges and measures taken by indigenous women in contexts where development projects are implemented by both State and non-state actors without the free, prior, and informed consent of the indigenous people concerned. The Expert Mechanism also held an interactive dialogue to enhance the participation of indigenous peoples' representatives and institutions in meetings of relevant United Nations bodies on issues affecting them. The Expert Mechanism has always been a strong proponent of enhancing Indigenous Peoples' participation in the work of the Human Rights Council. The participation of Indigenous Peoples themselves was essential in the evolution of the Expert Mechanism's mandate, a mandate that contributes positively to improving their participation. In our experience, the participation of Indigenous Peoples in United Nations processes is indispensable. It is crucial to informing our understanding of Indigenous Peoples' human rights issues and proposing realistic measures to address them.

The Expert Mechanism continued with its important country engagement work. Since the last session in 2021, we could not undertake any mission under this new mandate due to the persistence of the COVID-19 pandemic. However, the EMRIP maintained a sustained dialogue with requesters and member States to advance the definition and organization of the country engagement missions to carry out in the next months, including with Canada and Australia.

The Expert Mechanism has followed up on previous and ongoing country engagements, including on the repatriation of a spiritual object, the Maaso Kova. In May, the National Museum of World Culture in Sweden communicated the Swedish government's approval of its recommendation to repatriate the sacred Maaso Kova, to the Yaqui people. The first step of the repatriation has been undertaken and the Maaso Kova was handed over to the Mexican Embassy on 3 June. The International Indian Treaty Council as the requesters, underscored the importance of the Expert Mechanism's follow up on this engagement and informed that the Mechanism had sent a letter to Governments involved, also stressing the need for direct return of the Maaso Kova object to the Yaki people.

This year the Expert Mechanism continued to coordinate its work at the expert and Secretariat level with the Special Rapporteur on the Rights of Indigenous Peoples, the Permanent Forum on Indigenous Issues and the UN Voluntary Fund for Indigenous Peoples. Several formal and informal virtual meetings took place, including at the UN Permanent Forum on Indigenous Issues in April. We also maintained our usual meeting with the other three mechanisms dealing with indigenous peoples at our session coordinating our work and avoiding overlaps. Such meetings allow us to deepen our cooperation, enrich our own experiences and avoid duplication of work.

As to future work, we have decided that our next Study will focus on the theme of the impact of militarisation on the rights of indigenous peoples. To that end, the Expert Mechanism will make a new call for contributions in the Fall and will hold an expert meeting in December 2022 to inform the study. The Expert Mechanism also decided to prepare a report for the Human Rights Council on good practices and lessons learned regarding the efforts to achieve the ends of the Declaration, as authorized under Council resolution 33/25, paragraph 2 (b). The focus of such report will be on establishing effective monitoring mechanisms at the national and regional levels for the implementation of the United Nations Declaration on the Rights of Indigenous Peoples.

Mr. President,
Excellencies,
Indigenous leaders and representatives,

The Expert Mechanism has been facing some incidents lately that could be understood as acts of intimidation and reprisals against individuals and groups who cooperate or have cooperated with the United Nations, its representatives and mechanisms in the field of human rights or in the discharge of their mandate as experts appointed by the Human Rights Council. I hope that we can build a constructive, safe and respectful atmosphere for the proper functioning of the Expert Mechanism and we will continue liaising with the Office of the President of the Human Rights Council as needed, in case of allegations of acts of reprisal and intimidation committed against persons in connection to their contribution to the work of the EMRIP.

I would like to thank the UN Human Rights Council for its efforts in advancing the rights of indigenous peoples. In particular, the delegations of Guatemala and Mexico, have demonstrated excellent cooperation and inclusiveness in pursuing the resolutions on indigenous peoples. I would also like to thank all those States, indigenous peoples' organizations, NGOs, national human rights institutions, and academic institutions that contributed to our work throughout the past years in challenging circumstances. Our common goal is the full realization of the Declaration and all relevant human rights instruments that point to the enjoyment for indigenous peoples of their collective and individual human rights, and we are all here to advance on that, finally together, through constructive dialogue and exchange.

Thank you.

Closing Remarks by Binota Dhamai

Chair-Rapporteur, Expert Mechanism on the Rights of Indigenous Peoples

The Expert Mechanism has followed with concern the events related to the impossibility of our fellow expert Ms. Anexa Alfred Cunningham of returning to her home country after the July session. All EMRIP experts have been regularly briefed about her situation and have addressed it during its internal regular meetings, including potential actions or resolutions, with her participation and consent.

The Expert Mechanism will continue taking the appropriate actions as well as liaising with the Office of the President of the Human Rights Council as needed, in case of allegations of acts of reprisal and intimidation committed against persons in connection to their contribution to the work of the EMRIP, including its own members. The Expert Mechanism will be in no way intimidated by those regrettable acts and will strongly continue discharging its mandate.