

*Expert Seminar in Support of the Work of the
UN Expert Mechanism on the Rights of Indigenous Peoples*
[Establishing effective monitoring mechanisms at the national and regional levels for the implementation of the
UN Declaration on the Rights of Indigenous Peoples](#)



THE UNIVERSITY OF BRITISH COLUMBIA



UNITED NATIONS
HUMAN RIGHTS
OFFICE OF THE HIGH COMMISSIONER

Panelist	Mr. Alexey Tsykarev
Panel	Panel 2: Role of international and regional bodies in monitoring the implementation
Time	11.00 – 12.30
Date	Thursday 23 February 2023
Location	Robert H. Lee Alumni Centre University of British Columbia 6163 University Blvd Vancouver, BC

Good afternoon, distinguished seminar participants.

This is a great honour to be able to contribute to this important discussion.

Even though this seminar and the prospective EMRIP's report is devoted to the implementation monitoring mechanisms on the national and regional levels, it is however also very important to consider international mechanisms as they can impact the improvement of domestic monitoring mechanisms, or directly monitor the implementation of indigenous peoples' rights on the national level.

I would like to start my remarks by elaborating on the terms that we use here and whether or not these terms are accepted and understood by all payers in the same way. Further, I will provide some observations regarding the following aspects: what are existing international mechanism to monitor domestic implementation of the Declaration, are they effective and what can be done in order to strengthen the realisation of the right of indigenous peoples.

If we look back 10 years, when the indigenous movement prepared for the WCIP, one of the recommendations expressed in the Alta outcome document was for the UN to establish a new mechanism with a mandate to promote, protect, monitor, review and report on the implementation of the rights of indigenous peoples, including but not limited to those affirmed in the Declaration, and that such a body be established with the full, equal and effective participation of indigenous peoples.

One year after, at the WCIP all states unanimously endorsed the Outcome Document which contains the word implementation concerning national action plans and strategies to achieve the ends of the Declaration. However, the document does not specifically use the phrase implementation of the Declaration, rather stating achieving the ends of the Declaration. Today, as was 10 years ago, many states resist using the term implementation at the international level. You all know the underlying reason for the different language states and indigenous peoples use: From the states' perspective, UNDRIP is not a legally binding document. However Indigenous Peoples point out that human rights are universal and that the Declaration can be used very effectively to contextualize rights that are already recognized in binding international treaties."

If this is true that the rights of indigenous peoples are – or can be -- represented by the international treaties and covenants, then -one very important activity is to work with each treaty body on using the Declaration in Indigenous



Peoples cases. Most importantly, with HRC and CESCR that represent the two international treaties recognised by the largest number of states. The role of the treaty bodies is actually to monitor the implementation of the international conventions by state parties. And what we observe lately is that more and more the treaty bodies cite the declaration as an interpretive tool while making decisions on cases regarding indigenous peoples. The specific examples are the decisions of CERD and HRC responding to the complains of Finnish Sami regarding the Sami parliament act and the violations of the right to self-determination, the CERD's concern and recommendation responding to the relocation of a Shor village in Russia without FPIC. There are cases concerning USA, Canada and other states practices that are inconsistent with the Declaration. And the committees have the ability to monitor the implementation of their recommendations and consequently the provisions of UNDRIP on which these recommendations are based.

Treaty bodies general recommendations also contribute to the monitoring of the implementation of human rights of indigenous peoples in general and of the rights of specific social subgroups. One good example is the most recent CEDAW's general comment on indigenous women and girls.

In addition, there is a number of international conventions of critical importance for indigenous peoples that are being monitored under UN agencies. Such as UNESCO's World heritage convention and Convention of the safeguarding the intangible cultural heritage, ILO 169. Currently under WIPO there is a process leading to the creation of a treaty on the traditional knowledge and intellectual property protection.

One example from EMRIP's practice is the Maaso Kova repatriation case actually negotiated in this very university a few years ago under leadership of former EMRIP members Kristen Carpenter and Megan Davis and with strong support from UBS and Professor Lightfoot. The State and Indigenous People of Yaqui (Mr. Torres spoke about this people earlier today) agreed to repatriation under the 1970 UNESCO Convention and the Declaration. Is that just an individual case or do we strive to monitor the actual implementation of the rights of indigenous peoples to repatriation of their ceremonial objects and human remains as EMRIP suggested in its report on this topic. Are the existing legal instruments such as UNDRIP and UNESCO's 1970 convention enough or do we need another instrument?

- UPR process. UNDRIP recommended as a reference document.
- Special procedures

How to strengthen the monitoring role of the treaty bodies and the UPR?

1. Given the effectiveness and importance of the treaty bodies and the UPR, indigenous peoples representation in these processes is disproportionately low. Because of the lack of funding, capacity and opportunities to participate directly. Therefore, capacity building programmes and more financing through the voluntary fund are needed along with the enhanced access of indigenous peoples' own institutions to the treaty body and UPR processes. (Enhanced participation process).
2. Indigenous experts should be better represented in the treaty bodies.
3. Indigenous peoples should be able to engage with the states during the consultation process while preparing periodic reports to UPR and treaty bodies. They should be able to provide comments and alternative reports.



4. UNDRIP should be an obligatory reference for periodic reporting.
5. To work towards ratification of the legacy binding treaties by more states.

Still, is it enough to have these mechanisms or should there be a separate UN mechanism as suggested by Alta outcome document?

The WCIP did not follow that proposal strictly but rather decided to strengthen the mandate of EMRIP, which was done in 2016. Even though the amended mandate is better positioned to assist member states in improving their laws and practices, it is still not the same as what the treaty bodies can do. But if look at the all three UN indigenous-specific mechanisms comprehensively, we will find out how close we are to having a strong mechanism to implement human rights enshrined in the Declaration. The Indigenous mechanisms complement the treaty bodies bc instead of relying on enforcement, they support Indigenous Peoples' own diplomacy and cooperative solutions.

EMRIP's reports and studies do correspond with the general comments of treaty bodies which interpret and deepen understanding of the specific rights. Country specific reports, reactions to human rights violations and consideration of complains by the Special rapporteur correspond with the country specific decision and recommendations of the treaty bodies. The UNPFII's practice to monitor implementation of its recommendations to UN system, states and indigenous peoples allows to keep an eye on large pictures of implementation. And EMRIP's new function of technical assistance and dialogue facilitation, its close relationship with and reporting to HRC is a good practical tool to not only monitor but assist in implementation of human rights of IPs. EMRIP is also able to constantly follow up the realisation of its recommendations and advice.

One issue that was not done during the reconsideration of the mandate was reporting to the GA which was meant to increase the political influence of the body which in the absence of a monitoring mechanism could additionally balance the powers.

National action plans (what Mr. Larsen said that national action plans play a role in monitoring). EMRIP can assist to create such plans.