

United Nations Human Rights Mechanisms

WHAT DO THEY DO?

What can we expect?



INTERNATIONAL INDIAN TREATY COUNCIL

CONSEJO INTERNACIONAL DE TRATADOS INDIOS

Some Definitions

- Mechanisms – forums or processes
- States – National governments
- Communications – Information, complaints or reports about violations: A complaint is a “communication”
- Rapporteurs, Independent Experts, Working Group – Investigators of human rights violations
- Covenant, Convention, Protocol – All are multilateral agreements (between more than two States) where it is mutually promised to respect and protect human rights, as well as to remedy violations thereof
- States Parties – States that have signed and ratified the human rights agreement
- Monitoring Committee, Oversight Body or Agency – Group of experts that monitor compliance with the agreement, elected by the States Parties



INTERNATIONAL INDIAN TREATY COUNCIL

CONSEJO INTERNACIONAL DE TRATADOS INDIOS

Mechanisms that do NOT receive complaints:

Under the Economic and Social Council

Permanent Forum on Indigenous Issues:

Reports to the United Nations system on
Indigenous Peoples and makes Recommendations

Under the Human Rights Council – Study Mechanisms

Advisory Committee of the Human Rights Council

Expert Mechanism on the Rights of Indigenous Peoples



INTERNATIONAL INDIAN TREATY COUNCIL

CONSEJO INTERNACIONAL DE TRATADOS INDIOS

United Nations Complaint Mechanisms

Human Rights Council Mechanisms

Universal Periodic Review

Human Rights Council Complaints Procedure

Generalized situations of **an ongoing nature of massive gross violations of human rights and fundamental freedoms**

Special Procedures

Conventional Mechanisms

Under Human Rights Covenants or Conventions



INTERNATIONAL INDIAN TREATY COUNCIL

CONSEJO INTERNACIONAL DE TRATADOS INDIOS

Special Procedures

Rapporteurs and Working Groups by Country and by Thematic Mandates



INTERNATIONAL INDIAN TREATY COUNCIL

CONSEJO INTERNACIONAL DE TRATADOS INDIOS

By Country (All Human Rights in a country)

Burundi

Cambodia

Democratic People's Republic of Korea

Haiti

Myanmar

Occupied Palestinian Territory

Somalia

Sudan



INTERNATIONAL INDIAN TREATY COUNCIL

CONSEJO INTERNACIONAL DE TRATADOS INDIOS

Thematic Mandates

Human Rights Themes

Worldwide



INTERNATIONAL INDIAN TREATY COUNCIL

CONSEJO INTERNACIONAL DE TRATADOS INDIOS

Civil and Political Rights

- **WG Arbitrary Detentions**
- **WG Enforced or involuntary disappearances**
- SR Freedom of opinion and expression
- **SR Freedom of religion or belief**
- SR Independence of judges and lawyers
- SR Slavery
- **SR Torture and inhuman treatment**
- **SR Illicit movement and dumping of toxic wastes**
- SR Trafficking of persons, especially women and children
- SR Violence against women
- SR Sale of children, child prostitution and child pornography
- **SR Culture (new)**



See Article 27 of ICCPR, Right to culture, language and religion

INTERNATIONAL INDIAN TREATY COUNCIL

CONSEJO INTERNACIONAL DE TRATADOS INDIOS

Economic, Social and Cultural Rights

- SR Adequate housing
- SR Education
- IE Extreme poverty
- **SR Food**
- SR Drinking water supply and sanitation
- **SR Physical and mental health**
- **[SR Culture (new)]**



INTERNATIONAL INDIAN TREATY COUNCIL

CONSEJO INTERNACIONAL DE TRATADOS INDIOS

General Thematic Mandates

- **SRS** Internally displaced persons
- **SRS** Human Rights defenders
- IE Economic reform policies and foreign debt
- IE Mercenaries and Self-determination
- SR Migrants
- IE Minorities
- SR Racial discrimination
- IE International solidarity
- SR Countering terrorism
- SRS Transnational corporations
- WG African descent
- **SR Indigenous Peoples**



INTERNATIONAL INDIAN TREATY COUNCIL

CONSEJO INTERNACIONAL DE TRATADOS INDIOS

Special Rapporteur on the Human Rights of Indigenous Peoples

1. Receives communications on alleged violations from all relevant sources, including Peoples, National Tribes or Indigenous persons
1. Responds to Communications and Urgent Actions **without needing to exhaust local resources**
1. Implements the UN Declaration on the Rights of Indigenous Peoples
1. Visits the country and the site of the violations
1. Formulates recommendations and proposals to prevent and remedy violations
1. Works in close cooperation with:
 - other special procedures,**
 - subsidiary bodies of the Human Rights Council,
 - treaty bodies, and
 - regional human rights organizations



INTERNATIONAL INDIAN TREATY COUNCIL

CONSEJO INTERNACIONAL DE TRATADOS INDIOS

Special Procedures To Support a Mobilized Community

- Defines its claims within the framework of international Human Rights and the obligations of the State
- Strengthens the credibility of the fight before the public and empowers the community
- Educates the national and international public
- Generates opportunities for public attention

Necessary Elements

Brevity (2 or 3 pages) and Clarity in communication

Follow-up, point of contact

Invitation to the Rapporteur to visit the site of violations



INTERNATIONAL INDIAN TREATY COUNCIL

CONSEJO INTERNACIONAL DE TRATADOS INDIOS

Conventional Mechanisms

Based on Protocols, Covenants and Conventions of Human Rights

They are international agreements between States Parties and constitute a legal obligation

A State must accept, through signing and ratification, the obligations that are established in their articles

(Whereas Special Procedures apply to all States without necessitating their consent)



INTERNATIONAL INDIAN TREATY COUNCIL

CONSEJO INTERNACIONAL DE TRATADOS INDIOS

Complaints Under Human Rights Agreements and Monitoring Committees

1. from other States Parties:

All agreements contain provisions for complaints on the part of other States Parties

Have never been used under any Covenant or Convention



INTERNATIONAL INDIAN TREATY COUNCIL

CONSEJO INTERNACIONAL DE TRATADOS INDIOS

2. Complaints Under Covenants or Conventions

The State Party to the Convention must also

sign and ratify a separate Protocol or make a declaration, depending on the terms of the Covenant or Convention, and

likewise recognize the competence of the Treaty Monitoring Committee to receive complaints from individuals.



INTERNATIONAL INDIAN TREATY COUNCIL

CONSEJO INTERNACIONAL DE TRATADOS INDIOS

There are 8 Principal Human Rights Covenants and Conventions

- 1. International Covenant of Civil and Political Rights**
Optional Protocol 1 allows complaints
- 1. International Covenant of Economic, Social and Cultural Rights**
Optional Protocol allows complaints
New – not in effect
- 1. Convention against Torture**
Article 20 allows investigation into systematic violations
based on well-founded information
Optional Protocol (allows visits to the detainees)
Art. 22: Declaration allows complaints from individuals



INTERNATIONAL INDIAN TREATY COUNCIL

CONSEJO INTERNACIONAL DE TRATADOS INDIOS

Principal Conventions on Human Rights, con't.:

1. **Convention on the Elimination of All Forms of Racial Discrimination**

Art. 14 Declaration allows complaints
Urgent Action/Early Warning Procedure

1. **Convention on the Rights of the Child**

Protocol 1: Optional Protocol concerning the participation of children in armed conflicts

Protocol 2: Optional Protocol concerning the sale of children, child prostitution and child pornography

The CRC does not contain a mechanism for complaints



INTERNATIONAL INDIAN TREATY COUNCIL

CONSEJO INTERNACIONAL DE TRATADOS INDIOS

Principal Conventions on Human Rights, con't.:

1. **Convention on the Elimination of All Forms of Discrimination against Women**

Optional Protocol allows complaints from individuals and investigations on systematic violations

1. **Convention on the Rights of Migrant Workers and their Families**

Optional Protocol allows complaints

1. **Convention on the Rights of Persons with Disabilities**
Protocol 1 allows complaints



INTERNATIONAL INDIAN TREATY COUNCIL

CONSEJO INTERNACIONAL DE TRATADOS INDIOS

A New Convention

International Convention for the Protection of All Persons from Enforced Disappearances

- 20 Ratifications are needed to put it into effect
- Article 30: Allows Complaints in the form of Urgent Action to search for and locate a disappeared person
- Article 31: Declaration of the State allowing complaints



INTERNATIONAL INDIAN TREATY COUNCIL

CONSEJO INTERNACIONAL DE TRATADOS INDIOS

3. Periodic Reports and Review of the States

- Each State Party has the obligation to report to the Monitoring Committee periodically and in writing on its compliance with the Covenant, Convention and Protocol
- Mandatory under all Human Rights covenants and conventions
- The Committees Question the State in a face-to-face Review with the State Committee and Delegation in New York or Geneva
- The States never speak of their non-compliance or failures



INTERNATIONAL INDIAN TREATY COUNCIL

CONSEJO INTERNACIONAL DE TRATADOS INDIOS

Parallel Reports of the NGOs

- Parallel Reports:
- Individuals, NGOs and communities may also report to the Treaty Body on the way in which a State does not fulfill its obligations with respect to rights through Parallel Reports.
- They may contradict the State Report and present the real situation of human rights in that country.
- The Committees use these Reports of the NGOs to question the States.
- Parallel reports of civil society are extremely important for the review of States since it is the only information that they receive aside from official reports.

• **If we do not tell them, they do not know**



INTERNATIONAL INDIAN TREATY COUNCIL

CONSEJO INTERNACIONAL DE TRATADOS INDIOS

Parallel Reports

- Peoples, Nations, Organizations, individuals
- Written, it may take the form of a letter or report
- Information on the real situation of Indigenous Peoples,
for example:
- **Inadequate implementation** of the enforcement mechanisms
of the law's protections
- **Lack of procedural resources**
- Racial discrimination as evidenced in **social and economic indicators**
- **Confiscation of Indigenous lands**
- Denial of Indigenous Law with respect to the rights contained
therein



INTERNATIONAL INDIAN TREATY COUNCIL

CONSEJO INTERNACIONAL DE TRATADOS INDIOS

The CERD Urgent Action/ Early Warning Process

Early Warning: preventing existing problems from escalating into conflicts

Social and economic indicators

Confiscation of lands

Urgent Procedures: requiring immediate attention to prevent or limit the scale or number of serious violations

Serious, massive or persistent pattern of racial discrimination or where there is **risk of further racial discrimination**



INTERNATIONAL INDIAN TREATY COUNCIL

CONSEJO INTERNACIONAL DE TRATADOS INDIOS

CERD: Definitions - Interpretations

All ... exclusion ... or restriction based on race or ethnic origin which has the purpose or effect of nullifying or impairing the recognition or enjoyment ... of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

General Recommendation XXIII:

To recognize and respect the culture, history, language and way of life of Indigenous Peoples as an enrichment of the State's cultural identity and to guarantee its preservation;

To provide Indigenous Peoples with conditions allowing for a sustainable economic and social development compatible with their cultural characteristics;



INTERNATIONAL INDIAN TREATY COUNCIL

CONSEJO INTERNACIONAL DE TRATADOS INDIOS

General Recommendation XXIII, con't.

- 5. The Committee especially calls upon States Parties to recognize and protect the rights of Indigenous Peoples to own, develop, control and use their communal lands, territories and resources and, where they have been deprived of their lands and territories traditionally owned or otherwise inhabited or used without their free and informed consent, to take steps to return those lands and territories. Only when this is for factual reasons not possible, the right to restitution should be substituted by the right to just, fair and prompt compensation. Such compensation should as far as possible take the form of lands and territories.



INTERNATIONAL INDIAN TREATY COUNCIL

CONSEJO INTERNACIONAL DE TRATADOS INDIOS

Information Requirements Applicable to Human Rights **Complaints** before Special Procedures and Monitoring Committees, including CERD Urgent Action/Early Warning

Exhaustion of domestic remedies/Application of other international processes

Steps taken, detail:

- which processes have been utilized,
 - including appeals to courts and to other public authorities, and
- with what outcome.

If these remedies have not been exhausted, explain in detail:

- it could be very prolonged,
- it may not be effective,
- the resource is not available, or
- whatever other well-founded reason



INTERNATIONAL INDIAN TREATY COUNCIL

CONSEJO INTERNACIONAL DE TRATADOS INDIOS

Information Necessary for all Complaints Mechanisms, including Special Processes and Monitoring Committees

When and where

- Date, hour and precise location of the incident (Country, state, municipality)

Victim(s)

- Name, number and complete location details of the individuals, people or community that has been or will be affected

What happened – Detailed circumstances of the alleged violation

- Chronologically
- In the case of general measures (legislation or national policies), how the Indigenous Peoples have been or will be affected

Responsible Party(ies)

Who allegedly committed the violation and reasons for which they are suspected, as well as their relationship, if there is one, with local or national authorities.



INTERNATIONAL INDIAN TREATY COUNCIL

CONSEJO INTERNACIONAL DE TRATADOS INDIOS

Information Requirements Necessary for Complaints

- **Actions taken by national authorities:** Has the problem been reported to national administrative or judicial authorities? If so, what actions were taken by the authorities to remedy the situation?
- **Actions taken before international agencies:** Has any international or regional action been initiated in the human rights mechanisms? What is the status of these actions?
- See Booklet of the Rapporteur on the Rights of Indigenous Peoples



INTERNATIONAL INDIAN TREATY COUNCIL

CONSEJO INTERNACIONAL DE TRATADOS INDIOS

Web Page

- <http://www.ohchr.org>
 - Spanish or French (at the top)
 - Human rights by country (on the same first page)
 - Human Rights Bodies
 - Special Procedures
 - Treaty bodies
 - Sessions by each monitoring committee (state report, NGO documents)
 - Form and requirements for complaints
 - General recommendations of each Committee



INTERNATIONAL INDIAN TREATY COUNCIL

CONSEJO INTERNACIONAL DE TRATADOS INDIOS

Omatakuiasin

All my Family



INTERNATIONAL INDIAN TREATY COUNCIL

CONSEJO INTERNACIONAL DE TRATADOS INDIOS