

Human Rights Council – 48th Session

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

Opening Remarks by Megan Davis

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

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President of the Human Rights Council,
Special Rapporteur on the Rights of Indigenous Peoples,
Chair of the Board of Trustees of the UN Voluntary Fund,
Excellencies,

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, Binota Moy Dhamai, Rodion Sulyandziga, Laila Vars and Erika Yamada, as well as our new members, Sheryl Lightfoot and Margaret Lokawua. It is an honor to be entrusted by my colleagues to lead this important body. I would also like to acknowledge the important work undertaken by our dear members, Lounes Belkacem and Kristen Carpenter, who finished their mandates at the end of April this year.

The COVID-19 pandemic has continued to disrupt our work and the lives of Indigenous Peoples globally. While some States have used this crisis to improve their engagement with Indigenous Peoples, listening to their needs and reacting accordingly, others have used the crisis to undermine and roll back indigenous rights. We hope that our work can contribute to creating awareness of Indigenous Peoples lived experiences, made all the more difficult under COVID-19, and contribute to improving their lives. Allow me to give you some updates on the work of the Expert Mechanism over the past year.

The Expert Mechanism conducted its session virtually this year in July through four regional meetings with the purpose of receiving comments on our two reports: a Study on the Rights of the Indigenous Child, and a Report on the Implementation of the UN Declaration on the Rights of Indigenous Peoples, focusing on the Right to Self-Determination. Each report was preceded by a virtual expert seminar.

The Expert Mechanism sees its Study on the Rights of the Indigenous Child under the UN Declaration on the Rights of Indigenous Peoples (A/HRC/48/74) as an opportunity to integrate a human and children's rights based approach to the interpretation of indigenous children's rights under the Declaration. It examines both the individual and collective rights of indigenous children, as well as the interplay between them and incorporates the principle of the best interests of the child in the context of indigenous children.

The Study is linked to the Report on Self-Determination, highlighting that Indigenous Peoples' capacity to meet their children's needs depends on their ability to exercise their right to self-determination. This is essential in considering existing gaps in areas like education and child welfare. The Study concludes with Expert Mechanism Advice No. 14, in which we put forward some measures that States, Indigenous Peoples and other stakeholders can take to implement the relevant rights as contained in the UN Declaration.

Our Report on the Right to Self-Determination (A/HRC/48/75), explores how this right has developed since the adoption of the UN Declaration. It notes that the definition of self-determination in the UN Declaration follows other international and regional instruments in how it defines the right to self-determination. It embodies the right for all peoples to determine their own economic, social and cultural development. The report sets out the legal framework and ways and means in which Indigenous Peoples express their right to self-determination. It also explores many challenges including, the regional differences in the implementation of the right; the dangers of conflating self-determination with the requirement for free, prior, and informed consent; and the imposition of self-determination by the State rather than Indigenous Peoples themselves.

The Report concludes with recommendations for both States and Indigenous Peoples highlighting the direct correlation between the extent of recognition of Indigenous Peoples as Indigenous Peoples by States and the extent to which States respect, protect and fulfill their right to self-determination. The greater the level of recognition, the more profound implementation of the right.

The third report we adopted this year is our annual report detailing all of the activities we engaged in this year. I take this opportunity to also refer to our annual report from last year which, due to the pandemic, was exceptionally submitted to this Council in March this year. That report has a substantive section focusing on the impact of the COVID-19 crisis on the rights of Indigenous Peoples. I spoke to the contents of this report this morning as a panelist on the Human Rights Council's panel on the "The situation of human rights of Indigenous Peoples facing the COVID-19 pandemic, with a special focus on the right to participation".

During our session, we had an interactive dialogue with four treaty bodies who provided us with updates on their work on indigenous rights: the Committee on the Elimination of Discrimination against Women; the Committee on the Elimination of Racial Discrimination; the Committee on the Rights of the Child and the Human Rights Committee. This is the

largest number of treaty bodies we have engaged with at any one time. 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 see our increased engagement with them as contributing to this change.

We also contributed this year to the CEDAW's upcoming General Recommendation on the Rights of Indigenous Women and Girls and to the CESCR's draft General Comment on Land, and Economic, Social and Cultural rights. Our usual coordination with the other UN mechanisms dealing with Indigenous Peoples continued this year.

During our session, we were privileged to have had the participation of children for the first time. The powerful statements from indigenous children and indigenous youth enriched the debate, notably on our Study on the Rights of the Indigenous Child. This has encouraged us to engage more regularly with children and youth in the future.

Despite the constraints of the COVID-19 pandemic, we continued with our important country engagement work. Although travel was impossible, we managed to finalize a country engagement request from Indigenous Peoples in Brazil. We undertook this engagement virtually and produced an Advisory Note on how to protect Indigenous Peoples during the current COVID-19 crisis. While virtual engagement with Indigenous Peoples and States is not ideal, given the urgency of the request we believe we achieved the best possible outcome. We also welcome Brazil's commitment to approve a visit from the Expert Mechanism once the COVID-19 situation is under control.

We finalized a country engagement with Sweden this year following a repatriation request from the Yaqui peoples for their spiritual object, the Maaso Kova, from the National Museum of World Culture in Sweden. This culminated in the parties welcoming the initiation of a process of repatriation of the Maaso Kova to Mexico. Mexico made a formal request for the return of this spiritual object under the UNESCO Convention. During our session, we were informed that the Swedish Museum of Cultures had made a recommendation to the Swedish government relating to the repatriation. We are expecting the response from the Swedish government soon.

We also engaged in follow-up to our country engagement mission of 2016 to Finland this year by providing an Advisory Note on new draft legislation. This is the third Advisory Note the Expert Mechanism has developed since its mission. We are currently preparing for a mission to Canada this year and pursuing other requests. To date we have received

approximately 16 requests from all regions and on a variety of different issues under the UN Declaration. An ongoing challenge for the Expert Mechanism is the lack of responses from States to these requests. Without full engagement from States this mandate cannot function as intended by you, the Human Rights Council. We call on all States, particularly those who have been through such engagement, to encourage others to fulfill their commitments on the right of Indigenous Peoples and support these country engagement visits.

As to the future work of the Expert Mechanism, we confirmed that our report next year for 2022 will be on the militarization of indigenous lands. As to our Study for 2022, we decided to postpone our follow-up study on land, with a focus on the impact of COVID, until we have a clear view of the recovery process. Instead, we will prepare a Study in 2022 on treaties and constructive arrangements.

For 2023, we decided that our Study would be on the impact of development policies on indigenous heritage, focusing on indigenous women and that our report would be on establishing effective monitoring mechanisms at the national and regional level for the implementation of the UN Declaration. The Expert Mechanism will also be represented in the preparation and pursuit of activities during the International Decade of Indigenous Languages.

Finally, I would like to thank the UN Human Rights Council for its efforts in advancing the rights of Indigenous Peoples. Guatemala and Mexico have continued to play a lead role in pursuing the resolution on Indigenous Peoples, ensuring open consultation and participation of Indigenous Peoples themselves. I would also like to thank all those States, Indigenous Peoples and their organizations, NGOs, national human rights institutions, and academic institutions that contributed to our work throughout the year in very difficult circumstances.

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