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**United Nations Declaration on the Rights of Indigenous
Peoples**

Efforts to implement the United Nations Declaration on the Rights of Indigenous Peoples: establishing effective monitoring mechanisms at the national and regional levels for the implementation of the Declaration*

Report of the Expert Mechanism on the Rights of Indigenous Peoples

Summary

In the present report, the Expert Mechanism on the Rights of Indigenous Peoples examines good practices and lessons learned regarding efforts to achieve the ends of the United Nations Declaration on the Rights of Indigenous Peoples, focusing on establishing effective mechanisms at the national and regional levels for the implementation of the Declaration.

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I. Introduction

1. In September 2016, the Human Rights Council, in its resolution 33/25, amended and expanded the mandate of the Expert Mechanism on the Rights of Indigenous Peoples and decided that it should identify, disseminate and promote good practices and lessons learned from the efforts to achieve the ends of the United Nations Declaration on the Rights of Indigenous Peoples, including through reports to the Council.

2. Pursuant to Human Rights Council resolution 33/25, the Expert Mechanism on the Rights of Indigenous Peoples, at its fifteenth session, held in July 2022, decided to prepare a report 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.

3. For this purpose, the University of British Columbia, in support of the Expert Mechanism, held an expert seminar in Vancouver on 23 and 24 February 2023. The Expert Mechanism acknowledges and thanks the University of British Columbia for organizing and sponsoring the seminar. The present report was informed by the seminar and an encouraging number of submissions received from Indigenous Peoples, States, national human rights institutions, civil society, academia and others.¹

4. In the present report, the Expert Mechanism addresses efforts to implement the provisions of the United Nations Declaration on the Rights of Indigenous Peoples. It seeks to provide contextualized information on existing monitoring mechanisms for the implementation of the Declaration, including examples of the purpose and mandate of those mechanisms and how they could contribute to achieving the ends of the Declaration. Since the adoption of the Declaration by the General Assembly, in its resolution 61/295, on 13 September 2007, it has been overwhelmingly recognized as reflecting a global consensus on the rights of Indigenous Peoples, individually and collectively. The Declaration, the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169) and the American Declaration on the Rights of Indigenous Peoples make up a trilogy of international human rights instruments specific to Indigenous Peoples. Collectively, they represent the most extensive and comprehensive attainment of human rights standards pertaining to Indigenous Peoples. Like many human rights instruments, the chronic challenge is the extent to which it is being implemented.²

5. The Expert Mechanism seeks to facilitate dialogue and collaboration among Indigenous Peoples, States, civil society actors, national human rights institutions and academia, among others, with the aim of ensuring that Indigenous Peoples are able to enjoy their human rights. It encourages the creation of an effective monitoring mechanism at both the national and regional levels to track progress in the implementation of the Declaration. The present report should not be considered either exhaustive or definitive; its aim is to contribute to global – and, crucially, national – efforts to achieve the ends of the Declaration.

6. The outcome document of the high-level plenary meeting of the General Assembly known as the World Conference on Indigenous Peoples, adopted by the Assembly in its resolution 69/2, marked a global shift towards the goal of achieving the ends of the Declaration. States pledged to take, in consultation and cooperation with Indigenous Peoples, appropriate measures at the national level, including legislative, policy and administrative measures, and to promote awareness of the Declaration among all sectors of society, including members of legislatures, the judiciary and the civil service. States also committed to cooperating with Indigenous Peoples, through their own representative institutions, to develop and implement national action plans, strategies, or other measures, where relevant, to achieve the ends of the Declaration. Similarly, in its resolution 42/19, the Human Rights Council called upon States to achieve the ends of the Declaration by adopting measures, including, national action plans, legislation or other frameworks, as required, to pursue its objectives in consultation and cooperation with Indigenous Peoples.

¹ The presentations and the submissions are available at www.ohchr.org/en/events/events/2023/establishing-effective-monitoring-mechanisms-national-and-regional-levels.

² A/HRC/36/56, para. 3.

7. The Expert Mechanism has welcomed the positive developments in a number of States that have developed or are in a process of developing national action plans and domestic legislation for achieving the ends of the Declaration with the full and meaningful participation of Indigenous Peoples;³ this includes the establishment of effective mechanisms for monitoring the measures and activities in national action plans with the full and meaningful participation of Indigenous Peoples.⁴ To achieve the ends of the Declaration, it is important to view monitoring as a collaborative effort involving States, Indigenous Peoples, national human rights institutions, academia and international organizations. Despite some progress, there is currently no effective monitoring mechanism to assess progress in the implementation of the Declaration.

II. Legal framework for mechanisms to monitor the implementation of the United Nations Declaration on the Rights of Indigenous Peoples

8. The United Nations Declaration on the Rights of Indigenous Peoples provides a comprehensive framework of minimum standards for the protection and promotion of the rights of Indigenous Peoples. According to article 43 of the Declaration, the rights recognized in the Declaration constitute the minimum standards for the survival, dignity and well-being of Indigenous Peoples of the world. The Declaration therefore does not create new human rights, but rather provides a contextualised elaboration of general human rights principles and rights relating to the specific historical, cultural and social contexts and circumstances of Indigenous Peoples. The standards affirmed in the Declaration connect to existing State obligations under international human rights law and other instruments.⁵

9. According to article 3 of the Declaration, Indigenous Peoples have the right to self-determination, and by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development. The right to self-determination is also evoked in articles 4, 5, 18, 19, 20 and 33 of the Declaration, expounding on its realization at the national level. Without the right to self-determination, none of the other rights of Indigenous Peoples can be wholly realized.⁶ In accordance with the view of international legal scholars, the right to self-determination is to be understood as a prerequisite to the exercise of all other human rights.⁷

10. In the preamble to the Declaration, the General Assembly encouraged States to comply with and effectively implement all their obligations as they apply to Indigenous Peoples under international instruments, those related to human rights, in consultation and cooperation with the peoples concerned. The Assembly also emphasized the urgent need to respect and promote the inherent rights of Indigenous Peoples.

11. Article 38 of the Declaration requires States, in consultation and cooperation with Indigenous Peoples, to take appropriate measures, including legislative measures, to achieve the ends of the Declaration. According to the Special Rapporteur on the rights of Indigenous Peoples, the Declaration, like any other human rights instrument, attributes a pivotal role to States in the promotion and protection of the rights affirmed therein, which therefore requires States to take concrete, substantive and affirmative measures to address the systematic problems that Indigenous Peoples have historically faced in the exercise and enjoyment of their collective and individual human rights.⁸

³ Including Argentina, Australia, Bolivia (Plurinational State of), Colombia, Canada, Costa Rica, Ecuador, El Salvador, Finland, Japan, Mexico, Namibia, New Zealand, Nicaragua, Panama, Paraguay, Peru and the Philippines.

⁴ A/HRC/51/49, proposal 9, para. 32.

⁵ A/HRC/9/9, para. 86.

⁶ A/HRC/48/75, para. 8.

⁷ See final report of the International Law Association, Kyoto Conference on the implementation of the rights of indigenous peoples, 2020, available at www.ila-hq.org/en/committees/implementation-of-the-rights-of-indigenous-peoples.

⁸ A/HRC/9/9, para. 44.

12. United Nations specialized agencies, funds and programmes, and other intergovernmental organizations, are required by article 41 of the Declaration to contribute to the full realization of its provisions. For instance, the Permanent Forum on Indigenous Issues has recommended that United Nations bodies and agencies discuss indicators that could be used to monitor the situation of Indigenous Peoples and the implementation of the Declaration.⁹ Moreover, the Permanent Forum has encouraged national human rights institutions to assist in monitoring the implementation of the Declaration.¹⁰

13. The treaty bodies have increasingly addressed the rights of Indigenous Peoples when interpreting the human rights treaties; for example, in its general recommendation No. 39 (2022), the Committee on the Elimination of Discrimination against Women describes the United Nations Declaration on the Rights of Indigenous Peoples as an authoritative framework for interpreting State party and core obligations under the Convention on the Elimination of All Forms of Discrimination Against Women. The Committee also recommended that States adopt legislative measures and create monitoring mechanism to eliminate all forms of gender-based violence against Indigenous women and girls. Similarly, the Committee on the Rights of Persons with Disabilities has recommended the development of legislative and policy frameworks that reflect, inter alia, the Convention on the Rights of Persons with Disabilities and the Declaration.¹¹

14. In recent decades, the Human Rights Committee has addressed the rights of Indigenous Peoples, including aspects of their political participation, self-government and autonomy within the framework of the clause relating to self-determination in article 1 of the International Covenant on Civil and Political Rights,¹² and has continued to contribute to a comprehensive body of jurisprudence on Indigenous Peoples through its individual communications procedure under the Optional Protocol to the Covenant.¹³ In paragraph 26 of its general comment No. 36 (2019), the Committee recalled that States should take measures to monitor and address the human rights issues of Indigenous Peoples arising from, inter alia, deprivation of their land, territories and resources.

15. In its general comment No. 26 (2022), the Committee on Economic, Social and Cultural Rights recognized the importance of respecting the free, prior and informed consent of Indigenous Peoples. To ensure that protection, the Committee recommended that State parties should regularly monitor policies, laws and measures relating to land rights. Monitoring processes should rely on qualitative and disaggregated quantitative data, be inclusive and participatory, and include consultation and collaboration with Indigenous Peoples. In 2021, the Committee recommended that States should consult and collaborate with Indigenous Peoples on the development of the legal, administrative and public policy frameworks that respect and uphold their right to be consulted and to free, prior and informed consent.¹⁴ It subsequently recommended that States establish mechanisms guaranteeing the rights of Indigenous Peoples to own and use their lands and resources.¹⁵ In 2023, the Committee recommended that States should establish a mechanism guaranteeing the rights of Indigenous Peoples to own and use their lands and resources; to and design, adopt and implement, in consultation with Indigenous Peoples, an adequate mechanism and guidelines for the effective implementation of the right to consultation and to free, prior and informed

⁹ *Official Records of the Economic and Social Council, 2009*, Supplement No. 23 (E/2009/43-E/C.19/2009/14), para. 33.

¹⁰ *Official Records of the Economic and Social Council, 2012*, Supplement No. 23 (E/2012/43-E/C.19/2012/13), para. 38.

¹¹ See CRPD/C/NZL/CO/2-3, para. 6 (b).

¹² See A/HRC/9/9, para. 22.

¹³ Presentation by Alexey Tsykarev at the expert seminar of the Expert Mechanism on the Rights of Indigenous Peoples on “Establishing effective mechanisms at the national and regional levels for the implementation of the United Nations Declaration on the Rights of Indigenous Peoples”, University of British Columbia, Vancouver, Canada, 23 and 24 February 2023. Some of the presentations made at the seminar are available at <https://isp.ubc.ca/implementation/event-united-nations-emrip-seminar/>.

¹⁴ E/C.12/BOL/CO/3, para. 15.

¹⁵ E/C.12/NIC/CO/5, para. 12.

consent respectively. The Committee also recommended considering the technical support of the Expert Mechanism on the Rights of Indigenous Peoples for this purpose.¹⁶

16. With regard to monitoring mechanisms, the Committee on the Elimination of Racial Discrimination has played an active role in addressing various forms of discrimination against Indigenous Peoples in its examination of State party reports. In its general recommendation No. 23 (1997), the Committee reaffirmed its view that the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination applied to Indigenous Peoples, and called upon States with Indigenous Peoples in their territories to include in their periodic reports full information on the situation of such peoples, taking into account all relevant provisions of the Convention. The Committee subsequently addressed sexual and gender-based discrimination against Indigenous women in its general recommendation No. 25 (2000), general recommendation No. 31 (2005), and discrimination against Indigenous Peoples in the administration of justice, including denial of indigenous legal systems.¹⁷ These recommendations have been used by the Committee to monitor and evaluate the compliance of States parties with the Convention in relation to the rights of Indigenous Peoples.¹⁸

17. Several recommendations have been made to States in the context of the universal periodic review to support the Declaration by adopting national action plans and establishing monitoring mechanisms to ensure the achievement of the ends of the Declaration;¹⁹ to ensure the full enjoyment and protection of the human rights of Indigenous Peoples;²⁰ and to strengthen joint work with Indigenous Peoples in the implementation of the Declaration.²¹

III. Role of regional bodies in monitoring the implementation of the Declaration

18. Article 33 of the American Declaration on the Rights of Indigenous Peoples and article 40 of the United Nations Declaration on the Rights of Indigenous Peoples affirm that Indigenous Peoples and individuals have the right to effective and suitable remedies, including prompt judicial remedies, for the reparation of any violation of their collective and individual rights; and that States, with the full and effective participation of Indigenous Peoples, are to provide the necessary mechanisms for the exercise of this right. Furthermore, article 34 of the American Declaration stipulates that, in the event of conflicts or disputes with Indigenous Peoples, States are to provide, with the full and effective participation of those peoples, just, equitable and effective mechanisms and procedures for their prompt resolution. For that purpose, due consideration and recognition is to be accorded to the customs, traditions, norms and legal systems of the Indigenous Peoples concerned.

19. The inter-American human rights system, comprising the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights, has the aim of safeguarding and advancing human rights in the Americas. In 1990, it established the mandate of Rapporteur on the Rights of Indigenous Peoples to assist and enhance the Commission's efforts to support, reinforce and organize its work concerning the rights of Indigenous Peoples. The Commission utilizes multiple tools, such as studies, petitions, cases (including friendly settlements), precautionary measures, thematic hearings, confidential information requests from States and press releases to achieve its objectives.²²

20. In its report on the right to self-determination of Indigenous and tribal peoples, published in 2021,²³ the Inter-American Commission made recommendations aimed at strengthening and guaranteeing the constituent elements of self-determination, such as

¹⁶ See E/C.12/PAN/CO/3, para. 11 (in Spanish).

¹⁷ See A/HRC/9/9, para. 23.

¹⁸ See Tsykarev, presentation at the expert seminar, February 2023.

¹⁹ See for example A/HRC/39/11, paras. 142.76 and 142.196.

²⁰ See A/HRC/8/38, para. 89.7.

²¹ See A/HRC/41/4, para. 122.174.

²² See www.oas.org/en/iachr/indigenous/mandate/functions.asp.

²³ www.oas.org/en/iachr/reports/pdfs/self-determination-EN.pdf.

models of self-government, political representation, legal systems, territorial rights, economic, social, and cultural development priorities, and Indigenous Peoples' autonomous protocols for consultation and free, prior and informed consent. The recommendations are focused on ensuring the right to self-determination, which is fundamental to the enjoyment by Indigenous Peoples of their human rights, and that it is respected and protected in practice.

21. The Inter-American Commission on Human Rights and the Inter-American Court of Human Rights have played a major role in protecting Indigenous Peoples and ensuring that they live with dignity and respect, and fully enjoy their human rights. They have addressed cases relating to the monitoring and enforcing of the rights of Indigenous Peoples in accordance with the United Nations Declaration on the Rights of Indigenous Peoples, particularly with regard to land-related rights and culture. The Inter-American Court has recognized the collective rights of Indigenous Peoples and ruled in their favour in several cases. In certain recommendations, the Court urged the Governments concerned to recognize Indigenous Peoples' ownership of, and to restore, their ancestral lands as a means of providing redress and acknowledging their traditional lands, territories and resources and cultural heritage.²⁴ These set an important precedent for the recognition of the right of Indigenous Peoples to self-determination, traditional lands and resources, and underscored the importance of monitoring the implementation of the Declaration by States and other actors to ensure that Indigenous Peoples' rights are respected, protected and fulfilled.

22. The African Commission on Human and Peoples' Rights and the African Court on Human and Peoples' Rights have interpreted several provisions of the African Charter on Human and Peoples' Rights in accordance with international standards relating to the collective rights of Indigenous Peoples. Articles 19 to 24 of the Charter specifically address the rights of Indigenous Peoples. Article 19 guarantees their right to equality and freedom from domination, including the right to the enjoyment of the same respect and rights as all other peoples. Article 20 recognizes the inalienable rights of all peoples to self-determination, allowing them to freely determine their political status and to pursue their own economic and social development policies.

23. In 2000, the African Commission established a subsidiary mechanism, the Working Group on Indigenous Populations/Communities and Minorities in Africa. Three years later, the Commission adopted resolution 65 (XXXIV)03 based on the report of the Working Group marking a milestone in the advancement of the human rights of Indigenous Peoples in Africa. In 2007, the Working Group contributed to the adoption of an advisory opinion on the United Nations Declaration on the Rights of Indigenous Peoples in which it clarified that the rights enshrined in the Declaration were consistent with the African Charter on Human and Peoples' Rights.²⁵ The African Commission has further demonstrated its commitment to the rights of Indigenous Peoples in other resolutions, such as resolutions 121 (XXXII)07 on the United Nations Declaration on the Rights of Indigenous Peoples (2007), 291(EXT.OS/XVI) on the World Conference of Indigenous Peoples (2014), 190(XLIX) on the rights of Indigenous Women in Africa (2011), and 489(LXIX) on the recognition and protection of Indigenous Peoples' rights of participation, governance and use of natural resources (2021). All of the said resolutions reference provisions of the Declaration, reinforcing the link between the implementation of the Declaration and the African Commission's effort to protect the rights of Indigenous Peoples.

24. Other decisions have played a critical role in implementing the United Nations Declaration on the Rights of Indigenous Peoples. In the eviction case of the Ogiek people in 2017, the African Court interpreted its decision in accordance with article 23 of the Declaration, implying that the eviction of the Ogiek from their lands without effective consultations had violated article 22 of the African Charter since it had not taken into account

²⁴ See *Yakye Axa Indigenous Community v. Paraguay*, Judgment (Merits, Reparations and Costs), 17 June 2005; *Saramaka People v. Suriname*, Judgment (Preliminary Objections, Merits, Reparations and Costs), 28 November 2007; and *Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina*, Judgment (Merits, Reparations and Costs), 6 February 2020.

²⁵ See www.iwgia.org/en/resources/publications/305-books/2544-advisory-opinion-on-the-un-declaration-on-the-rights-of-indigenous-peoples.html.

the impact on the economic, social and cultural development of that people.²⁶ Similarly, the African Commission in 2010 ruled in favour of the Endorois and recommended that the Government of Kenya recognize their rights of ownership and restore their ancestral land.²⁷

25. The European Union also plays a role in the international process of promoting and protecting the rights of Indigenous Peoples. Four Member States have ratified ILO Convention No. 169, and the European Union expressed its support for the adoption of the United Nations Declaration on the Rights of Indigenous Peoples in 2007, as well as the outcome document of the World Conference on Indigenous Peoples in 2014. In 2021, the European Parliament voted through five resolutions that touched upon Indigenous Peoples' rights and issues, calling for better rights protection, greater inclusion in decision-making processes, and corporate due diligence and accountability. The resolutions also covered the impact of climate change and the role that Indigenous Peoples can and should play in addressing the multitude of issues associated with climate change.²⁸

IV. Role of Governments, legislation and domestic courts and other bodies in monitoring the implementation of the Declaration

26. The Declaration places significant responsibility on State actors to promote and safeguard the rights it expounds, and describes the obligations, duties and responsibilities of parties; for instance, articles 36, 38 and 42 of the Declaration require States to fulfil their obligations and responsibilities in facilitating the implementation of its provisions. While a few States have incorporated the principles of the Declaration into their national laws, constitutions and policies, recognizing its importance and using it as a framework for addressing the rights of Indigenous Peoples, challenges persist, because many States Members of the United Nations erroneously argue that the Declaration is not legally binding and therefore carries no moral, political or legal obligations.²⁹

27. According to the Special Rapporteur on the rights of Indigenous Peoples, for the Declaration to be fully operative, States must pursue a range of affirmative, distinct measures that engage the various institutions of law-making and public administration, including legal and institutional reform, judicial action, specific policies and special reparation procedures. Such a process requires States' full political engagement and financial commitment.³⁰ The Special Rapporteur has recommended that States, together with Indigenous Peoples, carry out strategic planning and develop monitoring mechanisms and indicators³¹ to identify steps for the practical application of the human rights norms set out by the Declaration and for its effective implementation.

A. Constitutional, legislative and policy measures

28. For the past 15 years, the United Nations Declaration on the Rights of Indigenous Peoples has influenced the drafting of constitutions and statutes at the national and subnational levels and contributed to the progressive development of international and domestic laws and policies with regard to Indigenous Peoples. The Declaration is reflected in the constitutions of Ecuador, Kenya and the Plurinational State of Bolivia, drafted in 2008, 2010 and 2009, respectively. Importantly, in its article 11, the Constitution of Ecuador recognizes that the human rights established in international instruments, including not only

²⁶ African Court on Human and Peoples' Rights, *African Commission on Human and Peoples Rights v. Republic of Kenya*, Application No. 006/212, Judgment, 23 June 2022.

²⁷ See African Commission on Human and Peoples' Rights, *Centre for Minority Rights in Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya*, communication No. 276/2003, 4 February 2010.

²⁸ International Work Group for Indigenous Affairs, *The Indigenous World 2022* (2022).

²⁹ Eirik Larsen, presentation at the expert seminar, February 2023.

³⁰ A/HRC/9/9, para. 87.

³¹ A/HRC/27/52, para. 63.

treaties but also the Declaration, are directly applicable and enforceable. In Chile, a constitutional reform introduced in 2020 allotted 17 seats to representatives of Indigenous Peoples in the constituent body formed to draft the new constitution (the proposal drafted by the body that included several provisions on Indigenous rights was rejected by a referendum in September 2022).³²

29. Implementing the Declaration normally requires (or may be facilitated by) the adoption of new laws or the amendment of existing legislation at the domestic level; article 38 of the Declaration in fact calls for appropriate “legislative measures”. The new regulatory frameworks that may be required are in most countries still lacking or are insufficient.³³ There is therefore an urgent need for States to establish monitoring bodies that can build political momentum towards the advancement of the rights of Indigenous Peoples across society. It is important to create autonomous Indigenous-specific institutions to monitor the implementation of the Declaration and assess fulfilment of government responsibilities and obligations.³⁴ Legislation on national action plans could provide a road map for effective implementation of the Declaration.³⁵

30. The recent developments in Canada regarding the rights of Indigenous Peoples provide a good example of concrete action taken by the State, and its political subdivision, for the effective implementation of the Declaration. In 2019, the Government of the province of British Columbia passed the Declaration on the Rights of Indigenous Peoples Act (Declaration Act), which established a framework for implementation, including a review of existing laws and policies for alignment with the Declaration, a provincial action plan to be co-developed with Indigenous Peoples, and annual reporting on progress made. In 2022, the Declaration Act Secretariat was created to coordinate and assist the Government in aligning its laws. The Government of Canada subsequently passed the federal United Nations Declaration on the Rights of Indigenous Peoples Act, which came into force on 21 June 2021. The Act – which requires the alignment of laws and policies with the Declaration and implementation of the national action plan, including reporting annually – is a veritable road map for cooperation between the Government and Indigenous Peoples to implement the Declaration. The first draft national action plan was tabled for discussion in March 2023. In 2019, New Zealand approved by a cabinet decision to develop its own national plan of action, strategy and other measures to implement the Declaration.³⁶

31. In 2021, Mexico established its own plan for justice for Indigenous Peoples, comprising a set of policies and initiatives aimed at addressing historical injustices and discrimination.³⁷ As part of the initiative, the National Institute of Indigenous Affairs and the Government of Mexico collaborated to create a mechanism to address historical injustices faced by the Yaqui people;³⁸ participatory dialogues and planning exercises have already been held.³⁹ The plan recognizes the right of the Yaqui to land and territories, and consequently the restitution of land belonging to them. It also acknowledges their right to water through the creation of irrigation district 108, with the Yaqui people recognized as its owners and administrators.⁴⁰ Indigenous Peoples have nonetheless expressed their concern regarding the effectiveness of the plan in addressing the issues they currently face.⁴¹ The success of these initiatives will depend on the sustained commitment and action of the Government and Mexican society, and will require a comprehensive and coordinated approach involving Indigenous Peoples and their communities as active partners in the process.

³² José Aylwin, presentation at the expert seminar, February 2023 (in Spanish).

³³ A/HRC/9/9, para. 50.

³⁴ William David, presentation at the expert seminar, February 2023.

³⁵ *Ibid.*

³⁶ www.tpk.govt.nz/en/mo-te-puni-kokiri/corporate-documents/cabinet-papers/all-cabinet-papers/develop-plan-on-nz-progress-un.

³⁷ See www.inpi.gob.mx/gobmx-2021/Plan-de-Justicia-del-Pueblo-Yaqui.pdf (in Spanish).

³⁸ Submission by Mexico.

³⁹ Gustavo Torres Cisneros, presentation at the expert seminar, February 2023.

⁴⁰ Submission by Mexico.

⁴¹ See Guadalupe Pastrana, “The Yaqui Tribe: an Indigenous Nation in Resistance”, *Cultural Survival*, 2 December 2021.

32. In Chile, the Ministry of National Assets has established an institutional strategic plan for the period 2022–2026, with the objective of restoring territorial rights and promote autonomy to Indigenous Peoples. The plan involves the regularization of Indigenous land titles and the registration of ancestral occupation to acknowledge Indigenous territories. In Argentina, the constitutional reform process of 1994 that incorporated various international treaties into national law was a significant step towards the safeguarding of international human rights standards within the national legal system. The provisions of the treaties could thus be applied and implemented directly, thereby contributing to the protection of human rights in general and the rights of Indigenous Peoples in particular.⁴²

33. In Guatemala, the Supreme Court of Justice has established a commission on Indigenous Peoples, the members of which are themselves judges from the Supreme Court. In addition, a secretariat for Indigenous Peoples of the Attorney General and head of the Public Prosecutor's Office has also been established to facilitate justice and to promote recognition of, respect for and the promotion of the human rights of Indigenous Peoples. These initiatives are designed to ensure that Indigenous Peoples receive justice that takes into consideration all factors of geographical, linguistic, cultural and legal relevance.⁴³

34. The Expert Mechanism received information about measures taken by the Government of Guyana to increase compliance with international commitments and obligations regarding the rights of Indigenous Peoples. A commission for Indigenous Peoples has been established as a statutory body with the function of monitoring the human rights issues of Indigenous Peoples and of responding to their legitimate demands and needs. Despite these efforts, the Expert Mechanism also received claims that no change had been made to relevant laws, such as the Amerindian Act (2006), to address demands for a revision of legislation relating to customary land rights, and violation of their rights to land and resources.⁴⁴

35. According to information received by the Expert Mechanism, public advisory bodies have been established in the Russian Federation, in several regions where Indigenous Peoples traditionally live, in various organizational forms at the regional and local levels, such as the Council of Representatives of Indigenous Peoples under the Government of the Yamalo-Nenets Autonomous Okrug.⁴⁵

36. In Asia, the implementation of the Declaration has been more problematic, given that many Indigenous Peoples are still not recognized, and that most States do not fully accept the Declaration.⁴⁶ The transition towards liberal democracy in recent decades has, however, led to some degree of legal recognition – albeit inadequate – of Indigenous Peoples in Cambodia, Indonesia, Japan, Malaysia, Nepal and the Philippines.⁴⁷

B. Role of domestic courts and judicial decisions

37. The Declaration may be implemented by States in numerous ways, including through the involvement of national human rights institutions and the courts. Over the past decade, national courts in specific regions have played a crucial role in enforcing the rights outlined in the Declaration and regional and international treaties, particularly regarding Indigenous Peoples and their ownership of land, territories and natural resources.⁴⁸ As a consequence, domestic courts increasingly refer to the Declaration in their legal decisions.⁴⁹

38. In 2021, the Supreme Court of Norway ruled that the concession for a wind turbine park in the Fosen peninsula region (Fosen-halvøya) infringed upon the cultural rights of the indigenous Sami people because the windmills would prevent them from herding reindeer in

⁴² Submission by the Office of the Ombudsman of Argentina.

⁴³ Submission by Guatemala.

⁴⁴ See www.iwgia.org/en/guyana/4221-iw-2021-guyana.html.

⁴⁵ Submission by the Russian Federation.

⁴⁶ Gam Awungshi Shimray, presentation at the expert seminar, February 2023.

⁴⁷ Ibid.

⁴⁸ See A/HRC/36/56.

⁴⁹ Joan Carling, presentation at the expert seminar, February 2023.

the area (as at March 2023, the ruling had yet to be implemented).⁵⁰ In 2022, the Constitutional Court of Ecuador made a groundbreaking ruling recognizing the right of Indigenous Peoples to grant or withhold consent over oil and mining or other extractive projects on their lands,⁵¹ thereby contributing to the realization of the objectives set forth in the Declaration. In 2020, the Supreme Court of Sweden ruled in favour of the Girjas Sami by restoring their exclusive rights to govern fishing and hunting of small game on their traditional territory.⁵²

39. In Argentina, in May 2022, the El Chaco Federal Court ruled that crimes against humanity and genocide had been committed against the Qom and Moqoit peoples, and proposed reparations for the systematic and large-scale State-instigated violence against them.⁵³ In the landmark case of *Tsilhqot'in Nation v. British Columbia*, the decision of the Supreme Court of Canada reflected the Declaration by recognizing the Aboriginal title of the Tsilhqot'in Nation over some of their traditional territory, holding that it gave them "the right to determine, subject to the inherent limits of group title for future generations, the uses to which the land is put and to enjoy its economic fruits". The Court added that, after Aboriginal title to land had been established, "the Crown must seek the consent of the title-holding Aboriginal group to developments on the land".⁵⁴ These decisions are consistent with the principle of free, prior and informed consent contained in the Declaration.

40. In 2015, the Caribbean Court of Justice, the highest appellate court in Belize, issued a ruling in favour of the Q'eqchi and Mopan Maya Indigenous communities of southern Belize. In its ruling, the Court, referring also to article 32 of the Declaration, recognized and acknowledged the Indigenous communities' communal ownership and traditional use of their ancestral lands, and affirmed the protection Maya customary land tenure under the Constitution of Belize.⁵⁵ Despite the ruling, inordinate delays have been reported in implementing the decision owing to the failure of the Government to engage with Indigenous Peoples in view of establishing a mechanism to guarantee legal protection of the right of the Maya to their lands and to ensure their free, prior and informed consent, in accordance with the provisions of the Declaration.⁵⁶

C. Role of disaggregated data and national statistical bodies

41. Indigenous data sovereignty is defined as the right of Indigenous Peoples to own, control, access and possess data that relate to them, such as Nation membership, knowledge systems, customs and territories. The concept is supported by the inherent right of Indigenous Peoples to self-determination and governance over Indigenous Peoples, territories and resources as affirmed in the Declaration, as well as in domestic treaties.⁵⁷

42. The Office of the United Nations High Commissioner for Human Rights (OHCHR) has developed a comprehensive framework for the design of human rights indicators, as well as a methodology for their use and analysis. The framework clarifies that human rights indicators require data that are disaggregated by the grounds of discrimination, including ethnicity and indigenous status (otherwise the situation of the people who are most vulnerable to human rights abuses will remain invisible). In addition to disaggregating data under general human rights indicators, it is also necessary to develop specific indicators for the

⁵⁰ www.ohchr.org/en/statements/2022/07/high-commissioner-opening-statement-fifteenth-session-expert-mechanism-rights.

⁵¹ <https://amazonfrontlines.org/chronicles/ecuador-supreme-court-recognizes-indigenous-right-to-consent-over-oil-and-mining/>.

⁵² www.highnorthnews.com/en/girjas-sami-village-won-swedish-supreme-court-case-may-have-consequences-other-countries.

⁵³ See www.iwgia.org/en/news/4852-the-ruling-on-the-napal%25C3%25AD-massacre-in-argentina-justice-for-the-past-and-inspiration-for-the-present.html.

⁵⁴ See Supreme Court of Canada, *Tsilhqot'in Nation v. British Columbia*, Case No. 34986, Judgment, 26 June 2014.

⁵⁵ A/HRC/39/62, para. 37.

⁵⁶ See www.culturalsurvival.org/news/belize-failing-implement-binding-court-orders-respect-maya-land-rights.

⁵⁷ See www.iwgia.org/en/indigenous-data-sovereignty/4699-iw-2022-indigenous-data-sovereignty.html.

distinct collective rights of Indigenous Peoples, for example rights relating to their lands and territories, cultures, languages and traditional economic activities.⁵⁸

43. The development of disaggregated statistical indicators relevant to Indigenous Peoples and the monitoring of such indicators through the collection and analysis of pertinent data are useful in measuring progress in the implementation of the Declaration. Numerous international human rights instruments call for the collection and analysis of disaggregated data to monitor inequalities and discrimination.⁵⁹ Despite the important role of disaggregated statistics, however, many countries still lack disaggregated data about Indigenous Peoples.

44. The realization of human rights correlates with the availability of sound official statistics. Statisticians support evidence-based policy and measuring civil, economic, political and social rights.⁶⁰ National statistical bodies play a crucial role in gathering data to evaluate the compliance and the progress made by States in implementing the provisions of the Declaration. To ensure the accuracy and relevance of the data collected, it is important to involve the surveyed population, particularly Indigenous Peoples, in data definition and data-collection processes. The use of local indigenous languages and the employment of local Indigenous Peoples as interpreters, and their training in data-collection processes, can also facilitate the collection and dissemination of this information. Non-indigenous professionals and technicians should also be informed of the culture and practices of Indigenous Peoples;⁶¹ for instance, in Norway, the collection of disaggregated data and retaining control over their own data is a key issue for Indigenous Peoples.⁶² The Norwegian National Human Rights Institution has identified the recognition of the role of traditional knowledge and indigenous research methods in data collection; in this regard, it advocates for a collaborative and inclusive approach to Sami statistics to reflect the perspectives and priorities of the Sami people themselves.⁶³

45. To accurately capture the perspective of Indigenous Peoples, it is crucial to have both Indigenous research and data sovereignty; Indigenous communities should therefore have the authority to collect, own and use data pertaining to their cultures. The National Inuit Strategy on Research is a good example of an initiative that acknowledges control by Indigenous Peoples over data and promotes respectful and ethical research practices.⁶⁴ Likewise, in Canada, the First Nations have claimed data sovereignty as an essential element of the rights to self-determination, autonomy and self-government, and to maintain, control and protect and develop their cultural heritage and traditional knowledge, as affirmed in article 31 of the Declaration. The First Nations Data Governance Strategy is an example of how rights to data sovereignty can be exercised.⁶⁵ First Nations are currently advancing data governance capacity through the implementation of a national First Nations data governance strategy. The goal is to progressively establish a network of fully functional, First Nations-led, non-political information governance centres at the regional and national levels.⁶⁶

⁵⁸ www.ohchr.org/en/instruments-and-mechanisms/human-rights-indicators.

⁵⁹ Inter alia, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of Persons with Disabilities and the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169).

⁶⁰ See www.ohchr.org/sites/default/files/Documents/Issues/HRIndicators/StatisticsAndHumanRights.pdf.

⁶¹ OHCHR, *Human Rights Indicators: A Guide for Measurement and Implementation*, 2012, p. 48.

⁶² Larsen, presentation at the expert seminar, February 2023.

⁶³ See *A Human Rights-Based Approach to Sámi Statistics in Norway*, available at www.nhri.no/wp-content/uploads/2020/08/StatistikkUrfolk_ENG_web_1708.pdf.

⁶⁴ www.itk.ca/wp-content/uploads/2018/04/ITK_NISR-Report_English_low_res.pdf.

⁶⁵ See https://fnigc.ca/wp-content/uploads/2020/09/FNIGC_FNDGS_report_EN_FINAL.pdf.

⁶⁶ Submission by the Assembly of First Nations.

V. Role of civil society in monitoring the implementation of the Declaration

46. Civil society organizations have played a significant role in promoting and implementing human rights, particularly for Indigenous Peoples, at the national, regional and international levels. They not only implement grass-roots programmes but also advocate for relevant protocols and procedures on a global scale. According to the Special Rapporteur on the rights of Indigenous Peoples, the kind of systemic changes required to operationalize the Declaration at the local level cannot ultimately be achieved without involvement of society at large and the engagement of social sectors, such as the educational system, the media, the arts, religious groups and the business community.⁶⁷

47. Civil society organizations use various strategies, such as human rights education, monitoring, investigating, documenting, advocacy and policy lobbying, to promote and enforce human rights at both the national and regional levels. Each of these strategies contributes to the creation of a culture of rights, and encourages the enforcement of human rights standards. Non-governmental organizations have also been instrumental in protecting the rights of Indigenous Peoples, using such methods as awareness-raising, lobbying and advocacy; for instance in Hawaii, non-governmental organizations successfully campaigned for the adoption by the Government of the Declaration as part of its policy.⁶⁸

48. Local and international non-governmental organizations play a central role in supporting the demands of Indigenous Peoples and promoting respect for their rights.⁶⁹ They are the key actors in disseminating the content of the Declaration and in facilitating constructive dialogue among States, Indigenous Peoples and other stakeholders in order to promote the implementation of the Declaration.⁷⁰ They have been taking the initiative to monitor progress in implementation of the Declaration at the national level in collaboration with organizations representing Indigenous Peoples. In recent years, a global partnership has been forged among non-governmental organizations to establish a collaborative initiative, including a framework and set of tools known as the “Indigenous Navigator”, which is used to monitor systematically the degree of recognition and realization of the rights of Indigenous Peoples. The Indigenous Navigator is currently being used by non-governmental and Indigenous organizations at the national level to monitor not only the implementation of the Declaration, but also the outcomes of the World Conference on Indigenous Peoples and essential aspects of the Sustainable Development Goals concerning Indigenous Peoples.⁷¹

49. By using the Indigenous Navigator, Indigenous organizations and communities, non-governmental organizations and journalists have access to free tools and resources based on updated community-generated data. The Indigenous Navigator initiative, which was launched in 2014, has been developed and carried forward by a consortium consisting of the Asia Indigenous Peoples Pact, the Forest Peoples Programme, the International Work Group for Indigenous Affairs, the Tebtebba Foundation, the Danish Institute for Human Rights and the International Labour Organization. The Indigenous Navigator is currently being used in 11 countries.⁷²

50. Many Indigenous Peoples face challenges when it comes to having a comprehensive picture of their situation, and States, as duty bearers, lack both awareness and adequate data on those peoples’ needs and concerns on multiple levels, from grass-roots community-based consensus-building to regional and national government. Non-governmental organizations fill this gap by documenting and reporting the situation of Indigenous Peoples. In the Plurinational State of Bolivia, the Indigenous Navigator assists Indigenous Peoples in their access to justice and development by documenting their situation in the country. Indigenous communities use these data to advocate for their rights at the local, national and international

⁶⁷ A/HRC/9/9, para. 80.

⁶⁸ Joshua Cooper, presentation at the expert seminar, February 2023.

⁶⁹ A/HRC/9/9, para. 84.

⁷⁰ Ibid.

⁷¹ See <http://indigenousnavigator.org>.

⁷² International Work Group for Indigenous Affairs, “*The Indigenous World 2021: the Indigenous Navigator: self-determined development*”, 18 March 2021.

levels. The Navigator also helps to monitor the compliance of States with or their failure to meet their human rights obligations with regard to Indigenous Peoples.⁷³

51. As some academics have underscored, while efforts are under way to develop standardized and, in some cases, accessible tools for assessing State compliance with the Declaration, including the Indigenous Navigator, there is currently no such quantified or standardized assessment of State compliance. In the field of human rights compliance assessment, the predominant approach focuses on monitoring and enforcement rather than on performance improvement.⁷⁴

52. The role of non-governmental organizations in the implementation of the Declaration is based on cooperation, finding an ally and a partner in the fight for human rights. The marginalization of Indigenous Peoples and the violation of their rights to land and resources cannot be overemphasized. In many countries, non-governmental organizations led by Indigenous Peoples are at the forefront of lobbying for policy change and the implementation of the provisions of the Declaration. The impact of such work, however, remains limited largely owing to the lack of political will and reported exclusion of Indigenous Peoples from decision-making processes.⁷⁵

53. The issue of recognition of Indigenous Peoples rights and identity remains the biggest challenge in most Asian States, alongside acceptance of the Declaration.⁷⁶ Recognition is often hampered by State-driven efforts to refer to “local communities” rather than accurately recognizing and respecting Indigenous Peoples and their distinct status, rights and role, consistent with the Declaration. According to the information received by the Expert Mechanism, little to no change has been witnessed in laws or policies in these countries, and many others, with regard to the provisions of the Declaration.⁷⁷ In this context, non-governmental organizations take on a prominent role in advocating for the rights of Indigenous Peoples in many countries.

54. In Chile, civil society, in coordination with Indigenous Peoples, monitors the responsibilities deriving from the State’s compliance with the provisions of the Declaration.⁷⁸ The contribution made by civil society to the protection and promotion of the rights of Indigenous Peoples includes such activities as documentation, promotion and litigation; for example, the organization Observatorio Ciudadano conducts research on the legal and political implications of the Declaration in Chile, human rights impact assessments of large-scale development projects, submits alternative reports to the treaty bodies and communications to the special procedures of the Human Rights Council on the rights of Indigenous Peoples, and files cases in relation to the right of Indigenous Peoples to consultation and free, prior and informed consent to domestic and regional courts.⁷⁹

VI. Role of national human rights institutions in monitoring the implementation of the Declaration

55. As the Expert Mechanism pointed out in its study on the 10 years of implementation of the Declaration, in several countries, national human rights institutions, including Ombudsman offices, use the Declaration as a framework for monitoring the implementation of the rights of Indigenous Peoples at the national level.⁸⁰ In British Columbia (Canada), the Office of the Human Rights Commission has declared that the United Nations Declaration on the Rights of Indigenous Peoples Act is justiciable in the provincial courts as a quasi-

⁷³ David Berger, presentation at the expert seminar, February 2023.

⁷⁴ Jackson A. Smith and Terry L. Mitchell, “Development of an UNDRIP compliance assessment tool: how a performance framework could improve state compliance”, *International Indigenous Policy Journal*, vol. 11, No. 2 (May 2020).

⁷⁵ Ibid.

⁷⁶ Shimray, presentation at the expert seminar, February 2023.

⁷⁷ Carling, presentation at the expert seminar, February 2023.

⁷⁸ Aylwin, presentation at the expert seminar, February 2023.

⁷⁹ Ibid.

⁸⁰ A/HRC/36/56, para. 69.

constitutional human rights statute that affirms the application of the Declaration to the laws of British Columbia. The Commission reported that, with its clear mandate to promote compliance with international human rights laws, including the Declaration, it is working to enforce the rights of Indigenous Peoples; for instance, it has produced interim guidance on how to align laws, noting that one of the purposes of the Act is to affirm the application of the Declaration to the laws of British Columbia.⁸¹

56. For national human rights institutions to effectively contribute to the protection, promotion and realization of the rights of Indigenous Peoples, it is crucial to engage and foster cooperative working relationships with those directly concerned. An application of the principle of free, prior and informed consent to the process is paramount to the development of such relationships. In this context, for example, the relationship between the New Zealand National Human Rights Commission and the National Iwi Chairs Forum, an Indigenous organization, has developed over the years, culminating in the formalization of their relationship in a signed agreement between them and a shared work programme based on mutual priorities.⁸²

57. In New Zealand, the National Human Rights Commission also collaborates with the Aotearoa Independent Monitoring Mechanism, an Indigenous-led initiative, to monitor the State's progress in the implementation of the Declaration. The Commission is also part of other formal monitoring mechanisms established under the United Nations human rights treaties, namely the Independent Monitoring Mechanism for the Convention on the Rights of Persons with Disabilities, and with the national preventive mechanism responsible for the Optional Protocol to the Convention against Torture. The Commission raises issues surrounding the rights of Indigenous Peoples within these processes.⁸³

58. In Argentina, the Office of the Chief Public Defender (*Defensoría General de la Nación*), in the light of the challenges that the oversight mechanisms for the rights of Indigenous Peoples currently face, has proposed solutions for the effective implementation of the rights affirmed in the Declaration, such as strengthening Indigenous participation in councils operating within the scope of the National Institute for Indigenous Affairs. It has also called for the creation of specific spaces for monitoring the implementation of the Declaration by Indigenous Peoples and their communities.

59. Although the Bolivarian Republic of Venezuela did not participate in the pilot test of this important instrument for monitoring compliance with international instruments, the Office of the Ombudsman promotes the Indigenous Navigator through various training activities, including a community questionnaire. These are tools prepared for indigenous communities and organizations that monitor respect for and the recognition and realization of the rights of Indigenous Peoples.⁸⁴

60. The Human Rights Council of Greenland advises the Danish National Human Rights Institution. Although one of the 13 members of the Council is appointed with a mandate to focus on the rights of Indigenous Peoples, the institution as such has not yet fully integrated the rights of Indigenous Peoples into its work or its reports. Debates are indeed currently being held about whether Greenland should establish its own human rights institution, which would pave the way to include the rights of Indigenous Peoples into institutional development and in the laws and mandates for such an institution.⁸⁵

61. In Peru, the Office of the Ombudsman advocates for public policies on the rights of Indigenous Peoples by means of surveys, recommendations and legislative initiatives. It has also consistently monitored social conflicts that have affected members of Indigenous Peoples. The Office has intensified its work on monitoring and preventive measures for the protection of Indigenous human rights defenders in the face of increasing human rights

⁸¹ Kasari Govender, presentation at the expert seminar, February 2023.

⁸² Submission by Aotearoa Independent Monitoring Mechanism and New Zealand Human Rights Commission.

⁸³ Ibid.

⁸⁴ Submission by the Bolivarian Republic of Venezuela.

⁸⁵ Sara Olsvig, presentation at the expert seminar, February 2023.

violations, with the additional objective of fostering trust between Indigenous Peoples and the Office.⁸⁶

62. The Asia Pacific Forum, a regional human rights organization, promotes cooperation on human rights issues concerning Indigenous Peoples in Asia Pacific countries.⁸⁷ The Forum supports the work of the national human rights institutions in advocating for the recognition and development of policies and a framework consistent with the Declaration. It engages with States, regional bodies and other stakeholders to raise awareness of the Declaration by facilitating regional workshops, conferences and training programmes. The Forum has developed a manual on Indigenous rights to support national human rights institutions in their work on issues relating to Indigenous Peoples.⁸⁸

VII. Monitoring of the Declaration by Indigenous Peoples

63. According to the preamble to the Declaration, the recognition of the rights of Indigenous Peoples in the Declaration would enhance harmonious and cooperative relations between the State and Indigenous Peoples, based on principles of justice, democracy, respect for human rights, non-discrimination and good faith. The affirmation of the right to self-determination and the extension of that right to the different spheres of indigenous life requires positive engagement, in a spirit of partnership, by both States and Indigenous Peoples.

64. Although the Declaration has been translated into many indigenous languages, it is not readily accessible to large numbers of Indigenous Peoples for a multitude of reasons, including their wide cultural and linguistic diversity, geographic factors (remoteness and wide dispersion), sociopolitical and educational marginalization, and limited access to telecommunications and other information resources. At the local or community level, Indigenous Peoples may not be sufficiently aware of their rights as outlined in the Declaration or how to demand the observance of those rights.⁸⁹

65. It is crucial to involve Indigenous Peoples in decision-making that affects them, as they have been effective monitoring agents for Indigenous rights. To facilitate the monitoring process, existing indicators from other initiatives, such as the Sustainable Development Goals and the 2030 Agenda for Sustainable Development, may be useful.⁹⁰

66. In New Zealand, the Aotearoa Independent Monitoring Mechanism was established by Indigenous organizations to monitor the implementation of the Declaration. The Mechanism facilitates data-collection using public data and statistics, and identifies key gaps. Although the Mechanism has faced certain challenges regarding governmental support, some positive developments have been noted, such as the increase in the Government's engagement, funding support and strengthened partnership with Indigenous Peoples.⁹¹

67. Greenland, with several institutions monitoring the rights of Indigenous Peoples, is often highlighted as a good example of self-determination. Nonetheless, Indigenous Peoples reportedly still lack understanding about their rights, and capacity-building campaigns have been criticized for not being sufficiently structured.⁹²

68. There is a strong connection between the legal systems used by Indigenous Peoples and the implementation of the Declaration. In the United States of America, Indigenous authorities use their own tribal legal traditions when applying the provisions of the

⁸⁶ Alicia Maribel Abanto Cabanillas, presentation at the expert seminar, February 2023.

⁸⁷ See <https://asiapacificforum.net/support/human-rights/indigenous-peoples/>.

⁸⁸ <https://un-declaration.narf.org/wp-content/uploads/2013human-rights-manual.pdf>.

⁸⁹ See Division for Inclusive Social Development of the Department of Economic and Social Affairs and Indigenous Peoples and Development Branch – Secretariat of the Permanent Forum on Indigenous Issues, *State of the World's Indigenous Peoples: Implementing the United Nations Declaration on the Rights of Indigenous Peoples*, vol. 4 (New York, 2019).

⁹⁰ Submission by Fondo Defensores.

⁹¹ Margaret Mutu, presentation at the expert seminar, February 2023.

⁹² Sara Olsvig, presentation at the expert seminar, February 2023.

Declaration and enforcing it through their own institutions and jurisdictions.⁹³ Consistent with the right of self-determination, such an approach ensures that Indigenous Peoples are able to express their own perspectives and to use their own language and traditions to lend greater cultural context to the Declaration, and its relevance to and implementation by the Indigenous Peoples concerned;⁹⁴ for example, A traditional conflict resolution mechanism operates in Hawaii.⁹⁵ In Latin America, customary laws within Indigenous justice systems provide the mechanisms necessary to resolve conflicts, thereby ensuring de facto strategies for Indigenous Peoples to exercise control over their territories.⁹⁶

69. In Africa, Indigenous Peoples' organizations played a significant role in the establishment by the African Commission of its Working Group on Indigenous Populations/Communities in Africa, and subsequently the adoption in 2003 of the landmark report of the Working Group on Indigenous Populations/Communities in Africa, today a crucial legal framework for addressing the rights of Indigenous Peoples within the African human rights system.⁹⁷

70. In Asia, the implementation of the Declaration is monitored mostly by Indigenous organizations, given the lack of government-established mechanism or bodies for that purpose. The establishment of an independent body with credibility and social standing equipped with a clear mandate and institutional capacity to make its recommendations effective would remove any ambiguity in the interpretation and application of the Declaration by States in Asia.⁹⁸

VIII. Monitoring of the Declaration by legal and academic institutions

71. The legal community and academia make a significant contribution to the implementation of international human rights standards and play a key role in facilitating knowledge transfer, interpretation of the standards and analysis of data for monitoring purposes. For example, the Expert Mechanism closely collaborates with a global pool of universities in producing its annual studies and reports concerning the realization of the provisions of the Declaration. The Expert Mechanism's informal group of academic partners is expanding, and now involves a number of universities from around the world.

72. Universities and lawyers play a key role in raising awareness and building the capacity of Indigenous communities and government entities concerning international human rights standards, particularly with regard to the Declaration, through education and consultative processes, providing a basis for effective monitoring practices, which within academia requires inclusion of Indigenous scholars, their worldviews, ethical frameworks and cultural practices.

73. Monitoring requires an analysis of national and subnational legislation, and executive acts and their evolution, which involves the processing of large databases and a professional understanding of the development of domestic law versus international law. While Indigenous organizations and human rights institutions often lack the necessary training, equipment and software, academic institutions have the resources and independence required for monitoring purposes.

74. Many universities host national and international human rights training programmes. For example, the University of Bilbao and the Peoples Friendship University of Russia host Spanish- and Russian-speaking components of the OHCHR Indigenous Fellowship Programme. The University of Victoria in Canada has introduced an Indigenous law degree

⁹³ Kristen Carpenter, presentation at the expert seminar, February 2023.

⁹⁴ See <https://un-declaration.narf.org/wp-content/uploads/Tribal-Implementation-Toolkit-Digital-Edition.pdf>.

⁹⁵ Cooper, presentation at the expert seminar, February 2023.

⁹⁶ Aylwin, presentation at the expert seminar, February 2023.

⁹⁷ www.researchgate.net/publication/361636449_IWGIA_report_20_years_WGIP_online_2022_ENG.

⁹⁸ Shimray, presentation at the expert seminar, February 2023.

programme,⁹⁹ while the University of Arizona in the United States hosts the Native Nations Institute.¹⁰⁰ In South Africa, the University of Pretoria offers an advanced course in Indigenous Peoples' rights; in the United States, Columbia University hosts the annual Indigenous Peoples' Rights International Summer Program; and in the Russian Federation, the Moscow State Institute of International Relations co-hosts the School of Public Diplomacy for Indigenous Peoples.¹⁰¹ In Canada, the University of British Columbia has an Indigenous strategic plan that has the Declaration as its foundational document, and is launching an Indigenous land stewardship program. In New Zealand, the University of Waikato, in Aotearoa, offers a masters in law and Indigenous Peoples. The Government of Mexico has established the University of Indigenous Languages of Mexico, which will open in September 2023. These and other programmes raise awareness of relevant international standards and will increase the number of lawyers and academics, which will indirectly contribute to the effective monitoring of the Declaration.

75. Some academic institutions have undertaken research on mechanisms monitoring the implementation of the Declaration, indicating that the key challenge to such monitoring is the lack of political will and of national governance monitoring mechanisms. Aside from monitoring and enforcement, feedback and monitoring can be useful for increasing compliance by States wishing to do so, and to look at employing Indigenous-informed and specific indicators to measure their compliance over time and to develop strategies for change.¹⁰² Academia can help States and Indigenous Peoples to evaluate the effectiveness of domestic measures by introducing and enforcing guidelines and performance indicators.¹⁰³

IX. Conclusions and recommendations

76. **Achieving the ends of the United Nations Declaration on the Rights of Indigenous Peoples requires both implementation and monitoring activities. Implementation involves carrying out legal and policy reforms to ensure local and national laws are consistent with the Declaration; monitoring entails examining their effectiveness in safeguarding the rights of Indigenous Peoples. The Declaration and its provisions should be recognized as the main legal framework for creating effective monitoring mechanisms at the national and regional levels to contribute to its implementation. The complementary and mutually reinforcing the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169) and the American Declaration on the Rights of Indigenous Peoples should also be taken into account.**

77. **The Expert Mechanism recommends that States take concrete steps by adopting laws, constitutional reforms and policies to achieve the ends of the Declaration. They should also develop national action plans, administrative measures and strategies in consultation and cooperation with Indigenous Peoples. These plans should identify and specify the roles of different State entities and departments, include accountability mechanisms, and have specific steps and timelines. To oversee compliance with the Declaration, States should co-design with Indigenous Peoples independent mechanisms that review and monitor compliance, identify and report violations, provide guidance, raise awareness and strengthen the capacity of Indigenous Peoples. It is also crucial for States to commit to and provide adequate resources and capacity for the effective functioning of these mechanisms.**

78. **The creation of a distinct body or mechanism at the national level explicitly addressing the interrelated human rights of Indigenous Peoples is not only critical in and of itself but is also instrumental to the fulfilment of individual and collective rights, including the right to self-determination, cultural rights and the right to land, territories and resources. The full political engagement and financial commitment of**

⁹⁹ See www.uvic.ca/stories/first-indigenous-law-degree/index.php.

¹⁰⁰ See <https://nni.arizona.edu/>.

¹⁰¹ <https://school-kmn-rf.ru/> (in Russian).

¹⁰² Jackson A. Smith and Terry L. Mitchell, "Development of an UNDRIP compliance assessment tool", *The International Indigenous Policy Journal*, vol. 11, No. 2 (2020).

¹⁰³ Vasily Nemechkin, presentation at the expert seminar, February 2023 (in Russian).

States are therefore crucial. In accordance with article 32 of the Declaration, States should promote the establishment or strengthening of existing mechanisms for participation, consultation, and platforms for dialogue between States and Indigenous Peoples. Such mechanisms should be co-designed by representatives of the Indigenous Peoples concerned.

79. The Expert Mechanism recommends that States ensure respect for rights-based consultation, participation and co-development. The protocols by which Indigenous Peoples are engaged by the Government must uphold the highest standards and adherence to the rights affirmed in the Declaration, including free, prior and informed consent, and their application. States should ensure Indigenous-led monitoring is built from the ground up and allows for iterative capacity growth.

80. States must uphold the principles of trust, transparency, comprehensiveness and balanced assessment, involving Indigenous Peoples in all aspects of oversight, monitoring and evaluation of and reporting on the progress of implementation. To that end, States should consider establishing an independent, national oversight body the membership of which comprises representatives of both the State and Indigenous Peoples to monitor and report annually to relevant bodies and the public in adherence to the above principles. This necessitates the establishment of monitoring mechanisms that are autonomous, free of all political influence, sufficiently resourced and accountable to both Indigenous Peoples and society at large.

81. States should also provide monitoring capacity-building for both Indigenous Peoples and State and non-State actors. This includes training and support for data collection and analysis, and for understanding and applying international human rights standards and mechanisms. Indicators already used in other initiatives by States and non-State actors, such as the 2030 Agenda for Sustainable Development, may also be incorporated.

82. The Expert Mechanism recommends that regional human rights bodies enhance their existing monitoring mechanisms to ensure the protection and promotion of the individual and collective rights of Indigenous Peoples. This can be achieved by providing assistance to States in the evaluation of their laws, policies and constitutional frameworks concerning the rights of Indigenous Peoples, and ensuring that they comply with the Declaration and other relevant international human rights instruments.

83. To effectively evaluate the implementation of the Declaration in each regional context, regional human rights bodies should develop a monitoring framework that includes specific indicators. Indigenous Peoples should be involved in this process to provide their perspectives and experiences. The monitoring framework should also make recommendations to States, Indigenous Peoples and other stakeholders based on the Declaration, with the objective of protecting and promoting the rights of Indigenous Peoples.

84. Indigenous data sovereignty is crucial for Indigenous Peoples to exercise their rights to self-determination, autonomy and self-government in internal and local affairs, and their rights to participate in decision-making and to protect their cultures, in accordance with article 31 of the Declaration, which protects the rights of Indigenous Peoples to maintain, control, protect and develop their cultural heritage and traditional knowledge. In addition, data are an important economic resource for Indigenous Peoples, as outlined in articles 21 and 23. States should therefore give Indigenous Peoples access to government-held data to fulfil their obligation to consult and to ensure free, prior and informed consent, and to allow for the repatriation of indigenous data as directed by rights holders.

85. States should collect and disseminate data disaggregated by Indigenous identity, ethnicity, income, gender, age, race, migratory status, disability, geographic location or other factors, as appropriate, in order to monitor and improve the impact of development policies, strategies and programmes aimed at improving the well-being of Indigenous Peoples and individuals, to combat and eliminate violence and multiple and intersecting forms of discrimination against them, and to support work towards the achievement of the Declaration and the implementation of the 2030 Agenda.

86. The Expert Mechanism recommends that national human rights institutions establish a dedicated unit or team to monitor and assess the implementation of the Declaration. The unit should create a monitoring framework that defines indicators, benchmarks and evaluation methods. It should also consult with Indigenous Peoples to gather their perspectives, and collaborate with other stakeholders, including civil society organizations and academia. The unit should furthermore advocate for national laws and policies that specifically embrace and mirror the Declaration with the objective of implementing it comprehensively, and provide all the financial resources necessary to support that objective. Laws and policies, as well as mechanisms, should be developed to ensure that both State and non-State actors are held responsible for the implementation of the Declaration.

87. Recognizing the significant role that academia can play in implementation and monitoring, the Expert Mechanism calls for greater efforts to engage and facilitate knowledge exchange and mutual partnerships among Indigenous experts by means of academic exercises, such as workshops, consultations and other activities. It also calls for strengthened cooperation and expanded academic networks across regions to create synergy and to establish stronger collaboration with academia in developing effective mechanisms to monitor the implementation of the Declaration at the national and regional levels.

88. Indigenous Peoples should build their own capacity in compliance with the provisions of the Declaration to enable them to effectively monitor and advocate for the implementation of their rights at the national and regional levels. This may include the application of the provisions of the Declaration in their own laws, tribunals, courts or dispute resolution processes. Indigenous Peoples can take advantage of opportunities like the OHCHR Indigenous Fellowship Programme, or seek grants from the United Nations Voluntary Fund for Indigenous Peoples to participate in and engage on human rights processes relevant to the rights of Indigenous Peoples.

89. The Expert Mechanism recommends that States commit to the empowerment of Indigenous Peoples by providing them with access to information, capacity-building, networking and cooperation opportunities at the domestic and international levels. The rights, perspectives and practices of Indigenous Peoples, including the right to participate directly in matters that affect them, must be recognized to ensure that they have both procedural and substantive means to participate fully in decision-making processes. Furthermore, Indigenous Peoples should have access to effective and culturally appropriate mechanisms for seeking recourse, redress and reparations in cases of rights violations, including access to legal aid and other forms of support.
