**United Nations Seminar of the Expert Mechanism on the Rights of indigenous peoples**

**“Right to Land under the UN Declaration on the Rights of Indigenous Peoples: A Human Rights focus”**

Centre for Human Rights, Faculty of Law, University of Pretoria, Pretoria, South Africa

*Pretoria, South Africa*

*30 September and 1 October 2019*

***Concept Note***

**Background**

1. Established by the United Nations Human Rights Council in 2007, the Expert Mechanism on the Rights of Indigenous Peoples is a subsidiary body composed of seven independent members that provides the Council with expertise and advice on the rights of indigenous peoples as set out in the United Nations Declaration on the Rights of Indigenous Peoples (the Declaration). The seven members serve in their individual capacities.

2. In September 2016, the Human Rights Council amended the mandate of the Expert Mechanism, to include inter alia the preparation of an annual study on the status of the rights of indigenous peoples worldwide in the achievement of the ends of the Declaration, focusing on one or more interrelated articles of the Declaration.

3. In this framework, the Expert Mechanism held a seminar in Pretoria, South Africa, on 30 September and 1 October 2019, on the theme of its next annual study: Right to Land under the UNDRIP: A Human Rights focus.

4. The studies and advice of the Expert Mechanism provide a better understanding of the provisions of the Declaration and propose concrete actions that States, indigenous peoples, civil society, national human rights institutions, international organizations, businesses and others can take in order to further its implementation. [[1]](#footnote-1)The Office of the United Nations High Commissioner for Human Rights (OHCHR) provides technical and substantive support to the Expert Mechanism.

5. The Expert Mechanism has traditionally collaborated with academic institutions. This seminar was co-hosted by the Centre for Human Rights, Faculty of Law, Pretoria University, South Africa.

**Objectives**

* Hold an in-depth discussion on the topic to give input to EMRIP’s 2020 study
* Discuss the latest related developments in the policy, legal and institutional fields, at national, regional and international levels
* Identify good practices and challenges from different regions relating to the theme
* Contribute to a human rights based approach to the land rights of indigenous peoples under the UNDRIP

**Participants**

6. The 2-day expert seminar (**30 September and 1 October**) was attended by approximately 30-45 participants including:

* Members of the UN Expert Mechanism on the Rights of indigenous peoples
* Experts on land rights and indigenous peoples from different regions
* Indigenous peoples from the region
* Staff of the Office of the UN High Commissioner for Human Rights
* Faculty of law from Pretoria University
* Staff from relevant UN agencies
* National Human Rights Institutions
* Students are welcome to observe the proceedings of the seminar

**Focus of study**

7. To assist all parties in contributing to this seminar, the EMRIP sets out below some of the elements it intends to focus on in its study[[2]](#footnote-2).

**Recognition of a right to land/establishment of processes to adjudicate land rights/involvement of indigenous peoples (articles 25, 26, 27, 30, 32 of the UNDRIP)**

Could consider but not limited to:

* The extent to which domestic law, policies or practices relating to the recognition and protection of indigenous peoples’ right to own, live and use their lands, territories and resources conforms with the UNDRIP.
* The extent to which these laws, policies, practices respect the traditions and land tenure systems of indigenous peoples.
* Positive examples of processes established by States to recognise and adjudicate the rights of indigenous peoples to their lands, territories and resources and the extent to which indigenous peoples are involved in this process.
* Experiences from Land Tribunals that have a mandate to identify and recognize indigenous ownership and usufruct rights to lands and extent to which these experiences are positive, and if not why not. The extent to which they apply or respect indigenous customary law when assessing land claims.
* Good practices of demarcation, including self-demarcation by indigenous peoples, and titling.
* The role of national courts in land rights conflicts, the extent of knowledge within the legal profession on UNDRIP and indigenous peoples’ rights, and the extent to which national courts refer to the UNDRIP and international human rights law in interpreting indigenous peoples rights. The relationship between national litigation and subsequent claims to regional human rights tribunals. Unintended consequences of successful land claims (violence, fatigue..)
* Extent to which indigenous peoples can determine and develop priorities and strategies for the development or use of their lands or territories and other resources, including by exercising their traditional occupations and ensuring their livelihoods.
* Extent to which States apply the norm of free, prior and informed consent for the approval of projects affecting indigenous peoples lands, territories and resources, bearing in mind the Study produced by the EMRIP on this topic, in 2018 - http://ap.ohchr.org/documents/dpage\_e.aspx?si=A/HRC/39/62

**Effective mechanisms/programmes/remedies (articles 8, 10, 28, 29, 32 of the UNDRIP)**

Could consider but not limited to:

* Types of mechanisms, assessment and consultation efforts, established by States for the prevention of and redress for the dispossession of indigenous peoples’ lands, territories or resources.
* Forms of redress granted to indigenous peoples, including restitution, compensation or other forms of redress following the confiscation, occupation, use, or damage to indigenous peoples land without their free, prior or informed consent, bearing in mind the Study produced by the EMRIP on this topic in 2018 (see above).
* Assistance programmes established by States to ensure the conservation and protection of the environment, management or co-management of World heritage sites and natural protection areas on indigenous lands, and the productive capacity of indigenous peoples’ lands.

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1. To date, the Expert Mechanism has carried out studies on themes including indigenous peoples’ rights with respect to their cultural heritage; access to justice for indigenous peoples; the right to health and indigenous peoples; right to participate in decision-making; the right of indigenous peoples to education; the free, prior and informed consent and migration. [↑](#footnote-ref-1)
2. The introduction and legal framework to the Study will include the link between self-determination (UNDRIP preamble paras. 6, 10, 11 and 12 and articles 3, 4 and 5) and lands, territories and natural resources. [↑](#footnote-ref-2)