



Droits et Démocratie
Rights & Democracy

Centre international des droits de la personne et du développement démocratique
International Centre for Human Rights and Democratic Development

**Canadian Association of Statutory Human Rights Agencies
(CASHRA)**

**INTERNATIONAL HUMAN RIGHTS MECHANISMS:
OPPORTUNITIES FOR THE PROMOTION AND IMPLEMENTATION
OF INDIGENOUS PEOPLES' RIGHTS**

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Introduction

On behalf of Rights & Democracy, I would like to warmly thank CASHRA and especially Thérèse Boulard at the NWT HRC for all the efforts that have been put in the organization of this pre-conference workshop organized in partnership between CASHRA and Rights & Democracy. It is a true pleasure to be able to organize an event with such distinguished speakers and audience in connection with the annual conference of CASHRA.

I am also happy to be here in Yellowknife to speak about the rights of indigenous peoples...

To discuss the promotion and the advancement of the human rights of Indigenous Peoples from an international, regional and national perspectives requires that we underline the essential role of indigenous organizations and human rights actors in being part of the overall dynamic for the recognition and the implementation of indigenous rights. The relationships between these different perspectives and the space that the international or regional human rights systems leave for the inputs from human rights activists and indigenous Peoples are crucial components of this dynamic.

I intend in this short presentation to emphasize the importance of an integrated and inclusive approach meant to avoid the all-too-frequent disconnect between local communities and the international human rights scene.

Indeed, it is sometimes difficult to clearly understand the direct usefulness to local communities of the various international and regional instruments and mechanisms for the promotion of their human rights. With regard to Indigenous people in particular, the majority

of indigenous communities throughout the world still suffer situations of great poverty, marginalization and discrimination, when not worse. The rights of indigenous, as individuals and as Peoples, are still too often violated, and the means for achieving self-sustained well-being respectful of indigenous Peoples' cultural specificities are most of the time lacking and many communities are struggling for survival.

Nevertheless, I would like to underline my strong belief that the work that indigenous Peoples have carried out to bring the voice of indigenous Peoples at the national, regional and international levels, have had an impact on the very development of human rights and on the work of many human rights organizations that now integrate indigenous Peoples' rights to their programming. This work opened international spaces for the expression of an indigenous perspective and of the issues affecting indigenous communities. Let me just mention here the creation of the UN Permanent Forum on Indigenous Issues that was held for its sixth year last month with as main theme the question of *Land, Territories and Resources*.

These have allowed indigenous Peoples' representatives to participate in the very development of human rights. These efforts notably allowed the international human rights system, while continuing to address individual rights, to also develop the collective rights dimension which is so essential to indigenous Peoples.

In the process, local concerns were brought to the international arena and inspired the beginning of the setting of common standards and norms on indigenous Peoples' rights; and beyond that, Indigenous Peoples have had some success in becoming respected international actors.

In spite of this, it is clear that there is still a long way to go for the recognition of indigenous Peoples' rights, let alone their concrete implementation at national level. We could find numerous examples that bring concerns in that regard.

But the development of human rights is a work in progress since its very foundation. It implies a constant movement back and forth between local realities, States and the international human rights system to discuss States' practice in the implementation (or non implementation) of these human rights. Local concerns are being expressed, translated into and incorporated to the making of international norms; and these international norms ideally influence the practice of States and the implementation of those norms into real communities.

Of course, this process is not as systematic as what I just presented here. The creation of norms and their implementation is unfortunately not as simple and automatic as one would wish. In this regard, human rights organizations, civil society groups, and also indigenous communities and leaders, are at the forefront in ensuring that the international human rights system truly functions for real changes on the ground.

I therefore believe that it is of utmost importance for the human rights community, civil society, and Indigenous peoples to ensure that the international human rights system allows their full participation in the various mechanisms for the promotion and monitoring of human rights, and particularly the rights of Indigenous peoples.

The Human Rights Council

In that regard, I would like to talk a little bit about the newly created Human Rights Council. As many of you know, the former Commission on Human Rights finished its mandate last year and was replaced by the Human Rights Council, which has recently celebrated its very first birthday.

Rights & Democracy has been actively engaged in the work of United Nations human rights system since the creation of our institution in 1988; and, of course, we have been closely following the transformation of the UN Commission on Human Rights to the UN Human Rights Council. Indeed, we supported the proposal to replace the previous Commission with a new human rights body.

The transformation of the Commission into the Council provides the international community to take a fresh look at the universality, indivisibility, interrelatedness, interdependence and mutually reinforcing nature of all human rights.

This “new beginning” is also an important occasion to revisit the division between civil and political rights, on the one hand, and economic, social and cultural rights on the other. For many States—and for billions of individuals around the world—the priority is the implementation of economic and social rights, like for example the right to work, the right to food, or the right to education. This is intrinsically linked with the statements of the UN High Commissioner for Human Rights, Madame Louise Arbour, that the struggle against poverty is the most important human rights issue.

For Indigenous peoples, the new Human Rights Council is challenging. It represents an opportunity to make the international human rights system further integrate indigenous Peoples' rights as well as allowing an increased participation of indigenous Peoples to its mechanism.

In this regard, I would like to briefly comment on two important implementation mechanisms at the HRC, whose very fates and modalities are being determined in Geneva as we speak.

UPR

First, the Council will continuously hold a Universal Periodic Review (UPR). In many ways, the Universal Periodic Review is the most significant institutional development of the Council. This process reviews each and every State's human rights record on an on-going basis, and not only certain States' as was the case with the previous Commission on Human Rights. The UPR is an essential feature of international accountability and commitment to the rule of law and should be an open and transparent process based on reliable information and on an honest assessment of the human rights situation on the ground.

In that regard, I believe that the *active* participation of civil society organizations, national human rights institutions, but also indigenous organizations, at all stages of the UPR process (preparation, inter-active dialogue and review, recommendations and follow-up) is indispensable for its credibility and impact on the ground, both in addressing specific human rights challenges and in creating an on-going dialogue about human rights. This *active* participation includes national-level consultations with States during the preparation stage; submission of independent reports to the UPR mechanism; participation and an opportunity

for statements during the review; and a meaningful role in the follow-up to the recommendations.

I believe that human rights expertise, including specific expertise on indigenous rights, must inform the UPR process in order to ensure the quality and integrity of the review, including the adequacy, objectivity and reliability of the information under review and the overall consistency and professionalism of the process. And for concerns on indigenous Peoples' rights to be taken into account, the inputs from indigenous organizations at the various levels are essential.

In this respect, Rights and Democracy views as very relevant and constructive the request made by the Indigenous Global Caucus that the human rights of Indigenous peoples be systematically tabled as an item of consideration during this Universal Periodic Review.

I should just add that each and every UN Member State (192) is due to be reviewed every 4 to 5 years, and that Canada, as one of the 47 members of the Human Rights Council, will be amongst the first ones to be reviewed when the UPR mechanism becomes fully operational.

Special Rapporteur

A second important mechanism of the Human Rights Council, which is part of the “Special Procedures”, is the appointment of *Special Rapporteurs* for a number of theme and specific issues. There are currently 28 thematic mandates and 12 country mandates. Since 2001, the Human Rights Commission appointed a *Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People*.

The Special Rapporteur is mandated to gather information from relevant sources, including government and Indigenous people, on violations of human rights and fundamental freedoms of Indigenous people, and to subsequently make recommendations and proposals on appropriate measures to prevent these violations.

Apart from his annual report, the Special Rapporteur prepares thematic reports on issues of concern to Indigenous people, such as education, large-scale development projects, access to administration and justice, and so on. He also makes country visits where he has the opportunity to meet with Indigenous organizations and visit Indigenous communities. In a way, this brings the UN human rights system to Indigenous people at a national and grassroots level.

A visit of the Special Rapporteur is an opportunity for indigenous people to then transmit concerns and testimony, and to tell the stories of the violations of human rights they are subjected to.

Of course, not every community has the chance to meet with the Special Rapporteur. For this reason, prior to such a visit, local and national indigenous organizations participate in its preparation so as to ensure the Special Rapporteur leaves the country with a clear picture of the Indigenous people's human rights situation. The Special Rapporteur visited 10 countries since 2001, including Canada in 2004. A report followed this visit to Canada.

In coordination with the Special Rapporteur himself, Rights and Democracy held in its offices, in October 2006, an International Expert Seminar on the Best Practices for the Implementation of the Recommendations of the UN Special Rapporteur.

A very interesting publication came out of this Seminar, and will be soon on our website very shortly.

Let me also add that as the Human Rights Council is building itself, I strongly believe that maintaining a meaningful and strong Special Rapporteur mechanism is fundamental to the quality of dynamic between the local and international levels to which I allude earlier.

The two examples that I just brought to your attention, i.e. the Universal periodic Review and the Special Rapporteur procedure, show the important role of an adequate articulation between the international human rights system and local realities. They also show how essential is the participation of indigenous organizations and the civil society in these international tools for the promotion and protection of human rights.

I believe that the preservation and enhancement of the role and input of civil society organizations and national human rights institutions – such as CASHRA members – in all aspects of the work of the Human Rights Council is a *sine qua non* condition for its development as the focal point for the global promotion and protection of human rights. It is obvious that the participation of indigenous organizations is similarly essential for the promotion and protection of indigenous Peoples' human rights in particular.

I wish to emphasize here that, in parallel to the crucial importance of the participation of Indigenous Peoples to the Human rights mechanisms, it is also important for non indigenous human rights organizations to integrate Indigenous Peoples' rights into their programming. Right and Democracy has had for more than 10 years a thematic working specifically on the

Rights of Indigenous peoples, and many other human rights organizations have also integrated an indigenous rights perspective into their activities. We do believe that the support of the overall human rights community to Indigenous peoples with respect to their human rights can be very beneficial and is absolutely necessary. Indigenous Peoples' Rights are human rights.

I would like at this point to underline the importance to also understand some of the limits of the United Nations system for the implementation of human rights at the national-level.

While the transition towards an effective UN Human Rights Council must succeed, it is not a panacea to human rights violations.

The effective promotion and protection of human rights around the world requires a multi-faceted approach that includes support at the regional level for human rights institutions (such as the African Commission for Human and Peoples' Rights or the Inter-American Commission on Human Rights), as well as regional networks of civil society organizations, national human rights institutions (such as CASHRA members) and, in line with what we are discussing, strong networks of Indigenous organizations at the regional level too (the Americas, for example).

There is a mutually reinforcing purpose to such a multi-faceted approach. First, strong civil society and indigenous participation at the national level has an impact on the positions that Member States will take in regional and universal human rights bodies and at the Human Rights Council. Conversely, the work of the United Nations system and of the regional bodies, like the OAS, can help improve the national-level performance of States, and thus, improve the human rights situation at the very local level.

Conclusion

In short, the participation of multiple actors is necessary for the achievement of this common goal. A constructive articulation between international, regional, national and local levels constitutes a key element in this quest.

Furthermore, the road to human rights must fully take into consideration the specificity of the rights of Indigenous peoples.

I would like to mention here, as a final word, that the United Nations Declaration on the Rights of Indigenous Peoples that was adopted by the Human Rights Council in June 2006 is meant to constitute a cornerstone for the recognition of those rights.

However, its final adoption by the UN General Assembly is now being put in danger. It is unfortunate to note in this connection that in the last year, a number of countries – including our own – have dedicated resources and efforts to convince other countries to oppose the current text of the Declaration. While Canada has been a key participant in the 20-year process that led to the current Declaration, it is now opposing articles that it helped draft.

Canadians are often proud of the leadership role that Canada has played in building the United Nations human rights system, and the positive image and reputation of Canada as a staunch supporter of a progressive human rights agenda could contribute to a “snowball effect” for countries which are still struggling with difficult human rights records.

I would therefore urge Canada to resume its traditional pro-human rights leadership and work towards the adoption of the UN Declaration on the Rights of Indigenous Peoples rather than against it as it is currently the case.

Thank you for your kind attention.
