

The Philosophy and the work of the United Nations Expert Mechanism on the Rights of Indigenous Peoples with focus on the right to language for the indigenous peoples

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Introduction

Over the past few decades, indigenous peoples of the world have made a huge leap in the protection of their individual and collective rights. Persistence of the leaders of the indigenous peoples movement has allowed to begin to overcome the legacy of colonization and gradually come to recognize the responsibility of the international community for the most vulnerable of its members, who thanks to their proximity to nature and traditional knowledge have preserved and taken care of the cultural and natural diversity of the planet for many centuries. Today it is the turn of humanity to help indigenous communities to preserve their identities, languages health and traditional ways of life.

Assisting states to implement international human rights standards

The Charter of the United Nations starts with the words “We the peoples of the United Nations determined ...” acknowledging that all peoples on Earth should be equal. Indigenous peoples over centuries had been put in a disadvantage position and have become vulnerable and some of them close to extinction. Only recently in the historical perspective the international community has started to recognize severe consequences of colonization and assimilation policy, and has decided to move towards reconciliation with and remedy for indigenous communities around the globe. The United Nations plays critically important role in this process.

We have already witnessed two international decades of the world's indigenous peoples, establishment of special indigenous peoples' rights pertaining mechanisms at the United Nations. The Permanent Forum is uniquely situated as a subsidiary body of the Economic and Social Council to provide advice in the areas of economic and social development, human rights, environment, health, culture and education. This body spreads the word about indigenous peoples among UN agencies and strengthens their coordination on this matter. The Permanent Forum is also tuned to assist in realization of the Sustainable Development Agenda until 2030 from an indigenous perspective.

Another mechanism is the Special Rapporteur on the Rights of Indigenous Peoples, an individual mandate established to report about overall human rights situation of

indigenous peoples in specific countries, promote best practices and do research on important aspects of indigenous peoples' rights. Being part of the Human Rights Council's special procedures, the Special Rapporteur receives complaints and alerts states on human rights violations.

The Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) is the youngest mechanism in this family, but many indigenous communities already bind their hopes with this body. EMRIP explicitly owes its birth to the adoption of the United Nations Declaration on the Rights of Indigenous Peoples in 2007. This international instrument, not legally binding by its legal nature, puts in the specific indigenous context existing universal human rights recognized by the majority of states as obligatory. The Declaration introduces a collective aspect of indigenous peoples' rights as necessary for their survival given traditional ways of life and close special connection to Mother Earth. Therefore, this instrument sets a minimum standard of the rights of indigenous peoples' human rights which states committed to strive to.

When the drafting and negotiation process by the Working Group on Indigenous Population successfully finished, states and indigenous peoples were in need of other types of services. It was a strategic decision by states to establish the Expert Mechanism to assist them in achieving the ends of the Declaration, protection and fulfillment of the rights of indigenous peoples, by providing expertise and advise in form of thematic studies and research.

It is clear that the Expert Mechanism is not an oversight or a monitoring body, and its role is not to critique state policies and practices. Rather, given the need for implementation of the rights of indigenous peoples in the reconciliation spirit, the Expert Mechanism is well placed and equipped to interpret different articles of the Declaration, and building on its own analysis of challenges and good practices and models to provide guidance on how in different countries specific rights of indigenous peoples can be best implemented. This work enlarges our understanding of the nature of states' human rights obligations and introduces possible implementation mechanisms.

Moreover, as a subsidiary body of the UN Human Rights Council the Expert Mechanism is also in a good position to create important synergy with the work of special procedures, treaty bodies and the Universal Periodic Review. Thousands of unrealized recommendations produced over decades by these organs and directed to states significantly lack implementation. In many cases, and according to states themselves, they need assistance and clarification on best ways of enforcement of these recommendations. Comprised of seven experts from different socio-cultural regions

and areas of knowledge, EMRIP in collaboration with other sister-mechanisms is qualified to advance states' understanding of their human rights obligations when it comes to indigenous peoples.

From advisors to facilitators

Over twelve years the Expert Mechanism has conducted in-depth studies focusing on one or more interrelated articles of the UN Declaration on the Rights of Indigenous Peoples. Experts have done research and advice on the rights to health; education; access to justice; cultural heritage; indigenous entrepreneurship and access to financial services; free, prior and informed consent; migration, borders and displacement; natural disaster risk reduction; and the right to participate in decision-making. While deeply analyzing the challenges indigenous peoples face on a daily basis accessing these rights, EMRIP also looks into the situation of the most vulnerable and in most cases double-marginalized groups inside communities, in particular women, children, youth and persons with disabilities. The rights of these disadvantaged groups, as well the interlinkages between different human rights are among the cross-cutting issues in every study.

Although studies allow for bringing up thematic expertise and guidance, there is a need for a broader picture and comparison of different practices of the use of the Declaration in state policies, law-making and law-enforcement at the national level. In order to meet increasing demand by all stakeholders to “identify, disseminate and promote good practices and lessons learned regarding the efforts to achieve the ends of the Declaration”, EMRIP produces a review reports focusing on issues of critical significance for the realization of the human rights of indigenous peoples, such as self-determination, recognition and reconciliation.

Having approached the first anniversary of the UN Declaration on the Rights of Indigenous Peoples, states and indigenous peoples were obviously not satisfied with the level of collaboration and mutual understanding. Indigenous peoples proposed new international mechanisms to monitor implementation of the provision of the Declaration, while states insisted on a non-binding nature of this instrument. The World Conference on Indigenous Peoples gathered in the UN General Assembly in 2014 confirmed the global consensus regarding the Declaration and triggered negotiations on revision of the mandate of one of already existing mechanisms. As a result of these deliberations, the mandate of EMRIP was amended in 2016 by the Human Rights Council in order to allow for an enhanced and more inclusive process of ensuring the minimum standards are met.

This reform has changed the paradigm: from being just advisors EMRIP members have become dialogue facilitators. The new mandate allows for engaging with states in order to assist them to implement their indigenous peoples' rights on a technical level, by providing notes on legislative initiatives, bills, laws, policies and action plans. Experts can offer capacity building for government officials and indigenous peoples to increase their understanding of human rights and ways to promote and implement them. Some engagements can be organized in the form of a country mission, while others would be carried out remotely. Most importantly, EMRIP is only allowed to provide technical support or dialogue facilitation services by request of states and / or indigenous peoples, ideally if it is a joint request prepared by both parties. This element of the mandate enforces collaborative approach and is directed to make a difference on the ground. This is why more and more indigenous leaders, states and academics participate in EMRIP's annual sessions and seek other types of cooperation.

The new mandate has increased EMRIP's authority and reputation among the human rights community, including within the UN system, in the Human Rights Council in particular. Following EMRIP's recommendation the Council has decided to pay more attention to the issue of enhanced participation of indigenous peoples in the UN processes, situation of human rights defenders and human rights-based approach for indigenous languages. There is a unanimous understanding that EMRIP's mandate should be considered in its entirety – country engagement supplements the studies and the research and advice help to provide technical assistance and facilitate dialogue.

Indigenous languages are a human right

One of the first studies of the Expert Mechanism was on the role of languages and cultures in the promotion and protection of the rights of indigenous peoples, a study which five years later became one of the key documents to build grounds for the Action plan of the 2019 International Year of Indigenous Languages. This study builds on the Article 13 of the UN Declaration on the Rights of Indigenous Peoples states that "Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures."

EMRIP believes that EMRIP indigenous cultures and languages are a central and principal feature of indigenous peoples' identities as collectivities and as individuals. While defining indigenous peoples as being primarily responsible for language survival, EMRIP experts also recognize states duties to promote indigenous languages and safeguard them from extinction. This includes providing sufficient funding to support

teaching methods, literacy materials and orthographies in the pupil's own language. According to the studies, states shall also "enact national law and policy frameworks to support traditional & formal education ... with the aim of developing and implementing appropriate programmes and activities for and by indigenous peoples." States must also "obtain indigenous peoples' free, prior and informed consent when developing and implementing laws and policies related to indigenous peoples' languages and culture."

Another, most recent report of EMRIP "Efforts to implement the United Nations Declaration on the Rights of Indigenous Peoples: recognition, reparation and reconciliation" provides that the "recognition of indigenous languages is another key aspect of the recognition of indigenous peoples and is receiving greater attention in the framework of the International Year of Indigenous Languages".¹ The study also contains several examples of both constitutional and legal recognition of indigenous peoples' languages and their relativeness to other rights such as land rights and education.

Understanding significant importance of indigenous languages for peace, reconciliation and sustainable development, and trying to ensure application of a human rights-based approach for languages, EMRIP joined others in proposing to proclaim the International Year of Indigenous Languages, as "...an opportunity for states and indigenous peoples to remedy injustices in the realm of language rights, including many states' historic suppression of indigenous languages, and to undertake preservation and revitalization measures, which earlier have seemed impossible or untimely".²

Former Secretary-General of the United Nations Ban ki-Moon repeatedly warned the international community about the critical loss of languages – one language dies a very second week. This trend threatens 40 per cent of the estimated 6,700 languages spoken around the world to become extinct. Not only globalization is a reason for this situation, but most of all the legacy of colonization and targeted assimilation policies exercised by colonial powers. Intergenerational trauma caused by these efforts has led to the sense of mistrust between indigenous communities and authorities and has severely damaged the confidence of indigenous peoples in their languages' vitality and resilience. In order to reconcile with the historical suppressions, the truth has to be found and recognized, and mutual investments in preservation and development of languages has to be agreed on. The Expert Mechanism is confident, that states should invest to the revitalization of languages at least as much resources as has been spent to destroy them.

¹ <https://www.undocs.org/a/hrc/emrip/2019/3>

² Statement of EMRIP to mark the launch of the International Year of Indigenous Languages

One of the most prominent good examples of reconciliation processes is Canadian Truth and Reconciliation Commission established in 2008 with the purpose of documenting the history and lasting impacts of the Canadian Indian residential school system on Indigenous students and their families. In June 2015, the Commission released an Executive Summary of its findings along with 94 "calls to action" regarding reconciliation between Canadians and Indigenous peoples. The Commission found that children in residential schools were not allowed to speak their native languages or practice their culture, partly to encourage the use of English but also in an effort by the government to assimilate the children into non-aboriginal society. The calls to action request increased funding for educating children in Indigenous languages and also request that post-secondary institutions provide degrees and diplomas in Indigenous languages. This domestic process in Canada along with the increased international attention to this issue has led to the public apology by the government of Canada and has triggered a process of revision of indigenous peoples related legislation in the country. In particular in June 2019 Canadian parliament adopted the new Indigenous Language Act and established the office of the federal indigenous language Ombudsman.

Unfortunately, there are still many countries where indigenous peoples and their languages are not recognized and therefore no targeted indigenous language policies have been put in place. However, the movement towards recognition is going forward in many parts of the world. Most recently, the Cabinet of Japan has approved a law that recognizes the Ainu as indigenous people, although Ainu representatives claim that the law in itself does not constitute an effort to achieve recognition, reparation and reconciliation, as there is no reference to past violations.³ However, this recognition is a good ground for further dialogue where UN human rights experts' assistance may or may not be requested.

In order to foster dialogue and reconciliation around indigenous languages parties should abandon potentially damaging stereotypes-based approaches. First of all, it is very often that states and international organizations treat languages only as part of cultural heritage. Recently renewed UNESCO's policy of engaging with indigenous peoples speaks about indigenous languages as "a vehicle of their intangible cultural heritage".⁴ Although it is non-contestable and non-doubtable that languages and cultures are indivisible, they should not be considered only in the context of cultural performances and festivals. Languages are a tool for communication, transmission of knowledge and a human right.

³ <https://www.undocs.org/a/hrc/emrip/2019/3>

⁴ <https://unesdoc.unesco.org/ark:/48223/pf0000258772>

Another extreme is to consider languages from a national security perspective and set legislative restriction on the linguistic communities. So called political nation building policies in many countries, in fact, constitute a neocolonial effort to determine on behalf of indigenous peoples how their languages can be taught and where they can be spoken and used. Overregulated language related normative framework provides little space and flexibility for indigenous own educational systems. These efforts are often articulated as state care of the nation wellbeing, prevention of segregation or advancing equality in the society.

Policies put in place without or with little participation of indigenous peoples in the drafting process lead to the dysfunction of such policies and eventually cause damage for languages and loss of critical time. Application of the principle of free, prior and informed consent is the key to the instrumentality of laws, policies or action plans. Well planned policies with full participation of indigenous peoples determines what methods could be most efficient in each case: reclamation, revitalization, maintenance or promotion. Collaboration of states and indigenous peoples in a good faith would make languages visible, resilient and restore prestige to speak those languages. Indigenous peoples have the knowledge how to preserve their languages, and states have resources to assist and encourage them to do so, including by building capacity of linguistic communities and individual language activists.

Many of above listed concerns are addressed by the priorities of the International Year and the Action Plan prepared under the leadership of UNESCO and the Steering Committee of International Year of Indigenous Languages: increasing understanding, reconciliation and international cooperation; Creation of favorable conditions for knowledge-sharing and dissemination of good practices with regards to indigenous languages; Integration of indigenous languages into standard setting; Empowerment through capacity building; Growth and development through elaboration of new knowledge.

Efforts to revitalize the languages

Many indigenous languages are recognized by the UNESCO's Atlas of the World's Languages in Danger as severely or critically endangered. These cases demand urgent measures of revitalization. One of the most effective ones – a pre-school full immersion method of language nest – was born in an indigenous Maori community in Aotearoa / New Zealand, and expanded to Hawaii, Nordic Countries and Russia. Language nests facilitate bilingual education and recreates native speakers in a relatively short period of time.

The only one existing Karelian language nest Kielipezä ('Language Nest') is run by the House of the Karelian Language. The nest is similar to a regular kindergarten, except that the language of instruction is Karelian, with no translation into Russian. The staff helps the children to learn the language, using nest-specific teaching methods. The nest group is small, which allows individual work with each child. The next challenge will be to maintain the Karelian-language skill throughout a Russian-language school period. With this in mind, the House of the Karelian Language carries out informational and educational work, encouraging the parents and the local community to improve their language knowledge and to speak to language-nest graduates in Karelian.⁵

While language nests are useful for settled communities, nomadic indigenous communities would need other culturally appropriate models. Understanding the negative experience of boarding schools, the Russian government has introduced a mobile school method, which ensures access to education without taking children from their families, and without harm to their physical and mental health. This method also allows for the preservation of native languages and cultures via traditional occupations. This educational practice might be appropriate for indigenous peoples living in the conditions of the Arctic and developing reindeer husbandry in tundra.⁶

Although formal educational programmes run by authorities or communities are very important and provide stability in language teaching, many indigenous language activists also significantly contribute to the language preservation and development. Moreover, community-led language activism is a pillar for linguistic sustainability and development. It is a modern environment that encourages speaking and learning the native language — Karelian — through educational and social activities: producing handicrafts, cooking, singing in a village chorus, or performing in a local amateur theatre. Here Karelian is the official working language. The project is a response to the emerging needs to revive the traditional knowledge, which almost faded away together with the senior generation of Karelians, keep the regional history, strengthen the Karelian identity, and test new forms of social interaction. These trends find more and more support in the local community and drive the interest to the House in guests and tourists. Projects like this ensure balance and cooperation between formal education and informal, community-based activism.

It is important for indigenous languages' survival and development that they are used in the education system, public administration and the media. In the modern life they should be also represented in cyberspace. While some languages still don't have own scripts and writing systems, others have been actively used on the Internet and in

⁵ <http://sana2019.ee/en/nest>

⁶ K. Carpenter and A. Tsykarev, (Indigenous) Language as a Human Right, 24 UCLA Journal International Law & Foreign Affairs (forthcoming 2019)

technology. Centre for Innovative Language Technologies of the Republic of Komi in Russia has contributed to the digitalization and documentation of many indigenous languages of Russia.⁷ Another example is the Language Resource Media Centre of the Karelians, Vepsians and Finns in the Republic of Karelia in Russia. Built on a publishing house this Centre unites journalists, researchers, activists to supports indigenous literatures, media, digital language technologies and language modernization efforts.

As mentioned earlier capacity building and empowerment of communities is one of the priorities of the International Year of Indigenous Languages. Seven indigenous non-governmental organizations in the Baltic Sea region have established a Civil Society Network for preserving and revitalizing indigenous languages “SANA 2019”. The team of *SANA 2019* believes that neither school, nor NGOs shall be held solely responsible; a successful revival of an endangered language can only be achieved through a coordinated work of policy-makers, educators and civil society. This position has been formulated and transferred into a set of specific recommendations by participants of *Language Activism Forum*, organized by *SANA 2019*. The recommendations have outlined how to promote language activism and how to ensure its interrelation with the agenda of formal educational institutions, cultural establishments, state bodies and other stakeholders. The preservation of indigenous languages would be impossible without optimism on the local level — in indigenous peoples’ habitual lands. The Network has contributed to increasing local optimism by providing training and financial small-scale support for indigenous languages activists and organizations and by promoting their advanced practices internationally allowing for cooperation with like-minded across the globe.

Conclusions: added value of the International year of Indigenous Languages

Preliminary results of the International Year of Indigenous Languages show the potential for recognition and reconciliation around indigenous languages. National steering committees and task forces are being formed in different countries, national and local action plans are being agreed on and implemented. Communities around the globe started to cooperate with each other and state authorities in search for best ways of safeguarding of critically endangered but still vital languages. More resources have been allocated to the instruction of indigenous languages and building capacity of communities. In some countries there have been moves towards expanding language policies and negotiating new, more effective language safeguarding strategies, with participation of indigenous experts and decision-makers. The crucial work being done by language grassroots activists has been supported and acknowledged.

⁷ <http://fu-lab.ru/laboratoriya>

The International Year has mobilized international community's attention to the need for preserving indigenous languages. Hundreds of international, regional, national and local events are held in all continents, where indigenous and expert community articulates calls to action and tries to find ways on how to keep going after the Year is over. At the high-level event of the UN General Assembly to mark the opening of the International Year, President Evo Morales of Bolivia stated that indigenous languages are very important for the modern democracy. Victoria and Yuelu Proclamations – outcomes of the regional meetings in Asia, North America and the Arctic – contain calls to shift the paradigm and recognize at all levels the human right nature of languages, which includes full respect to the right to free, prior and informed consent of indigenous peoples, and potentially the need for a legally binding international instrument to protect languages.

As proposed by the Expert Mechanism on the Rights of Indigenous Peoples, the UN Human Rights Council will hold a half-day panel discussion on indigenous languages from a human rights perspective in its upcoming regular fall session. The International Year's calendar still has a lot of events, but it is rapidly approaching and its conclusion. Is it enough for us to pay attention only for twelve months? Do we have time to conclude all we have in mind? Shall we use the momentum and prolong our efforts building on the results and dynamics of this year? On the World's Indigenous Peoples' Day, the Expert Mechanism together with other UN indigenous-specific mechanisms, namely the Permanent Forum on Indigenous Issues, the Special Rapporteur on the Rights of Indigenous Peoples, and the Voluntary Fund for Indigenous Peoples, jointly called on states to proclaim an International Decade of Indigenous Languages. This would give a little bit more time for all of us to support indigenous languages, and therefore give them more chance for survival.