



THE UNIVERSITY OF BRITISH COLUMBIA



UNITED NATIONS  
HUMAN RIGHTS  
OFFICE OF THE HIGH COMMISSIONER

**Panelist** Chidiebere, C. Ogbonna, Ph.D.

**Panel** Panel 4: Legal and academia

**Time** 9.00 – 10.35

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**Location** *(Remote on Zoom)*  
Robert H. Lee Alumni Centre  
University of British Columbia  
6163 University Blvd  
Vancouver, BC

UNDRIP establishes a universal framework of minimum standards for the survival, dignity, and well-being of the Indigenous peoples of the world. It covers the full range of indigenous peoples' specific rights, including rights to lands, territories, and resources; self-determination; participation in public affairs; health; education; general economic and social development; access to justice and customary law, among others. According to Article 2 of UNDRIP "Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular, that based on their indigenous origin or identity." On the issue of the overarching concerns of marginalization and assimilation of indigenous peoples, UNDRIP provides for the combined application of the principles of non-discrimination and self-determination. This implies that indigenous peoples must be respected for whom they are and must be accorded the right and liberty to determine their modus of existence following their rich heritage.

The implementation of international treaties usually involves different mechanisms. The UN employs Treaty monitoring bodies, Special Rapporteurs, regional human rights bodies, and other mandate holders. Regional organizations also utilize different mechanisms, for example, the African Union (AU) has three principal mechanisms for protecting human rights on the continent: A Charter, a Commission, and a Court. Despite these mechanisms being in place, human rights are still violated in numerous countries across the world. The reasons stem from the fact that the human rights system suffers from weak capacity, while many states seem to lack the political will to improve the human rights situation within their national territories.

Moving to the situation in Africa, the African Union as a body recognizes indigenous peoples at the regional level. In 2000, the African Commission on Human and Peoples' Rights commissioned the Working Group on Indigenous Populations/Communities in Africa (WGIP), with the mandate to carry out promotional activities on the rights of indigenous peoples including country visits and information gathering, research, and sensitization seminars. Worryingly, till date, recognition in national laws remains the foremost challenge faced by indigenous peoples in Africa. Over 50 Million indigenous peoples of African descent are barely recognized by their national laws. In 2010, the Central African Republic became the first African country to ratify ILO Convention No. 169, which deals specifically with the rights of indigenous and tribal peoples. In 2011, the Republic of Congo became the first African country to adopt a specific law on the promotion and protection of the rights of indigenous populations. The 2010 Kenya constitution



recognizes historically marginalized groups. The 1996 constitution of Cameroon states that: The State shall ensure the protection of minorities and shall preserve the rights of indigenous populations in accordance with the law, and in Burundi, the constitution provides for special representation of the indigenous Batwa people in the National Assembly and the Senate.

The few number of African states that have recognized indigenous peoples shows that African governments are reluctant to recognize indigenous peoples within their territories, instead, they claim that all Africans are indigenous, thus no group deserves a special right on the basis of being "indigenous". The issue of Africans being inherently indigenous is not in question because they were the original inhabitants of the land, also they were subjects of European colonial subordination. However, Indigenous peoples refer to a specific group that suffers peculiar discrimination and marginalization due to their unique cultural heritage and way of life, which other groups within the state are not subjected to. Another challenge that is associated with recognition is the presumption that recognizing a group as indigenous will advance the path for secession. Ironically, this notion is contrary to the provisions of UNDRIP, which specifies that indigenous peoples' right to self-determination does not "expressly" include secession. Apparently, the international legal framework on indigenous peoples' rights recognizes and respects territorial sovereignty and therefore does not pose any threat to the territorial integrity of states.

Observably, human rights violations and marginalization exist in different parts of the world and spheres of life, however, Indigenous peoples of the world face "double marginalization". This is because they are marginalized even within marginalized groups, which suggests that the existing mechanisms for the implementation of UNDRIP are inadequate and inefficient. Consequently, the following recommendations are made as possible ways of establishing effective monitoring mechanisms at the national and regional levels for the implementation of UNDRIP:

- i. Given that recognition is a paramount challenge for indigenous peoples, OHCHR should encourage regional organizations, such as the African Union to adopt a special resolution on indigenous peoples' rights. The proposed resolution will be worded in a way that will clearly address the issue of recognition of indigenous peoples at both regional and national levels and thus provide a framework to address marginalization, exclusion, vulnerability, and discrimination against indigenous peoples.
- ii. Establishing special courts that will arbitrate indigenous matters at national levels should be in view. The judiciary system of many states, particularly African states does not offer prospects for the respect of indigenous rights, which makes the African Court of Justice and Human Rights the closest point of legal redress for the indigenous peoples of Africa. Consequently, seeking legal redress is a daunting process for many marginalized indigenous communities. For them, litigation is complex, lengthy, and costly. Establishing a court with special jurisdiction on indigenous affairs will help to address the complexities of litigation faced by indigenous peoples and improve the implementation of UNDRIP.
- iii. Establishing a committee of "national experts on indigenous peoples' affairs". The commissioning of "national experts on indigenous peoples' affairs" for each state will help with the monitoring of the implementation of UNDRIP at the national level. At the moment, this role is covered by EMRIP, which has only 7-member representatives from different regions of the world. Obviously, the 7 Expert members of EMRIP are insufficient to oversee the implementation of UNDRIP in the different regions that they represent, therefore establishing a



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committee of "national experts on indigenous peoples' affairs" should be considered. The committee may serve as an "EMRIP sub-expert committee" with a clear role of monitoring and reporting on the implementation of UNDRIP in the different states that they represent.