

United Nations Expert Mechanism on the Rights of Indigenous Peoples

July 11 – 15, 2011

Geneva, Switzerland

July 14, 2011

Thank you

Mr. Chairman
This is

Agenda Item 5 – United Nations Declaration on the Rights of Indigenous Peoples

~~Presented by~~ ^{presented by} the Joint Submission on behalf of: Aktionsgruppe Indianer und Menschenrechte (~~AGIM~~, Germany), Committee in Solidarity with Indigenous Peoples of the Americas (~~CSIA~~ ^{the} ~~Nassimur~~, France), GLOBAL 2000 - Friends of the Earth - Austria, International Committee on the Indigenous Peoples of the Americas (INCOMINDIOS Switzerland), Working Circle Indians of North America (~~WCI~~, Austria),

~~Presented by Gawan Maringer, MA~~

Mr. Chairman, this statement shows in a nutshell the significance of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP): ^{the UNDRIP}

To begin with, let's explore the legal status of a declaration:

In international law, conventions as well as covenants can be distinguished from declarations. While the first mentioned are claimed to be "hard law" and therefore binding, a declaration is often regarded as "soft law" and consequently interpreted as of having unbinding status.

Already in 1962, the UN Office of Legal Affairs defined a declaration as „... *a solemn instrument, resorted to only in very rare occasions relating to matters of major and lasting importance where maximum compliance is expected*“.

~~(UN Office of Legal Affairs, 1962)~~

Based on this definition, obviously, a declaration is of remarkable character. Accordingly, the United Nations Declaration on Human Rights has to be mentioned as best example. Due to its worldwide application and relevance it has become similar to the significance of a convention, one could claim that it even exceeds the value of a convention because of its implicit universal moral character which has become customary law.

So Why is the UNDRIP of truly exceptional relevance and has a unique status as a declaration¹?

- The UNDRIP is the first declaration being elaborated by States, non-indigenous experts and those that are mainly affected: Indigenous Peoples themselves – represented by experts, traditional leaders and activists. In this matter, the UN changed its procedural regulations and included indigenous participation. Consequently, indigenous expertise was essential, to finally reach outstanding substance and utmost significance.
- The extensive period of time in the process needed to realize the adoption of the UNDRIP highly increased its relevance. Each seemingly endless debate among States and Indigenous Peoples, as well as other actors, finally promoted the coherence and legitimacy of the UNDRIP. As a matter of

¹The following taxation does not claim to be complete, nevertheless it highlights rather central points

fact, this 25 year-long process affirmed its **exceptional validity** and is **unique** in UN history.

- Remarkably unique as well, during the mentioned period the UNDRIP has passed **six UN mechanisms and institutions**: The Working Group on Indigenous Peoples (~~Populations~~) (~~WGIP~~), the Sub-Commission on Prevention of Discrimination and Protection of Minorities, the Working Group on the Draft Declaration (~~WGDD~~), the Human Rights Council (~~HRC~~), the Third Committee of the General Assembly and eventually, the UN General Assembly itself.
- Within the time of its elaboration, as a result of indigenous expertise, **fundamental new standards evolved** - such as **Free, Prior, Informed Consent (FPIC)** – which today are being referred to as acknowledged terminology.
- Nevertheless, it has to be highlighted that the UNDRIP evolved upon already existing legal norms and is therefore **consistent with established international law**. The UNDRIP **promotes specific rights on collective entities** and therefore broadens its application. In this regard, the **Right to Self Determination** serves as the essential basis concerning all other provisions' economic, social, cultural, ecologic and spiritual impacts. Of particular importance and above ILO 169 provisions is the uniquely **consistent, interrelated application of the Right to Lands, Territories and Resources** (~~CPR~~).
- Respectively, despite the UNDRIP's status as a declaration, many of its specific provisions are of binding nature due to their **relation and consistency to already inscribed "hard law"**, as **implicit in the UN Treaty Bodies**, such as the Right to Self Determination in the Convention on Civil and Political Rights (~~UNICCPR~~), the Convention on Economic, Social, and Cultural Rights (~~UNICESCR~~) and anti-discrimination provisions in the Convention on the Elimination of All Forms of Racial Discrimination (~~CERD~~) as well as the protection of women and children in the Convention on the Elimination of All Forms of Discrimination against Women (~~CEDAW~~) and the Convention on the Rights of the Child (~~CRC~~). Particularly, the Committee on the Elimination of Racial Discrimination uses the UNDRIP as a foundation against ~~Indigenous~~ ^{Discrimination} ^{regarding indigenous Peoples}. The mentioned Treaty Bodies already referred to the UNDRIP several times. Due to the UNDRIP's consistency with the Treaty Bodies, **specific provisions of the UNDRIP can be monitored** and are, as a consequence, **legally binding**.
- The UNDRIP has been already applied by Courts as well, such as, inter alia, by the Inter-American Court in the case Saramaka People v. Suriname in which indigenous **Land, Territory and Resource Rights in relation to FPIC** got affirmed².
Free Prior and Informed Consent
- The application of the UNDRIP by different actors has already profoundly strengthened its normative character - even as a draft it had central relevance – UN Special Rapporteur on Indigenous Peoples James Anaya highlights the **customary law character** of the UNDRIP.
- Furthermore, the UNDRIP is the **only declaration** which explicitly calls for its own **implementation under article 42 and assigns the Permanent Forum on Indigenous Issues** (~~PFII~~) **to promote this aim**. It uses the terms "full application" – a very strong term in international law – and also "effectiveness".

²Further examples inter alia: Mayagna (Sumo) Awas Tingni Community v. Nicaragua, 2001, and Mayan Indigenous Communities of the Toledo District Toledo v. Belize

Mr. (Chairman)

The above mentioned points clearly highlight the exceptional significance of the UNDRIP and its inherent rights. It is certainly not just "an aspirational document". The UNDRIP adheres to full transparency mainly due to the broad participation of Indigenous Peoples and is truly coherent as well as determined in its meaning. Respectively, it is the most relevant international instrument concerning Indigenous Peoples which must be respected and implemented.



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