



## **Statement by Victoria Tauli Corpuz, Special Rapporteur on the rights of indigenous peoples**

### **High-Level Event of the General Assembly to mark the tenth anniversary of the adoption of the United Nations Declaration on the Rights of Indigenous People**

**25 April 2017, New York**

Honorable President of the General Assembly, Mr. Secretary General of the United Nations, President Morales, Honorable Mr. Gilmour, Madame Chairperson of the Permanent Forum, Chairperson of the Expert Mechanism on the Rights of Indigenous Peoples, Excellencies, indigenous representatives, distinguished ladies and gentlemen,

#### **Introduction**

In September 2007, during the adoption of the United Nations Declaration on the Rights of Indigenous Peoples ('the Declaration'), I had the honour to address the General Assembly as the Chairperson of the United Nations Permanent Forum on Indigenous Issues. In my speech, I referred to the historical moment and stated that,

*(t)he challenge to ensure the respect, protection and fulfilment of Indigenous Peoples Rights has just begun. (...) Effective implementation of the Declaration will be the test of commitment of States and the whole international community to protect, respect and fulfil indigenous peoples collective and individual human rights.*

Now, ten years later, as the Special Rapporteur on the rights of indigenous peoples, I have been vested by the Human Rights Council with the mandate to promote the Declaration as one of my main tasks. Effective implementation of the Declaration means that the rights enshrined in it are enjoyed by indigenous peoples all over the world. Despite some progress made, as previous Special Rapporteur James Anaya pointed out, *the wide gap between the rights mentioned in the Declaration and its effective implementation will persist, leading to a certain complacency and acceptance of that condition by dominant actors and within the United Nations system.*

Before elaborating further, I would like to pay tribute to Professor Rodolfo Stavenhagen, the first mandate holder who recently passed away. He has been a source of inspiration for me especially in how he performed his mandate as the first Special Rapporteur on the human rights and fundamental freedoms of indigenous peoples. I would ask for a minute of silence to remember him and thank him for his work.

#### **The Declaration and the mandate of the Special Rapporteur**

The Declaration was introduced in the mandate of the Special Rapporteur since it was adopted. In September 2007, the HRC in its resolution extending the mandate of the Special Rapporteur (resolution 6/12) included the task of promoting '*the United Nations Declaration on the Rights of Indigenous Peoples and international instruments relevant to the advancement of the rights of indigenous peoples, where appropriate.*'

Since my appointment, I have worked to identify the obstacles and challenges, as well as the potential best practices, on the implementation of the Declaration. Unfortunately and as the late Professor Rodolfo Stavenhagen pointed out, what persists are statements of best intentions rather than best practices. Still, there have been positive developments that I have underlined in my reports, including initiatives adopted by indigenous peoples themselves, which can inspire the legal and policy changes needed.

In my first report, I pointed out two challenges regarding the application of the Declaration: the lack of awareness and understanding of this human rights instrument, and the difficulties for States to translate them into practical steps for implementation. I would like to use this opportunity to briefly analyse how the work of the mandate has aimed to address these two challenges through its mandated areas of work: the promotion of good practices, country assessments, communications concerning alleged human rights violations and thematic studies. I will prepare a more elaborated report on this which will be presented at the 72<sup>nd</sup> Session of the General Assembly this year.

### **Promoting a better understanding and raising awareness**

The work of my predecessor during the first term of his mandate focused on encouraging acceptance of the Declaration by the States that voted against its adoption in the General Assembly. All four countries (Australia, Canada, New Zealand and the USA) announced the reversal of their positions during his tenure, and other countries, like Colombia or Samoa, that had abstained from the vote later issued statements in support for the Declaration.

Special Rapporteur Anaya devoted considerable efforts to clarify the legal status of the Declaration. According to him, the Declaration is a standard-setting resolution of profound significance and has legal significance which reflects a wide consensus at the global level on the content of the rights of indigenous peoples. General Assembly resolutions, particularly when they enjoy such a high level of consensus and adopted under the authority of the Charter, can and do inform Member States' obligations under the human rights clauses of the Charter. Besides, some of the core provisions of the Declaration reflect international customary law, and many of its articles are an extension of standards found in various human rights treaties that have been widely ratified and that are legally binding on States. Moreover, due to its process of elaboration and adoption, the Declaration also enjoys a high degree of legitimacy. For all these reasons, he strongly emphasized that "implementation of the Declaration should be regarded as a political, moral and, yes, legal imperative without qualification."<sup>1</sup>

The mandate holders have also underlined the remedial nature of the Declaration. In our view, the Declaration recognizes and strives to repair the ongoing consequences of the historical denial of the fundamental human rights of indigenous peoples, including their right to self-determination. I regard the Declaration as an essential tool for reconciliation, a much needed process in countries where indigenous peoples continue to suffer gross human rights violations.

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<sup>1</sup> A/68/317, para 67.

The Declaration is an instrument aimed at ending the pervasive racism and discrimination which prevents indigenous peoples' full enjoyment of their human rights. I have found that systemic and institutionalized racism and discrimination persist in most countries and remain as the key obstacles for indigenous peoples to attain a relationship on equal footing with Governmental institutions and with the society at large. I pointed this out in my mission reports<sup>2</sup> and in my comments on thematic issues.

Although I have noted that the legal status and aims of the Declaration are now better understood and accepted by many States, I have also noted that problems still remain, sometimes due to competing interpretations of the content of the rights enshrined in the Declaration and the balancing of interests and rights of others.<sup>3</sup> I have observed that differences in interpretation exist especially in relation to rights to lands and resources; the application of the duty of States to consult with and seek the free, prior and informed consent of indigenous peoples in matters that affect them; and harmonizing State and customary indigenous governance and justice systems. In this context, the work of the mandate has been directed to clarifying the standards contained in the Declaration, and other relevant existing human rights instruments, both in general and in specific contexts. The communication and exchanges with other UN human rights bodies and the increasing reference to the Declaration in court cases related to the rights of indigenous peoples at both the country and the regional levels have also been instrumental in this interpretative work.

After the adoption of the UN Guidelines on Business and Human Rights, Special Rapporteur Anaya helped clarify how indigenous peoples' rights should be implemented in the context of business activities affecting them, both in relation to State duties and companies responsibilities, in particular within the extractive sector. In my case, I have devoted particular attention to clarify issues related to the operationalization of the rights to development and economic, social, cultural and environmental rights as reflected in the Declaration, in the context of the multilateral processes, debates and negotiations on sustainable development,<sup>4</sup> climate change, biodiversity and conservation activities,<sup>5</sup> and in relation to investment agreements.<sup>6</sup>

Nevertheless, challenging and recurring cases of competing interpretation of the rights of indigenous peoples and corresponding duties and responsibilities remain. A good example of this can be found in the implementation of the State duty to consult and obtain consent from indigenous peoples before the adoption of measures that affect them. The work of the mandate in this regard has provided a better understanding of the meaning of consultation and consent in the context of ILO 169 and the Declaration through dialogue with Governments, technical assistance and working visits to discuss legal developments and concrete cases. Last week I was in Honduras where I did a working visit, upon the invitation of the government, to observe the processes around the development of a draft law on consultation in that country. Before I went there I made a commentary on the processes undertaken so far and the contents of the first Draft. The mandate has tried to help clarify and implement these standards contained in the Declaration through participation in meetings and seminars, and through

<sup>2</sup> A/HRC/30/41/Add.1 paras 43

<sup>3</sup> A/HRC/33/42/Add.3

<sup>4</sup> A/69/267

<sup>5</sup> A/71/229

<sup>6</sup> A/70/301; A/HRC/33/42



communications, visits and reports on concrete cases, such as the hydrocarbons exploitation projects in the Peruvian Amazon, among others.

Finally, I would like to comment on the special need for more awareness-raising and effective application within the United Nations system itself. Despite the work the mandate has developed in cooperation with other UN specialized bodies, including the UNPFII, for the full incorporation of the Declaration in the work of UN agencies, bodies, programmes and funds and other entities, there continues to be a lack of coherence within the UN system with regards to the rights of indigenous peoples. Articles 41 and 42 of the Declaration state that the organs and specialized agencies of the UN System and other intergovernmental organizations shall promote respect for and full realization and application of the provisions of the Declaration, including at the country levels.

Within the UN human rights system, there have been clear advances in the work of the Treaty bodies and other Special Procedures, which now routinely incorporate the Declaration as source of law in their reports and observations. I have worked in cooperation with other mandate holders through joint communications and public statements linking the rights in the Declaration with the human rights enshrined in other human rights treaties and instruments, and I can say that there is a much better understanding of the particular rights of indigenous peoples among my colleagues. The decision reached by the Human Rights Council to expand the mandate of the Expert Mechanism on the Rights of Indigenous Peoples is also a favourable development which should be acknowledged.

It is without any doubt that there has been an increased level of awareness on the Declaration within UN bodies, programmes, agencies and funds at the various levels. This has resulted in the adoption of policies of engagement with indigenous peoples, environmental and social safeguard mechanisms and targeted projects for indigenous peoples. However, just like what is happening with States, there is still a big gap between rhetorics and practices. I still hear some UN personnel saying that indigenous peoples should not be obstacles to progress and development, echoing what some government officials say. Article 32 of the Declaration affirms the right of indigenous peoples to determine and develop priorities and strategies for the development or use of their lands, territories and other resources and that their free, prior and informed consent should be obtained before approving any project affecting them. Other articles referring to free, prior and informed consent are Articles 10, 11, 19, 28 and 29. I would like to express my serious concern on how the processes around ILO Convention No. 169 are being used by some states and other actors to undermine free, prior and informed consent especially in the context of the development of laws to regulate the free, prior and informed consultation.

One of the good practices within the UN System which should be highlighted is the work done by the International Fund on Agricultural Development (IFAD). It has facilitated the engagement of indigenous peoples with its highest governing body and senior management through the establishment of an Indigenous Peoples' Forum which meets once in two years just before the Governing Council meeting. It adopted a Policy of Engagement with Indigenous Peoples and established the Indigenous Peoples' Assistance Facility. I certainly wish that more UN agencies, funds and programmes follow this practice, so more constructive dialogues and collaborative actions between

indigenous peoples and UN bodies, agencies, programmes and funds can be done for the effective implementation of the UN Declaration on the Rights of Indigenous Peoples.

### **Translation into action**

The mandate of the Special Rapporteur allows for direct and authoritative recommendations and advice to States and others on practical implementation of the Declaration. The mandate has provided guidance on concrete legal, policy, administrative and other measures to ensure implementation of the Declaration and overall coherence, at the national level. This is done through our communications work, country and thematic reports. In our missions, we state that the purpose of the visit to evaluate the human rights situation of indigenous peoples in the light of international human rights standards, including the Declaration, and to provide comments and recommendations designed to support the implementation of those standards.

The recognition and protection of the rights to lands, territories and resources is crucial for indigenous peoples to be able to enjoy all the full spectrum of human rights to which they are entitled. All three Special Rapporteurs have devoted particular attention to this issue, responding to allegations submitted to us in our working and country visits. Problems related to lack of recognition of land rights are manifold, and we have provided recommendations on measures and actions to be adopted at different levels, including the development of an adequate legal framework in accordance with human rights international standards; adequate procedures, which are accessible, rapid and effective, to adjudicate land titles; the review of laws on expropriation; provision of adequate mechanisms to solve land disputes; effective protection from encroachment, including through early warning systems and on site monitoring systems; prohibition of forced eviction; among others.

Taking into account all the recommendations made by the mandate holders in this regard, I think a sound roadmap has been provided with the set of measures to be adopted in order for States and other actors to comply with their responsibilities and international obligations at the national and international level.

The existence of an adequate legal framework is not *per se* a guarantee of implementation, but it is an important first step to establish a solid basis to build the necessary changes. Within the legal sphere, the mandate has provided technical advice on constitutional reforms<sup>7</sup> and on specific legislation.<sup>8</sup> Our approach has always been to promote harmonization of the national legal framework with applicable international human rights standards on the rights of indigenous peoples, particularly the Declaration.

An important element to translate rights into practice is the adoption of adequate public policies. Both in my thematic and country reports, I have underlined the need to develop public policies that are based on human rights. I believe it is important to clarify the link between substantive human rights as contained in the Declaration and the issues, such as poverty eradication, education or health typically addressed in public policies. The reinterpretation of the concept of development in light of the Declaration is a way the

<sup>7</sup> A/HRC/12/34/Add.6, appendix A, A/HRC/9/9/Add.1; A/HRC/15/37/Add.7

<sup>8</sup> A/HRC/12/34/Add.6; A/HRC/18/35/Add.7

mandate can contribute to adequate implementation of the rights of indigenous peoples within this sphere, ensuring that the agency of indigenous peoples as development actors is recognized in the reconceptualization of economic development.

In this sense, I have aimed to stress the link of poverty with the violation of the right to self-determination, stating that the denial to self-determination in relation to development pathways and control over natural resources is a central causal factor in the prevalence of poverty among indigenous communities.<sup>9</sup> I have also tried to make clear the need to implement the rights of indigenous peoples over their lands, territories and resources to ensure their enjoyment of other human rights, including the rights to food, health and an adequate standard of living, as well as the right of indigenous peoples to control and access those lands and resources and to be supported in the development of their own economic alternatives. I have also underlined the persistent problem of the lack of adequate indicators to measure compliance in relation to the measures adopted,<sup>10</sup> a situation I have found in most of my country visits and which makes it difficult to assess the adequacy of State initiatives.

I believe that more frank and widespread discussions and pro-active actions and decisions should be undertaken in addressing simultaneously development and human rights. While the common understanding on the human-rights based approach to development has been established and the mutually reinforcing and interdependence of human rights and development is affirmed in the Sustainable Development Goals and the 2030 Development Agenda, humongous efforts are needed to operationalize these.

The Outcome Document of the World Conference on Indigenous Peoples adopted by consensus at the General Assembly and the adoption by the Inter-Agency Support Group of its System-wide Action Plan, are attempts to address the gap between theory and practice so that objectives, policies and processes of development are linked directly and effectively in achieving human rights goals. Sustained efforts to address the gaps in knowledge and skills in translating human rights norms into concrete programming guidance and operations should be done at global, regional and national levels. I hope to see progress in this area in the future and look forward to cooperating with the Permanent Forum and the Expert Mechanism on the rights of indigenous peoples to achieve this end.

#### **At the international level: promote coherence**

It is difficult to assess to what extent the work described above has been effective in promoting the implementation of the rights of indigenous peoples enshrined in the Declaration and relevant international human rights instruments. It would be presumptuous to assume that the adoption of certain laws and measures respond solely to the efforts and recommendations of the Special Rapporteur. As with any human rights issue, the advances come about as results of joint efforts by, above all, indigenous peoples themselves, by the civil society organizations, the UN system and State institutions that are truly committed to respect and protect those rights.

I consider the establishment of the mandate of the Special Rapporteur on the rights of indigenous peoples as an achievement of the work of indigenous peoples at the international level. It is an essential tool for the promotion of the Declaration, for

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<sup>9</sup> A/HRC/30/41, para 18

<sup>10</sup> A/69/267 para 59

shining a spotlight on the violations of human rights contained in the Declaration and identifying possible steps to redress such situations through the establishment of constructive dialogues and cooperation with all actors involved for its effective implementation.

### **Challenges for the mandate to further promote implementation**

Beyond the increasing recognition of the moral and legal obligations enshrined in the Declaration, we seem to have arrived to an *impasse*, in which the Declaration is not openly challenged but remains far from being implemented. I have held constructive but worrying dialogues with Governments and other actors during which they openly recognize the problems and needs, and their own inability to carry out the needed measures for the implementation of their duties and responsibilities. The mere recognition of the problems and their limitations to solve them does not liberate them from further scrutiny or from effective compliance.

To respond to this situation and adequately promote the Declaration, successive Special Rapporteurs have made efforts to refine the working procedures so they are more effective, within the framework of the code of conduct guiding our work. I have followed former rapporteur Anaya's approach to go beyond reacting to allegations to actually assisting States and others in the implementation of the rights of indigenous peoples.

I am also seriously concerned on the increasing trend of criminalization of indigenous activists, organizations and movements. Many ardent and committed indigenous persons who are devoting their lives to the promotion and effective implementation of the Declaration, face trumped up criminal charges which prevent them from pursuing their advocacy. Some of them end up prisons and at worst are physically assaulted or killed, as illustrated by the cases of Berta Caceres and many more. Several indigenous peoples' formations and institutions have been stopped from operating or were taken over by governments. These are evidences of the lack of political will on the part of some states to respect and promote the UN Declaration on the Rights of Indigenous Peoples. More efforts and resources should be provided to redress these situations and bring the perpetrators to justice. Sustained interventions by all actors should be undertaken to put a stop to criminalization efforts and continuing assassinations of indigenous leaders.

I will be remiss if I fail to mention that there are still countries in which the existence and identity of indigenous peoples are denied by some States which justifies their claim that the Declaration does not apply in their context . This creates a void of protection. It is very difficult for the Special Rapporteur to work in these circumstances, as these States are reluctant to initiate a dialogue, will not answer communications nor provide invitations for visits. I have invested a lot of effort in increasing visits and work in Asia and Africa but, as of today, only one invitation from an African country has finally materialized from an African Country (Cameroun) and none as of yet from an Asian country.

In order to engage with countries that do not respond to requests for invitations or answer communications, the mandate has tried to develop creative ways to approach these situations. Increasing coordination with regional and national human rights

institutions has proved, in some cases, to be very useful, although straining in terms of time and resources. We have also participated in seminars, conferences and other activities in these regions trying to take those opportunities to open a dialogue with the States in question. Any proactive approach requires a bigger effort and more resources than what is currently available. In this sense, the support of some funds and institutions has been essential to support the work of the mandate.

We have also put some effort in increasing the dissemination of our work through Internet. The mandate holders have developed specific websites, apart from the official UN OHCHR website devoted to the mandate, allowing us to make our reports, statements and other work readily available. Still, a lot more can be done in this area so the work of the Special Rapporteur becomes even accessible. I have also increased interaction through social media which allows for a more immediate attention to certain issues. I consider that the work with mass media is a very helpful tool in terms of promotion and best practices.

Collaboration with other UN human rights mechanisms is very important, not only in terms of promotion of the Declaration within the work of such mechanisms, but also to reinforce and complement our work, for instance through joint statements and communications in cases that fall under different mandates. Communication and coordination with regional human rights systems, such as the Inter American and African Human Rights Commissions, are also important to increase effectiveness. More streamlined procedures could be developed to enhance such coordination. Lack of resources is also a consideration in this case. A special case is the coordination of the Special Rapporteur with the other two specialized mechanisms in the United Nations system, namely the UNPFII and EMRIP. These can be cited as good examples of cooperation, which include the participation of the Special Rapporteur in the sessions of the mechanisms, allowing for parallel meetings with indigenous peoples representatives and others, joint statements and coordination meetings.

## **Conclusion**

To conclude, it is my view that there have been some progress in the implementation of the Declaration, especially in terms of the emergence of national laws and policies in several countries which protect rights of indigenous peoples. There is also progress from the UN System seen in the adoption of policies on indigenous peoples and development of programmes and projects dedicated to indigenous peoples. The references to the norms established in the Declaration in decisions reached in Courts, Treaty bodies, and Guidelines, such as UN Guidelines on Business and Human Rights, and decisions of the Conference of Parties of the UN Framework Convention on Climate Change and the Convention on Biological Diversity, among others. The 2030 Development Agenda and the Sustainable Development Goals also has some targets and indicators relevant for indigenous peoples. So I will certainly look forward to see more efforts in effectively implementing these policies and decisions.

Another achievement is the strengthening of indigenous peoples' movements in many parts of the world. The Declaration, no doubt, has been a tool for empowerment of indigenous peoples. Indigenous peoples are getting better organized and equipped in their efforts to assert and claim their rights.



This progress, however, is challenged by a lot of obstacles particularly by the roll-back on the rights of indigenous peoples to freely organize and strengthen their capacities to assert and claim their rights. The criminalization of indigenous activists, organizations and movements is a serious challenge which has to be addressed by the duty bearers. The lack of political will to implement recommendations from various multilateral processes and decisions of Regional courts and supreme courts favourable to indigenous peoples is another challenge.

The mandate of the Special Rapporteur on the rights of indigenous peoples plays an essential role in monitoring and advancing the effective implementation of international human rights standards related to indigenous peoples, particularly the UN Declaration on the rights of indigenous peoples. Besides dealing with allegations of human rights violations and country monitoring functions, the mandate has an enormous potential to provide advice and technical assistance and has an important role in promoting the Declaration through awareness-raising of the various actors whose actions impact on the rights of indigenous peoples, fostering dialogue and promoting best practices. It is my hope that States, indigenous peoples, civil society and the UN bodies, programmes, agencies and funds use this mandate to help them implement more effectively the UN Declaration on the Rights of Indigenous Peoples.

For me, the most fitting way to celebrate the 10<sup>th</sup> anniversary of the Declaration is to honestly identify and confront the obstacles faced for its effective implementation at all levels. It is an imperative that the recommendations relevant for indigenous peoples which emerged from multilateral processes are monitored and effectively implemented. These include those contained in the Outcome Document of the World Conference on Indigenous Peoples, the 2030 Development Agenda, general comments from the UN Treaty Bodies, recommendations of the Universal Periodic Review of the Human Rights Council and mandate holders and favourable decisions of the regional courts, e.g. Inter-American Court on Human Rights, African Court on Human Rights, among others. Widespread efforts in raising awareness on the Declaration and using it as a tool for reconciliation should be undertaken.

In this present era where the world faces complex economic, environmental, political and social crises, it is about time that nation-states and the UN system join hands with indigenous peoples to solve these crises. Respect, protection and fulfilment of indigenous peoples rights enshrined in the UN Declaration on the Rights of Indigenous Peoples is one of the long-lasting solutions towards attaining a just and sustainable world.

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