

Expert Mechanism on the Rights of Indigenous Peoples

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Item 7 of the provisional agenda: *United Nations Declaration on the Rights of Indigenous Peoples*

Joint Statement of the Indigenous World Association; Grand Council of the Crees (Eeyou Istchee); Assembly of First Nations; Canadian Friends Service Committee (Quakers); Federation of Saskatchewan Indian Nations; First Nations Summit; First Peoples Human Rights Coalition; Inuit Circumpolar Council; KAIROS: Canadian Ecumenical Justice Initiatives; Na Koa Ikaika KaLahui Hawaii; Union of British Columbia Indian Chiefs

Speaker: Kenneth Deer, Indigenous World Association

Thank you for the opportunity to address the ongoing implementation of the *United Nations Declaration on the Rights of Indigenous Peoples*. We express our appreciation to those States and Indigenous peoples that have responded to the EMRIP questionnaires and have contributed their views on best practices and implementation strategies.

In considering implementation strategies, it is essential to place the *Declaration* in its contemporary international law context. This consensus universal human rights instrument is not merely “aspirational” and has diverse legal effects.¹ The International Law Association has concluded: “overwhelming support by the UN General Assembly leads to an expectation of maximum compliance”.²

Former Special Rapporteur on the rights of indigenous peoples James Anaya concluded:

“Implementation of the Declaration should be regarded as a political, moral and legal imperative without qualification, within the framework of the human rights objectives of the Charter of the United Nations.”³

In particular, Anaya adds: “some aspects of the Declaration — including core principles of non-discrimination, cultural integrity, property, self-determination and related precepts that are articulated in the Declaration — constitute, or are becoming, part of customary international law or are general principles of international law”.⁴

The *Declaration* is “[g]uided by the purposes and principles of the Charter of the United Nations”. This includes the principle of “equal rights and self-determination of peoples”, as well as the duty of the UN and States to promote “universal respect for, and observance of, human rights ... for all without distinction”.⁵

The *Declaration* affirms the inherent or pre-existing collective and individual human rights of Indigenous peoples. The rights constitute the “minimum standards” for the survival, dignity, security and well-being of indigenous peoples worldwide.⁶ It provides a framework for justice and reconciliation, applying existing human rights standards to the specific historical, cultural and social circumstances of Indigenous peoples.⁷ As Norway has emphasized: “The Declaration contextualizes all existing human rights for indigenous peoples”.⁸

The *UN Declaration* enjoys consensus global support in the context of sustainable development. In the Rio+20 outcome document, *The future we want*, States “recognize the importance of the United Nations Declaration ... in the context of global, regional, national and subnational implementation of sustainable development strategies.”⁹

The *Declaration* should not be viewed in a vacuum. It is used by UN bodies to interpret Indigenous peoples’ rights and related State obligations in existing treaties.¹⁰ The *Declaration* is also linked to domestic legal systems. In different regions of the world, domestic courts are increasingly using the *Declaration*.

The *Declaration* is a crucial step towards significantly diminishing adversarial relations between States and Indigenous peoples. As affirmed in the preamble, “recognition of the rights of indigenous peoples in this Declaration will enhance harmonious and cooperative relations” and the *Declaration* is “a standard of achievement to be pursued in a spirit of partnership and mutual respect”. Article 38 requires States to achieve the ends of *Declaration* “in consultation and cooperation” with Indigenous peoples.¹¹

The jurisprudence of international human rights bodies is an essential aspect of implementation of the *UN Declaration*. For over thirty years, the rights of Indigenous peoples have been addressed within the international human rights system. The jurisprudence of UN human rights bodies, including their General Comments, have been ascribed “great weight” by the International Court of Justice (ICJ).¹²

Indigenous peoples’ rights are increasingly addressed in various international forums, including those relating to food security, biodiversity, climate change, and intellectual property.¹³ It is concerning that in these other forums some States take positions that are prejudicial to Indigenous peoples’ rights, including those affirmed in the *UN Declaration*.

With the adoption of the *UN Declaration*, the issue of “peoples” was resolved. The term “Indigenous peoples” is used consistently by the General Assembly, Office of the High Commissioner for Human Rights, Human Rights Council, treaty monitoring bodies, specialized agencies, special rapporteurs and other mechanisms.

At the October 2013 meeting of the Working Group on Article 8(j) of the Convention on Biological Diversity, 98% of States agreed to change the out-dated term of “indigenous and local communities” to the term “indigenous peoples and local communities”. Canada, India and France were disappointingly among the 2% that insisted a study must first be done, including seeking advice from the UN Office of Legal Affairs, to assess the implications.

“Indigenous peoples” is used in the 2003 *Convention for the Safeguarding of the Intangible Cultural Heritage* and the 2005 *Convention on the Protection and Promotion of the Diversity of Cultural Expressions*. The term "aboriginal peoples" is enshrined in Canada’s Constitution.

To restrict or deny the status of Indigenous peoples as “peoples”, so that the purpose or effect is to impair or deny their human rights constitutes racial discrimination. This violates the *International Convention on the Elimination of All Forms of Racial Discrimination* and the *International Covenant on Civil and Political Rights*.

Indigenous peoples globally are leading the way on active implementation of the *UN Declaration* at the local, national and international levels. International mechanisms are engaging with implementation within their mandates. Many States are also actively engaging with implementation in consultation and cooperation with Indigenous peoples. EMRIP is well placed to continue sharing information on good practices and strategies.

Recommendations to EMRIP

1. THAT, in its 2014 report to the Human Rights Council, EMRIP should underline the diverse contexts for full and effective implementation of the *UN Declaration on the Rights of Indigenous Peoples*. In this regard, it is essential to highlight the *Declaration’s* significance in both international and domestic contexts.
2. THAT EMRIP urge States, in accordance with their international human rights obligations, to uphold the rights affirmed in the *UN Declaration* when involved in standard-setting and other negotiations in international forums. Whether through joint or separate action, States cannot evade their international human rights obligations by acting through international organizations, such as UN specialized agencies.¹⁴
3. THAT EMRIP emphasize to States that, in regard to Indigenous peoples, use of the term “peoples” is clearly settled in international law. It is unacceptable for there to be any processes unwilling to accept this terminology or to revert to or maintain out-dated terminology.

Endnotes

- 1 Alexandra Xanthaki, "Indigenous Rights in International Law Over the Last 10 Years and Future Developments", (2009) 10 Melbourne J. Int'l L. 27 at 36; and Paul Joffe, "UN Declaration on the Rights of Indigenous Peoples: Not Merely 'Aspirational'", 22 June 2013, <http://quakerservice.ca/wp-content/uploads/2012/09/UN-Decl-Not-merely-aspirational-.pdf>.
- 2 International Law Association, "Rights of Indigenous Peoples", Final report, Sofia Conference (2012), <http://www.ila-hq.org/en/committees/index.cfm/cid/1024>, (Conclusions and Recommendations), at 29.
- 3 General Assembly, *Situation of human rights and fundamental freedoms of indigenous people: Note by the Secretary-General*, Interim report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, UN Doc. A/65/264 (9 August 2010), para. 85.
- 4 General Assembly, *Rights of indigenous peoples: Note by the Secretary-General*, UN Doc. A/67/301 (14 August 2013) (report of the Special Rapporteur on the rights of indigenous peoples, James Anaya), para. 64.
- 5 *Charter of the United Nations*, arts. 1(2), 2(2), 55(c) and 56.
- 6 *UN Declaration*, arts. 7 and 43.
- 7 Human Rights Council, *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, S. James Anaya*, UN Doc. A/HRC/9/9 (11 August 2008), para. 86 (Conclusions).
- 8 Norway, Statement, UN Declaration on the Rights of Indigenous Peoples, 5 years, Permanent Forum on Indigenous Issues, 17 May 2012, <http://www.docip.org/gsd/collect/cendocdo/index/assoc/HASHee74/b33db27f.dir/pf12morten330.pdf>.
- 9 Rio+20 United Nations Commission on Sustainable Development, *The future we want*, Rio de Janeiro, Brazil, 20-22 June 2012, UN Doc. A/CONF.216/L.1 (19 June 2012), endorsed by General Assembly, *The future we want*, UN Doc. A/RES/66/288 (27 July 2012) (without vote).
- 10 See, e.g., Committee on the Elimination of Racial Discrimination, *Concluding observations of the Committee on the Elimination of Racial Discrimination: United States of America*, UN Doc. CERD/C/USA/CO/6, 8 May 2008, para. 29.
- 11 *UN Declaration*, arts. 38 and 43.
- 12 *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo), Merits, Judgment, I.C.J. Reports 2010*, p. 639 at 663, para. 66.
- 13 See, e.g., Grand Council of the Crees (Eeyou Istchee) *et al.*, "Undermining Indigenous Peoples' Rights and UN Declaration: Urgent Need for Procedural Reforms in International Organizations", UN Permanent Forum on Indigenous Issues, Eleventh sess., 12 June 2012, <http://quakerservice.ca/wp-content/uploads/2012/06/IPs-Rts-and-UN-Decl-Need-for-Urgent-Reforms-in-Intl-Organizations.pdf>.
- 14 *Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels*, GA Res. 67/1, 24 September 2012 (adopted without vote), paras. 2 and 6.