

6th Session of the UN Expert Mechanism on the Rights of Indigenous Peoples

Agenda item 6: United Nations Declaration on the Rights of Indigenous Peoples

Opening Statement by Jannie Lasimbang, Expert Member

Thank you, Mr Chairman.

Since the Expert Mechanism considers the *Declaration on the Rights of Indigenous Peoples* as an instrument for achieving justice and a foundational framework for the attainment of Indigenous peoples' human rights, all the reports, advices and studies presented to the Human Rights Council is based on this normative framework.

Under this agenda item, I would like to start by introducing briefly, the report on the responses received from the questionnaires to states and Indigenous peoples on good practices on appropriate measures and implementation strategies in order to attain the goals of the *Declaration*, contained in A/HRC/EMRIP/2013/3.

In resolution 21/24 the Human Rights Council asked the Expert Mechanism to continue to undertake, with the assistance of the Office of the High Commissioner, a questionnaire survey to seek the views of States and extend it to indigenous peoples on best practices with regard to possible appropriate measures and implementation strategies to attain the goals of the United Nations Declaration on the Rights of Indigenous Peoples. A final summary of responses is to be presented to the Human Rights Council at its twenty-fourth session.

The questionnaire sought responses from States and indigenous peoples on the following issues relating to indigenous peoples: self-determination and autonomy; participation in decision making; culture and languages; non-discrimination and equality; lands, territories and resources; treaties, agreements and other constructive arrangements with States.

In the second round to invite submissions from States, nine states responded to the questionnaire. In total, twenty-one States responded the questionnaire. The Expert Mechanism is disappointed in this number, and is worried that it reflects a broader lack of political will on the part of States to implement the Declaration.

Seventeen indigenous peoples' organizations have responded to the questionnaire. The Expert Mechanism is equally disappointed in this number. Consequently, alternate methods of data collection should be considered to ensure the meaningful participation of indigenous peoples in future studies.

Having said that however, the Expert Mechanism finds the contribution on good practices and reflection on implementation challenges very useful, particularly partnerships between States and indigenous peoples, which has facilitated the participation of indigenous peoples in decision-making. Bolivia demonstrated good practices of gender equality by recognizing the need to ensure programmes specifically target and benefit indigenous women. As part of its strategy to address violence against indigenous women, Australia's national plan includes strengthening indigenous communities through fostering leadership of indigenous women within communities and broader Australian society.

There was evidence to suggest that States sometimes perceive a conflict between the recognition and implementation of the rights contained in the Declaration and the principle of equality. On the one hand, equality was often perceived as requiring specialised programs targeting indigenous peoples. On the other hand, some states indicated that the principle of equality prohibited States from treating any one group differently from another group. In this regard the Expert Mechanism stresses that substantive equality can require treating indigenous peoples as distinct groups facing unique circumstances.

Overall, the tenor of some responses also indicated that there continues to be

tensions between States, indigenous peoples and NGOs on the best approaches to achieving the goals of the Declaration.

Implementation Strategies

Many states indicated that they had a national strategy in place to implement the Declaration. Several states, including Congo, Peru and Myanmar, indicated that the principles of the Declaration are reflected in national legislation or policy. However, in some of these instances it was unclear whether the laws and policies were developed specifically to implement the goals of the Declaration or whether they were developed in consultation with Indigenous peoples.

Among those states that indicated adopting measures to implement the Declaration, only Bolivia, Chile, Congo and Mexico reported enacting laws or policy inclusive of all the rights in the Declaration. Most participating states report applying only certain aspects of the Declaration, such as the right to self-determination, autonomy, culture and language, non-discrimination and equality, lands, territories and resources, and treaties.

Bolivia provided extensive information on laws and programs in existence in that country relevant to the implementation of the Declaration. Chile also provided a comprehensive overview article by article of measures taken to implement the rights set out in the Declaration.

However, no state has yet passed explicit laws requiring the Declaration to be considered when devising new laws, policies or other measures relating to indigenous peoples.

There were few examples of awareness-raising about the Declaration or of providing education and training specifically on indigenous peoples' rights. Some awareness raising activities consisted of creating and distributing literature and audio visual materials, facilitating trainings, round tables and conducting research

on indigenous peoples concerns. Few governments noted their resistance to promote the Declaration, while others noted their preference to focus on general human rights instruments.

Several states had legislation in place that recognised indigenous peoples' right to autonomy. Autonomy was provided in several ways: autonomous areas, jurisdiction over autonomous areas, and recognition of indigenous laws and institutions in autonomous areas. Bolivia has begun a process of allowing indigenous communities to vote for the creation of autonomous areas. Similarly Burkina Faso has also begun a process of decentralization, which allows territories to promote their own development and governance of areas including education, health and culture.

Most states had various methods for allowing indigenous peoples to participate in national decision making and to be consulted on decisions affecting them. Indigenous peoples are represented in Bolivian legislative bodies. For example, the Chilean Indigenous Act provided that indigenous peoples should be consulted through their traditional organizations and associations recognized under the Act.

There were several examples, of indigenous languages being recognised in State constitutions, such as in Laos, Guyana and Iraq. There were a few examples of indigenous languages being taught in national schools. Some states indicated the need to overcome negative stereotypes of indigenous cultures and languages in order to preserve and promote their use.

Several states mentioned that they have started a process of demarcating indigenous peoples' lands. For example, France identified the creation of the Guyana Amazonian Park in French Guiana as providing protection to indigenous peoples in the area to maintain and preserve their subsistence practices. In Guyana, Amerindians are granted title to their lands absolutely and forever.

Lack of awareness of the Declaration and other relevant instrument remains one of the biggest challenges to implementing the rights of indigenous peoples. There is also a lack of civil society engagement on indigenous peoples' rights. Others identified challenges included the cost of implementing the Declaration and remoteness of indigenous communities.

Among some of the best practices identified were partnerships with indigenous peoples that facilitated consultation and participation of indigenous peoples in decision making. Examples included the Noumea Accord between France and the Kanaks of New Caledonia. Many states used constitutional, legal and policy measures to implement the Declaration. Bolivia had good practices for providing gender equality by ensuring that programmes target both men and women.

The responses from indigenous peoples' organizations are mainly focused on thematic issues and their activities are often limited due to financial resources and the lack of state will to cooperate. Few indigenous peoples' organizations reported they have strategies in place to implement the Declaration. Yet, most did not describe them in detail or reported they do not have specific strategies.

Most Indigenous peoples' organizations identified best practices that could include developing various initiatives, not yet in place, targeting national policies, laws and regulations to be in line with the Declaration's norms. This includes, strengthening the links between UN Institutions and local communities.

It was also proposed that the Expert Mechanism on the Rights of Indigenous Peoples and relevant UN Rights Mechanisms collaborate with regional NGOs to better assist indigenous peoples in proposing measures and implementations strategies to attain the goals of the Declaration. As EMRIP, this recommendation is in line with our mandate to advise states, the UN and Indigenous Peoples to promote and achieve the implementation of the rights of Indigenous Peoples.

The Expert Mechanism values the responses of States and of indigenous peoples

organizations to its questionnaire, especially because these responses are can provide inspiration to creatively devise strategies to implement the Declaration. In your intervention under this agenda item, I would like to hear comments on the present structure and content of the questionnaire, and whether it is useful to continue to build this up, where responses can be kept as references on good practices and lessons learnt.

