Introduction of
Study on how States exploit weak procedural rules in international organizations to devalue the United Nations Declaration and other international human rights law
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May 9, 2016
Fifteenth Session
UN Permanent Forum on Indigenous Issues

There are four points that I want to emphasize:

1. The UN Declaration must be the framework to guide all state party actions
2. States are the key target here; consistent with the UN Charter, states are the actors that have the responsibility to uphold, promote and protect Indigenous human rights and refrain from actions to diminish them
3. Procedural rules of inter-governmental institutions must be strengthened and must be consistent with the human rights standards affirmed in the UN Declaration and consistent with the commitments that states solemnly agreed to in the Outcome Document of the WCIP. There must also be consistency between international legal obligations of states and the domestic or national context.
4. There are concrete and positive examples by which states can ensure implementation of the rights affirmed in the UN Declaration and to do so in collaboration and cooperation with Indigenous peoples.

Indigenous peoples fought hard to achieve the human rights standards affirmed in the *UN Declaration* and remain proactive to ensure compliance in their implementation.

Pursuant to its articles 38, 41 and 42, States, the United Nations and its organs, bodies and specialized agencies are required to respect and fully apply the *UN Declaration* and to take appropriate measures to achieve its ends – essentially to achieve its realization.

It must be noted that some States and international organizations, including UN agencies, have positive policies relating to Indigenous peoples and the *UN Declaration*. Yet, too often, we have observed that when States negotiate *new* international instruments, even within such supportive international organizations, Indigenous peoples' status and rights are often adversely affected – and Indigenous peoples' participation is marginalized.

In regard to environmental issues, negotiations of new international instruments can be especially challenging. Member State representatives tend to be well-informed on environmental matters, but are often much less informed on – if not also unreceptive to – related Indigenous human rights concerns.

Whether through joint or separate action, States parties cannot evade their international human rights obligations by acting through their participation in international organizations.

In the 2012 *Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels*, it is recognized by consensus: "the rule of law applies to all States

equally, and to *international organizations* ... and that respect for and promotion of the rule of law and justice should guide all of their activities and accord predictability and legitimacy to their actions."

Yet, as described in our Study, regressive actions by States have been observed in such international organizations and processes as the United Nations Framework Convention on Climate Change, the Convention on Biological Diversity, the Food and Agriculture Organization of the United Nations (FAO), the World Intellectual Property Organization (WIPO), the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the World Bank.

Too often, in seeking *consensus* among States parties, the lowest common denominator among their positions ends up in the final text. Such a substandard outcome is inconsistent with the obligations of international organizations and States concerned. The quest for consensus has led to widespread abuses in the Indigenous context.

And, participation in international forums is challenging for Indigenous peoples because the existing procedural rules are heavily weighted in favour of States. Indigenous peoples remain highly vulnerable to State discretion because they are not part of any consensus. With virtually no checks and balances within outdated procedural rules, States may, and do, propose and agree to discriminatory or substandard provisions. We have found that, in many cases, where Indigenous peoples are denied direct access, resulting provisions are inconsistent with the human rights affirmed in the UN Declaration and the corresponding solemn commitment that States have made to "respect, promote and advance and in no way diminish the rights of indigenous peoples"

Examples of poor practice

For example, the FAO has progressive positions that are supportive of Indigenous peoples' human rights and the *UN Declaration*. Specifically, the 2010 FAO Policy on Indigenous and Tribal Peoples highlights that it will be guided by core principles, such as self-determination and free, prior and informed consent, and by the *UN Declaration* overall.

However, in negotiating international agreements under procedural rules of FAO, member States are able to take positions that fall significantly lower than existing international human rights standards, including those affirmed in FAO's own Policy relating to Indigenous and Tribal Peoples.

The Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security of 2012 fail to characterize land and resource tenure rights as human rights (see paras. 3.2 and 4.3), and ambiguously imply that the legal status of the *UN Declaration* may be nothing more than a "voluntary commitment" (see paras. 9.3 and 12.7). The Guidelines also unjustly alter the legal concept of "free, prior and informed consent" by adding "with due regard for particular positions and understandings of individual States" (see para. 9.9).

In regard to the Convention on Biological Diversity, a decision was taken by the Conference of the Parties in October 2014 (mere weeks after the World Conference on Indigenous Peoples) that in effect freeze the interpretation of the term "indigenous peoples and local communities" in future decisions and secondary documents so as to have no legal effect on the Convention on Biological Diversity or on the Nagoya Protocol either now or in the future.

Also, as States reaffirmed their commitments to Indigenous rights at the World Conference of Indigenous Peoples, the World Bank sought consensus on a proposal to allow governments to opt out of implementing the Indigenous peoples' safeguard policy completely, in favor of an 'alternative approach' to the safeguard. Significantly, the Indigenous peoples' safeguard was the only policy in which the Bank advanced an opt-out clause.

The study details these and other examples of member State behavior through international agencies attempting to devalue the standards that States have affirmed in the *UN Declaration.*

Examples of good practice

In September 2015, the International Whaling Commission [IWC] Aboriginal Subsistence Whaling Working Group, held a meeting in Maniitsoq, Greenland with one of the central objectives of "ensuring better synergy between the IWC and other international commitments, including those on the rights of indigenous peoples."

The Workshop "**recommends** that member States of the IWC, with the full and effective participation of the Indigenous peoples concerned, consider preparing a statement or resolution for adoption, if possible at the 2016 meeting, recognising the developments in the rights of Indigenous peoples and their relevance to the IWC. Such a document should consider the right of Indigenous peoples to self-determination as well as other civil, social, cultural, political, health, nutritional, economic and spiritual rights of Indigenous peoples and their significance in the context of the IWC."

FAO, IFAD, others

Conclusions

It is essential that international organizations and member States fully inform themselves of the distinct nature of Indigenous peoples' status and human rights. It is crucial that international organizations use the *UN Declaration* as a standard and framework, when Indigenous peoples' status and rights may be affected.

To safeguard the rights of Indigenous peoples and the international human rights system, it is imperative that procedural rules be reformed. This should be undertaken with the full and effective participation of Indigenous peoples, in a spirit of partnership and mutual respect consistent with the *UN Declaration on the Rights of Indigenous Peoples.*

Strong procedural rules are necessary to prevent States from using consensus on substandard proposals that are inconsistent with the principles of justice, democracy, non-discrimination, respect for human rights and rule of law. Effective compliance mechanisms would be required.

All States have a responsibility to ensure their negotiating teams include people knowledgeable on international human rights and in particular, Indigenous human rights, to ensure that standards that States are supporting in the Indigenous context are also being supported within all international fora. Only then will states be able to ensure compliance and consistency of not only their actions, but consistency with their solemn obligations "in promoting and encouraging respect for human rights", including Indigenous human rights.