



Economic and Social Council

Distr.: General
10 March 2011

Original: English

**ADVANCE UNEDITED
TEXT**

Permanent Forum on Indigenous Issues

Tenth session

New York, 16-27 May 2011

Item 3 of the provisional agenda *

Follow-up to the recommendations of the Permanent Forum:

(a) Economic and Social Development

Analysis prepared by the secretariat of the United Nations Permanent Forum on Indigenous Issues on Economic and Social Development, Environment and Free, Prior and Informed Consent.

Summary

This report provides an analysis of the implementation of the recommendations of the Permanent Forum on Indigenous Issues on economic and social development, the environment and free, prior and informed consent. The report is divided into three sections. The first section provides an analysis of the recommendations on economic and social development. The second section provides an analysis of the recommendations on the environment and that the third section provides an analysis of the implementation of recommendations on free, prior and informed consent.

* E/C.19/2011/1

Advance unedited version

Content

I. Introduction.....	
II. Analysis of the Permanent Forum’s Recommendations on Economic and Social Development.....	
III. Analysis of the Permanent Forum’s Recommendations on the Environment.....	
IV. Analysis of the Permanent Forum’s Recommendations on Free, Prior and Informed Consent.....	
V. Conclusions and Recommendations.....	

I. Introduction

1. This document seeks to provide an analysis of the implementation of the Permanent Forum's recommendations on economic and social development; the environment and free, prior and informed consent from the second to the eighth sessions. This analysis is based on reports received from Governments, UN agencies and other inter-governmental bodies, non-governmental organizations, and indigenous peoples' organizations. While this document does not constitute a global analysis of the economic and social situation of indigenous peoples around the world, or the environmental issues confronting indigenous peoples, and the concept and practices of free, prior and informed consent, there are some references made to how these issues are taken into account and implemented at the international and national levels.

II. Analysis of the Permanent Forum Recommendations on Economic and Social Development

2. At its eighth session in 2009, the Permanent Forum conducted its first review of its recommendations under the mandated area of economic and social development. At that time, the secretariat of the Permanent Forum (SPFII) prepared an analysis of the recommendations and their implementation status. Given that only two years have passed since the previous analysis was made, most of the findings made are still valid today.

3. Broadly speaking, during the first seven sessions, the Permanent Forum's recommendations focused on issues relating to the Millennium Development Goals (MDGs), urban indigenous peoples and migration as well as indicators, data collection

and disaggregation. The Permanent Forum had also consistently made recommendations to the UN System as well as Member States on changing paradigms and approaches to development. The analysis undertaken by the secretariat reflected this focus.

Recommendations from the eighth session

4. In its review of the recommendations on economic and social development, the Permanent Forum identified an existing gap in the sense that it had made very few recommendations addressing the activities of the private sector in general and more specifically transnational corporations and their impact on indigenous peoples. Accordingly, the Permanent Forum recommended that business enterprises set minimum standards of conduct according to the UN Declaration on the Rights of Indigenous Peoples (UN Declaration) and ILO Convention No. 169 on Indigenous and Tribal Peoples, 1989. The Permanent Forum indicated its support for the work of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises and recommended that Secretary-General urge states to comply with the UN Declaration. Understanding that the principles of the UN Declaration are not always observed, the Permanent Forum also recommended that states establish effective grievance mechanisms.

Recommendations from the ninth session

5. The Permanent Forum's special theme for the ninth Session was *Indigenous peoples: development with culture and identity: articles 3 and 32 of the United Nations Declaration on the Rights of Indigenous Peoples*. The Permanent Forum emphasized the

Advance unedited version

central role that the UN Declaration plays in affirming indigenous peoples' rights and aspirations and called upon the UN system to financially support the efforts of indigenous peoples in consolidating their own development models, concepts and practices.

6. The recommendations from the ninth session clearly demonstrate that indigenous peoples' development is intimately linked with education and in that regard the Permanent Forum recommended that UNESCO and other UN agencies convene an expert group meeting on themes and concepts related to bilingual, intercultural and multilingual education and conduct country specific research on these issues. International Financial Institutions were also encouraged to have policies in place that support, protect and preserve indigenous languages.

7. The Permanent Forum emphasized the importance of indigenous knowledge systems and identified a host of ongoing international processes that should recognize and integrate indigenous knowledge systems in their work. The Permanent Forum also made recommendations to UNDP regarding the need to strengthen indigenous peoples' participation in the MDG review processes and in its democratic governance program. The Forum emphasized and reiterated its previous recommendations on the MDGs in light of the forthcoming MDG summit.

8. The Permanent Forum made five recommendations on indigenous peoples and corporations, calling upon States to implement recommendations from the Special Rapporteur on the Rights of Indigenous Peoples and the Special Representative of the Secretary-General on business and human rights. The Permanent Forum specifically mentioned the need for States to review policies on biofuel industries which are causing

Advance unedited version

deforestation and displacement of indigenous peoples. The Permanent Forum expressed its desire for cooperation with the Special Representative of the Secretary-General on business and human rights and the United Nations Global Compact on engaging with the private sector on issues related to indigenous peoples.

Implementation of Recommendations of the Permanent Forum on Indigenous Issues on economic and social development

Session	Number of recommendations	Implemented (ongoing or completed) ¹	Implementation not initiated or reporting not received
Third	13	8	5
Fourth	47	35	12
Fifth	33	33	0
Sixth	32	23	9
Seventh	30	22	8
Eighth	18	8	10
Total:	173	129	44

Progress

9. There has been some progress in the last two years. In particular there is progress in terms of States and the UN system recognizing indigenous peoples' rights. How well this improved recognition translates to effective change on the ground is beyond the scope of

¹ It is worth keeping in mind that a recommendation is noted as being implemented if only a single State or agency reports to the Forum as having acted upon it.

Advance unedited version

this report. Nevertheless, roughly three-quarters of the Permanent Forum's 179 recommendations on economic and social development have either been completed or are in progress. SPFII has limited resources to verify the information received and does not analyze the effectiveness of the actions taken. Thus, the high implementation rate provides little information on the effectiveness of the implementation. Having said that, a 74% implementation rate does, at the very least, indicate that the Permanent Forum's recommendations are indeed being heeded.

10. OHCHR, ILO, SCBD, SPFII and other UN Agencies are closely following up the Permanent Forum's recommendations on indicators and data collection/disaggregation. In response to a recommendation from the eighth session, ILO, OHCHR and SPFII organized a technical expert meeting on indicators of well-being of indigenous peoples. The report of that meeting makes certain proposals on the development of indicators based on an OHCHR approach to identify structural, process and outcome indicators that capture the collective aspects of indigenous peoples' rights. This approach will inform the work of the Permanent Forum as well as other supervisory mechanisms, such as UN treaty monitoring bodies, UN specialized mechanisms, ILO supervisory system and other international instruments/processes relevant to indigenous peoples.

11. The Permanent Forum has consistently recommended that UN Agencies and other international organizations establish a specific policy on working with indigenous peoples. In 2009 IFAD finalized its policy on engagement with indigenous peoples and in 2010 FAO adopted its policy on indigenous and tribal peoples, joining other agencies

Advance unedited version

such as UNDP, the World Bank, the Asian Development Bank, the Inter-American Development Bank, the European Bank for Reconstruction and Development and UN-HABITAT, all of which also have specific policies on indigenous peoples.

12. The Outcome Document of the 2010 Millennium Development Goal Summit² makes six references to indigenous peoples, including with regard to participation in human rights and non-discrimination, the right to full employment, food security and forest management. The Outcome Document also reaffirms that states should “...take concerted, positive steps to ensure respect for all human rights and fundamental freedoms of indigenous people, on the basis of equality and non-discrimination...”³ The original Millennium Declaration from 2000 made no references to indigenous peoples. This is a clear example that while States have increased their commitments to indigenous peoples, there is also a reminder of the need to address the implementation gap.

13. Although the implementation of the Permanent Forum’s recommendations regarding the MDGs has been limited at the national level, one area of progress is capacity building for UN system staff, government agencies and indigenous peoples at the country level. With support from IFAD, the secretariat has developed a training module based on the UNDG Guidelines on Indigenous Peoples Issues (February 2008) for the purpose of implementing the UN Declaration. Training workshops have been held for UN Country teams in Ecuador, the Philippines, Bolivia, Guyana, Nepal and Cambodia.

² A/RES/65/1

³ A/RES/61/1, para. 55.

III. Analysis of the Permanent Forum Recommendations on the

Environme

14. Indigenous peoples have an important relationship with the land. The natural environment has provided indigenous peoples with the means of survival as their spiritual beliefs are also connected with the plants, animals, waters and places they have inhabited since time immemorial. Environment is one of the six substantive mandated areas of the Permanent Forum and covers a range of issues including among others, land rights, land use, natural resources, water, oceans, wetlands, fishing, climate change, forests, desertification, pollution, traditional knowledge and access and benefit sharing. One of the focuses of the 2012 UN Conference on Sustainable Development (Rio+20) and the Green economy is to strengthen the framework for environmental sustainability which is also goal 7 of the MDGs. Hence, environmental issues continue to be linked to sustainability and as a means for alleviating poverty in the world.

15. Environmental issues are also incorporated in a number of articles in the UN Declaration on the Rights of Indigenous Peoples, specifically in relation to lands, territories and resources. Articles 25 to 32 outline the rights of indigenous peoples in relation to maintaining and strengthening their spiritual relationship with lands, territories and resources; right to own, develop and control their lands, conserve and protect the environment and the production capacity of lands. Also, the right to determine development on their lands and the right to maintain, control, protect and develop their cultural heritage and traditional knowledge and knowledge of properties of fauna and flora. Within these Articles are specific issues such as the need for States to give due

Advance unedited version

recognition to indigenous peoples' laws, traditions and customs and land tenure systems; restitution for land, territories and resources confiscated, taken or occupied; and that States take effective measures to ensure there is no storage or hazardous materials or disposal of hazardous materials in the lands and territories without the free, prior and informed consent of indigenous peoples.

16. From the second to the eighth session, the Permanent Forum's recommendations on the environment covered a range of environmental issues such as climate change, traditional knowledge, access and benefit-sharing, land tenure, conservation, pollution, water, forests, fishing, renewable energy, reindeer herding, indicators, participation and policies on indigenous peoples. Below is an analysis of the main recommendations on environmental issues

Water

17. The Permanent Forum made ten recommendations on water, and while some of the recommendations related to indigenous peoples' access to water, there was concern about the privatization of water, a natural resource that is sacred to indigenous peoples and is central to all life. At its sixth session, the Permanent Forum requested the support of UN agencies in the planning and development of a world indigenous forum on the right to water, which should also include an examination of the cultural and spiritual dimensions of water. Other recommendations ranged from the impact of river diversions for development projects as well as the compliance by states under the Convention on the Rights of the Child in recognising the basic rights of all children to nutritional food and

access to clean water.⁴ Recommendations also requested position papers on the relationship between access to water services, sanitation and human settlements and the consideration of indigenous peoples' Kyoto Water Declaration made at the World Water Forum in Japan in 2003. While many of the recommendations are yet to be implemented, some Governments did report on addressing priority water needs for indigenous peoples and their communities including the provision of basic infrastructure for guaranteeing access to water and the implementation of water management strategies. The Permanent Forum also applauded the UN Human Rights Council's recognition of the right to water as a human right. At the ninth session, the Permanent Forum decided to hold a half-day discussion at its tenth session, in 2011, on the *theme the right to water and indigenous peoples*.⁵

Toxic waste and persistent organic pollutants

18. At its second session, the Permanent Forum made recommendations to States to ratify the Biosafety Protocol, the Stockholm Convention on Persistent Organic Pollutants and other Convention relating to toxic waste and persistent organic pollutants as well as mercury contamination. The Stockholm Convention on Persistent Organic Pollutants entered into force in May 2004 and targets 12 hazardous pesticides and industrial chemicals. The Permanent Forum also made recommendations to States to control the pollution of river and streams as well as clean up those rivers and streams that had already been polluted. At the sixth session the Permanent Forum welcomed an invitation by the Russian Federation to hold an expert group meeting in Khabarovsk on indigenous

⁴ Second Session, para 73

⁵ Ninth session, para 129

peoples and the environment. In August 2007, the expert meeting took place with the focus on pollution. The report of the expert group meeting is available on the Permanent Forum's website.⁶

Traditional Knowledge and Access and Benefit-Sharing

19. Recommendations on protecting indigenous peoples' traditional knowledge continues to be a major focus, especially the effects of commercialization and bioprospecting of genetic resources on indigenous peoples' lands and territories. The Permanent Forum's recommendations were largely focused towards studies and reports to analyse the use of traditional knowledge relating to medicinal plants and the commercialization of such knowledge. Recommendations were also made on recognizing the unique contribution of indigenous women in possessing and transmitting traditional knowledge as well as considering indigenous peoples' issues in the lead up to the negotiation and elaboration of an international regime on Access and Benefit-Sharing. The establishment of an international code on bioprospecting as a means to avoiding biopiracy and to ensure the respect for indigenous peoples' cultural and intellectual property, and the development of sui generis laws was also among the Permanent Forum's recommendations. The Akwe: Kon guidelines were also highlighted as a guide for States and the international community for any proposed development on indigenous peoples' lands, territories and resources.

20. Most of the Permanent Forum's recommendations on traditional knowledge and access and benefit-sharing was addressed by the secretariat of the Convention on Biological Diversity. For example, a major accomplishment at CBD's COP 10 was the

⁶ <http://www.un.org/esa/socdev/unpfii/en/workshopIPPE.html>

Advance unedited version

adoption of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from the Utilization of Genetic Resources of the Convention on Biological Diversity following six years of intense negotiations. Indigenous peoples participated throughout the negotiations. Also at its tenth meeting, the negotiation of and adopted the Code of Ethical Conduct on Respect for the Cultural and Intellectual Heritage of Indigenous and Local Communities Relevant for the Conservation and Sustainable Use of Biological Diversity (“the Tkarihwaíé: ri code of ethical conduct) was adopted and States were invited to make use of its elements to guide the developments of models of codes of ethical conduct for research, access to, use, exchange and management of information concerning traditional knowledge. The code also provides for the prior informed consent and/or approval and involvement of indigenous peoples.

Forests

21. The Permanent Forum’s recommendations focused on indigenous peoples’ rights to forests as well as fossil fuel plantations and carbon funds. The Permanent Forum noted that the current framework for Reducing Emissions from Deforestation and Degradation (REDD) is not supported by most indigenous peoples because of its centralized top-down management of forests, which undermined indigenous peoples’ rights.⁷ In regard to the political focus on forests, stimulated by current policy debates on REDD, under the United Nations Framework Convention on Climate Change (UNFCCC), the Permanent Forum requested that these debates be used towards securing the rights of indigenous peoples living in forests. Further, indigenous peoples should be rewarded for their

⁷ E/C.19/2008/13 para 45

historical stewardship role and continuing conservation and sustainable use of forests. In order to directly benefit indigenous peoples, new proposals for avoiding deforestation or reduced emissions from deforestation must address the need for global and national policy reforms and be guided by the United Nations Declaration on the Rights of Indigenous Peoples. The Permanent Forum also recommended that for those indigenous peoples who do not wish to participate in projects on REDD, their choice should be respected. The principle of free, prior and informed consent should be central when deciding forest policies and programmes for indigenous peoples.⁸ Many of these recommendations are ongoing.

Climate Change

22. Indigenous peoples have survived climate changes which have taken place over thousands of years and they continue to survive despite their high vulnerability which is also a testament to their resilience and their tremendous capacity to adapt. However, that capacity is being challenged in the face of accelerating climate change and the manner such issues are addressed at the global and national levels. Further, indigenous peoples have not always been able to participate in climate change meetings. It was for this reason that the Permanent Forum adopted the special theme, *Climate change, bio-cultural diversity and livelihoods: the stewardship role of indigenous peoples and new challenges*, for its seventh session. Major consideration was given to climate change and mitigation measures, especially during the 7th, 8th and 9th sessions, in response to the fact that climate change was capturing the attention of the world community and there was heightened awareness around global warning due to greenhouse gas emissions (GHG).

⁸ E/2008/43

23. There were a number of recommendations made at the 7th Session that focused on participation of indigenous peoples in climate change meetings and the need to provide support and funds for climate change adaptation and mitigation measures. Other recommendations included migration management solutions for those indigenous peoples who are displaced from their lands and territories due to the impacts of climate change and environmental degradation. The Permanent Forum called on States to ensure that policy support, technical assistance, funding and capacity-building activities be provided for indigenous peoples to enable them to implement effective mitigation and adaptation strategies. Some States as well as indigenous peoples' organizations reported they were supporting indigenous related projects for sustainable conservation projects as well as sharing experiences, lessons, aspirations and strategies in dealing with climate change. Other recommendations called for strengthening links between climate change, biodiversity and cultural diversity under the Convention on Biological Diversity or the UNFCCC to ensure the participation of indigenous peoples. Issues regarding indigenous peoples' participation in climate change forums are outlined below.

Conservation and Protected Areas

24. The Permanent Forum made five recommendations related to environmental conservation and protected areas that included protecting sacred places and ceremonial sites, the need for social impact assessments as well as the recognition of indigenous peoples' free, prior and informed consent before declaring protected areas that may have an impact on indigenous peoples and their communities. In its report to the Permanent Forum, UNESCO has suggested that it would be helpful, if more indigenous peoples'

organizations entered into formal relations with UNESCO in order to develop partnerships with its Local and Indigenous Knowledge Systems (LINKS) project that aims to empower local and indigenous peoples in biodiversity governance especially in protected areas.⁹ At its 9th session, the Permanent Forum reiterated its concerns about conservation issues including the designation of national parks, biosphere reserves and world heritage sites which frequently lead to the displacement of indigenous peoples from their traditional lands and territories.¹⁰ While a Permanent Forum member was able to attend the thirty-fourth session of the UNESCO World Heritage Committee in Brazil in 2010, this issue remains ongoing.

Indigenous Peoples' Participation

25. The Permanent Forum made a number of recommendations to UN Agencies and States to support indigenous peoples' participation in environment meetings.¹¹ As a result, indigenous peoples' participation in meetings have continued to grow over the past few years with representative of indigenous organizations now attending meetings such as UNFCCC, UN Forum on Forests, Stockholm Convention on Persistent Organic Pollutions, Ramsar Convention on Wetlands, the Convention on the Conservation of Migratory Species of Wild Animals, the Convention on International Trade in Endangered Species of Wild Flora and Fauna, the UN Forum on Forests, UN Convention to Combat Desertification, as well as UNEP Governing Council. For example, indigenous peoples' presence in these meetings is growing, particularly in the UNFCCC and UNFF meetings. While indigenous peoples are now more visible at these meetings, their

⁹ http://www.un.org/esa/socdev/unpfii/en/session_ninth.html

¹⁰ E/2010/43 para 131

¹¹ Second Session, paras 47, 49, 55 and 61

concerns were often marginalized, especially relating to policy making issues. Other environment meetings where indigenous peoples have a strong presence include the Convention on Biological Diversity (Article 8(j) Traditional Knowledge & Access and Benefit-sharing) and the World Intellectual Property Organization (Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore). Both the Convention on Biological Diversity and the World Intellectual Property Organization has funds to support the participation of indigenous peoples.

Other recommendations

26. There were a small number of recommendations calling on States to recognize indigenous peoples' rights to fishing, hunting and reindeer herding. The Permanent Forum also made recommendations to UN agencies dealing with environmental matters to adopt an indigenous peoples' policy and ensure the full participation of indigenous peoples in the formulation of their policies, programmes and projects. A few UN agencies have adopted policies and others have drafted such policies which are awaiting endorsement by senior management. There were a number of Permanent Forum recommendations related to reports and meetings and technical workshops on environmental issues such as climate change,¹² forests,¹³ pollution,¹⁴ traditional knowledge¹⁵ and access and benefit-sharing,¹⁶ some of which have been implemented. Most of these reports can be found on the Permanent Forum's website. The reports and

¹² E/C.19/2008/CRP.9

¹³ E/C.19/2007/CRP.6

¹⁴ <http://www.un.org/esa/socdev/unpfii/en/workshopIPPE.html>

¹⁵ E/C.19/2006/2; E/C.19/2007/10

¹⁶ E/C.19/2007/8

Advance unedited version

workshops provide in-depth understanding of issues; the papers submitted are from experts who have provided analysis of issues within their respective regions in relation to indigenous peoples. The Permanent Forum also called upon the European Union to reconsider its seal product import ban which impacts on the livelihood of the Inuit people of the Arctic. The European Union was also requested to enter into direct and meaningful dialogue with the Inuit Circumpolar Council to discuss ways to move forward on this issue.

Implementation of Recommendations of the Permanent Forum on Indigenous Issues on the environment

Session	Number of recommendations	Implemented (ongoing or completed) ¹⁷	Implementation not initiated or reporting not received
Second	20	2	18
Third	11	6	5
Fourth	2	1	1
Fifth	6	2	4
Sixth	22	18	4
Seventh	13	11	2
Eighth	9	8	1
Total:	83	48	35

The 2012 UN Conference on Sustainable Development (Rio + 20)

¹⁷ It is worth keeping in mind that a recommendation is noted as being implemented if only a single State or agency reports to the Forum as having acted upon it.

Advance unedited version

27. The UN Conference on Sustainable Development or Rio+20 will be held in Brazil in 2012 and will focus on the global transition to a low-carbon, resource-efficient green economy which is seen as crucial for sustainable development. The transition to the green economy is seen to be crucial to the attainment of the MDGs because it not only promotes economic growth and lessens inequality but also reduces environmental risks and ecological scarcities and hence improves human well-being. The Green Economy Initiative, launched by UNEP in 2008 aims to demonstrate how to revive economies and create lasting employment while at the same time tackling environmental challenges. In May 2010 indigenous peoples attending the First Conference on Sustainable Development pointed out that discussions around a Green Economy should not distract from addressing the root causes of the global economic and ecological crisis. They also stated there were numerous agreements reached in multilateral processes which already conceptualized and defined sustainable development and the problem is that many of these agreements have not been effectively implemented. Further, such development, whether it is called green or sustainable, should integrate all the dimensions of development which include economic, social, political, ecological, cultural and spiritual considerations. Indigenous peoples also expressed concern that in the design and promotion of the Green Economy, there is a need to be mindful of potential human rights implications especially when hydroelectric dams and nuclear power plants are considered clean and renewable energy. There are also concerns about human rights violations related to dam building, mining of uranium for nuclear power plants and the dumping of radioactive waste in indigenous peoples' territories which affects indigenous peoples'

livelihoods. Hence, this is an area where indigenous peoples could make valuable contributions.

IV. Analysis of the Permanent Forum Recommendations on Free, Prior and Informed Consent.

28. This section provides a brief introduction of the concept of free, prior and informed consent (FPIC) and its recognition at the international level. It also includes a summary of the main recommendations issued by the Permanent Forum on free prior and informed consent and details the implementation process.

29. The common understanding of Free Prior and Informed Consent is that consent should be freely given without coercion, intimidation or manipulation (Free); sought sufficiently in advance of final authorization and implementation of activities (Prior); and founded upon an understanding of the full range of issues entailed by the activity or decision in question (Informed).

Brief introduction at the international level of the principle of FPIC

30. Free Prior and Informed Consent is covered in the UN Declaration on the Rights of Indigenous Peoples in relation to: the relocation of indigenous peoples from their lands and territories,¹⁸ redress with respect to the appropriation of their cultural, intellectual, religious and spiritual property;¹⁹ before adopting and implementing legislative and

¹⁸ Article 10

¹⁹ Article 11 (2)

Advance unedited version

administrative measures that affect indigenous peoples;²⁰ redress for their lands or resources taken without their consent,²¹ and disposal of hazardous materials in their territories;²² as well as prior to the approval of development projects affecting their lands or territories or other resources.²³

31. Due to its importance, which is also embedded in the UN Declaration, the Permanent Forum has issued a number of recommendations on Free Prior and Informed Consent to the UN system, States and State-owned Corporations, international financial institutions and the private sector.

Main recommendations issued by the Permanent Forum to the UN system on FPIC

32. The following is a brief overview of the recommendations issued over the nine sessions of the Permanent Forum.

- Undertake an analysis of the implementation of FPIC principles and mechanisms.
- Review policies, programs and approaches with indigenous peoples in order to ensure the respect of FPIC and to create a true partnership for development.
- Undertake an analysis of the implementation of FPIC principles and mechanisms regarding projects on indigenous peoples' lands and territories, and to submit the analysis to the Permanent Forum.
- FPIC should form the basis of the United Nations Collaborative Programme on Reducing Emissions from Deforestation and Forest Degradation in Developing

²⁰ Article 19

²¹ Article 28 (1)

²² Article 29 (2)

²³ Article 32(2)

Advance unedited version

Countries forest's (UN-REDD) policies, as well as those UN programs assisting the resettlement, reintegration and migration of those indigenous peoples affected by climate change.

- Respecting the principles of FPIC is critical for a free and universal civil registration of indigenous peoples and is important for all programs related to the prevention and treatments of HIV/AIDS.
- Continue to promote the political development and implementation of FPIC, taking into account the development perspectives, respect for human rights and juridical pluralism of indigenous peoples.

Main recommendations issued by the Permanent Forum to States and State-owned Corporations on FPIC

33. The following are the main recommendations issued to States and State-owned Corporations

- Adhere to the principle of FPIC in all matters affecting indigenous peoples.
- Follow the FPIC principles and mechanisms regarding projects involving indigenous peoples' territories, land and natural resources. Analyze the implementation of those principles and mechanism. The Permanent Forum called upon those States which have granted leases, concessions and licences on indigenous peoples' territories for projects related to logging, minerals, oil, gas and water without proper consultation and without respecting the FPIC of the indigenous peoples concerned, to review those arrangements and to address the complaints raised by indigenous peoples in those territories. States and State-

Advance unedited version

- owned corporations are also urged to consult and cooperate with indigenous peoples concerned in order to obtain their consent before the approval of any policies, plans and projects affecting their lands or territories and other resources.
- Support free and universal civil registration on the basis of FPIC of indigenous peoples.
 - When addressing situations of violence and abuse within indigenous communities, to do so on a non-discriminatory basis and consistent with human rights standards and the principle of FPIC.
 - Apply the rights affirmed in the UNDRIP throughout their operational frameworks for implementing the Programme of Action for the Second International Decade, in particular its objective on FPIC by indigenous peoples.
 - Implement ILO Convention No. 169 by training public officials/civil servants to respect and fulfil its provisions. It is crucial that indigenous peoples be fully informed of the consequences of the use and exploitation of natural resources in their lands and territories through consultations, under the principle of FPIC.
 - Intensify the dialogue among African governments under the supervision of the African Union with emphasis on poverty eradication based on FPIC.
 - Asian States to establish full transparency regarding projects on indigenous territories by States and corporations, through the implementation of the principles of FPIC, in accordance with customary laws and practices of the respective indigenous peoples.

Advance unedited version

- Ensure full and effective participation, and FPIC of indigenous peoples in all programs related to HIV/AIDS in indigenous communities.
- Follow the principle of FPIC at all levels and take into account both the Fundamental Principles of Official Statistics as established by the Statistical Commission and provisions on human rights and fundamental freedoms and data protection regulations and privacy guarantees including respect for confidentiality. For indigenous peoples living in voluntary isolation, data-collection exercises should not be used to establish forced contact.

Implementation

34. A number of States have implemented policies that include the consultation and participation of indigenous peoples in programmes and projects that affect them. In Argentina, following the first national data-collection concerning indigenous peoples in 2001, a more in-depth survey was carried out, called the Supplementary Survey of Indigenous Peoples 2004 -2005 (ECPI). In this process, there was participation of indigenous in the design of the ECPI and in the various phases of the operational process, as well as the use of local indigenous languages.²⁴

35. The Colombian Government believes the processes of prior consultation is a prerequisite for the implementation of projects, legislative initiatives or administrative acts that have an impact on areas where there are indigenous peoples. The overall aim of prior consultation is to provide an opportunity for the indigenous peoples located in the area of impact of the project, construction work or activity and the relevant company to dialogue directly on the potential effects and impacts of these activities towards reaching

²⁴ E/C.19/2006/4 pp 17 - 18

Advance unedited version

consensus on agreements for mitigating and/or offsetting them. This includes two types of prior consultation: when the projects include the extraction and exploiting of natural resources, and for projects including the seismic exploration in the oil and gas sector. The requirement for prior consultation is based on decree 1320 of 15 July 1998²⁵.

36. In the Bolivarian Republic of Venezuela, chapter II on the Basic Law on Indigenous Peoples and Communities is devoted to the right to prior informed consent. It establishes a series of guidelines for its due application, guaranteeing indigenous peoples and their communities respect for their institutions and authorities throughout the consultation process. The chapter's most important contribution is to make prior and informed consent binding, establishing it as an essential requirement for conducting any activity that might have a direct or indirect impact on indigenous communities or peoples²⁶.

37. The theoretical framework for Spain's Strategy for Cooperation with Indigenous Peoples (ECEPI) includes the basic principles that indigenous peoples' right to free, prior and informed consent, including the right to reject proposals for development and other types of cooperation projects and activities, particularly those which affect their lands and territories. In that regard, Spanish cooperation activities which directly or indirectly affect indigenous peoples shall respect this right²⁷

²⁵ *Diario Oficial No. 43.340. Consulta previa con las comunidades indígenas y negras para la explotación de los recursos naturales dentro de su territorio.* 15 July 1998.

²⁶ *Ley Orgánica de los Pueblos y Comunidades Indígenas de Venezuela*

²⁷ *Estrategia de la Cooperación Española con los Pueblos Indígenas. Ministerio de Asuntos Exteriores y de Cooperación, 2007.*

Advance unedited version

38. Article 57(7) of the Constitution of Ecuador guarantees the right to free, prior and informed consultation on plans and programmes on protection, exploitation and commercialization of resources in indigenous territories that affect their environment or their cultures. Indigenous peoples also have the right to the benefits from such projects as well as receive indemnization for any social, cultural and environmental damages²⁸.

39. Article 30.II.(15) and (16) of the Bolivian Constitution states that: Indigenous peoples have the right to be consulted following adequate procedures through their institutions, when legislative or administrative measures affect them including the exploitation of natural resources in indigenous peoples' territories. Indigenous peoples also have the right to the benefits arising from the exploitation of the natural resources in their territories²⁹.

40. In May 2010 the Peruvian Congress approved a law on prior consultation for indigenous peoples. The law stipulates that during the consultation process, indigenous peoples are expected to participate through their institutional and representatives organizations established in accordance with their own uses and customs³⁰.

41. In some countries, there are more explicit references to free, prior and informed consent. In the Philippines the Indigenous Peoples' Rights Act (IPRA) requires a higher

²⁸ *Constitución del Ecuador. 2008.*

²⁹ *Constitución Política de Bolivia. 2009.*

³⁰ *Ley del Derecho a la Consulta Previa a los Pueblos Indígenas u Originarios reconocido en el Convenio No. 169 de la OIT.*

Advance unedited version

degree of public involvement in decision making for projects implemented within indigenous peoples' ancestral lands and domains that affect the lives of indigenous peoples³¹. The IPRA requires the project proponent to obtain the free, prior and informed consent (FPIC) of the affected community, in accordance with prescribed procedures, before the project can be carried out. However, there is recent legislation, the *Joint Administrative Order No.1 2005*, that allows for some exemptions.

42. Canada has stated that a broad and inclusive policy framework on FPIC is needed to address the interests and needs of all parties, indigenous and non-indigenous. It has also stated that FPIC is an important part of ensuring indigenous peoples' participation in development and decision making and of ensuring the fair and equitable balancing of interests in development projects. Positive examples of FPIC in practice in Canada include the *Nunavut Final Agreement, 1993*, which enshrined that consent of Designated or Regional Inuit Organization (DIO or RIO) is required for entry and access to Nunavut. Consent is only required under this agreement where indigenous peoples' title is established. More recently, the Yukon Oil and Gas Act, 2002 and Kaska-Yukon Government Bilateral Agreement, 2003 also enshrined FPIC into Canadian law.

43. In Australia, the *Aboriginal Land Rights (Northern Territory) Act 1976* requires that indigenous peoples must grant their consent for their ancestral lands to be used and for the transfer of these lands to others. The *Environmental and Biodiversity Conservation Act, 1999* also requires consultations with indigenous peoples prior to the commencement of a project. Further, its associated regulations, *Environment Protection and Biodiversity*

³¹ Indigenous Perspectives. Tebtebba. Vol 7, No 2. page 20.

Advance unedited version

Conservation Regulations 2000, states that informed consent must be sort from indigenous peoples if biological resources are to be accessed during a project.

44. Aotearoa-New Zealand's, Crown Minerals Act 1991, provides special protection for Maori land, as defined by the *Te Ture Whenua Maori Act 1993*. If the land is regarded as *waahi tapu* (sacred areas), access to land by companies and others can only be obtained if the Maori landowners give their consent (sec. 51) companies and others can only be granted access if the Maori landowners give their consent. The right to consent applies even where there may be public interest in accessing land and resources.

45. According to the Russian Federation before exploiting lands and resources which affect the living conditions of indigenous peoples, companies must obtain the free, prior and informed consent of the indigenous peoples concerned Indigenous peoples have the right to participate equally in negotiations through their representative institutions in order to share benefits. Where necessary, they should have access to legal representation to prevent their rights from being infringed upon by the illegal conduct of companies.

Main recommendations issued by the PFII to International Financial Institutions on FPIC

46. The main recommendations include:

Advance unedited version

- Adhere to the FPIC principle in all matters affecting indigenous peoples and ensure that FPIC and the provisions of the UN Declaration are integrated into their policies on indigenous peoples.
- Target indigenous peoples as beneficiaries of micro-financing mechanisms, with their FPIC and to support a free and universal civil registration on the basis of FPIC of indigenous peoples.
- The World Bank should revise its operational safeguard policies to be consistent with the provisions of the UNDRIP. Further recommends the World Bank and other Multilateral Development Banks to ensure full and effective participation of indigenous peoples in the formulation of the forthcoming indigenous peoples' guidebook and any revision to Operational Policy 4.10-Indigenous Peoples (World Bank).

Implementation

47. A number of international financial institutions have included FPIC in their policies to ensure indigenous peoples' participation in all stages of the project cycle, not only planning and implementation, but also the management of resources. FPIC is required when the project is located on, or proposes to commercially develop natural resources located within indigenous peoples' customary lands or when adverse impacts are expected on the livelihoods, and/or cultural, ceremonial or spiritual uses that define the identity of the indigenous people's community. Also when the project entails relocation of indigenous peoples and when the project proposes to use the cultural resources, knowledge, innovations or practices of indigenous peoples for commercial purposes.

Advance unedited version

According to the World Bank, it “requires the borrower to engage in a process of free, prior and informed consultation....”.³² In some instances, IFIs have established Safeguard Policy Statements for obtaining the consent and support of indigenous peoples in development projects that affects them.

Main recommendations issued by the Permanent Forum to the private sector on FPIC

48. The main recommendations include:

- Adhere to and upholding of the principles of FPIC, self-determination and accountability in all matters affecting indigenous peoples in order to create a good partnership for development.
- Target indigenous peoples as beneficiaries of micro-financing mechanisms, with their FPIC.

Implementation

49. The Royal Bank of Canada has incorporated in its policy the FPIC clause to ensure that big business clients in the mining and energy sectors are socially responsible by meaningfully consulting and accommodating indigenous communities affected by their operations.

³² Operational Policy 4.10-Indigenous Peoples (World Bank) paragraph 1.

50. The International Council on Mining and Metals issued guidance on mining and indigenous peoples. In instances where FPIC for indigenous peoples is legally provided for by national governments, ICMM members are expected to comply with the law.

Implementation of Recommendations of the Permanent Forum on Indigenous Issues on Free, Prior and Informed Consent

Session	Number of recommendations	Implemented (ongoing or completed) ³³	Implementation not initiated or reporting not received
First	1	1	
Second	3	2	1
Third	2	1	1
Fourth	13	4	9
Fifth	3	3	
Sixth	17	13	4
Seventh	6	4	2
Eighth	8	7	1
Total:	53	35	18

V. Conclusion and Recommendations

³³ It is worth keeping in mind that a recommendation is noted as being implemented if only a single State or agency reports to the Forum on having acted upon it.

Advance unedited version

51. The Inter-Agency Support Group plays a valuable role as a node for cooperation and coordination among agencies and as a catalyst for the implementation by agencies of the recommendations of the Permanent Forum. Establishing and maintaining contact with agencies, through both official visits by the Permanent Forum as well as informal cooperation during the sessions and throughout the year is important. The work of the focal points within the agencies is crucial to the implementation of the Permanent Forum's recommendations. **The Permanent Forum should continue to maintain these relationships as well as to seek out new partners for cooperation.**

52. General recommendations that are not directed at a specific agency are less likely to be implemented than those that are targeted. **The Permanent Forum should continue to endeavor to make clear and measurable recommendations.**

53. The Permanent Forum devoted two sessions to the MDGs, and has made a number of recommendations in relation to the MDGs. Considering the importance of the MDGs and the fact that the deadline of 2015 is approaching, **the Permanent Forum may wish to consider a specific review of recommendations on the MDGs at the twelfth Session of the Permanent Forum.**

54. Considering the need to strengthen the recognition of the principle of Free, Prior and Informed Consent, **The Permanent Forum** may wish to consider taking one of the following actions: establishing a new category in the portfolio of the members of the

Advance unedited version

Permanent Forum; designate a Permanent Forum to write a broader report on the matter; include FPIC as a theme in one of its session, or as a half day discussion.

55. The **Permanent Forum** may wish to consider the recommendations of the *Expert Group Meeting on Indigenous Peoples and Forests*, held 12 – 14 January 2011. In particular, the recommendation calls upon the General Assembly to include the full and effective participation of the Permanent Forum as well as the participation of indigenous peoples around the world in the preparation, organization and follow-up of the Rio+20.³⁴

56. Concerning the International Year of Forests, the **Permanent Forum** may also wish to consider a further recommendation from the *Expert Group Meeting on Indigenous Peoples and Forests*. This recommendation calls upon the secretariat of UN Forum on Forests and the secretariat of the UN Permanent Forum on Indigenous Issues, the Collaborative Partnership on Forests and other agencies, bodies, states and indigenous peoples' organizations to closely collaborate in order to ensure that indigenous peoples have the full and effective participation in UNFF initiatives, in particular the commemoration of the International Year of Forests (2011), and to emphasize the central role of indigenous peoples as stewards of many of the world's most biologically diverse forests.³⁵

³⁴ E/C.19/2011/5 para 37

³⁵ Ibid, para 38