

**BACKGROUND NOTE FOR THE DEVELOPMENT OF A
SYSTEM WIDE ACTION PLAN TO ENSURE A COHERENT
APPROACH TO ACHIEVING THE ENDS OF THE UNITED
NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS
PEOPLES**

Background Note 5

**Overview of the Findings of the Expert Mechanism
on the Rights of Indigenous Peoples on implementation of the
United Nations Declaration on the Rights of Indigenous Peoples**

Prepared by the Secretariat of the United Nations Permanent Forum on Indigenous Peoples
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Introduction

In 2011, the Human Rights Council requested the Expert Mechanism on the Rights of Indigenous Peoples to develop a questionnaire to seek the views of States on best practices regarding possible appropriate measures and implementation strategies in order to attain the goals of the Declaration (A/HRC/18/8) and reiterated that request in 2012 (A/HRC/21/24). The results of the survey conducted were summarized in a report presented to the Human Rights Council entitled *Final summary of responses to the questionnaire seeking the views of States and indigenous peoples on best practices regarding possible appropriate measures and implementation strategies to attain the goals of the United Nations Declaration on the Rights of Indigenous Peoples* (A/HRC/EMRIP/2014/4). The report issued by the Expert Mechanism identified both challenges in adopting measures and implementing strategies to attain the goals of the Declaration and identified best practices in this regard.

I. Obstacles to the implementation of the Declaration on the Rights of Indigenous Peoples

A. Obstacles identified by Member States

- a) Lack of awareness of the Declaration and prioritization of indigenous issues;
- b) Lack of information on how to implement the Declaration;
- c) Insufficient dialogue between the States and indigenous peoples;
- d) Lack of definitional consensus of meaning of key terms of Declaration;
- e) Cost of implementing the Declaration and limited resources;
- f) Need for regional variances in implementation especially as between federal and state governments;
- g) Challenges in developing national legislation and in implementing international commitments in public policies; and
- h) Monitoring and enforcement of laws, particularly mining and forestry laws.

B. Obstacles identified by indigenous peoples

- a) Lack of awareness of the Declaration, including by indigenous organizations;
- b) Lack of clarity on legal status of Declaration, including in light of governments' position that it is merely aspirational;
- c) Perceived complexity of implementation of collective rights;
- d) Difficulties presented by the remoteness of indigenous communities in some cases and costs in this regard;
- e) Lack of political will, especially regarding implementation of land rights and principle of free, prior and informed consent;
- f) Problematic interpretation of right of equality and view that indigenous peoples receiving 'special treatment';
- g) Challenge in recognition of indigenous peoples within certain countries;
- h) Lack of inclusion and participation of indigenous peoples in relevant State discussions or in cases of extractive industries taking place in indigenous plans;
- i) Lack of enforcement mechanisms to compel State compliance with Declaration; lack of funding for indigenous peoples to promote Declaration; and
- j) Scepticism among indigenous peoples on potential of Declaration to affect change.

II. Factors that facilitate the implementation of the Declaration on the Rights of Indigenous Peoples

A. Facilitating factors identified by Member States

- a) Commitment to implementation;

- b) Response to the particularities and historical and cultural backgrounds of the indigenous peoples concerned;
- c) Partnership, cooperation and good faith between States and indigenous peoples, including on the basis of treaties, agreements and other constructive arrangements;
- d) Dialogues and consultations with indigenous peoples, especially if ongoing, on key issues affecting indigenous peoples;
- e) Existence of strong legal and policy frameworks to implement the Declaration;
- f) Capacity building for indigenous peoples and strengthening of indigenous peoples' institutions, including the need for them to participate as equal partners; and
- g) Adequate budgets

B. Facilitating factors identified by indigenous peoples

- a) Ensuring that State laws and policies are in line with standards;
- b) Education and awareness among all stakeholders on the Declaration, including among judicial authorities;
- c) Strengthening of the legal, political and institutional frameworks concerning indigenous peoples in States;
- d) Advocacy by indigenous peoples before relevant national, regional and international mechanisms;
- e) Awareness raising and capacity building of indigenous peoples and others on Declaration;
- f) Supporting the work of indigenous peoples' organizations to promote the Declaration.

III. Recommendations to the UN system

Member States identified the following as elements that facilitate the implementation of the United Nations Declaration on the Rights of Indigenous Peoples:

- a) Cooperation with the UN system and support from the international community in the implementation of strategies to achieve the Declaration;
- b) Identification of best practices and technical assistance.

Indigenous peoples made the following observations and recommendations regarding the UN system:

- a) Provide capacity building to indigenous peoples;
- b) Support indigenous peoples' initiatives;
- c) Support indigenous peoples' participation in relevant processes;
- d) Support and encourage Member States to recognize indigenous peoples and to implement the Declaration;
- e) Assist indigenous peoples in proposing measures and implementation strategies;
- f) Monitor implementation of the Declaration.

No responses specifically mentioned UN coherence.

Annex I

Specific language from the Report entitled Final summary of responses to the questionnaire seeking the views of States and indigenous peoples on best practices regarding possible appropriate measures and implementation strategies to attain the goals of the United Nations Declaration on the Rights of Indigenous Peoples (A/HRC/EMRIP/2014/4)

Challenges in adopting measures and implementing strategies to attain the goals of the Declaration (States)

84. One of the biggest challenges identified is the lack of awareness and knowledge of the Declaration and other international instruments on the rights of indigenous peoples to ensure the respect for these rights. One State indicated that this lack of knowledge is exacerbated by a lack of larger civil society engagement in indigenous peoples' rights. Moreover, the rights of indigenous peoples are often not priorities

85. A few States indicated that a challenge they experienced was a lack of information on how to implement the Declaration. In particular, there was an identified need to improve mechanisms for dialogue and information exchange between the State and indigenous peoples.

86. One State cited the lack of definitional consensus on the meaning of terms such as self-determination, sovereignty and free, prior and informed consent as an impediment to the practical implementation of the Declaration. One State identified the need for the practical implications of self-determination to be clarified, including how self-determination can be implemented in practical policy.

87. Another main challenge identified was the cost of implementing the Declaration and the limited resources available to undertake this work. Funds will be necessary in order to implement different strategies in order to meet the objectives of the Declaration. Specifically, the cost of land demarcation and titling was identified. One State indicated that the remoteness of indigenous communities poses challenges to access to and timely delivery of goods and services, as well the inherent prohibitive costs in delivering these goods and services. In addition, there are challenges in preserving and publishing State materials in all of the many indigenous languages that may exist within a single State.

88. Another challenge identified was the need for regional variances in implementation. Specifically, each Government's policies are not organized in the same manner. Moreover, each indigenous people has its own history, culture, needs and perspectives.

89. One State indicated that it is a challenge to develop national legislation. Further, there is a need to incorporate and implement international commitments in public policies. Also, one State expressed concern because there is a need to ensure that policies developed for indigenous peoples also contribute to the development of the national society.

90. One State indicated that it is a challenge to ensure consistency across states due to the constitutional division of legislative powers between federal and state governments.

91. A major challenge discussed was in relation to monitoring and enforcement of laws, particularly mining and forestry laws. One State indicated that it is a challenge to prevent unethical foreign researchers and non-governmental organizations from misappropriating indigenous peoples' intellectual property rights and traditional knowledge.

92. *Some States did not identify any challenges but rather reiterated the rights enjoyed by indigenous peoples within the State.*

93. *One State indicated that government programmes and policies are not enough to attain the goals of the Declaration, and underlined that the indigenous community needs to be more engaged.*

Best practices (States)

94. *In their responses, States indicated many measures and best practices for implementing the Declaration. To fully realize the goals of the Declaration, Governments need to commit to an ongoing implementation process and continue building on achievements. Implementation of the Declaration will need to respond to the particularities and historical and cultural backgrounds of indigenous peoples concerned. States that do not have indigenous peoples within their borders can use the Declaration a framework for development assistance.*

95. *Where treaties, agreements and other constructive arrangements already exist, these instruments can provide the foundation for partnership, mutual respect, cooperation and good faith between States and indigenous peoples. As stated in France's response, the Nouméa Accord between France and the Kanaks of New Caledonia recognized the harmful effects of colonization, returned confiscated land to the indigenous peoples, provided full participation of Kanak people in decision-making, and established a consultation process.*

96. *Chile notes that its approach to hold regional round tables for a "historic reunion" is an example of a process to create a national plan to attain the goals of the Declaration. Government, churches, civil society organizations, and indigenous representatives participated in these roundtables. The goals were to build trust and identify topics that are important to indigenous peoples.*

97. *Many States set out a multi-pronged approach to implementing the rights in the Declaration. Some States used constitutional, legislative and policy measures to implement the Declaration. Some States drafted new legislation, amended existing legislation, created new programmes and initiatives, and increased involvement in international indigenous issues. This multi-pronged approach can include a special law recognizing the rights of indigenous peoples, which is developed with the effective participation of indigenous peoples based on the principle of free, prior and informed consent. This may also require legal recognition of indigenous peoples, including ratifying ILO Convention 169.*

98. *The Plurinational State of Bolivia particularly demonstrated good practices of gender equality by recognizing the need to ensure that programmes specifically target and benefit indigenous women. As part of its strategy to address violence against indigenous women, the national plan of Australia includes strengthening indigenous communities through the fostering of leadership of indigenous women within communities and broader Australian society.*

99. *Paraguay highlighted the importance of regularizing the communal ownership of land as well as supporting indigenous peoples' access to sustainable livelihoods.*

100. *States can work with United Nations agencies to substantially improve the situation of indigenous peoples, especially with those agencies providing technical assistance. Chile identified the need for ongoing support by the international community in the implementation of strategies to achieve the Declaration, especially in studying and publicizing best practices to assist States in achieving the goals of the Declaration. Norway demonstrated good practice by responding to the report of the Special Rapporteur on the rights of indigenous peoples (A/HRC/18/35/Add.2), indicating how the Government plans to follow up the recommendations.*

101. *Many States pointed to the relationship between the Declaration and other international human rights treaties, including ILO Convention No. 169, the International Covenant on Civil and Political*

Rights, the International Convention on the Elimination of All Forms of Racial Discrimination and the European Convention for the Protection of Human Rights and Fundamental Freedoms, in the promotion and protection of indigenous peoples' rights.

102. The African Commission on Human and Peoples' Rights and the United Nations Special Rapporteur on the rights of indigenous peoples supported the Republic of the Congo in the adoption of the special law for indigenous peoples. Technical assistance from the international community, including information and capacity-building, will, in the opinion of some States, significantly benefit and improve implementation.

103. To attain the goals of the Declaration, States promoted capacity-building for indigenous peoples. Further, States encouraged efforts to strengthen indigenous peoples' institutions, non-governmental organizations and self-government structures. There was also a recognized need to provide opportunities for indigenous peoples to participate as equal partners in the development process of the entire country. Australia pursues a policy of focusing on addressing indigenous disadvantage in areas such as education, health services, community development and community safety.

104. States also identified best practices in the area of education and promoting indigenous peoples' languages and cultures. It is important to include indigenous languages within the education system. This includes developing strategies for implementing bilingual and intercultural education, which includes indigenous peoples' participation. In addition, cultural centres can be created to promote indigenous cultures. Finally, some States recognized indigenous languages as official languages.

105. To attain the goals of the Declaration, some States indicated that a special budget for consultation with indigenous peoples was created. Other States provided funds to address issues facing urban indigenous peoples and undertake studies on employability. To this end, States indicated that international financial institutions will need to aid developing countries throughout the implementation process.

106. Norway cited the development of more sustainable policies as a result of consultations between the Sámediggi and the Norwegian government as a best practice.

Challenges in adopting measures and implementing strategies to attain the goals of the Declaration (indigenous peoples)

143. Several indigenous peoples' organizations noted that there was a lack of awareness of the Declaration, including on the part of indigenous organizations. In some cases, this was due to the lack of availability of the Declaration and information about it in relevant languages.

144. One indigenous peoples' organization noted that the lack of awareness in its country related also to the relevance of international law at the national level. Lack of clarity in this regard was contributed to by a government view of the Declaration as being an aspirational document. This position had influenced the views of some indigenous peoples, as well as lawyers and members of the judiciary.

145. Another challenge identified was the Declaration's perceived complexity in overtaking the traditional dichotomy between individual and collective rights in societies. This was seen as a concern in terms of making the Declaration more effective and better understood.

146. One organization noted that the costs of raising awareness regarding the Declaration, which included costly travel to remote areas with dispersed populations, often fell to indigenous peoples and their allies.

147. One of the biggest challenges identified was a lack of political will on the part of the States to implement the Declaration and to consider indigenous peoples' rights more broadly. One

organization observed slow progress from the national Government in capturing the essence of the principles and goals of the Declaration. In some cases, there is also a lack of attention paid by authorities to indigenous issues or public support for indigenous peoples' rights. Several indigenous peoples' organizations noted challenges with regard to, in particular, the implementation of free, prior and informed consent. In some cases, lack of political will also manifests itself in a lack of legislation or public policies directed to indigenous peoples. Indigenous peoples also expressed concern regarding a lack of respect for indigenous land and sea rights. One organization pointed out that they could not fully practice their customs and traditions because their lands were located within a national park.

148. The problematic interpretation of the principle of equality was stated as another challenge in implementing the Declaration. Interpretations of equality that did not take into account that human rights norms accommodate, and in some cases require special measures and concerns regarding special or differential treatment of indigenous peoples were used to excuse failures to implement indigenous peoples' rights.

149. Three indigenous peoples' organizations noted challenges relating to a lack of recognition of indigenous peoples in their countries. Another noted that, although recognized in the country in question, indigenous peoples confronted racial discrimination.

150. A number of organizations expressed concerns regarding their lack of inclusion and participation in relevant State discussions, public affairs and political processes, including in processes related to laws, policies and programmes. One organization observed that the government was perceived to be inaccessible. It was further observed that the lack of inclusion of indigenous peoples in relevant discussions resulted in an avoidance of constructive dialogue between indigenous peoples and public authorities. Moreover, in some cases, there was no dialogue with indigenous peoples even where extractive industries activities were being carried out on indigenous lands.

151. One organization also pointed out the lack of enforcement mechanisms likely to engage States to abide by the Declaration.

152. Another main challenge identified was the lack of sufficient funding and resources for indigenous representative organizations to function effectively and so to promote the Declaration. Challenges relating to poor infrastructure and communications facilities were also noted.

153. In terms of challenges within indigenous peoples' organizations or institutions, one organization noted that the many pressures facing indigenous peoples and scepticism of the Declaration's potential to effect change present a potential barrier to its implementation. Some indigenous peoples expressed scepticism over how the Declaration could solve the daily pressing concerns that are common in indigenous communities.

Best practices (indigenous peoples)

154. Many indigenous peoples' organizations described measures that would constitute best practices of the implementation of the Declaration.

155. In terms of the role of indigenous peoples' organizations, best practices could include taking initiatives to implement the Declaration by ensuring their policies, regulations and laws are in line with these norms, to better educate all stakeholders on the Declaration, and to encourage judges and lawyers to cite it in pleadings and in court. It was also noted that, where States lacked the will to implement the Declaration, indigenous peoples should take initiatives to advocate for implementation before relevant national, regional and international mechanisms.

156. It was also proposed that best practices regarding appropriate measures and implementation strategies should include education initiatives to raise awareness of the Declaration. Best practices also included the capacity-building of indigenous peoples.

157. The United Nations system can work with indigenous peoples' organizations to provide capacity development regarding the Declaration, and to support their work and their participation. In this regard, the United Nations was encouraged to continue to support indigenous peoples' participation, including through the provision of financial assistance. Several indigenous peoples' organizations observed that the United Nations could play a positive role in supporting and encouraging States to recognize indigenous peoples and to implement the Declaration.

158. Best practices could also include the strengthening of links between United Nations institutions and grassroots communities, as well as the strengthening of support provided by United Nations institutions for such communities. It was also proposed that the Expert Mechanism on the Rights of Indigenous Peoples and relevant United Nations mechanisms collaborate with non-governmental organizations to better assist indigenous peoples in proposing measures and implementations strategies to attain the goals of the Declaration.

159. Recommendations were also offered to the United Nations system, including that it evaluate in particular indigenous peoples' issues during universal periodic review sessions. One organization called on United Nations mechanisms to further elaborate the legal principles of the Declaration.

160. NNTC noted that an intensified effort to create awareness of the Declaration among Government officials and departments was necessary and could yield positive results in achieving the goals of the Declaration. As an example, the NNTC noted the sensitising of the Social Justice Commissioner of Australia to the Declaration and emphasized the importance of a collaborative partnership between the Government of Australia and indigenous peoples to develop a sustainable and empowering strategy that fully realizes the Declaration.

161. Indigenous peoples' organizations emphasized that best practices would include the recognition of indigenous peoples in countries where this has not yet occurred; enforcement of the Declaration and its inclusion in public policies; engagement in consultation processes with indigenous peoples on matters affecting their lives and activities; provision of support for the work of indigenous peoples organizations to promote the Declaration; demilitarization; and access to justice. CEPODRA proposed the creation in Peru of an intercultural committee in charge of indigenous interests.