

**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**

**Summary and analysis of Background Notes 1-11 for the
development of the action plan**

16 July 2015

I. Introduction

The outcome document of the World Conference on Indigenous Peoples requests the Secretary General to develop a United Nations system-wide action plan to ensure a coherent approach to achieving the ends of the United Nations Declaration on the Rights of Indigenous Peoples. In order to address this request it is necessary to identify where challenges in this regard exist.

Since the Declaration was adopted in 2007, progress has been made in further promoting the rights of indigenous peoples both at the national as well as international levels. At the national level, several Member States have engaged in legislative and administrative reforms, in an attempt to harmonize their national frameworks with the Declaration. Some Member States have even engaged in constitutional reforms, granting greater recognition of indigenous peoples.

At the global level, the United Nations system after 2007 has intensified his support to indigenous peoples and Member States in advancing the implementation of the Declaration. Several other multilateral, bilateral and regional organizations also engaged in the acceleration of efforts, since many of them have also been engaged since the 1st and 2nd Decades. United Nations Agencies, Funds and Programmes increasingly make use of the Declaration as the normative framework that guides their activities in relation to indigenous peoples. The United Nations Development Group (UNDG) is using extensively the Guidelines on Indigenous Peoples' Issues to assist the UN agencies, funds and programmes to integrate indigenous peoples' issues in programme and operational activities, wherever that is relevant.

On various occasions since the adoption of the Declaration in 2007, Member States, indigenous peoples, UN agencies, UN expert bodies, academia, and other international organizations have contributed to the implementation of the Declaration by identifying both, challenges and opportunities, throughout the process. By reviewing these views and positions we are able to initiate delineating the contour of the issues that need to be addressed to ensure a coherent approach to achieving the ends of the United Nations Declaration on the Rights of Indigenous Peoples from the perspective of the UN system.

In this brief document, a series of major factors representing challenges to the implementation of the Declaration on the Rights of Indigenous Peoples are identified. These elements can broadly be divided into five categories, a) political will; b) awareness on the Declaration and on indigenous issues; c) legal, political and administrative frameworks; d) capacity and resources; e) engagement of the UN system.

This review also compiles a range of general recommendations or suggestions that have been made, by Member States, indigenous peoples and others to the UN system on how to support the implementation of the Declaration. Although not necessarily related to issues of internal coherence within the UN system, the review of these challenges and proposals points the way

might also contribute to the identification of actions required to achieving the ends of the Declaration on the Rights of Indigenous Peoples.

II. Some challenges to the implementation of the United Nations Declaration on the Rights of Indigenous Peoples

The Declaration on the Rights of Indigenous Peoples acknowledges historic injustices, discrimination and systematic efforts preventing indigenous peoples from exercising their rights in accordance with their own needs and interest. Therefore implementation of the Declaration is a complex, challenging and long-term effort requiring the involvement not only of Member States, indigenous peoples and the United Nations systems, but many other relevant stakeholders at global, regional, national and local levels. With almost eight years of implementation, a lot of progress has been done. However in the opinion of indigenous peoples, much more still has to be addressed. Expectations from the side of key member States and other international organizations also recognised this fact.

In identifying key elements that are required to address a more coherence approach within the UN system on the implementation of the Declaration, several efforts were carried out. A questionnaire has been circulated among Member States and indigenous organizations. The questionnaire is available online for individuals to contribute¹.

In addition, a review of reports and documentation addressing the implementation of the Declaration and the efforts of the UN system on indigenous issues was also conducted. The review is contained in twelve background notes listed in Annex I. They are all available on the website of the Secretariat of the Permanent Forum on Indigenous issues.

Based on the review described above, we identified the more frequent references about the challenges that the implementation of the Declaration faces still today, after eight years of implementation. The identified items do not represent the results of a statistically sound sample of relevant stakeholders. They reflect frequent views that will require further analysis and clarification to identify exactly how to best address them. The list presented below is a general compilation and does not differentiate views between Member States, indigenous peoples or UN entities. They are not presented in any order of priority or importance.

a) General challenges

1) The Declaration is not a legally-binding document for Member States and only represents an aspirational set of principles and rights, and a standard of achievement to be pursued in a spirit of partnership and mutual respect (above all between Member States and indigenous peoples).

2) Some Member States still do not recognize indigenous peoples as distinct people from the general population. Reference is also made frequently to the notion that indigenous peoples' rights do not represent a political priority in many societies.

¹ <http://undesadspd.org/IndigenousPeoples/InterAgencySupportGroup/UNSystemwideactionplan.aspx>

3) Three issues are considered to be major political challenges for the implementation of the Declaration:

- (i) the right of self-determination;
- (ii) the principle of free, prior and informed consent; and
- (ii) land rights.

This seems to be of particular relevance in the case of conflicts linking land rights with the exploitation of natural resources (water, forests, gas, oil, minerals, and other resources). The resolution of land disputes seems to be an area of particular vulnerability for the indigenous peoples.

4) There is lack of satisfaction with the allocation of financial resources to address indigenous issues and needs at all levels of government. There are very few resources, if any, allocated to promote the content of the Declaration.

5) The capacity of interaction with politicians and government officials is limited given the dispersion and remoteness of indigenous communities from centers of political decision making.

7) Participation and inclusion of indigenous peoples in decision making processes at local and national levels remains a major challenge.

8) Adaptation of national, regional or local legislation to the content of the Declaration is a complex process that requires systematic political efforts and capacities, as well as time to go through the different processes existing in each national legislative system to enact or reform laws.

9) Many indigenous organizations experience limited capacities and facilities to promote the Declaration and influence decision making processes at local and national levels.

10) The prevalence of racist attitudes and discriminatory approaches in many societies is a major obstacle for progress of indigenous issues and the issuance of appropriate and relevant national or local policies addressing the implementation of the Declaration.

11) The implementation of relevant policies and laws protecting indigenous peoples remains a challenge at national and local levels, because the lack of mechanisms to enforce the Declaration and certainly the difficulties in enforcing national legislation. This applies particularly in relation to the exploitation of natural resources in areas occupied by indigenous communities.

12) The observation of collective rights has proven to be a major legal challenge in many countries.

13) The limitation or lack (in several cases) of disaggregated data on indigenous peoples hampers the possibilities of addressing policies and allocation of public financial resources to address the needs of indigenous communities.

14) There are conflicting views, and consequently, no consensus in the interpretation of several key terms or core rights included in the Declaration.

15) In some cases, the implementation of the Declaration is facing resistance because it has been interpreted as intending to grant a special status to indigenous peoples compared to the rest of the population of a given community or country.

16) Several indigenous organizations are frustrated by the capacity of the Declaration to affect their lives, thus their commitment and involvement in its implementation is limited.

17) Knowledge about the Declaration is limited, even among indigenous peoples, but also within UN staff and within civil servants and officials at all levels of government.

In the list of challenges identified for the implementation of the Declaration on the Rights of Indigenous Peoples, some few of them were addressing specifically issues for the specific attention of UN entities and other international organizations. In that sense, perceptions suggest the following:

b) Challenges relevant for the consideration of UN entities and other international organizations

18) The number of international organizations, operating in countries with the presence of indigenous peoples, with explicit policies or guidelines on indigenous peoples seems to be limited and could be enhanced.

19) There seems to be a mismatch between the overall needs emerging from the framework provided by the Declaration and the available financial and human resources allocated for that purpose, by Member States and donor international organizations, in different UN entities. Member States and donor international organizations are reducing contributions to core resources, and contributions to non-core budgets tend to be ear-marked. With the prevalence of so many different development and humanitarian priorities worldwide, the allocation of financial resources to address the implementation of the Declaration remains relatively marginal. There is a lack of satisfaction with the relatively limited available information on financial resources allocated to indigenous issues by each UN organization.

20) There is still lack of satisfaction with regards to the existing mechanisms for the participation of indigenous peoples in UN meetings and in consultative processes with international organizations in general.

21) There seems to be a lack of satisfaction in the way Member States together with UN entities are reflecting indigenous issues in programming issues such as UNDAFs (UN Development Action Frameworks) or CCAs (Common Country Assessments). Same opinion was voiced with regards to the analysis of impact of MDGs on indigenous issues in many of the MDG Country Reports. Similar opinion was expressed with regards to documents of other international organizations such as PRSPs (Poverty Reduction Strategy Papers used by the World Bank some years ago).

III. General recommendations to the United Nations system on how to support the implementation of the Declaration on the Rights of Indigenous Peoples

A series of recommendations or suggestions for the UN system to consider in for making progress towards the implementation of the Declaration on the Rights of Indigenous Peoples were also identified during the process of review of documentation and the analysis of questionnaires referred above. The suggestions have been proposed by Member States, indigenous peoples, and by UN entities themselves in many occasions. These also reflect general recommendations and are not necessarily addressing an intention to improve internal coherence within the UN system. They are as follows:

- 1) Raise awareness on the rights of indigenous peoples globally and at national levels.
- 2) Ensure that in relevant countries programme and operational activities of the UN system addressing indigenous issues, in support of government policies and efforts, use the Declaration is used as the basic framework.
- 3) Provide technical assistance, including capacity development efforts addressing government officials (including parliamentarians, judicial system officials, municipal authorities) to address, at least the harmonization of national legislation and policies.
- 4) Provide systematic learning opportunities for representatives of indigenous peoples to (i) facilitate their effective engagement with the UN Country Teams in different areas of policy concern; and to (ii) improve their capacities to monitor the implementation of the Declaration and report violations of rights embedded in the Declaration.
- 5) Provide systematic learning opportunities for all UN staff working at country level where the Declaration is relevant, to ensure effective programming and monitoring efforts.
- 6) Engage in resource mobilization efforts together with Member States to ensure promotion of the Declaration and the enhancement of programmes addressing the specific needs of indigenous peoples.
- 7) Promote that UN entities use the same standards of consultation with indigenous peoples that apply to Member States under the Declaration.
- 8) Promote and facilitate the effective participation of indigenous peoples at the United Nations; within the framework of existing rules and regulations established by the General Assembly.
- 9) Develop a set human rights indicators relevant to indigenous peoples for the evaluation and monitoring of the impacts of projects and programs.
- 10) Monitor situation and well-being of indigenous peoples.

Annex I

Background notes 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

- 1) The Second International Decade of the World's Indigenous Peoples: An evaluation of challenges and facilitating factors for implementation of the United Nations Declaration on the Rights of Indigenous Peoples.
- 2) Information provided by Member States to the United Nations Permanent Forum on Indigenous Issues through annual questionnaires (2011-2015): An evaluation of challenges and facilitating factors for implementation of the Forum's recommendations and the United Nations Declaration on the Rights of Indigenous Peoples.
- 3) Information provided by United Nations Agencies, Funds and Programmes to the United Nations Permanent Forum on Indigenous Issues through annual questionnaires (2011-2015): An evaluation of challenges and facilitating factors for implementation of the Forum's recommendations and the United Nations Declaration on the Rights of Indigenous Peoples.
- 4) Overview of the Findings of the Special Rapporteur on the Rights of Indigenous Peoples on implementation of the United Nations Declaration on the Rights of Indigenous Peoples.
- 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.
- 6) Implementation of the United Nations Declaration on the Rights of indigenous Peoples: Obstacles identified and recommendations made by the Permanent Forum on Indigenous Issues.
- 7) Online questionnaire on the follow-up to the 2014 World Conference on Indigenous Peoples: Inputs from Indigenous Peoples on implementation of the United Nations Declaration on the Rights of Indigenous Peoples.
- 8) Questionnaire on the follow-up to the 2014 World Conference on Indigenous Peoples: Inputs from Member States on Implementation of the United Nations Declaration on the Rights of Indigenous Peoples.
- 9) Policies and guidelines on indigenous peoples by the United Nations system and other international organizations.
- 10) United Nations Indigenous Peoples' Partnership: Lessons learned - Extracted from the UNIPP Consolidated Annual Progress Report 2014.
- 11) Indigenous Peoples and the Post 2015 Development Agenda.