

Free, prior and informed consent (FPIC): A local and global concern



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rights of indigenous peoples
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Outline

- Mandate and Role of the Special Rapporteur on the Rights of Indigenous Peoples
- Legal basis of Free, Prior and Informed Consent: Local and Global Perspectives
- Arguments and Practices used to undermine FPIC
- Road Ahead

UN Special Rapporteur on the rights of indigenous peoples

- Created in 2001
- First mandate holders: Rodolfo Stavenhagen (2001-2008), James Anaya (2008-2014), Victoria Tauli-Corpuz (2014-2017)
- Main instruments
 - UN Declaration on the rights of indigenous peoples
 - ILO Convention No. 169
 - Other relevant UN treaties
 - Regional human rights instruments

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- (a) To examine ways and means of overcoming existing obstacles to the full and effective protection of the rights of indigenous peoples, and to identify, exchange and promote best practices;
- (b) To gather, request, receive and exchange information and communications from all relevant sources, including Governments,



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indigenous peoples and their communities and organizations, on alleged violations of the rights of indigenous peoples

- (c) To formulate recommendations and proposals on appropriate measures and activities to prevent and remedy violations of the rights of indigenous peoples



Special Rapporteur on the Rights of Indigenous Peoples

(d) To work in close cooperation and coordination with other special procedures and subsidiary organs of the Council, in particular with the Expert Mechanism on the Rights of Indigenous Peoples, relevant United Nations bodies, the treaty bodies, and regional human rights organizations;



Mandate of the Special Rapporteur

- (e) To enhance engagement with and to participate in the annual sessions of the Permanent Forum on Indigenous Issues and of the Expert Mechanism on the Rights of Indigenous Peoples to ensure complementarity between their work;
- (f) To develop a regular cooperative dialogue with all relevant actors, including Governments, relevant United Nations bodies, specialized agencies and programmes, as well as indigenous peoples, national human rights institutions, non-governmental organizations and other regional or subregional international institutions, including on possibilities for technical cooperation at the request of Governments;
- (g) To promote the United Nations Declaration on the Rights of Indigenous Peoples and international instruments relevant to the advancement of the rights of indigenous peoples, where appropriate;

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- (h) To pay special attention to the human rights and fundamental freedoms of indigenous children and women, and to take into account a gender perspective in the performance of his/her mandate;
- (i) To consider relevant recommendations of the world conferences, summits and other United Nations meetings, as well as the recommendations, observations and conclusions of the treaty bodies on matters regarding his/her mandate;
- (j) To submit a report on the implementation of the mandate to the Council and to the General Assembly in accordance with their annual programme of work;

Special Rapporteur on the Rights of Indigenous Peoples

- Communications
- Country Visits – Paraguay, Honduras, Brazil, Finland/Sweden/Norway (Sapmi)
- Thematic Studies - indigenous women and girls; investments; conservation
- Participation in other UN processes and events
- Business and Human Rights processes

Norm-setting processes and establishment of spaces in the UN

- 1989 ILO Convention No. 169 on Indigenous and Tribal Peoples (succeeded ILO Convention 107, 1957)
- UN Declaration on the Rights of Indigenous Peoples (1985-2007) – Working Group on Indigenous Populations
- World Conference on Indigenous Peoples Outcome Document (22-23 September 2014)
- UN Permanent Forum on Indigenous (2001)
- UN Special Rapporteur on the Rights of Indigenous Peoples (2001)
- UN Expert Mechanism on the Rights of Indigenous Peoples (2007)

Legal basis of Free, Prior and Informed Consent

Self-Determination based normative framework of indigenous peoples rights.

UN Declaration on the Rights of Indigenous Peoples

Article 3 – Indigenous peoples have the right to self-determination. By virtue of this right they freely determine their political status and freely pursue their economic, social and cultural

Art. 26 – right to own, manage, control lands, territories and resources which they traditionally own, occupied or otherwise acquired,

Legal basis of Free, Prior and Informed Consent

UN Declaration on the Rights of Indigenous Peoples

- Art. 10 – in case of relocation
- Art. 11 – redress through effective mechanisms, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.
- Art. 19 – when States adopt legislative or administrative measures that affect indigenous peoples

Legal basis of Free, Prior and Informed Consent

- Art. 28 – right to redress, for the lands, territories and resources which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.
- Art. 29 – disposal of hazardous wastes in indigenous peoples' territories
- Art. 32 – consult and cooperate in good faith prior to approval of any project affecting indigenous lands, territories and resources, particularly exploitation of mineral, water or other resources

Arguments used to challenge FPIC

- Public interest
- Common good
- National Development Objectives
- FPIC and inclusive and exclusive democracy
- State sovereignty
- Eminent domain
- Subsoil rights

Challenges

- Implementation gap in implementation of the UN Declaration on the Rights of Indigenous Peoples, ILO Convention No. 169 and Court decisions
- Low level of awareness of government officials and the dominant society on indigenous peoples' situations and rights
- Inadequate capacities of indigenous peoples to assert and claim their rights.
- Persistence of racist and discriminatory laws and policies against indigenous peoples

Challenges

- Need to build further capacities of indigenous peoples to read and use recommendations of SR to pursue further implementation of UN Declaration and ILO Convention No. 169.
- More active and effective use of the World Conference on Indigenous Peoples (WCIP) Outcome Document for better protection and fulfilment of rights.
- Sustained monitoring and reporting of how rights of indigenous peoples are protected, respected and fulfilled

Opportunities

- Increasing evidences on and recognition of positive contributions of indigenous peoples to achieving ecological balance, sustainable development and cultural diversity.
- More policies on indigenous peoples made by UN agencies and programs (UNDP, IFAD, FAO, WB, ADB,etc.)
- The need to obtain free, prior and informed consent of indigenous peoples becoming a normative standard.

Opportunities

- Indigenous peoples putting priority in strengthening their communities, practicing their indigenous values and implementing their self-determined development.
- Special Rapporteur's increasing engagement and dialogues with governments, UN and other multilateral bodies and indigenous peoples for awareness raising and capacity building.
- Reports of previous SRs and present SR used as references in development of court decisions, policies and programs.

Dakkel ay lyaman!
Thank you!

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