



General Assembly

Distr.: General
XX August 2016

English only

Human Rights Council

Thirty-third session

Agenda item 5

Human rights bodies and mechanisms

Written statement* submitted by Indian Law Resource Centre, a non-governmental organization on the roster

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[27 August 2016]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

Establishing an effective body to implement, promote, and monitor states' compliance with the rights in the UN Declaration on the Rights of Indigenous Peoples

The Office of the High Commissioner for Human Rights has recently reported on the lack of implementation and enforcement of the rights of indigenous peoples, drawing particular attention to systematic discrimination, lack of indigenous peoples' participation in decision-making, lack of land demarcation and titling, challenges to indigenous peoples in voluntary isolation or in initial contact, and increasing violence against indigenous human rights defenders.¹ For many years, indigenous leaders and organizations have urgently called for measures to implement the rights in the UN Declaration on the Rights of Indigenous Peoples and to respond to violations of those rights. In 2014, during the World Conference on Indigenous Peoples, the General Assembly at last decided to address this dire human rights situation when it invited the Human Rights Council to review the mandate of the Expert Mechanism on the Rights of Indigenous Peoples to enable it to “more effectively promote respect for the Declaration, including by better assisting Member States to monitor, evaluate and improve achievement of the ends of the Declaration.”²

To enable the Expert Mechanism to act effectively and to meet the call of the World Conference Outcome Document, the core of its new mandate must be the authority to gather information and to disseminate reports and make recommendations about implementation and violations of indigenous rights. This is what is most needed and what has been demanded by indigenous leaders and their communities for years. To do less will risk failure and the waste of UN resources.

The report of the Office of the High Commissioner on this process recognizes that the review of the mandate is for the purpose of modifying and improving the Mechanism so that it can more effectively promote respect for the Declaration.³ The authority to gather information and to respond to serious situations of human rights violations must be the irreducible, indispensable part of the mandate, and no other duties or possible activities should interfere with this core obligation.

The Need for an Implementing Body

A body capable of responding to major problems or issues concerning indigenous lands and resources, protection of the environment, and the well-being and self-governance of indigenous peoples and communities is urgently needed. These matters often demand timely responses, on-going fact-gathering, and follow-up, and the body must be capable of action that is both prompt and sustained.

¹ Rights of indigenous peoples, Report of the United Nations High Commissioner for Human Rights, A/HRC/33/27, ¶ 5 (20 July 2016).

² G.A. Res. 69/2, ¶ 28, U.N. Doc. A/RES/69/2 (Sept. 25, 2014).

³ Expert workshop to review the mandate of the Expert Mechanism on the Rights of Indigenous Peoples, Report of the Office of the United Nations High Commissioner for Human Rights, A/HRC/32/26 (10 May 2016).

Because the rights of indigenous peoples are rights of communities, tribes, nations, and peoples, as well as individuals, violations of these rights often involve hundreds or thousands of people, vast areas of land, and extensive resources. Indigenous lands and resources can be of great value, and they are frequently sought by developers, settlers, extractive industries, and agricultural interests. The invasion and theft of indigenous lands and resources is often complex, involving a range of actors and taking place over extensive periods of time. Tragically, violence often accompanies such invasions and takings, and it is usually indigenous people who are killed. According to one investigation, 2015 was the deadliest year yet for environmental activists with 185 killings, almost 40 percent of whom were indigenous people.⁴

Despite the scale and frequency of indigenous rights violations, indigenous peoples and individuals typically have little ability to protect themselves or find remedies at the national level. Because indigenous peoples are usually disadvantaged economically and politically, they frequently have little or no access to justice in their countries. International attention and international mechanisms are often the only recourse available. The need is extraordinarily great for a strong and capable body to promote and oversee the implementation of the rights in the Declaration.

Currently, the Expert Mechanism's existing mandate is terribly inadequate. It simply does not have the authority to do very much or to respond to serious situations or violations of human rights. The Special Rapporteur on the rights of indigenous peoples is overwhelmed with thousands of cases each year, many of which are life-threatening and require an immediate response or intervention, as discussed in the expert workshop.⁵ The Special Rapporteur has done a tremendous job, but given the sheer number and seriousness of rights violations that are occurring, more is needed. An expert body with a broad and responsive mandate is needed.

The Mandate for the Implementing Body

The reformed body must be able to, at minimum, seek and receive information relating to indigenous rights, to prepare and distribute reports on these matters, and to make recommendations to states and others concerning implementation of the rights in the Declaration. The mandate should include, among other things, authority to make country visits, to disseminate information about successful implementation and good practices, and to issue general comments including interpretations of the Declaration and observations about its application.

The body should also be able to provide technical advice and assistance regarding states' domestic legislation and policies relating to the rights of indigenous peoples, and also regarding the relevant safeguard policies of international financial institutions. The report of the Office of the High Commissioner on the review of the mandate of the Expert Mechanism⁶ supports this recommendation, explicitly referencing the "need to expand the mandate of the Expert Mechanism

⁴ Global Witness, *On Dangerous Ground: 2015's Deadly Environment: The Killing and Criminalization of Land and Environmental Defenders Worldwide*, (June 20, 2015), available for download at: <https://www.globalwitness.org/en/reports/dangerous-ground/>.

⁵ Expert workshop to review the mandate of the Expert Mechanism on the Rights of Indigenous Peoples, Report of the Office of the United Nations High Commissioner for Human Rights, A/HRC/32/26, ¶ 18 (10 May 2016).

⁶ Expert workshop to review the mandate of the Expert Mechanism on the Rights of Indigenous Peoples, Report of the Office of the United Nations High Commissioner for Human Rights, A/HRC/32/26 (10 May 2016).

so that it could better engage States and indigenous peoples in advancing implementation of the Declaration, including by addressing country-specific situations in some way....”⁷

In its work to implement the Declaration, the reformed body should pay particular attention to the rights and special needs of indigenous women and children to ensure their full protection against all forms of violence and discrimination. The body could address serious implementation gaps in this area and provide the necessary expertise to effectively address the epidemic of violence against indigenous women and girls.

The Structure of the Implementing Body

To be effective, the body must be made up of independent experts who will serve in their individual capacities. The body should comprise indigenous and non-indigenous experts, experts nominated by indigenous governments and organizations as well as those nominated by states. Reports and recommendations from such a mixed and balanced body will have greater political and moral force, and that political and moral force is practically the only power that can be exerted by an implementing body. The method of selecting the experts should be transparent. Indigenous governments and organizations should be widely consulted to identify indigenous experts from the various parts of the world. States, too, should be consulted to identify independent experts. Of course, gender balance must also be achieved. To demonstrate the seriousness of the reformed body in meeting the call of the World Conference Outcome Document, it should be renamed, and new members should be appointed or re-appointed.

The body will require a sufficient number of members and meeting days to accommodate an expanded mandate. Existing human rights bodies that do similar work consist of 10 to 25 experts who meet from four to nine weeks per year. This reformed body should include at least 10 experts meeting in three annual two-week sessions with adequate financial and human resources. To ensure continuity, sharing of information, and follow-up, the experts should serve four-year staggered terms, with five experts chosen by lot to serve an initial two-year term. The body should be innovative and flexible and use cost-effective tools such as internet and teleconferencing technology when possible.

Taken together, these practical recommendations to improve the structure and mandate of the Expert Mechanism are essential to the effective implementation of the Outcome Document and vital to the achievement of the ends of the Declaration.

⁷ *Id.* at ¶ 53.