

INDIAN LAW RESOURCE CENTER

CENTRO DE RECURSOS JURÍDICOS PARA LOS PUEBLOS INDÍGENAS

602 North Ewing Street • Helena, Montana 59601 • (406) 449-2006 • Email: mt@indianlaw.org
WASHINGTON OFFICE: 601 E Street, S.E., Washington, D.C. 20003 • (202) 547-2800 • Email: dcoffice@indianlaw.org

Implementing the UN Declaration on the Rights of Indigenous Peoples: Creating a UN Mechanism for Monitoring and Promotion

May, 2013

The UN Declaration on the Rights of Indigenous Peoples now enjoys a worldwide consensus of states. No country today opposes the Declaration. It is an historic declaration of rights, and the UN General Assembly has decided to hold the UN World Conference on Indigenous Peoples in order to “contribute to the realization of the rights of indigenous peoples, pursue the objectives of the [Declaration], and promote the achievement of all internationally agreed development goals.” A/RES/66/296 (17 September 2012) The General Assembly has explicitly decided to take action to realize or implement the rights in the Declaration, and it is urgent that a body be created within the United Nations to do this work.

Many indigenous peoples in various regions of the world are now calling for the creation of some form of implementing or monitoring body to promote compliance with the Declaration and to promote the realization of the rights of indigenous peoples. One group of indigenous nations in North America has made the following recommendation for action by the World Conference:

Recommend that the UN World Conference decide to create an implementing and monitoring body with a mandate to promote and monitor implementation of the Declaration and to encourage compliance with the obligations expressed in the Declaration. Such a monitoring and implementation body should have a mandate to receive relevant information, to share best practices, to make recommendations, and otherwise to work toward the objectives of the Declaration. The body should be made up of expert members, including indigenous experts. The General Assembly should, in conjunction with indigenous peoples, establish a process, which would include indigenous peoples’ representatives, for elaborating the structure and mandate of such a body or mechanism at the earliest possible time.

Recommendations for an implementing and monitoring body have also been made by the Inuit and Sami Peoples in the Nuuk Arctic Declaration, by Indigenous Peoples in Asia, by the North American Indigenous Peoples Caucus, by the African Regional Preparatory Meeting, by the Preparatory Meeting of America Latina y el Caribe, and by the Preparatory Meeting for Pacific Indigenous Peoples. A study has been undertaken by the Permanent Forum on an Optional Protocol to the Declaration, which is

another possible mechanism. All of the recommendations and proposals deserve consideration in order that the most effective and most workable ideas can be adopted.

Experience shows that human rights instruments may have practically no effect unless steps are taken to implement the rights in question, that is, to make it possible to exercise or enjoy the rights. An implementing and monitoring body will improve respect for indigenous rights, will encourage and foster implementation at the state level, and will help to achieve the objectives of the Declaration, especially improving the well-being of indigenous peoples and helping to avoid or stop the abuse of their rights.

International monitoring and oversight are especially needed to guard against fraud, misdealing, and legal manipulation to deprive indigenous peoples of their lands and natural resources. The great disparities in economic and political power that most indigenous peoples endure make them especially vulnerable to wrong-doing. The need for an international mechanism to implement the UN Declaration is discussed in an expert paper submitted to a UN Expert Seminar on indigenous rights in January 2006. HR/GENEVA/IP/SEM/2006/BP.2

Without strong and effective measures at the international level, the promise of the UN Declaration will be lost. The Declaration needs an implementing and monitoring body because of the grave human rights situations of indigenous peoples in many parts of the world, especially the horrendous violence against certain indigenous people and the pandemic of violence against indigenous women and girls. An implementing and monitoring body is appropriate for the Declaration, because it already enjoys a global consensus, because it contains very specific and detailed provisions, and because the Declaration contains many provisions calling for specific state actions to implement rights.

Implementing bodies or mechanisms have, of course, long been used to promote respect for human rights instruments and to monitor compliance by states. Committees of experts, such as the Human Rights Committee (Covenant on Civil and Political Rights) and the Committee on the Elimination of Racial Discrimination (Convention on the Elimination of All Forms of Racial Discrimination), monitor and promote compliance with a number of human rights treaties. Many such bodies are working effectively today.

The UN Permanent Forum on Indigenous Issues has an important role in terms of implementation, but implementation work is required beyond what the Permanent Forum can do. The Expert Mechanism on the Rights of Indigenous Peoples also has a role, but only a very limited one because of its narrow mandate. We believe at this early stage that a new body, made up of independent experts, including indigenous experts, with a broad new mandate, will be the best but not the only possible approach.

After states have made the decision to create such a body, it will be necessary to discuss and negotiate the details about the structure, mandate, and functioning of the body. The process of elaborating the structure, mandate, and functioning of the body must be one that includes full and active participation by indigenous peoples.