

Free, prior and informed consent

Obligations under international law

Lisa Ogle

Environmental Legal Consultant

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lisa@lisaogle.net

UN-REDD takes a rights-based approach

- United Nations Charter
 - UN to promote and encourage respect for human rights (Arts 1, 55(c))
- UN Development Group
 - Guidelines on Indigenous Peoples' Issues
- UN-REDD Operational Guidance: Engagement of IPs and other Forest Dependent Communities
 - Requires adherence to FPIC principle
- United Nations Declaration on the Rights of Indigenous Peoples (2007) (UNDRIP)

UNDRIP

- What is UNDRIP?
 - a declaration adopted by a vote of the UN General Assembly (13 Sept 2007)
- Is it binding under international law?
 - No, because it is not a treaty
 - But, vote was overwhelmingly supported: 143 – 4
 - and three of the ‘against’ countries have since endorsed it
- Status?
 - A strong aspirational statement of the standards required for engagement with indigenous peoples.

Record of voting on UNDRIP

	Voted for	Against	Abstained	Absent
Total	143	4	11	34
Asia / Pacific countries	Cambodia China DPR of Korea Indonesia Lao Malaysia Myanmar Nepal Pakistan Philippines Sri Lanka Thailand Timor-Leste Viet Nam	Australia (2008) Canada New Zealand (2010) USA (considering)	Bangladesh Bhutan Samoa	Fiji Kiribati Marshall Islands PNG Solomon Islands Tonga Tuvalu Vanuatu

UNDRIP – Overview

- Establishes a broad framework of human rights for IPs
- Right to self-determination (Art 3)
- Right to own, use, develop and control lands, territories and resources traditionally owned or occupied (Art 26)
- Right of IPs to free, prior and informed consent (Arts 18, 32)
 - But does not define FPIC
- UN bodies and agencies to promote respect for UNDRIP at country level (Arts 41, 42)

When must FPIC be done?

- Before adopting legislative or administrative measures that may affect IPs (Art 19):
 - E.g. REDD+ legislation
 - E.g. Land-use planning decisions
- Prior to approval of any project affecting indigenous peoples' lands and resources (Art 32)
 - Note: carbon is a resource
 - E.g. REDD+ projects

Guiding principles for FPIC from UNDRIP

- Indigenous peoples have the right to:
 - choose their own representatives to participate in decision-making (Art 18)
 - Participate through their own representative institutions (Art 32)
- Must pay particular attention to vulnerable groups:
 - indigenous elders, women, youth, children and persons with disabilities (Art 22)
- Right to recourse mechanisms and remedies (Art 40)

Other UNDRIP rights relevant to REDD+

- Right not to be forcibly removed from lands or territories
 - unless done with FPIC and compensation (Art 10)
- Right to own means of subsistence (Art 20):
 - If deprived, entitled to just and fair redress
- Right to maintain and have access to religious and cultural sites (Art 12)
- Right to traditional medicines (Art 24)

Indigenous and Tribal Peoples Convention 1989 (ILO 169)

- Strong framework of human rights for IPs, including right to control land and natural resources (Arts 14, 15)
- Governments must consult IPs through their representative institutions (Art 6)
 - Does not use term “FPIC”
- BUT: not widely ratified
 - Only 20 countries have ratified (Brazil, Chile, etc)
 - In Asia-Pacific, only Fiji and Nepal have ratified

International Convention on the Elimination of All Forms of Racial Discrimination (1965)

- Obligation on State to eliminate all forms of racial discrimination
- Includes right to own property
- CERD General Recommendation No 23
 - affirms the Convention applies to IPs
 - States to recognise right of IPs to control and develop own land and resources
 - says that decisions affecting IPs not to be taken without informed consent

UN Framework Convention on Climate Change (1992)

- COP Negotiating Text
 - current version dated 13 August 2010
 - doesn't expressly refer to FPIC, but notes GA has adopted UNDRIP
 - requires full and effective participation of IPs and local communities in developing national REDD+ strategies
- Note of caution
 - Negotiating Text is still changing!

Summary

- UN-REDD Programme's FPIC obligations are clear
- Country level obligations:
 - Did the country support UNDRIP?
 - How do they define 'indigenous peoples'?
 - Which international human rights treaties has the country ratified?
 - Keep obligations under Negotiating Text in mind, because it may incorporate UNDRIP, and the decision will eventually become legally binding.

Thank you!