Engaging the marginalized: Partnerships between indigenous peoples, governments and civil society

Guidelines for engagement with indigenous peoples

United Nations Workshop – 2005
International Conference on Engaging
Communities – Brisbane, Australia

15 August 2005

Contents

Part I – Workshop Overview

Introduction by Workshop Chair, Professor Mick Dodson Member of the United Nations Permanent Forum on Indigenous Issues

On 15 August 2005, in Brisbane Australia, 160 delegates from the International Engaging Communities Conference participated in the UN-sponsored workshop, 'Engaging the marginalized: Partnerships between indigenous peoples, governments and civil society'.

The Secretariat of the United Nations Permanent Forum on indigenous Issues and the Human Rights and Equal Opportunity Commission of Australia organized this workshop which was divided into four sessions. Sessions one and two opened with a number of distinguished panellists who laid out international frameworks, as well as national and local level examples of engaging indigenous communities. The workshop reconvened in the afternoon for small group discussions, where delegates were encouraged to identify specific mechanisms and challenges they have experienced in engaging indigenous peoples as well as identify the important principles to guide engagement with indigenous peoples.

The experiences and comments shared by the delegates have been captured in the *Workshop Report* and the *Guidelines for Engaging Indigenous Communities* which are below.

The workshop aimed to build on the human rights based approach to development which places indigenous peoples at the centre and identify opportunities as well as challenges for engaging indigenous communities in governance processes. This is an important development internationally. The workshop acknowledged that never has the UN system been so primed to receive indigenous views into their frameworks and processes. It is hoped that this document will advance an understanding and awareness of these important issues. The workshop proceedings and guidelines will be discussed at the forthcoming session of the Permanent Forum on Indigenous Issues.

I would like to thank our co-hosts the Human Rights and Equal Opportunity Commission for assisting the United Nations and Secretariat in pulling the workshop together. I would also like to thank and congratulate all the workshop participants from all around the world who contributed to the workshop discussion, shared their experiences and views, which ultimately informed the workshop outcome – *Guidelines for Engaging with Indigenous Communities*.

Part 2 – Workshop Report

International Conference on Engaging Communities, Brisbane 2005
United Nations Workshop 4: Engaging the marginalized – Partnerships
between indigenous peoples, governments and civil society

Introduction

This workshop was held on 15 August 2005 and co-sponsored by the Secretariat of the United Nations Permanent Forum on Indigenous Issues and the Human Rights and Equal Opportunity Commission of Australia. Approximately 160 people participated in the workshop.

The workshop noted that indigenous peoples face common experiences of marginalization and exclusion in the states in which they live. This is reflected in significantly lower standards of living and often, feelings of dislocation and disempowerment.

The workshop identified the need to significantly increase efforts to build *effective partnerships* between governments, the private sector, civil society and indigenous peoples. This requires respect for the rights of indigenous peoples.

The workshop noted the key elements of a human rights based approach to engaging with indigenous people and communities. This approach is informed by international law, the normative framework of the international human rights system,[1] the interdependence and inter-relatedness of all human rights, civil, political, economic, social and cultural, and the policies and practices of the United Nations.[2] It includes the Common Understanding of the Human Rights Based Approach to Development and the principle of free, prior and informed consent.

The workshop centred on the challenges and opportunities of recognizing cultural diversity; developing policies and programs that are non-discriminatory, inclusive, targeted and effective; providing an enabling environment for participation and the empowerment of indigenous peoples at all levels; and adopting approaches that are (indigenous) people centred.

Experiences and challenges in engaging with indigenous communities

The workshop noted some positive experiences but articulated a number of concerns in the interaction of governments, the private sector and civil society with indigenous peoples and communities.

The workshop noted that partnerships with indigenous peoples in some countries variously involve constitutional recognition, are underpinned by formal agreements or protocols for engagement, or involve legislative requirements for governments to consult with indigenous peoples' organizations on matters that directly or indirectly affect indigenous communities. Participants noted that a consistent problem is the failure of governments to comply with the policies and processes that they have established or to act in accordance with their international obligations under international treaties.

The workshop noted that existing relationships between governments and indigenous peoples are often inequitable. This is because the relationship is negotiated with unequal bargaining power. The underlying basis for these relationships are often set by government, are conditional, place limitations on the recognition of indigenous rights and/or pay insufficient attention to the ongoing impact of the history of dispossession and discrimination experienced by indigenous peoples.

The workshop identified the need to build partnerships on an equitable footing, which are flexible and responsive to the diverse needs and circumstances of indigenous peoples. Such partnerships require: the full and effective participation of indigenous peoples; the opportunity for indigenous peoples to identify concerns, prioritize them and propose solutions that are community driven; and respect, and support indigenous peoples' chosen form(s) of representation, including traditional or customary authority structures.

The workshop also identified the need for government, the private sector and civil society to recognize the cultural diversity that exists *within* indigenous peoples and between communities. Accordingly, partnerships must be tailored to the specific characteristics of indigenous communities. Government programs must also be responsive to the specific needs of individual communities, be coordinated and avoid duplication.

The workshop also noted the challenge of developing *sustainable* partnerships with indigenous communities, which are targeted to achieving long term objectives negotiated with the full and effective participation of indigenous peoples. Partnerships should also acknowledge the existing social capital and strengths within indigenous communities, and look to build and support these.

Guidelines for engagement with indigenous peoples

The workshop developed guidelines for governments, the private sector and civil society to engage with indigenous peoples in relation to the following contexts:

- Indigenous systems of governance and law;
- Indigenous lands and territories, including sacred sites;
- Treaties, agreements and other constructive arrangements between states and indigenous peoples, tribes and resources;
- In relation, but not limited to extractive industries, conservation, hydro-development, other developments and tourism activities in indigenous areas leading to possible exploration, development and use of indigenous territories and/or resources;
- Access to natural resources including biological resources, genetic resources and/or traditional knowledge of indigenous peoples, leading to possible exploration, development or use thereof;
- Development projects encompassing the full project cycle, including but not limited to assessment, planning, implementation, monitoring, evaluation and closure – whether the projects be addressed to indigenous communities or, while not addressed to them, may affect or impact upon them;
- UN agencies and other intergovernmental organizations who undertake studies on the impact of projects to be implemented in indigenous peoples territories;
- Policies and legislation dealing with or affecting indigenous peoples;
- Any policies or programs that may lead to the removal of their children, or their removal, displacement or relocation from their traditional territories.

The guidelines for engaging with indigenous communities specifically include:

A Human Rights-Based Approach to Development

- All policies and programs relating to indigenous peoples and communities must be based on the principles of non-discrimination and equality, which recognize the cultural distinctiveness and diversity of indigenous peoples;
- Governments should consider the introduction of constitutional and or legislative provisions recognizing indigenous rights;
- Indigenous peoples have the right to full and effective participation in decisions which directly or indirectly affect their lives;
- Such participation shall be based on the principle of free, prior and informed consent,[3] which includes governments and the private sector providing information that is accurate, accessible, and in a language the indigenous peoples can understand;
- Mechanisms should exist for parties to resolve disputes, including access to independent systems of arbitration and conflict resolution.

Mechanisms for representation and engagement

- Governments and the private sector should establish transparent and accountable frameworks for engagement, consultation and negotiation with indigenous peoples and communities;
- Indigenous peoples and communities have the right to choose their representatives and the right to specify the decision making structures through which they engage with other sectors of society.

Design, negotiation, implementation, monitoring, and evaluation

- Frameworks for engagement should allow for the full and effective participation of indigenous peoples in the design, negotiation, implementation, monitoring, evaluation and assessment of outcomes;
- Indigenous peoples and communities should be invited to participate in identifying and prioritizing objectives, as well as in establishing targets and benchmarks (in the short and long term);
- There should be accurate and appropriate reporting by governments on progress in addressing agreed outcomes, with adequate data collection and disaggregation;
- In engaging with indigenous communities, governments and the private sector should adopt a long term approach to planning and funding that focuses on achieving sustainable outcomes and which is responsive to the human rights and changing needs and aspirations of indigenous communities.

Capacity-building

- There is a need for governments, the private sector, civil society and inter-national organizations and aid agencies to support efforts to build the capacity of indigenous communities, including in the area of human rights so that they may participate equally and meaningfully in the planning, design, negotiation, implementation, monitoring and evaluation of policies, programs and projects that affect them;

- Similarly, there is a need to build the capacity of government officials, the private sector and other non-governmental actors, which includes increasing their knowledge of indigenous peoples and awareness of the human rights based approach to development so that they are able to effectively engage with indigenous communities;

- This should include campaigns to recruit and then support indigenous people into government, private and non-government sector employment, as well as involve the training in capacity building and cultural awareness for civil servants; and

- There is a need for human rights education on a systemic basis and at all levels of society.

International agenda for change

The principles recognized in this action-oriented report recognize the agenda for change and should be progressed through the United Nations commitment to the Millennium Declaration, including the Millennium Development Goals process, as well as the Program of Action of the Second International Decade of the World's Indigenous People.

Part 3 – Concluding Remarks

Concluding Remarks by Workshop Rapporteur, Mr Tom Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner, Human Rights & Equal Opportunity Commission (Australia)

We received many valuable contributions from the panellists and delegates during the workshop. While some views differed, and the varying ways of developing partnerships were noted, one common theme re-emerged throughout the workshop. This theme was the need for indigenous peoples to be at the centre of all development, policy-making and planning that affects their lives. This is to be achieved by government and civil society's full support of:

- Full and effective participation of indigenous peoples; and
- Indigenous peoples right to free, prior and informed consent.

Both nationally and internationally much progress is required for an indigenous people-centered approach to be implemented. Workshop panellists Mr Darryl Pearce of the South-West Aboriginal Land and Sea Council in Australia and Mr Mangal Chakma of the Chittagong Hills Tracts in Bangladesh showed that domestically some governments and civil societies are not engaging with indigenous peoples in a way that places them at the centre.

Ms Chandra Roy from the UN Development Programme, offered the Human Rights Based Approach to Development as a model for governments and civil society to engage with indigenous peoples. Ms Elsa Stamatopoulou of the UN Permanent Forum Secretariat affirmed this in her remark that, 'there has been considerable work already on a normative framework of engagement with indigenous peoples; it is time for implementation'.

As the Aboriginal and Torres Strait Islander Social Justice Commissioner I have made a strong commitment to progress the development of the guidelines for engagement by disseminating information about the workshop throughout indigenous communities in Australia. I also understand that my colleagues in the United Nations will disseminate this information inter-nationally.

I also urge governments and civil society to take full consideration of the workshop report as well as adopt the guidelines for engagement.

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1   As set out in: *UN Workshop on engaging the marginalized: Background paper prepared by the Secretariat of the UN Permanent Forum on Indigenous Issues*. These include, but are not limited to, the International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights; the International Convention on the Elimination of All Forms of Racial Discrimination; Convention on the Rights of the Child; International Labour Organisation Convention No. 169 on Indigenous and Tribal Peoples in Independent Countries; and the Draft Declaration on the Rights of Indigenous Peoples.

2   Including the United Nations Common Country Assessment and Development Assistance Framework (CCA/UNDAF), the Human Rights Based Approach to Development adopted by the United Nations Development Group, the recommendations of the United Nations Permanent Forum on Indigenous Issues and other policies adopted by entities of the United Nations system and other inter-governmental organizations, as well as bilateral donor agencies.

3   The elements of a common understanding of free, prior and informed consent, as identified at the *International Workshop on Methodologies regarding free prior and informed consent and indigenous peoples* (UN Doc: E/C.19/2005/3, 19 January 2005) are set out in the *UN Workshop on engaging the marginalized: Background paper prepared by the Secretariat of the UN Permanent Forum on Indigenous Issues*. The workshop report identifies the main areas where the principle of free, prior and informed consent is relevant; what constitutes consent; the timeframes for seeking such consent; who may provide it on behalf of an indigenous community; how it should be sought; and procedures and mechanisms for oversight and redress.

Further Information

The full report of the workshop, including background papers and presentations, is available at:

- The website of the Human Rights and Equal Opportunity Commission at: www.humanrights.gov.au/social_justice/

- The website of the United Nations at: www.un.org/esa/socdev/unpfii/

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