

Developments And Challenges To The UN Declaration On The Rights Of Indigenous Peoples Five Years On: Insights On Biodiversity And Case Studies In Bangladesh, Brazil, Japan And Uganda: An Introduction To The Special Issue

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After many years of drafts and negotiations, the United Nations Declaration on the Rights of Indigenous Peoples (hereafter ‘UNDRIP’) was adopted on the 13th of September 2007. Building on the scope offered by other international instruments such as the ILO Convention N° 169, the Declaration enshrines both the individual and collective rights of indigenous peoples: including the right to self-determination, the right to education, the right to development, land and natural resource rights, intellectual property rights, cultural rights, and the right to treaty recognition (Allen & Xanthaki, 2009). The adoption of the Declaration undoubtedly constitutes an important victory for indigenous peoples around the world and a result of years of efforts to gain recognition and respect for their rights as peoples. UNDRIP has been met with both high expectations over its potential impact and considerable concern over some States’ initial reticence to ratify it and implement in practice. In order to be meaningful, the resulting debate should be fueled by theoretical considerations, real-life experiences, practical guidelines, and – most importantly – the participation of indigenous peoples themselves.

In this special issue, we hope to contribute to this important debate. In the following pages we present five articles researched and written by scholars working on the implementation of UNDRIP at international level as well as the situation of indigenous peoples in different rather under-researched corners of the world: Bangladesh, Brazil, Japan, and Uganda. Working from different perspectives and scholarly disciplines, the articles presented here highlight both the opportunities presented by the Declaration in terms of the protection of indigenous peoples’ cultural and territorial rights and the difficulties faced in implementing specific clauses at the national level. The evidence in this issue suggests that the “boomerang” pattern of using international allies and legal instruments to exert pressure over unwilling national governments leads to mainly symbolic rather than substantive victories (Keck and Sikkink 1998). Nonetheless, there is also plenty of evidence to suggest that the UNDRIP itself has opened up new avenues for the protection of specific rights and therefore what is needed are guidelines for its successful implementation.

Offering a legal perspective on the potential of the UNDRIP, Federica Cittadino (University of Trento-EURAC) shows that the Declaration constitutes an important step forward for two reasons: on the one hand, because it is one of the most comprehensive legal frameworks on indigenous peoples’ collective and individual rights; and on the other because it can be used as a powerful instrument to clarify the

scope of the clauses of the Convention on Biological Diversity that affect indigenous peoples. Offering a more holistic approach to the question of indigenous rights, Federica shows how they are intrinsically linked to the protection of biodiversity and benefit-sharing, an additional and beneficial consequence of the UNDRIP. Despite the generally optimistic perspective, the article highlights that the lengthy process to adopt the Declaration reflects how the question of the respect for human rights and indigenous peoples is a difficult one for many States as well as the importance of offering guidelines to ensure that the UNDRIP is implemented in practice.

The other articles in the edition are country-based case studies, offering both encouraging and discouraging evidence on the potential impact of the UNDRIP in relation to both cultural and territorial rights.

Referring to the case of the Ainu People in Japan, Yoko Tanabe (University of London) highlights the important role of the UNDRIP in their recognition as an indigenous people by the Japanese government. Throughout the text Yoko describes the government's historical policies towards the Ainu and the sudden change in the context of the momentum gained by the Japanese indigenous movement coupled with the impact of the UNDRIP. Indeed, in 2008 the National Diet of Japan recognized the Ainu as an indigenous people for the first time, constituting an enormous victory in the context of the government's ratification of the Declaration. Nevertheless, Yoko explains that as a result of generations of inequality and assimilation policies, the Ainu people still face many difficulties due to the political context in which indigenous issues are framed.

On the other hand, Eva Gerharz (Ruhr-Universität Bochum) refers to the expectations created by the Declaration throughout the world and the frustration of these expectations in the case of Bangladesh, where indigenous peoples expected the new discourse to improve their bargaining position over the national government which had in the past limited their political demands. In this sense, Eva refers to the Constitutional Amendment of 2011 as a lost "window of opportunity" when the Bangladeshi government rejected a demand for the constitutional recognition of indigenous people. Consequently, the article traces the emergence of indigenous activism in Bangladesh, outlining the largely "constraining" socio-political changes in recent years and analysing the political process that led to the rejection of the demand for recognition in the Constitution. Essentially, Eva's research contests the "boomerang" paradigm prevalent in social science studies on transnational activism and domestic legal systems.

In the same way, Sayuri Fujushima (Brazil) outlines frustrated expectations in Brazil. Referring to the "Belo Monte" project to build a hydroelectric dam along the Xingu and Iriqui rivers, an area well-known for its biological diversity and for being home to various indigenous territories, Sayuri highlights the importance of the free, prior, informed consent established in UNDRIP being applied and the difficulties in doing so. The article describes how the Belo Monte project has given rise to several debates, including its impact on indigenous peoples in the region, as a result of the potential environmental impact on their territories. Despite the 2011 ruling by the Inter-American Commission on Human Rights to suspend the dam construction, the Brazilian government is going ahead with its plans, contravening UNDRIP's requirement to consult indigenous people, with potentially catastrophic consequences. Fujushima's article reminds us that international standards such as the UNDRIP are only

effective when successfully applied in real situations, which is made more difficult by recent authoritarian experiences and a negation of multicultural democracy in practice.

Finally, with reference to the Batwa people in Uganda, Norman Mukasa (Universidad de Deusto) demonstrates how the UNDRIP could still be a powerful instrument for the protection of indigenous land rights. The study reviews the events, processes, and consequences of the Batwa eviction from their traditional forest land in the early 1990s. A result of this forceful removal, the displaced Batwa have suffered from appalling social and health conditions. Norman's argument is that measures to redress the harm done to these people should be in compliance with international guidelines. In this sense, the UNDRIP, as an international instrument, acknowledges and offers protection for territory rights in a way that could have changed the plight of the Batwa at the national level.

As a result of the articles presented in this issue we hope to continue the meaningful debate that has taken place on the United Nations Declaration on the Rights of Indigenous Peoples with new perspectives and research by young scholars working in different parts of the world on different indigenous peoples. In this sense it is important to highlight that the articles presented in this issue were presented as papers at EMPI III (the Third Multi-Disciplinary Meeting on Indigenous Peoples) held at la Universidad de Sevilla in June 2012 and organised by the REDEMPI network.¹ The meeting on the issue of UNDRIP was attended by junior scholars, senior scholars, and representatives of indigenous peoples, offering an open and participatory debate on the topic. The five articles here are an excellent and representative selection of the issues covered in Seville.

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¹The REDEMPI network holds an annual meeting on indigenous issues and aims to bring together scholars working on issues relating to indigenous peoples from a multi-disciplinary perspective. For further information please see the website: <http://redempi.blogspot.com>.

² In alphabetical order: Claire Charters, Victoria University of Wellington; Bartolomé Clavero, Universidad de Sevilla; Felipe Gómez Isa, Universidad de Deusto; Rainer Hoffman, Goethe-Universität Frankfurt a.M.; Timo Koivurova, Arctic Centre, University of Lapland; Salvador Martí Puig, Universidad de Salamanca; and Francesco Palermo, Università degli Studi di Verona, Accademia Europea Bolzano EURAC.