

International Whaling Commission Aboriginal Subsistence Whaling Survey of Indigenous and Human Rights Instruments

Proposed Terms of Reference and Background

Background

In September 2015, the IWC Expert Workshop on Aboriginal Subsistence Whaling (ASW) met to advance work to improve the Commission's management of subsistence whaling and the consideration of indigenous rights (Maniitsoq Workshop). The report of the Workshop lists 11 recommendations for consideration by the Commission, a task that was then delegated to the ASW Working Group (ASWWG), which met in Utqiagvik (Barrow), Alaska in 2018. The Expert Workshop recommended the Commission undertake a survey of international indigenous and human rights instruments, and that such a survey could inform the Commission's role in addressing indigenous rights.

The ASWWG agreed that conducting this review was a high priority and that this would be assisted by referring to information in Wold (2017)¹ and Johnstone². It recommended that the IWC Secretariat, in consultation with interested members of the ASWWG and experts who attended the Maniitsoq Workshop, develop Terms of Reference for such a review.

Project Description

The Terms of Reference for the work are outlined below. A survey of this nature will require a literature review and some outreach. Sources of information could include large international organizations and governing bodies such as the United Nations, UN agencies, funds and programmes (inter alia ILO, IFAD, FAO, WIPO, UNEP, UNESCO); as well as materials and reports by relevant international commissions, e.g. the International Law Commission and the appertaining contributions and statements of States; Human Rights entities and courts of regional organisations, such as the Organisation of African Unity (African Union) and the Organisation of American States (OAS), Regional Fisheries Management Organisations, as well as the Arctic Council. Attention should be given to rulings, jurisprudence pertaining to indigenous peoples and their rights, including on participation practices on issues affecting them, in particular those emanating from national and regional courts, as well as the relevant human rights treaty bodies and the supervisory mechanisms of the ILO. Relevant policy documents and guidelines, as well as academic literature may also prove useful. The report and background papers from the IWC expert workshop held in Maniitsoq, Greenland in 2015, should be consulted, as well as documents from the output of the Utqiagvik (Barrow) meeting. It is essential to study international instruments and agreements, in particular those that address indigenous peoples' rights and human rights. Outreach to indigenous peoples' representative institutions and organisations active in ASW would help enhance the ownership of the review.

¹ Wold, C. 2017. Integrating Indigenous Rights into Multilateral Environmental Agreements: The *International Whaling Commission and Aboriginal Subsistence Whaling*. *Boston College International and Comparative Law Review*. Vol. 40, Issue 1, Art. 4 (Available at: <https://lawdigitalcommons.bc.edu/cgi/viewcontent.cgi?article=1781&context=iclr>)

² Johnstone, R.L., 2017. BRIEFING NOTE #4: 22nd MAY 2017 Indigenous Peoples' Rights to Traditional Fishing and Hunting Under the United Nations Human Rights Instrument. Prepared for the Human Rights Council of Greenland in response to a request for information regarding indigenous rights to resources from the Association of Fishers and Hunters in Greenland (KNAPK). (Available at: <http://uni.gl/media/2277745/aogrc-briefing-note-4-en.pdf>)

Proposed Terms of Reference

Topic: The terms of reference for this survey are to collect information regarding international indigenous peoples' and human rights instruments and intersecting international treaties, agreements, and other arrangements, evolving practices and policy developments in relation to ASW and the incorporation of dimensions pertaining to indigenous peoples.

Key Actions

1. Identify international and regional governmental organisations and entities across the UN and non-UN with a focus on indigenous peoples' rights generally and more specifically relating to sustainable use of natural resources
2. Identify indigenous peoples' rights instruments used in international and regional organisations and their subsidiary bodies, as well as key agreements or treaties to serve as precedents
3. Excerpt key provisions related to indigenous peoples' rights for subsistence use and participation in decision making³ for each agreement, treaty or instrument (including judicial decisions and organizational policies).

Deliverables: A draft report of no more than 100 pages delivered to the IWC Secretariat, to be reviewed by ASW countries and participants in the Maniitsoq and Utgiagvik Workshops. A final report of no more than 80 pages summarizing key precedential provisions and practices regarding indigenous peoples' rights and subsistence use in other international bodies, and addressing any comments received, delivered to the IWC Secretariat, and ASW countries, to be presented to the ASW Subcommittee at IWC69. Dates TBD.

A Call for Tenders document is being prepared to seek appropriate applicants for this survey and report.

³ Recommended key categories of information to be considered related to aboriginal subsistence whaling could include:

1. Cultural Identity, Integrity, and Self-Determination
2. Social/Political Roles and Kinship Ties
3. Traditional Values, Belief Systems/Spirituality, and Indigenous Knowledge
4. Participation in Mixed Cash-Subsistence Economies and Sharing/Trade Systems
5. Participation in Subsistence Harvesting/Processing/Consumption Activities and Access to Traditional Subsistence Resources and Harvesting Areas
6. Food Security/Sovereignty, Nutrition, and Access to Healthy Subsistence Foods