

Expert Mechanism on the Rights of Indigenous Peoples (EMRIP)

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Background

- Created in Dec 2007 as a result of strong lobby by IPs and some supportive govts (HRC Resolution 6/36)
- Subsidiary expert body under the HRC
- Reports annually to the HRC (September)



Special Rapporteur Prof. S. James Anaya at the Expert Mechanism on the Rights of Indigenous Peoples

Mandate

- Mandate – provide HRC with:
 - thematic expertise mainly on studies and research-based advice on the rights of IPs requested by the Council
 - other proposals for Council's consideration and approval
 - annual reporting to the HRC on its work



Composition

5 independent experts,

- Mr. Vital BAMBANZE (Burundi)- 2012
- Ms. Anastasia CHUKHMAN (Russian Federation) - 2013.
- Ms. Jannie LASIMBANG (Malaysia)- 2014.
- Mr. Wilton LITTLECHILD (Canada)- 2014
- Mr. José Carlos MORALES (Costa Rica)- 2013

Method of work

- Meets annually for 5 days in both private and open meetings
- Open participation
- Determines its own method of work but shall not adopt resolution or decision
- Consider permanent agenda on the implementation of the UNDRIP at the regional and national level
- Enhance cooperation and avoid duplicating the work of SR and UNPFII

Progress so far

- Concluded study on “lessons learned & challenges to achieve the implementation of the rights of indigenous peoples to education” (2009) - HRC strongly encourages States to disseminate it broadly & to take it into account when elaborating national plans & strategies
- Intersessional meetings with govts, collaboration with SR, treaty monitoring bodies, UNPFII



Agenda items for 2011

There are 7 agenda items for the 2011 session.

Observers can actively engage in the following items:

Agenda item 3

- Follow-up to thematic studies and advice

Agenda item 4

- Study on IPs and the right to participate in decision making

Agenda item 5

- Implementation of UNDRIP

Agenda item 6

- Proposal for new theme

Item 3. Follow-up to thematic studies and advice

- EMRIP submitted its report on IPs right to education in 2009 and advice No. 1 (2009)
- The report was welcome by HRC and encourages the states
 - 1) To disseminate it broadly
 - 2) To take it in account in national plans and strategies
 - How does your gov't implement it?

Suggestion readings:

1. EMRIP report A/HRC/12/33 and advice No.1
2. A/HRC/12/50 (page 29)

Item 4: Study on IPs' right to participation in D-M

- Final study on IPs right to participate in decision making is going to be submitted this year
- The report is divided into
 - i. Introduction
 - ii. Defining good practice
 - iii. IPs internal decision-making processes and institutions
 - iv. Participation in decision-making mechanisms linked to State and non-State institutions and processes affecting the IPs

Suggestion readings:

1. EMRIP progress report (A/HRC/EMRIP/2010/2)
2. Final Study: A/HRC/EMRIP/2011/2

Defining Good Practices

The report set indicators which can be defined as good practices

- Allows and enhances IPs' participation in D-M
- Allows IPs to influence the outcome of decisions that affect them
- Realizes IPs right to self-determination
- Includes, as appropriate, robust consultation procedures and/or processes to seek IPs' FPIC
- Good practice may be found in a law, a policy, a single project and/or in a component of a project

IPs' Internal D-M processes and institutions

- Internal D-M processes and institutions means- are indigenous and function in accordance with indigenous-determined practices and for IPs
- It can be traditional institution as well as processes and institutions that have evolved over time
- Can be established as a result of discussion or even agreement with State
- Internal D-M processes are sometimes though not always recognized by the State and under State law
- The report categorizes 4 kinds of IPs' internal D-M processes and institutions

Indigenous D-M processes and institutions

- Many indigenous institutions have their own D-M processes and the right to maintain such D-M and institutions is embodied in article 5,20 and 34 of UNDRIP
- Indigenous DM processes and institutions also express a degree of SD and autonomy, free from imposed external influence
- Example can be found in IPs management of resources in IPs conversation areas and territories
- Indonesia-Sasi, Maori- Fishing control, others

Indigenous Parliaments and Organizations

- IPs parliament and organization are established to facilitate consultation on matter affecting to them
- A number of examples of IPs parliament and organizations are enable to influence DM
- Sami Parliament in Norway, Sweden, Finland
- Philippines- establishes a consultative body that provides inputs and suggestions to National Commission on IPs
- New Caledonia, Congress is legally required to consult with Customary Senate, consisting of Kanak senators
- Inuit Circumpolar Conference- good example of regional cooperation- holds quadrennial general assemblies

Indigenous Legal Systems

- Art# 5, 27, 34, and 40 of UNDRIP affirms the right of IPs to maintain and strengthen their own legal systems
- IPs legal systems enhance IPs' ability to influence DM externally
- CHT has distinct legal and administrative system from other part of Bangladesh
- Practice of IPs legal system in Sabah allows to maintain autonomous
- Constitution of Mexico recognises the right to IPs SD with regard to the election and exercise of their own form of governance

Indigenous women in D-M

- Women have the right to equality under human rights law and UNDRIP
- Women continue to have important DM roles
- Naga women- playing an important role as peacekeepers
- Nupi Keithel (Manipur)- as an example of indigenous women's participation in State DM

Part IV of the report

Part IV of the report emphasizes on participation in DM mechanisms linked to State and Non-State institutions and processes affecting IPs, there are several forms such as;

- 1) Participation in electoral processes
- 2) Participation in parliamentary processes
- 3) Direct participation in governance
- 4) Participation in hybrid governance
- 5) FPIC
- 6) Participation in regional and international forums and processes
- 7) Other examples of good practices

EMRIP Advice No.2 (2011)

- A part from the study report, the EMRIP develops advice (or) general comment regarding indigenous peoples' right to participation in decision making.
- The advice contains the following features
 - ① Scope and meaning of IPs rights to participation in decision making
 - ② Legal framework on IPs right to participation in decision making
 - ③ Consultation and duty to State to consult with IPs and obtain their consent
 - ④ Components and elements regarding the right to participation in decision making
 - ⑤ Measures

Scope and meaning of IPs right to participation in Decision Making

- IPs have been among the most excluded, marginalized and disadvantaged sectors of society
- This has had negative impact on their ability to determine the direction of their own society
- This can still be a major factor contributing to their disadvantaged position
- Decision-making rights and participation by IPs in decisions that affect them is necessary to enable them to protect inter alia, their cultures including their languages, their lands, territories and resources
- IPs right to participation in decision making processes means not only allowing them to participate but also to actually control the outcome of such processes

Legal Framework on IPs rights to participation in D-M

- More than 20 provisions of UNDRIP illustrate the rights pertaining to indigenous peoples and decision making
- These rights range from the right to self-determination to right to participate and be actively involved in decision-making processes
- International human rights law refers to the right to participate in public affairs in both general specific forms such as ICCPR, ILO No. 169
- In the context of IPs, the right also takes on a collective aspect, implying a right to the group as a people to have decision-making authority
- The right of IPs to participate in DM is also affirmed in international jurisprudence (Inter-American Court of HR)

Consultation

- Consultation with IPs be carried out through their own institutions is stated in UNDRIP as well as ILO 169
- The process shall be controlled by IPs including selection of representative
- Consultation shall be carried out through appropriate procedures- need to allow for full expression of IPs' view, timely, full understanding of the issues involved
- Consultation should be undertaken in good faith and in a form appropriate to the relevant context, mutual trust and transparency, giving enough time
- The objective of consultation should be to achieve agreement or consensus

Duty to States to consult with IPs and obtain consent

- The duty to States to consult with IPs is reflected in a number of provisions of UNDRIP
- Like ILO 169, UNDRIP (art#19&32(2)) mentions that States to consult IPs in good faith, appropriate procedures to obtain their agreement or consent
- A number of UN HR treaty bodies have established that States have a duty, within the framework of their treaty obligations to consult with IPs, in some cases to seek to obtain the consent of IPs
- The duty to States to consult with IPs and to obtain their consent are also expressed in the jurisprudence of, inter alia, UPR of HRC, Inter-American Court of HR, Inter-American Commission on HR, African Commission on Human and Peoples Rights

IPs right to participate in DM and HR and good governance

- Meaningful and effective participation of IPs in DM is of fundamental importance to their enjoyment of a large number of HR
- It is also of crucial importance to good governance
- One of the objectives of international standards on IPs rights is to fill the gap between their rights on the one hand and their implementation on the other hand
- Many IPs remain vulnerable to top-down State interventions
- This is underlying cause for land dispossession, ethnic conflict, human rights violations, displacement, and the loss of sustainable livelihood
- The duty to consult IPs applies whenever a measure or decision specially affecting IPs is being considered but also affect wider society in which the decision may have a disproportionately significant effect on IPs

Components and elements regarding the IPs right to participate in decision making processes

The most important components and elements that will facilitate IPs right to participate in decision making are;

- a) The right to Self-Determination and
- b) Free, Prior, Informed Consent

The IPs right to participate in decision making and the right self-determination

- The right to self-determination is affirmed in UNDRIP and in exercising it, have the right to develop and maintain their own DM institutions and authority parallel to their right to participate in external DM processes that may affect them
- This is crucial to their ability to maintain and develop their identities, languages, cultures and religions within the framework of the State where they live
- Art#3 of UNDRIP mirrors common art#1(1) of ICESCR and ICCPR
- IPs have the right to determine their own economic, social and cultural development and to manage for their own benefit, their own natural resources
- The duties to consult with IPs and to obtain their FPIC derive from their right to self-determination
- In accordance with art# 5 and 18 of UNDRIP, within the ambit of the right to SD, IPs have the right to make decision in all matters relating to their internal and local affairs, to influence external DM affecting them if they choose so

IPs right to participate in decision making and the FPIC

- FPIC provides the foundation to ensure that IPs have ultimate say over external DM in matters that affect them
- FPIC is embedded in right to SD - it is an integral part of SD
- FPIC entitles IPs to determine the outcome of DM, not merely involve in the processes
- FPIC is not only a procedural process but a substantive mechanism to ensure the respect of IPs' rights, process to be undertaken in good faith to ensure mutual respect
- The element of FPIC are interrelated, the elements of free, prior, informed qualify and set the conditions for IPs' consent, violation of any elements may invalidate any agreement by IPs
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Brief definition of Free, Prior, Informed and Consent

Free: No coercion, intimidation or manipulation

Prior: in advance of the activity associated with the decision is being made

Informed: Provide all information relating to the activity, information is objective, accurate and presented in a manner and form understandable to IPs

Consent: agree to the activity that is subject of relevant decision, which may also subject to conditions

Measures for implementation of IPs right to participate in the Decision Making

States' Duties:

- To recognize and respect IPs right to participate in all levels of decision making including in external DM
- To recognize to obtain FPIC, not merely involve but influence the outcomes as IPs right to SD
- To respect and assist both traditional and contemporary forms of IPs' governance structures, including collective practices
- To enact and implement constitutional and other legal provisions that enhance IPs' participation in DM consistence with UNDRIP

Women's Participation: all entities shall facilitate the participation of indigenous women in DM, address their difficulties

Measure: Financial and technical capacity

- States shall respect IPs right to SD, to be exercising within existing borders through autonomous or self-governing mechanism
- States shall ensure that IPs have means for financing their autonomous functions (art# 4 of UNDRIP)
- States and relevant international and domestic organizations should ensure that IPs have the financial and technical capacity to engage in consultation and consent-seeking exercise and to participate in regional and international decision-making processes

Other measurements

UN System:

- To establish a permanent mechanism/system for consultation with IPs' governance bodies
- To ensure that such bodies have a consultative status

ILO:

- Shall enable effective representation by IPs in its DM- regard to implementation and supervision of ILO conventions and policies relevant to IPs

NHRI:

- NHRI should play a role in bringing together reps of IPs and gove'ts
- NHRI shall stress the need for all stakeholders to ensure IPs are involved in DM

Item 5. Implementation of UNDRIP

- EMRIP is not a monitoring body or complain box for UNDRIP
- But EMRIP has also the indirect mandate to promote and respect the UNDRIP in accordance with art.42 of UNDRIP
- Shares what kinds of implementation have been taken by States, non-state institutions and IPs organizations that may facilitate the identification of themes of study in the future
- River and elephant story

Item 6. Proposal to be submitted to HRC for its consideration and approval

- For agenda item 6, pre-discussion is made in global or regional caucus rather than **individual proposals**, but it doesn't mean that individuals cannot make proposal
- Members of EMRIP and the caucus organize discussion and try to reach agreement for theme to be studied
- The proposal should be cross-cutting issue and relevant to all regions
- The present study on IPs right to participation in decision-making will be continued so that theme for study shall be submitted to HRC in 2011
- It **is important** to take into account sensitivity of State when you make a proposal

Other events during the session

Caucuses

There are meetings of global and regional caucuses during the session. It is good to participate in the meetings. **These venues facilitate the transposal of your concern/s into global or regional dimensions** in order to get more attention

Side events

A number of side events also are organized during the session

Appointment with SR

Appointment with SR is available during the session. But one needs to take the appointment in advance

Building network

There are many IPs organizations from all over the world which attend the session and it is a good opportunity for building network and alliances

Technical Supports

- During the session, DOCIP will provide the following technical supports for IPs representatives;
 - ✓ Computers and Internet access
 - ✓ Translation of documents from and to English, Spanish, Russian and French
 - ✓ Interpretation of caucuses, parallel events and informal conversations
 - ✓ Photocopying machines
 - ✓ Sending and receiving faxes
- For more details, please see the Welcome brochure
- doCip's volunteers will also collect your interventions and post them on its website ([www.docip.org/Documentation/Online Documentation/Conferences/Human Rights Council/Expert Mechanism on the Rights of Indigenous Peoples/2010-3rd session](http://www.docip.org/Documentation/Online%20Documentation/Conferences/Human%20Rights%20Council/Expert%20Mechanism%20on%20the%20Rights%20of%20Indigenous%20Peoples/2010-3rd%20session))
- Thank you for welcoming them kindly!