

BRIEF INTRODUCTORY COMMENTS ON FREE, PRIOR AND INFORMED
CONSENT

Item 3 – Tenth Session of the UNPFII

Dalee Sambo Dorough

UN PFII Member

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Thank you Madame Chair. I will not be exhaustive in these introductory remarks as I know that numerous statements, proposals, and recommendations are yet to come this afternoon throughout our discussion on free, prior, and informed consent. First of all, I want to underscore Secretary General Ban Ki Moon's statement that "supporting Indigenous peoples' rights benefits us all." This is certainly true in the context of free, prior and informed consent.

We are all aware of the dire conditions of indigenous peoples worldwide. Yesterday, Dinah Shelton of the UNDP referenced the "generalized patterns of poverty and marginalization" of Indigenous peoples in her comments to us. Such patterns of poverty and marginalization are not an accident. Rather these conditions are the direct result of the lack of respect for and recognition of our basic human rights as well as the blatant denial and violation of our basic human rights, including the right of self-determination, rights to lands, territories and resources, our right to participate in decision-making not to mention the right to free, prior and informed consent. Yesterday and today we have heard numerous references to free, prior and informed consent in relation to Item 3 on Economic and Social Development.

As far back as the first encounters between Indigenous nations and peoples and others, Indigenous peoples established their relations on consent and in particular, in relation to treaties. FPIC is an "underlying principle that is inherent to the relationships established by treaties between indigenous peoples and states and their predecessors" as well as their relations with others. Such legal and political relationships and associated obligations are "founded on the consent of parties." [E/CN.4/Sub.2/AC.4/2005/WP.1]

As most of you know, one of the key elements of human rights is that they are inter-related, inter-dependent, and indivisible. In the context of FPIC, the linkage between self-determination; lands, territories and resources; the right to development; the

right to protection of our environment and our profound relationship to our environment; and the right to our distinct cultural identity, are all critical.

In order to illustrate such a linkage, Erica Irene Daes underscored the inter-related and inter-dependent nature of fpic, lands, territories and resources, and the right of Indigenous peoples to self-determination and the right to development. She stated “*Logically arising from these property rights, as well as their right to self-determination and the right to development*, there is also an increased recognition of indigenous peoples’ right to give or withhold their prior and informed consent to activities within their lands and territories and to activities that may affect their lands, territories, and resources.”

If I understood correctly, IFAD has included the standard of FPIC in the context of their work to relieve poverty within Indigenous communities. However, there are also areas where international organs and inter-governmental agencies that have fallen short of recognizing this essential right. For example, the World Bank has not yet fully embraced the standard of FPIC as reflected in the UN Declaration not to mention the misinterpretation of the nature of consent by a range of states across the globe.

The PFII 9th session report highlighted the “disconnection between dominant development paradigm and indigenous peoples.” In relation to development projects, former Special Rapporteur for Indigenous Peoples, Rodolfo Stavenhagen, stated: “Free, prior, informed consent is essential for the human rights of indigenous peoples in relation to major development projects.”

Furthermore, our Forum predecessors, in relation to the *Inter-agency Support Group on Indigenous Issues Report on Free Prior and Informed Consent*, [E/C.19/2004/11, 12 March 2004, para. 1] affirmed: “In a context of increasing recognition of the rights of Indigenous Peoples (IPs), the principle of free, prior and informed consent (FPIC) of IPs to development projects and plans that may affect them, has emerged as the desired standard to be applied in protecting and promoting their rights in the development process.”

A range of international treaty bodies (including the CERD, the Committee on Economic, Social, and Cultural Rights, the Inter-American Commission on Human Rights, and others), as well as national human rights institutions, as catalogued by our

brother and former PFII member Parshuram Tamang, in preparation for the 2005 PFII workshop on FPIC, have recognized that FPIC is an essential right of Indigenous peoples. Furthermore, FPIC is now being invoked and affirmed in national courts such as the Constitutional Court of Columbia, which I understand has affirmed the significance of FPIC as recently as May 3, 2011. In this specific context, I understand that the court stated: "Under consideration here is not just the expectation of receiving certain economic benefits from a development project, but to understand and recognize that what is at stake is the present and future of a people, a human group that has the right to self-determination and to defend its physical and cultural existence." [Decision T-129, signed by Justices Jorge Ivan Palacio Palacio, et al]

Furthermore, our colleagues within the Expert Mechanism on the Rights of Indigenous Peoples have noted that: "Indigenous peoples identify the right of free, prior and informed consent as a requirement, prerequisite and manifestation of the exercise of their right to self-determination as defined in international human rights law."

Finally, with the adoption of the UNDRIP, it is important to underscore that FPIC is now explicitly referred to in relation to the issues of relocation of indigenous peoples¹, redress with respect to their cultural, intellectual, religious and spiritual property taken², implementation of legislative or administrative measures that might affect them³, redress for their lands or resources taken without their consent⁴, disposal of hazardous materials in their territories⁵ as well as development projects⁶.

1 *See* Article 10 of UNDRIP.

2 *See* Article 11.2 of UNDRIP.

3 *See* Article 19 of UNDRIP.

4 *See* Article 28 of UNDRIP.

5 *See* Article 29.2 of UNDRIP.

6 *See* Article 32.2 of UNDRIP.

In conclusion, the key challenge for all and in particular, nation-state members of the United Nations, is to ensure full respect for and recognition of the fundamental collective human right of Indigenous peoples to free, prior and informed consent. Though the examples may be few and far between, it would be useful to know from both Indigenous peoples and nation-states, the specific and positive examples of where FPIC has been effectively and genuinely operationalized. In this way, we can teach others how to manifest this important human right in order to alter and improve the urgent and real life circumstances that face Indigenous peoples everywhere. It is my hope that Indigenous peoples make concrete proposals and recommendations that are tied directly to the language of the UN Declaration and in this way, we can begin to formulate substantive, proactive methods to realize this fundamental right. Thank you, Madame Chair.