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Expert Mechanism on the Rights
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Item 5: United Nations Declaration on the Rights of Indigenous Peoples.
Statement from: Students¹ of Dr. Cristina Blohm of the Leuphana Universität
Lüneburg, Germany.

Dear Mr. Chairman, Ladies and Gentlemen,

I would first like to thank you for the Opportunity to speak here in front of you. As students of the Leuphana University of Lüneburg, we dealt with the Rights of Indigenous Peoples of Latin America and especially with the United Nations Declaration on the Rights of Indigenous Peoples and the right to participate in decision-making within the framework of a seminar.

In the following I will introduce you to some of the results of a brief investigation on the constitutional anchoring of the right of indigenous peoples to participate in decision-making processes that we have made for the most part based on data of Cletus Gregor Barié and María Cristina Blohm.

We proceed from the assumption that the participation-rights which are enshrined in the ILO 169 and the UN Declaration on the Rights of Indigenous Peoples are of immense importance and that in particular the adoption of the UN Declaration in 2007, after more than 24 years of your work, marks one significant step in the right direction. But for better control of the enforcement of rights and realistic possibilities of suability of the same, we attach importance to the constitutional anchoring of indigenous rights and at best the transfer of the rights,

implementation

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which are listed in the UN Declaration on the Rights of Indigenous Peoples in the constitutions.

Our analysis of the constitutions of the 19 independent states of Latin America shows the following: Some states have anchored specific rights, which are the basis for an effective right to participation, in their constitutions. However few states have phrased these rights to such an extend detailed and precise as the United Nations Declaration on the Rights of Indigenous Peoples has done. Furthermore few states have adopted the respective rights to their constitutions following the model of the UN Declaration.

More precisely: Different rights that are affecting the participation in decision-making-processes exist in different precise and detailed form, in 9 of the 19 constitutions. The right to self-government or to the use and validity of own legal systems as well as the right to free, prior and informed consent are examples of such rights. Investigations of María Cristina Blohm show that of the independent states of Latin America 8 have anchored the right of self-government or the acceptance of own legal systems and 6 have anchored the right to free, prior and informed consent in their constitutions. This means that so far 11 states have not anchored the right to use and validity of own legal systems and 13 states have not anchored the right to free, prior and informed consent constitutionally.

Beside States like Venezuela, which have already anchored a far-reaching legal protection for indigenous peoples in their constitution, there are two states so far which have renewed the rights of indigenous peoples in their constitutions following the model of the UN Declaration or have almost completely adopted the rights of the UN Declaration to their constitutions: Bolivia and Ecuador. In our view such a revision or reformation of constitutions is to be welcomed.

With our investigation we want to urge the states to perceive the Importance of the constitutional anchoring of a comprehensive right to participate in decision-making as of all other rights of indigenous peoples and therefore take the United Nations Declaration on the Rights of Indigenous Peoples as a model to ensure a broad legal protection for indigenous peoples also in their constitutions.

x not only in Latin-America, but all over the world

Mr. Chairman, Ladies and Gentleman, thank you for your attention.