



UN EXPERT MECHANISM ON THE RIGHTS OF INDIGENOUS PEOPLES
10TH SESSION
JULY 10, 2017

AGENDA ITEM 3: New Mandate of the Expert Mechanism on the Rights of Indigenous Peoples:
Activities and Methods of Work

Statement by:

EWIIAAPAYP BAND OF KUMEYAAY INDIANS, a traditional, indigenous peoples' representative institution within its aboriginal territory, also a non-governmental organization in consultative status with ECOSOC;

CENTRAL COUNCIL OF TLINGIT AND HAIDA INDIAN TRIBES OF ALASKA, a traditional, Indigenous peoples' representative institution within its aboriginal territory; and

CALIFORNIA ASSOCIATION OF TRIBAL GOVERNMENTS, a tribally chartered, non-profit, inter-tribal association of 33 Indigenous peoples' representative institutions within their aboriginal territories.

We congratulate the members of the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) on the authority granted by the Human Rights Council through Resolution 33/25 and offer our support, guidance and assistance for your immediate and continued endeavors under this new mandate.

Please recall Resolution 33/25 item 1. that decides to amend the mandate of the EMRIP to provide the Human Rights Council with "expertise and advice on the rights of indigenous peoples as set out in the United Nations Declaration on the Rights of Indigenous Peoples, and", and we recommend close attention to the conjunction "and" which possesses the legal meaning of "or", a disjunctive connector of the preceeding clause and the succeeding clause, as follows, " and assist Member States, upon request, in achieving the ends of the Declaration through the promotion, protection and fulfillment of the rights of Indigenous peoples."

Much attention is upon the fact that this new mandate to EMRIP does not constitute "special procedures" authorizing EMRIP self-initiated activities because a Member state request is required. However, this analysis pertains only to the second clause of Article 1. The first clause makes clear EMRIP activities are in response to the Human Rights Council, therefore, the Human Rights Council may direct the EMRIP to action pursuant to their mandate independent

of a Member State request. Such action through the special procedures mandate of the Human Rights Council is confirmed by Article 16 wherein Resolution 33/25, “invites the special procedures of the Human Rights Council to explore concrete ways to coordinate their work with the Expert Mechanism with regard to the rights of Indigenous peoples.”

Thus, we petition the Human Rights Council to authorize the Expert Mechanism, and the members of the Expert Mechanism to both issue an immediate press release and include within its report from this 10th Session, support for a resolution, expressed as the Chair’s text, that authorizes enhanced participation of Indigenous peoples’ representative institutions within the United Nations system, including the General Assembly, the Human Rights Council, the ECOSOC, and affiliated organizations, through an accreditation process that is transparent, that does not violate the Declaration articles 3 or 33 by defining Indigenous peoples or their representative institutions, and approves accreditation by political vote of ECOSOC with an appeal mechanism.

This decision is now at the end of the intergovernmental process of the United Nations General Assembly and requires immediate action by the Human Rights Council and the Expert Mechanism. We commend the HRC and Expert Mechanism to immediate action.

We further recommend the United Nations General Assembly Member States as decision makers include consultation with Indigenous peoples’ representative institutions after commencement of the intergovernmental process in order to better inform negotiations.

We finally recommend such decisions not be decided as a Chair’s text that requires consensus of all Member States for final agreement. Such decision-making overweights dissenters with coercion power over the majority who are willing to participate in responsible and reasonable compromise, but whom are powerless against the dissenting minority who desire either no resolution or one that violates inherent Indigenous rights contrary to the Declaration, the World Conference on Indigenous Peoples Outcome Document and successive resolutions adopted by the General Assembly.

I thank you for the opportunity to comment.