

Structural Analysis of Cultural Systems

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Systems**

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Name of Speaker: Arnold GROH
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Comment on the Draft Study on Free, Prior and Informed Consent

Thank you, Mr. Chairman / Madam Chairperson,

And congratulations to the Draft Study on Free, Prior and Informed Consent. Section III:19 mentions criteria for freedom. Humans are very complex beings, and formal texts on legal issues generally do not put sufficient weight on the psychological determinants of persons' mutual influence, motivations, and decisions. The Draft Study pertains to the realisation of FPIC in indigenous contexts. The relation of states or mediating stakeholders on the one side and indigenous peoples on the other side imply an imbalance of dominance. Intimidation, coercion, manipulation and harassment, which are mentioned in the Draft Study, are socio-cognitive forces that take effect gradually. Indigenous persons, who are exposed to cultural dominance, might try to gain the benevolence of the negotiating party. The Draft Study's claim that "Indigenous peoples should have the freedom to be represented as traditionally required" could easily be debilitated in this connection, even so far that the concern that "Establishing who can represent indigenous peoples may cause[s] difficulties" (III:22) comes into effect. Being indigenous by descent does by no means guarantee that a person will genuinely advocate the indigenous cause; any seeming consent with an alleged yet globalised indigenous representative might not reflect what the respective community wants. If he or she is of a hereditary traditionally privileged status, then the implementation of the UNDRIP is at a dilemma. Furthermore, indigenous peoples who have partially adopted globalisation often behave dominantly towards the more traditionally living indigenous peoples, who they consider to be inferior to them. Such obstacles of realising FPIC could contingently be overcome by clearly addressing and jointly discussing them. "The context or climate of the process" (III:19) needs to be one of mutual acceptance and respect. But that cannot be reached as long as representatives of the indigenous culture make advances to the dominant globalised stakeholders. Instead, it is necessary that the representatives of the dominant culture factually translate acceptance and respect into action. When negotiations take place on indigenous territory, that can be done by integrating and immersing into the indigenous culture, analogous to indigenous persons' integration into e.g. urban settings. Cultural-psychological factors and mechanisms need to be taken into account, as the realisation of FPIC is a socio-cognitive process.

Thank you, Mr. Chairman / Madam Chairperson.