

Human Rights Council
Expert Mechanism on the Rights of Indigenous Peoples

Third session, 12-16 July 2010

Agenda Item 3: Study on Indigenous Peoples and the Right to Participate in Decision-Making

Statement by Hawai'i Institute for Human Rights

Thank you Mr. Chairperson,

As this is the first time we take the floor at the Expert Mechanism on the Rights of Indigenous Peoples, please allow the Hawaii Institute for Human Rights to congratulate you on your appointment as Chairperson of EMRIP. We would also like to note the excellent method of sharing responsibility with the consistent rotation of the chairperson-rapporteur annually and the authoring of the studies. Allow us also to extend our gratitude to all the members for providing this Progress Report. It constitutes a very sound beginning for completing a full Study on indigenous peoples' right to participate in decision making. A particular thanks to EMRIP members Lasimbang and Henriksen as the main co-authors of the study and their excellent summaries sharing the essentials of the report in the presentations earlier in the session. We offer this intervention to comment on the challenges from the grassroots to global level including the Asia-Pacific region and also reflect on recommendations to restore the rights of indigenous peoples.

Hawai'i Institute for Human Rights would like to offer examples through engagement with the experts to enhance the study that will serve to secure the rights of indigenous peoples to actively participate in the decisionmaking process to protect own sacred homeland from states interests and corporations investments.

Like many people in the room, HIHR read the thematic report. Yet, it is through the discussion in the Global Indigenous Peoples Caucus over the weekend at the World Council of Churches and in the initial interventions by our indigenous brothers and sisters in this session that we truly comprehend the significance of this study to change the conditions facing indigenous peoples around the planet.

We hear the call of the chairperson-rapporteur to offer suggestions to the study through recommendations that will allow the articles of the UN Declaration on the Rights of Indigenous to be realized via this study to be incorporated into state policies and practice.

Therefore, we offer the following recommendations first and then will offer examples of how such recommendations could positively change the reality for indigenous peoples daily practices.

1) The right of Free, Prior and Informed Consent must be a legal priority in the progress report and in the future final report. A precise and profound paragraph in the study notes that the values and voice of indigenous peoples expressed in a decision must be respected and thus observed by states, international financial institutions, multinational corporations and intergovernmental initiatives.

2) An array of international institutions, regional frameworks and indigenous models of decision-making must be improved in existing mechanisms with the an openness for potential new means rooted in indigenous values and be created in partnership with indigenous peoples as an accomplishment of the United Nations Decade of the World's Indigenous Peoples. There is no single entity that has solved a situation rising from denial of rights. Upon our discussions every day in the UN and our deliberations over the decades in the UN treaty and charter bodies, rights are recognized but not realized. Our studies must move beyond suggestions to substantive structures that will implement and realize the rights of indigenous peoples.

We hope these recommendations are an example of exchange and engagement to strengthen the study. While we know the circumstances and conditions, yet we remain committed to overcoming obstacles and creating optimistic opportunities.

Recent examples from our islands in Hawaii, the Asia-Pacific region and the international arena illustrate the necessity for such a study.

In Hawaii, the Kanaka Maoli face structural systems of oppression since the illegal overthrow. A wave of recent legal lawsuits have eroded the rights of indigenous peoples of Hawaii. A response is the Native Hawaiian Recognition Act known as the Akaka Bill. This legislation has many problems according to the indigenous peoples. The US Congress also has consistently weakened the proposed policy resulting in deteriorating rights of Kanaka Maoli over a decade. The most recent example of how indigenous peoples rights in decision-making is not respected. The Akaka Bill will be introduced again by Hawaii Democrat Senators after the Republican Governor introduced language that limits the rights of indigenous peoples to self-determination. Indigenous peoples weren't included in these negotiations.

In the Asia-Pacific region, a recent report of the Mekong River Commission revealed 12 dams in the lower Mekong River will cause serious problems for over two million people living downstream. If the dozen dams are done, 55 percent of the river flow will stop. The impact will be among indigenous peoples living along the river in rural areas and depend heavily on agriculture and other natural resources for survival. Indigenous peoples in Laos, Cambodia and Vietnam continue to call let the sacred Mekong flow naturally and not to interfere with its course.

Indigenous peoples have been able to make an impact in the international human rights institutions. However, in the international arena in various intergovernmental institutions such as the UN Framework Convention on Climate Change and the Convention on Biological Diversity indigenous peoples must mobilize to be included in the decision-making process. The current structures don't incorporate the principle of FPIC. Even more alarming, while focusing on climate change impacts in the future, the human rights violations are already visible relating to the rights to food and water. Concerning the CBD process and revised Draft Protocol on access and benefit sharing as it relates to Indigenous Peoples' human rights and States' international obligations. In this context, we emphasize the essential need for revisions to the current text of the draft Protocol to be consistent with the CBD as well as the UN DRIP and other international human rights law. FPIC must be included as the Protocol is to be adopted at the COP in Nagoya, Japan in October 2010. There is a duty to respect Indigenous Peoples' Human Rights. The CBD and Revised Draft Protocol are generally viewed as environmental instruments. Yet, they give rise to significant human rights considerations such as FPIC. Whenever human rights are at issue, States are required to act in accordance with their human rights obligations.

There can be a paradigm shift from processes that ignores and inflicts harm on indigenous peoples to one of inclusion as indicated in this progress report.

In conclusion, we support suggestions for recognizing the right to self-determination enshrined in common article one of the twin covenants of ICCPR and ICESCR and article 3 of the UN Declaration on the Rights of Indigenous Peoples.

This study should be explicit and emphatic that Free, Prior and Informed Consent is at the core of the right to self-determination. Good faith is fundamental to future frameworks for indigenous peoples and states to work together.

This is our initial input and we look forward to continue our participation in this process with EMRIP and to the UN Human Rights Council. And even more to

put these principles regarding the right to self-determination and also Free Prior and Informed Consent into reality for indigenous peoples.