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**Expert Mechanism on the Rights of Indigenous Peoples Forth session
11 -13 July 2010, Geneva**

Agenda Item 4, Study on Participation in decision making; and Item 5, Implementation of the Declaration

Intervention by the International Indian Treaty Council

Read by Alberto Saldamando

Thank you, Mr. Chairman. This intervention addresses both Agenda items 4 and 5 as they relate to the implementation of the Declaration on the rights of indigenous peoples.

Mr. Chairman, most problematic for us all is the question of the implementation of the United Nations Declaration. We understand the political necessity in these early stages of the implementation of the mandate, to focus on so-called "good practices" as required by the mandate. We agree with the Study on Indigenous Peoples and the right to participate in decision-making, the difficulty in defining what a "good practice" actually is. The identification of elements in good practices suggested in the Study is one way to go.

But in our discussions here before the EMRIP we must also focus on "bad" practices, in order to identify those elements of "bad" practices that impede the full enjoyment of the Declaration by Indigenous Peoples in order to identify what a "good practice" might be.

Some good practices in the United States are identified in the Study. It is true, for example, that Indian and Native Peoples and Nations are allowed autonomy and self determination, but it is only recognized Peoples and Nations, those formally and legally recognized by the government who enjoy these rights. The Declaration makes no mention of any requirement that governments need to formally "recognize" Indigenous Peoples as Indigenous before the rights apply. This situation, found in Asia, Africa, Oceania, the Americas, is a great impediment, in our understanding, to the vast majority of Indigenous Peoples of the world. Before the Declaration was adopted, the United Nations estimated the number of Indigenous at 300 million people. Now we are estimated to be 370 million. It is said that there are at least 300 million in India alone for whom the Declaration is far from implementation.

In the United States, Native Hawai'ians, the Taino Peoples of Puerto Rico, as examples, are considered Indigenous "groups" as are many Indigenous Tribes and Nations throughout United States. They do not enjoy the right of self determination, autonomy or even access to their traditional aboriginal sacred areas, lands, territories and resources. Some traditional Indigenous Peoples in the United States reject formal recognition and all that it implies, and do not intend to apply. Perhaps a good practice in the implementation of the Declaration is of States where

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Indigenous Peoples can be Indigenous without the necessity of an application. It is a fundamental first step toward the implementation of the Declaration on the rights of Indigenous Peoples

The Declaration recognizes Indigenous rights as inherent rights, not rights dependent on a State's recognition of who is Indigenous and who is not.

Mr. Chairman, yesterday, the distinguished United States delegation informed this body that although it is aware of the significance of free prior and informed consent, the United States understands it as a process not requiring agreement before the actions addressed in consultations are taken.

We note that Declaration's preamble condemns colonialism. Colonialist and their successor States are accustomed only to taking. With the Declaration and the recognition of the right of free, prior and informed consent, now they have to ask. But under present US policy and its "understanding" of the Declaration, the potential for unilateral, unwanted and many times destructive actions is as real today as the day Columbus landed.

Of great concern to us all is the market system, promoted by developed countries, even those who profess friendship with Indigenous Peoples, and the commercialization of all we hold sacred. The denial of rights, particularly the right of free, prior and informed consent allows States and multi-national corporations to continue to mine, to deforest, to pollute and destroy – as they have done for 520 years.

Mr. Chairman, rights are not born from a State's political will to recognize, protect and remedy rights. Recognition, protection and remedies for human rights and particularly indigenous rights as framed by the Declaration, are born of struggle at the local level. Indigenous Peoples all over the world are themselves implementing the Declaration where they live, in spite of a State's lack of political will, many times in spite of violent reactions, the application of anti-terrorism laws, imprisonment, increasing already extreme marginalization and threats. Perhaps a good practice is for Indigenous Peoples themselves is to know and own their rights and exercise them in whatever way they determine their realities allow, and not wait for a State's approval.

Mr. Chairman, as we all learn to use the EMRIP and other international processes to further the implementation of the Declaration on the rights of indigenous Peoples, we know now they allow us to examine our respective situations with some deliberation and thought. The EMRIP provides all of our movements a forum for reflection and lends legitimacy to our local struggles. And as the mandate and our understanding of it progresses, hopefully, more Indigenous Peoples will contribute to its work and nourish our progress toward the full realization and enjoyment of our rights.

Thank you Mr. Chairman.