

**Expert Mechanism on the Rights of Indigenous Peoples Fifth session  
9-13 July 2011, United Nations, Geneva  
Agenda Item 7: Recommendations to the UN Human Rights Council  
Intervention by the Indigenous Caucus, presented by Danika Billie Littlechild,  
International Indian Treaty Council**

Mr. Chairman,

The Indigenous Caucus would like to comment on the future work of the Expert Mechanism on the Rights of Indigenous Peoples and make a few recommendations.

First of all, we are disappointed that the Human Rights Council is not taking into consideration the recommendations for studies from the Expert Mechanism and deciding on their own what studies the Experts will do. We believe this to be a violation of the spirit of the resolution that created the Expert Mechanism which states, "The Expert Mechanism may also suggest proposals to the Council for its consideration and approval."

The Expert Mechanism holds its annual meeting with many Indigenous representatives, states, UN Agencies, academics, and other interested parties and hears from them what issues are most pressing and need study. As experts, their recommendations should be given due respect and consideration. If the Human Rights Council is going to ignore their recommendations, what purpose is there for the Mechanism to make recommendations?

While all the studies the Mechanism has undertaken so far have been useful, there are many pressing issues that need attention which directly affect the lives of Indigenous Peoples. We hope that the Mechanism is not discouraged by this lack of respect by the Human Rights Council and will continue to recommend important and far reaching studies that are requested by Indigenous Peoples who are the most affected by violations of their rights and need the studies to define their rights.

The Indigenous Caucus would also like to suggest that the Expert Mechanism take into consideration the upcoming UN World Conference on Indigenous Peoples, which is only two years away, and produce studies that would feed into the Conference process. There are many important and sometimes difficult issues that could use the guidance, opinions and conclusions of the Expert Mechanism.

Assuming that the World Conference will be in September of 2014, this leaves two study cycles for the Mechanism to produce studies which could be used by the conference. Good planning by the Mechanism and the Human Rights Council could benefit the World Conference.

In all likelihood, one of the issues that will be discussed at the World Conference is the right of self-determination of Indigenous Peoples. This is a formidable topic, however, it must be faced at one time or another. It would be timely for the Expert Mechanism to begin a study now and be given a full two years to complete comprehensive research on the topic. We request that the Expert Mechanism give serious consideration for such a study.

In a related area, the Indigenous Caucus affirms the importance of the ground breaking studies on the Rights of Indigenous Peoples conducted by the experts of the Working Group on Indigenous Populations which have contributed so much to the advances we continue to make in the international arena. In this regard, we recognize the study on Treaties, Agreements and Other Constructive Arrangements by the late Dr. Miguel Alfonso Martinez, and look forward to advancing in this area of work with Indigenous Peoples, States, and UN agencies at the 3<sup>rd</sup> UN Treaty seminar next week.

Another very important Study which remains of central importance and continued relevance was the Study by Madame Erica-Irene Daes, former Chairperson of the WGIP [E/CN.4/Sub.2/2004/30/Add.1] on the Permanent Sovereignty of Indigenous Peoples over Natural Resources, which was followed up by the “Expert seminar on Indigenous Peoples’ permanent sovereignty over natural resources and their relationship to land” in January 2006 [E/CN.4/Sub.2/AC.4/2006/3].

There has been considerable progress in the recognition of this right since the Study and Expert Seminar were concluded. Of central importance is the adoption of the UN Declaration on the Rights of Indigenous Peoples, which affirmed a number of relevant rights in articles 3, 26, 28, 31 and 32 among others. It also provided the recognition of Indigenous Peoples as Peoples with full rights to enjoyment of the full right of self-determination as expressed in Article 1 in common in the two Human Rights Covenants.

Based on the interventions of many Indigenous Peoples at this Session under Agenda Item 4 on Extractive Industries, as well as the realities in our communities and Nations on the ground, it is clear that considerable work needs to be done in this area. This includes consideration of the implications of the adoption of the UN Declaration by the UN General Assembly, as well as mechanisms for implementation. The richness and diversity of the natural world, the land, water, air, plants, seeds, animals and minerals often referred to as “natural resources,” are essential for our cultural practices, spirituality, food sovereignty, Treaty rights, traditional economies, political sovereignty and survival ways of life.

As the Expert Mechanism on the Rights of Indigenous Peoples is the successor body of the Working Group on Indigenous Populations, this is an appropriate UN forum to advance consideration of this area of work, which is of vital importance for the rights and survival of Indigenous Peoples. The Indigenous Caucus at this 5th Session of the Expert Mechanism therefore requests and recommends that the EMRIP members present “a follow up study on Indigenous Peoples Permanent Sovereignty over Natural Resources” as their next study to the UN Human Rights Council.

The Indigenous Caucus also supports a study on ‘Access to Justice’ which has been recommended in a previous session of the Expert Mechanism. This topic has wide application and would be of use in many different applications and in various forms. A preambular paragraph of the UN Declaration sets out “principles of justice” as forming a part of the foundation of the recognition of the rights of Indigenous Peoples and the enhancement of harmony and cooperation between states and Indigenous Peoples. Furthermore, the final Article of the UN Declaration states: *“The provisions set forth in this Declaration shall be interpreted in*

*accordance with the principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance and good faith.*” As such, principles of justice are characterized as serving a foundational pillar of interpretation and implementation. However, Indigenous Peoples continue to face direct and systemic discrimination as well as violations of rights under dominant judicial systems. Indigenous legal orders and Indigenous principles of justice must be brought to bear in the interpretation and implementation of the UN Declaration. Indigenous peoples have a right to just, equitable, fair and culturally relevant services under non-Indigenous judicial frameworks. Treaty bodies such as the UN Committee on the Elimination of Discrimination have pointed to lack of access to justice as a pervasive violation of human rights of Indigenous Peoples in many countries.

The Indigenous Caucus would like to conclude with recommending three possible studies by the Expert Mechanism:

1. The Right to Self-determination for Indigenous Peoples
2. The Permanent Sovereignty of Indigenous Peoples over Land and Natural Resources
3. Indigenous Peoples Access to Justice

Thank you, Mr. Chairman