

Expert Mechanism on the Rights of Indigenous Peoples

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Agenda Item 3: Study on indigenous peoples and the right to participate in decision-making

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Joint Statement of the Grand Council of the Crees (Eeyou Istchee); International Organization of Indigenous Resource Development (IOIRD); International Indian Treaty Council; Indigenous World Association; Innu Council of Nitassinan; First Peoples Human Rights Coalition; Canadian Friends Service Committee (Quakers)

1. Thank you Chair for this opportunity to contribute to EMRIP's current study on indigenous peoples and the right to participate in decision-making. This intervention is a summary of a longer document which we will be submitting for your consideration.
2. The right of Indigenous peoples to participate in decision-making also pertains to international and regional processes. My people are a Treaty Nation, I would like to underline that Indigenous peoples' Treaty rights generally constitute an elaboration of human rights. Therefore, it is especially important for Indigenous peoples with Treaties to participate in international and other processes that may affect their human rights.
3. Examination of the current process of negotiations relating to the *Convention on Biological Diversity* can be instructive in illustrating some of the challenges that Indigenous peoples face in various international processes.
4. The *Convention on Biological Diversity* has the potential to institute protections of Indigenous rights to traditional knowledge and related natural resources. This could be accomplished through the current negotiations on a Revised Draft Protocol on access and benefit sharing from use of genetic resources. To date, the text of the draft Protocol reflects narrow self-interest of the Contracting Parties. The text, as drafted, does not prevent – and may even contribute to – the erosion and dispossession of Indigenous peoples' human rights.
5. Any dispossession or diminution of Indigenous rights would be incompatible with a key objective of both the *CBD Convention* and the draft Protocol, namely, “*fair and equitable* sharing of the benefits arising out of the utilization of genetic resources”.
6. A Joint Statement by Indigenous and civil society organizations recently submitted to the Parties in the CBD negotiations concludes:

In relation to the world's Indigenous peoples, the current text of the Revised Draft Protocol is not consistent with the *Convention on Biological*

Diversity, the *Charter of the United Nations* and other international law and standards. In relation to Indigenous peoples' human rights, the draft Protocol is not compatible with the international human rights obligations of States and the European Union.

7. According to the Joint Statement, a significant part of these failures are the result of procedural deficiencies that profoundly affect the right of Indigenous peoples to participate in decision-making:

Parties are taking advantage of one-sided procedures in the CBD process to undermine or ignore Indigenous peoples' human rights affirmed in the *UN Declaration on the Rights of Indigenous Peoples* and other international instruments. The *Declaration* provides a crucial global context for interpreting and implementing Indigenous rights and related State obligations.

8. A further problem is the lack of financial support for Indigenous peoples to adequately participate in the current negotiations on the Revised Draft Protocol
9. The CBD voluntary fund is not sufficient to ensure that sufficient numbers of Indigenous peoples have the capacity to prepare for and attend the negotiations on the draft Protocol. This financial burden should not have to be carried solely by the voluntary fund.
10. Far too few Indigenous peoples are actually represented. There is an inadequate number of representatives at the meetings to ensure proper research and timely development of positions. There is also an insufficient number of spokespersons at the negotiations table, with the necessary technical and legal expertise on a wide range of matters.
11. The CBD process is especially challenging for Indigenous peoples, since the rules that are employed are wholly weighted in favour of States. Although they are participating in these negotiations, Indigenous peoples remain highly vulnerable to State discretion.
12. For example, Indigenous peoples are not permitted to table any proposed amendments to the Revised Draft Protocol. If Indigenous proposals are to be inserted into the text, they must be put forward by one or more States. Indigenous peoples are not part of any consensus on provisions relating to Indigenous rights and concerns.
13. Since the final text is intended to reflect a consensus among State parties, it is often the *lowest common denominator* that is reflected in the Revised Draft Protocol. Such a substandard dynamic does not serve to fulfill the key objectives of the *Convention on Biodiversity*. In the Indigenous context, consensus is leading to unfair results.

14. International human rights standards are too often cast aside in the interests of obtaining consensus. Such actions are not compatible with State obligations in the *Charter of the United Nations* and, more generally, international law. There is a tendency to excessively reinforce State sovereignty, while unjustly circumscribing Indigenous peoples' rights.
15. Consensus can show a unity of purpose, but it loses its significance if achieved at the expense of human rights. A similar concern relating to consensus has surfaced at the General Assembly. As underlined by the UN Secretary-General:

... unfortunately, consensus (often interpreted as requiring unanimity) has become an end in itself. ... This has *not proved an effective way of reconciling the interests of Member States*. Rather, it prompts the Assembly to retreat into generalities, abandoning any serious effort to take action. Such real debates as there are tend to focus on process rather than substance and *many so-called decisions simply reflect the lowest common denominator of widely different opinions*.

16. During the standard-setting process on the UN Declaration on the Rights of Indigenous Peoples, the Chair of the working group on the *UN Declaration* made it clear that any consensus would include both States and Indigenous peoples. While achieving consensus was desirable, no strict requirement was imposed. State and Indigenous representatives had equal rights to make interventions and propose text.
17. Thus, in regard to the negotiations on the *UN Declaration*, a highly inclusive and democratic process of participation was established within the United Nations. It still constitutes today an impressive precedent and best practice.
18. Whenever Indigenous peoples and their rights are involved, meaningful participation in international and regional processes should be a key objective. In this regard, we recommend the following:
 - i) International and regional negotiations and other processes should not be based solely on consensus among States. To do so would unjustly increase any existing power imbalance.
 - ii) While it can be positive for State and Indigenous parties to aspire towards consensus, such an objective should remain flexible. In no case should consensus be achieved at the expense of Indigenous peoples' human rights.
 - iii) Negotiations on procedural issues should include both State and Indigenous representatives. In this context, principles of equality and mutual respect among the parties would serve to generate increased confidence and trust.