

Expert Mechanism on the Rights of Indigenous Peoples
Item no 5
Implementation of the United Nations Declaration on the Rights of Indigenous Peoples

By
Kontinoh:sta'ts – Mohawk Language Custodians
Speaker: Ellen Gabriel

Wa'tkwanonwera:tons – Greetings to all

I would like to begin by referring to UN Secretary General Ban Ki-moon at the opening of the ninth session of the United Nations Permanent Forum on Indigenous Issues, in New York, 19 April 2010 who stated that

“we need development that allows indigenous peoples to exercise their right to self-determination through participation in decision-making on an equal basis.”
“Indigenous cultures, languages and ways of life are under constant threat from climate change, armed conflict, lack of educational opportunities and discrimination.”

One of the most important aspects of the implementation of the UN Declaration (UNDRIP) is the acknowledgment and respect by all states of Indigenous peoples' right to self determination.

The implementation of the UN Declaration (UNDRIP) requires sensitizing all members of the global community of the meaning and principles involved. Ignoring this important step will continue to foster conflicts making Indigenous peoples vulnerable to further land dispossession, human rights violations by state authorities and the criminalization of representatives of Indigenous governing structures and their organizations.

Obstacles such as outdated domestic mining and development legislation often over ride the inherent rights of Indigenous peoples. Outdated and oppressive domestic laws provide venues for corporations to develop, to proceed with development without the free, prior and informed consent of Indigenous peoples.

The Committee on the Elimination of Racial Discrimination has indicated to Canada that the burden of proof is too onerous in terms of proving Aboriginal title. To date the courts have yet to fully recognize such title in any case.

Archaic and hegemonic interpretations of Indigenous peoples' inherent rights do not fully recognize our self-determining rights. In fact some states often cite hundreds of years old decrees and Doctrines whose advocacy of superiority, according the UNDRIP “are deemed legally invalid, morally condemnable and socially unjust.”

States who practice age old Doctrines, such as the Doctrine of Discovery contravene the UN Declaration and other international human rights instruments. The continual lack of recognition of Indigenous peoples' right to free, prior and informed consent in regards to development threatens their security and well-being, as well as the environment that Indigenous peoples depend upon for their spiritual, physical and mental well being.

For example, in the Kanehsata:ke, the Mohawk community that I am from, we have been exercising our right to self-determination for hundreds of years. Our inherent rights continue to be violated by Canada's Indian Act and their hegemonic interpretations of what those rights may be.

Due to this lack of respect for our self-determining rights, Canada allows third party development to continue while they maintain a position whereby we must prove occupation of land from time immemorial. Mining companies are now attempting to begin projects on our traditional territory that will contaminate our aquifers and quality of life. These same companies would indeed have succeeded by now, had we not invoked the UN Declaration and our own customary law Kaianera'ko:wa to inform Canada that they cannot grant permits to these mining companies. Rather they must obtain the free, prior and informed consent of our nation.

In the implementation of the UN Declaration (UNDRIP), consent is a crucial aspect of self-determination

In certain states conditional endorsements of the UN Declaration (UNDRIP) has caused the arbitrary selection of articles within the Declaration that has not been practiced with other human rights instruments. This is unacceptable and brings into question the real intention of those individual states, especially those with energy security priorities.

In the implementation of the UN Declaration (UNDRIP), we must emphasize the role of traditional governments, such as the Haudenosaunee or Iroquois Confederacy in the process of obtaining free, prior and informed consent. Often traditional governments are excluded in any negotiations or consultations and recognition of Indigenous self-determining rights. This has caused the further dispossession of our lands and the exploitation of our resources leading to long-term damages to territories.

The loss of land and of a healthy environment due to development and colonial laws, leads to serious erosion of Indigenous identity as destructive activities like mining and resource extraction contribute to climate change. Residential Schools have already had a devastating impact on all aspects of our identity and land.

Within the UN Declaration (UNDRIP), articles affirming Free, Prior and Informed Consent include: 11.2, 10, 29.2, 32.2. Self-determination is fundamental to the rights of Indigenous Peoples and so we urge the Expert Mechanism in all its studies to promote the self-determining rights of Indigenous peoples. The full implementation of article 36 for Indigenous peoples divided by imposed borders such as the one between Canada and the US is also essential for the protection of our rights to our lands, territories, resources and our ability to meet with our relatives on our territories.

Niawenko:wa – thank you for listening to my words
Tho Ni Kawen:nenke – these are my words