



INTERNATIONAL INDIAN TREATY COUNCIL

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Expert Mechanism on the Rights of Indigenous Peoples

Third Session, 12-16 July 2010

Item 3 on the Agenda, Study on Indigenous People's right to participate in decision-making

Oral Intervention delivered by Alberto Saldamando

Thank You Mr. Chairman,

The International Indian Treaty Council welcomes the Expert Mechanism's study on the right of Indigenous People to participate in decision-making and congratulate the Expert Mechanism for this draft.

Recognizing the importance of the theme, we are concerned about the important necessity for an explicit statement in the study, on the right of Free, Prior and Informed Consent (FPIC) as an unqualified right. Particularly we are concerned that the conclusion of the process of FPIC, Consent, is not specifically mentioned or discussed in the draft of the Study. This is true not only on the discussion of ILO 169, but in discussion on the right under the UN Declaration.

My delegation strongly suggests that there be a clear and unequivocal statement in the study that the decision of the Peoples concerned, whether to consent or not, must be respected and observed by States, multinational institutions, Banks, transnational corporations, or any other third party.

There are other elements of consent, including conditional consent and the right to withdraw consent if conditions are not met or departed from, or as a result of material unforeseen circumstances, should also be included in the discussion in this preliminary study.

A failure to explicitly describe the element of consent may in itself undercut the years of our struggle with States during the declaration process who wanted equivocation. Such an omission would also undercut not only important

developing jurisprudence, particularly in the Inter-American human rights system, but the struggles of Indigenous Peoples all over the world. We cite only one example of the growing number of Peoples who are suffering repression for insisting on **their decision to deny consent**, (as reported by the Special Rapporteur on the rights of Indigenous Peoples) the Indigenous Peoples of Peru, who have met with repression for in their struggle to establish their decision to say NO to extraction in their lands and territories. This decision must be respected and observed.

We would strongly urge the EMRIP to include an explicit statement on the nature and scope of the decision to Consent or not, in this preliminary study.

For all our relations,

Thank you, Mr. Chairman