

Expert Mechanism on the Rights of Indigenous Peoples

Ninth session

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Item 7: *Indigenous peoples' participation in the United Nations system*

Speaker: Grand Chief Wilton Littlechild

Joint Statement of: Confederacy of Treaty No. 6; Assembly of First Nations; Assemblée des Premières Nations du Québec et Labrador/Assembly of First Nations of Québec and Labrador; BC Assembly of First Nations; Canadian Friends Service Committee (Quakers); First Nations Summit; Grand Council of the Crees (Eeyou Istchee); Indigenous Bar Association; Inuit Circumpolar Council; Inuit Tapiriit Kanatami; KAIROS: Canadian Ecumenical Justice Initiatives; Métis Nation; National Aboriginal Circle Against Family Violence; Union of British Columbia Indian Chiefs.

In regard to the current process related to enhancing Indigenous peoples' participation in UN bodies, some positions give rise to serious concerns. A number of States have objected to Indigenous peoples having participation at the General Assembly. While there had also been some discussion of enhanced participation of Indigenous peoples in ECOSOC and the Human Rights Council, it now appears that any enhanced Indigenous participation in any UN bodies is uncertain.

We wish to emphasize that it would be premature and undemocratic for States to abandon Indigenous peoples' enhanced participation in UN bodies. To fail to determine ways and means for ensuring Indigenous participation is inconsistent with articles 41 and 42 of the *UN Declaration on the Rights of Indigenous Peoples*. In particular, in denying Indigenous participation at the UN General Assembly, no reasons have been provided – except that some States are firmly against such involvement.

Some States are also insisting that they must determine who is “Indigenous”, in regard to Indigenous participation in UN bodies. Such positions are discriminatory and contrary to international human rights law. States should not be seeking to renegotiate what was explicitly rejected during the negotiations on the *UN Declaration*.

States are not free to determine whether a people is “Indigenous”. There continues to be an erroneous presumption, by some States, that they each can determine which peoples are Indigenous within their respective States. This would serve to undermine existing commitments in international human rights law, rather than respect and build upon them.

In *Ways and means of promoting participation at the United Nations of indigenous peoples' representatives on issues affecting them: Report of the Secretary-General* (July 2012), para. 62, it is emphasized that, in accordance with the *UN Declaration*:

indigenous peoples have the right to self-identify as such, the right to self-determination, and the fact that there is no agreed definition of indigenous peoples should be borne in mind. ... it is important to ensure that the

process to determine recognized indigenous peoples' representatives strengthens indigenous peoples' participation through their institutions, representative bodies and organizations.

In international law, there is no legal basis to insist that States must determine which peoples or persons are "Indigenous". UN treaty bodies and mechanisms have repeatedly emphasized the right of Indigenous peoples to self-identification, and we list some examples in our written submission.

Proposals emanating from States are falling significantly short, in failing to fully respect the *UN Declaration* and OP33 of the *Outcome document of the high-level plenary meeting of the General Assembly known as the World Conference on Indigenous Peoples*. Article 2 of the *UN Declaration* affirms:

Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.

In this whole context, it is worth recalling PP18 of the *UN Declaration*: "*Convinced that the recognition of the rights of indigenous peoples in this Declaration will enhance harmonious and cooperative relations between the State and indigenous peoples, based on principles of justice, democracy, respect for human rights, non-discrimination and good faith*".

In order to safeguard the integrity of the international human rights system and uphold existing commitments, it is critical that States that remain supportive of enhanced participation by Indigenous peoples within the UN raise the fundamental concerns outlined above.

The options on how to proceed in the current negotiations should not be determined by illegitimate arguments put forward by some States. Such arguments are not only prejudicial to Indigenous peoples, but also seriously undermine the United Nations, including the jurisprudence of UN treaty bodies, and other international human rights law.

Recommendations

Consistent with its expanded mandate and in view of the centrality of the *UN Declaration on the Rights of Indigenous Peoples*, we recommend:

1. THAT EMRIP examine, on an urgent basis, all relevant documentation emanating from the closed meetings among States and from the UN Secretary-General, with a view to providing a principled approach to enhanced participation of Indigenous peoples in UN bodies.
2. THAT such examination must be fully consistent with OP33 and other relevant provisions of the *Outcome document of the high-level plenary meeting of the General*

Assembly known as the World Conference on Indigenous Peoples, the UN Declaration and other international human rights law.

3. THAT, in this context, EMRIP elaborate ways and means of ensuring enhanced participation of Indigenous peoples in UN bodies. In so doing, EMRIP should also identify, disseminate and promote good practices and lessons learned, including through EMRIP reports to the Human Rights Council on this matter. Indigenous peoples and States could then reassess how best to proceed.

Appendix

Examples from Treaty Bodies and Others on Indigenous Self-identification

Committee on the Rights of the Child, *Indigenous children and their rights under the Convention*, General Comment No. 11, UN Doc. CRC/C/GC/11 (12 February 2009), para. 19: “The presence of indigenous peoples is established by self-identification as the fundamental criterion for determining their existence. There is no requirement for States parties to officially recognize indigenous peoples in order for them to exercise their rights.”

See also Argentina, CERD/C/ARG/CO/21-23, 11 January 2017, paras. 10, 11; Namibia, E/C.12/NAM/CO/1, 23 March 2016, paras. 15, 16; Thailand, E/C.12/THA/CO/1-2, 19 June 2015, para. 9; Peru, CRC/C/PER/CO/4-5, 2 March 2016, para. 23; Niger, CERD/C/NER/CO/15-21, 25 September 2015, para. 17; France, CCPR/C/FRA/CO/5, 17 August 2015, para. 6; France, CERD/C/FRA/CO/20-21, 10 June 2015, paras. 5 and 11; Colombia, CERD/C/COL/CO/15-16, 25 September 2015, paras. 7, 8; Costa Rica, CERD/C/CRI/CO/19-22, 25 September 2015, paras. 9, 10; Vietnam, CERD/VNM/CO/10-14, 9 March 2012, para. 12; and Report of the Special Rapporteur on extreme poverty and human rights on his mission to Chile, A/HRC/32/31/Add.1, 8 April 2016, para. 77.

Indigenous and Tribal Peoples Convention, 1989, art. 1, para. 2: “Self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply.”