

UN Expert Mechanism on the Rights of Indigenous Peoples 11th session, 9 - 13 July 2018
Agenda Item 4: Study and Advice on Free Prior and Informed Consent, Intervention by the
International Indian Treaty Council, presented by International Chief for Treaties 6, 7 and 8 Wilton
Littlechild

Thank you Madame Chair and Respectful Greetings to all delegations. We welcome the EMRIP's draft Study on Free Prior and Informed Consent and the important elements it includes. We appreciate, in particular, its recognition of the "UN Study on Treaties, Agreements and Other Constructive Arrangements Between States and Indigenous Populations" and the observations of Special Rapporteur Miguel Alfonso Martinez. These underscore the vital importance of FPIC as the basis, prerequisite and continuing foundation of the Treaty relationship between States and Indigenous Nations as well as the creation of bi-lateral dispute mechanisms to address violations.

We appreciate the emphasis, in the advice section, on the importance of such oversight and dispute resolution mechanisms. The framework for such processes is contained in Articles 27, 28 and 40 of the UN Declaration on the Rights of Indigenous Peoples, which should be applied to carrying out Treaty rights. Consensual, participatory dispute resolution processes based on mutual consent are nonexistent in most States. We urge the Expert Mechanism to give priority attention in its advice to the Human Rights Council to ensure that this shortfall is remedied by encouraging the application of this cluster of Articles in the development of such processes.

We also recommend that the Study highlight that some of these legally-binding international Treaties themselves affirm the right of consent. For example, Treaty No. 6 and its adhesions, concluded between the Cree and other Nations with the British Crown in 1876, references the requirement for consent in paragraph 3. Article 16 of the 1868 Ft. Laramie Treaty concluded between the United States and the Oceti Sakowin ("Great Sioux Nation") states that consent is required before settlers can "settle upon or occupy" Indigenous Treaty lands. The crisis created by the imposition of the Dakota Access Pipeline in the Treaty Lands near what is now the Standing Rock Reservation demonstrated to the world the ongoing lack of US implementation of this core Treaty provision.

Key processes for implementing the rights of Indigenous Peoples to FPIC currently underway internationally should also, in our view, be included as examples of progress. One example is the continued progress for development of an international mechanism for repatriation of ceremonial objects and human remains, based on Articles 11 and 12 of the UN Declaration which call for participatory processes for the return of Indigenous Peoples' cultural property taken without their Free Prior and Informed Consent.

In addition, the right to FPIC regarding the disposal of Hazardous Materials affirmed in Article 29 of the UN Declaration is currently the basis of a legal review, along with the Conventions on the Rights of the Child and on Persons with Disabilities, of the UN Rotterdam Convention by the UN Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes. Article 29 is also the basis of a for the revision of the UN FAO Code of Conduct on Pesticides as endorsed by the IITC, the UNPFII and other bodies.

We request that these and other efforts to uphold and implement FPIC within the UN system, including Indigenous Peoples' insistence that FPIC be ensured as a safeguard for the new Traditional Knowledge Exchange Platform at the UNFCCC, be specifically mentioned and supported in the EMRIP's advice to the Human Rights Council. Thank you.