



# General Assembly

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## Human Rights Council

### Eighteenth session

Agenda items 3 and 5

**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

**Human rights bodies and mechanisms**

**Joint written statement\* submitted by the International  
Indian Treaty Council, a non-governmental organization in  
general consultative status, the Indigenous Peoples'  
International Centre for Policy Research and Education  
(Tebtebba Foundation), the Indigenous World Association,  
non-governmental organizations in special consultative status**

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[24 August 2011]

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\* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

## **Good practices and impediments to the rights of indigenous peoples\*\***

The International Indian Treaty Council, Tebtebba Foundation and the Indigenous World Association welcome the report to the Human Rights Council of the Expert Mechanism on the rights of Indigenous Peoples (EMRIP) particularly on its focus of so-called “good practices” with regard to Indigenous Peoples’ participation in different levels of Decision-making. (A/HRC/EMRIP/2011/22)

We note that the EMRIP identifies many States, including members of this Council that have adopted these good practices. We also agree with the EMRIP that in many of these States, the processes and practices described may not fully implement the United Nations Declaration on the Rights of Indigenous Peoples (hereinafter the “Declaration”) and its requirements for the full and effective participation of Indigenous Peoples in decision-making, but that they show some progress in the recognition of the rights recognized in that relatively recent but most important United Nations human rights Declaration.

We would also agree that it is difficult to identify “good practices” or as the EMRIP states, “what actually constitutes a “good” practice involving indigenous peoples’ participation in decision-making and, second, to assess whether a practice meets the definition of “good”.

For these reasons, our organizations believe that this well-reasoned and factually based EMRIP Study on Participation should be read together with the Special Rapporteur on the Rights of Indigenous Peoples’ reports, also before the Council.

The Rapporteur, in accordance with his mandate, points out problems and makes recommendations to States with regard to some shortcomings of the same States that the EMRIP has identified as implementing or supporting good practices.

Both the Rapporteur and the EMRIP assess one “good practice,” that of an actual recognition and implementation of the right to Free, Prior and Informed Consent. In his report on his missions to various States, the Rapporteur examines the Nordic Countries of Sweden, Norway and Finland as does the EMRIP in various paragraphs. While the EMRIP examines the good practices in these States with regard to Indigenous participation in decision-making, the Rapporteur points out shortcomings, particularly in threats to Sami culture and livelihood on account of development projects over which the Sami Peoples and their enjoyment of their right of Self Determination including their right to participate in decisions that affect them, are not sufficiently considered.

The Rapporteur recommended that these States continue to enhance and improve the implementation of the right of Free, Prior and Informed Consent and to define those areas where the Sami parliaments can act as the primary or sole decision-makers, including issues related to Sami lands, languages, traditional livelihoods and cultures. (A/HRC/18/35/Add.2, paragraph 76). We believe that this same recommendation could be made to many States that the EMRIP identifies as implementing some good practices, while recognizing that these practices may not completely satisfy the requirements of the Declaration. Both approaches are consistent with the respective mandates. Both mandates are necessary for a full discussion on the rights of Indigenous Peoples and the implementation of the Declaration.

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\*\* The International Council for the Indigenous Peoples of CHT (ICIP-CHT), and Centro para la Autonomía y Desarrollo de los Pueblos Indígenas (CADPI), NGOs without consultative status, also share the views expressed in this statement.

We also note the report of the Progress report of the Human Rights Council Advisory Committee on the right of peoples to peace considered at the 17<sup>th</sup> Council session. (A/HRC/17/39). All human rights are related. The denial of one human right is the denial of all. And the denial of the right of all Peoples, including Indigenous Peoples, to Self Determination and to Peace is a denial of all other human rights. It is noteworthy that the Advisory Committee identifies Indigenous Peoples as vulnerable and cites the various Declaration articles that recognize the right of Indigenous Peoples to Peace as a collective right (Annex II, paragraphs 8 – 11).

The Special Rapporteur makes particular reference in his report on his Observations on the situation of the rights of the indigenous people of Guatemala with relation to the extraction projects, and other types of projects, in their traditional territories (A/HRC/18/35/Add.3). He cites, inter alia, a disproportionate reaction by the State to legitimate protest, harassment and attacks on human rights defenders and community leaders, emphasizing, "... the alarming lack of legal protection for the rights of indigenous people over their traditional lands and territories, which leaves Guatemala lagging behind other countries in the region that have made progress in that regard." Again, the denial of the right to Peace, the denial of the right of Self Determination and the denial of the right to Free, Prior and Informed Consent are underscored (paragraph 41).

We also believe that the discussions at the Permanent Forum on Indigenous Issues (hereinafter, "Permanent Forum") complement the EMRIP and Special Rapporteur's reports.

At this year's 10<sup>th</sup> Session of the Permanent Forum, the government of Bangladesh stated that there were no Indigenous Peoples in Bangladesh in an apparent attempt to discredit the Permanent Forum's Rapporteur, Mr. Lars Anders' report on the status of the implementation of the Chittagong Hills Tracts (CHT) Accord of 1997 (E/C.19/2011/6). Debate ensued, and the Permanent Forum, taking into consideration the concerns raised by the government of Bangladesh, noting the steps the government had taken to implement the Accord, and considering the concerns of the Indigenous Peoples of Bangladesh, made the following recommendations:

- That, consistent with the code of conduct for United Nations peacekeeping personnel, the Department of Peacekeeping Operations prevent military personnel and units that are violating human rights from participating in international peacekeeping activities under the auspices of the United Nations, in order to maintain the integrity of the indigenous peoples concerned;
- That the Government of Bangladesh declare a timeline and outline modalities of implementation and persons and/or institutions responsible for implementation;
- That the Government of Bangladesh undertake a phased withdrawal of temporary military camps from the region and otherwise demilitarize the region, consistent with the safeguards of the peace accord, which will contribute to the ultimate objective of peace and economic and social development, and improve the relationship between indigenous peoples and the Government of Bangladesh;
- That the Government of Bangladesh establish a high-level, independent and impartial commission of enquiry into human rights violations perpetrated against indigenous peoples, including sexual violence against women and girls, and prosecute and punish the perpetrators, as well as provide reparations for the victims concerned.

Given the consultations on amendments to the Bangladeshi Constitution then ongoing, the Permanent Forum also encouraged "peaceful dialogue between the Government and

indigenous peoples aimed at implementing the Chittagong Hill Tracts Accord and addressing the substantial concerns raised in the report...”

Instead of addressing the well documented violations of the human rights and fundamental freedoms raised in Rapporteur Anders’ report, the government of Bangladesh sought to have this recommendation stricken from the report of the Economic and Social Council (ECOSOC). After debate the ECOSOC accepted the Permanent Forum’s recommendation with an oral amendment, as reported by the UN press, “taking note of the importance for the Permanent Forum on Indigenous Issues to always continue to adhere to its mandate and takes into account the concerns of United Nations Member States, indigenous peoples and all other stakeholders while dealing with particularly [sic] situations and also notes that the Permanent Forum should continue to ensure that its studies are conducted in a fully independent, transparent, impartial and objective manner; and approves the provisional agenda for the eleventh session of the Permanent Forum.”

Wisely, the ECOSOC saw the importance of the Permanent Forum being a deliberative and independent expert body that could take up contentious and difficult issues in order to fully explore the dimensions of its human rights mandate toward a positive resolution to differences between states and Indigenous Peoples.

It should be noted that the EMRIP report before this Council cites good practices in Bangladesh with regard to Indigenous participation in decision-making even though informal, by the Bangladesh judicial system (paragraph 32), and recognition at the district and regional levels of indigenous traditional administrative bodies (paragraph 65). One good practice that the EMRIP recognized was Consultation with Indigenous Peoples.

However, the Bangladesh constitution, after recent amendments adopted in 2011 without consultation with Indigenous Peoples, now refers to the Indigenous Peoples of the Chittagong Hills Tract as “Bangali”, even though they differ from the dominant culture in respect of their distinctive culture, history, religion, language, social and economic practices. The Indigenous Peoples of the CHT, therefore, believe that the imposition of “Bangali” identity and refusal to recognize them as “Indigenous” is a gross human rights violation on the part of Bangladesh government. The Government also uses other disrespectful and inaccurate terms to refer to the indigenous peoples, including “sub-nation” (“upajati”) and “small ethnic groups” (“khudro nrigoshthi”), without the consent of the peoples concerned. It has also been reported in the national media in Bangladesh that the government is planning to delete all references to indigenous (adibashi) from national laws and policies, including laws passed by the present government in 2010 (adibashi), laws passed during the Pakistan period (1950-51) and laws passed during the British period (1900) without the prior informed consent of the indigenous peoples of the country. This would be discriminatory and violative of the CHT Regional Council Act of 1998 and the Hill District Councils Acts of 1989, which provide for mandatory consultation by the government concerning laws that affect the Chittagong Hill Tracts region, including the three hill districts. This would also be violative of international human rights norms and standards, including the provisions of such treaties ratified by Bangladesh, as ILO 107, ICERD, ICCPR and ICESCR.

According to Rapporteur Anders’ Permanent Forum report, their right to peace is being violated. According to standards applied by the Special Rapporteur, their right to Self Determination and their right to consultation and their Free, Prior and Informed Consent on matters that affect them so profoundly, their identity, rights to lands, territories and resources, their spiritual manifestations and beliefs, are all effectively nullified by this classification.

The attitude of the Bangladesh government effectively ignores in its entirety the EMRIP’s Advice number 2 in its report before the Council, calling for good faith consultations and

the right of Free, Prior and Informed Consent in decisions that affect them, to ensure that there is respect for the right of the Indigenous Peoples of Bangladesh to Self Determination in decision-making.

Members of the Council, the Declaration on the Rights of Indigenous Peoples makes no reference to a State's recognition of Indigenous Peoples before the rights recognized therein are applicable. Now universally accepted, the United Nations Declaration on the rights of Indigenous Peoples can and should be implemented by all States, including Bangladesh, whatever terminology is used in the national constitution to refer to them. It is unfortunate that the Government of Bangladesh now denies the existence of Indigenous Peoples, when several of its laws recognize "indigenous", "aboriginal" and "adibashi" people. Moreover, the Government of Bangladesh had advised the Special Rapporteur Jose R Martinez Cobo that there are Indigenous Peoples in Bangladesh, and these are mentioned in the Special Rapporteur's Report (Study of the Problem of Discrimination Against Indigenous Populations, E/CN.4/Sub.2/1982/2/Add.6, paragraphs 61, 86, 117, 152, 194 and 253).

We call on the government of Bangladesh to (i) to fully implement the Declaration on the Rights of Indigenous Peoples, with particular reference to the collective right to peace; (ii) to implement the recommendations of the UN Permanent Forum on Indigenous Issues 10<sup>th</sup> session, as accepted by ECOSOC; (iii) to constitutionally recognize the Indigenous Peoples in a manner of their choice; and (iv) to refrain from replacing the term 'Indigenous' or its equivalent from laws and policies of Bangladesh.

Finally, we call upon this Council to consider the reports of all United Nations bodies and Special Procedures charged with studying and examining compliance with the rights of Indigenous Peoples. It is only with this broad spectrum of voices all with differing mandates that we can track both the good practices and impediments to the full enjoyment of the rights of Indigenous Peoples in all regions of the world.

For all our relations

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