

INDIGENOUS PEOPLES' RIGHT TO PARTICIPATE IN
DECISION -MAKING -

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This study on Indigenous Peoples and the right to participation in decision making has been requested at the right time, when we are working with our Indigenous and local communities in our respective continents are looking forward to know and evaluate ourselves in terms of building and strengthening the capacity of those communities out there. To have a voice and be able to speak out and contribute to decision making at all levels. A time when we want to know how much they are contributing to the planning and implementation of the policies and regulations on different disciplines in their respective countries.

It is important to make sure that the participation we discuss in this study will be the process of involving Indigenous Peoples, women and youth in projects, policy reviews, ideas to encourage decision-making and empowerment, ownership of opinion and influence in services and issues that affect them and promote inclusion. It should not be participation of just being there and not contributing anything. A common scenario in most countries of African.

Indigenous Peoples of Africa like others in the world, following traditional practices actively consider ways to accommodate others. The question of participation was never an issue as everyone knew their places and contribution to their own process. For them, there are no 'opposition parties', instead there are different perspectives and different ways of expressing ideas. Decision-making within most Indigenous communities is in the form of consensus. Inherent in the consensus process is respect for the roles of all people, including those of women, young people, and elders. Indigenous Peoples depend on their knowledge from the past to make meaningful decisions in the present.

History tells us that, although most indigenous communities in Africa now use the terms 'history' and 'historical', they do not disconnect from the past

as many modern western decision makers do. Leaders are expected to know the past and understand the relevance of the past to current circumstances even when they seem to be vastly different. It is however a pity that leadership and traditional Institutions that held that history and helped make those clear decisions have been broken a problem that has affected the full and effective participation of Indigenous Peoples. For centuries, Indigenous Peoples had their own decision making processes which varied from group to group and had to be administered by a council of elders. The decision-making process included the following:

- **Inclusive:** Many Indigenous Peoples are involved in the consensus decision-making process.
- **Participatory:** The process actively solicit the input and participation of all decision-makers
- **Cooperative:** Participants in an effective consensus process strive to reach the best possible decision for the group and all of its members, rather than opt to pursue a majority opinion, potentially to the detriment of a minority.
- **Solution-oriented:** They strive to emphasize common agreement over differences and reach effective decisions using compromise and other techniques to avoid or resolve mutually-exclusive positions within the group.

These approaches should be taken in consideration as the discussions on participation is taking place, what was there before and what is happening now and what will happen in future. Is there hope for the Indigenous Voice to remain where it is or should that voice be louder constructive and stronger?

The human rights based approach (HRBA) is premised on the understanding that human rights principles guide all programming in all phases of the programming process, including assessment and analysis, program planning and design, implementation, monitoring and evaluation. These principles include universality and inalienability, indivisibility, interdependence and inter-relatedness, non-discrimination and equality; participation and inclusion; accountability and the rule of law

Today in the international and national levels there is an increasing trend in participatory governance, which involves the meaningful participation of civil society in the policy making and administration processes. The right to full and effective participation in decision-making process includes,

1. The right to participate in shaping and implementing decisions and policies affecting themselves, their families, communities, and societies, at the local, national and international levels.
2. The right to equal access to public service.
3. The right to equal access to education and information.
4. The right to freedom of expression and opinion.
5. The right to equality between men and women and to full and equal partnership in the family and society

Despite international recognition and acceptance of the Universal Declaration of Human Rights, which guarantees the fundamental rights of all human beings, in practical fact, Indigenous Peoples' human rights remain without specifically designated safeguards. To this day, Indigenous Peoples continue to face serious threats to their basic existence due to systematic government policies. In many countries of Africa, Indigenous Peoples rank highest on such underdevelopment indicators as the proportion of people in illiteracy rate and unemployment rate. This has come with other problems of forcing the productive members of the family like the men and youth move to urban areas to look for greener pastures and therefore leaving women and the old in the villages. A turning point for the women to be left on their own taking up decisions at the family level a role they never use to have before.

Most Indigenous Peoples in Africa face discrimination in schools and are exploited in the workplace due to lack of adequate education and the fact that they come from marginalized or minority communities such as the hunter gathers and other minority pastoralist scattered all over Africa. In many countries, they are not even allowed to study their own languages in schools. With this problem they are then assimilated to other larger communities denying them the right to participate and have self determination as a community and tribe that can live its own cultures and traditions and have its own identity. Enforcing policies of forced assimilation become efforts to eradicate Indigenous Peoples, cultures, and traditions. In most of the African countries, indigenous peoples face yet another challenge relating to lack of legal recognition of their existence by their respective governments within their territories. This results into lack of measures to ensure that indigenous peoples enjoy their rights on an equal footing to other communities' especially in decision making processes and in maintaining their traditional institutions due to forced evictions for instance.

Over and over, most African Governments have displayed an utter lack of respect for Indigenous values, traditions and human rights. Although the Universal Declaration of Human Rights is designed to protect the human rights of all individual human beings, international law concerning collective human rights remains vague and can fail to protect the group rights of Indigenous Peoples.

According to the resolution, the goal of the UN Second Decade of Indigenous Peoples, shall be the further strengthening of international cooperation for the solution of problems faced by indigenous peoples in such areas as culture, education, health, human rights, the environment and social and economic development, by means of action-oriented programmes and specific projects, increased technical assistance and relevant standard. To some extent this has been implemented in different parts of the world by other Indigenous peoples organizations with the help of donors and other partners but for us in Africa the challenges are still there and despite the facts that some efforts and steps have been undertaken, we cannot celebrate yet as we still have a long journey to go.

The participation of Indigenous Peoples of Africa started way back after the rest had started the journey. In 1996 in Vienna their step to a long journey started. It is since then that it became clear that they needed to be visible and join the rest in understanding the process. One of the great step taken by Indigenous Peoples of Africa even despite the fact of participating in different forums, was their entry and presence at the African commission on human and peoples rights. Their presence has sent a clear message to the African Commission that indigenous peoples in Africa suffer from gross and widespread human rights violations and their input has been important in terms of convincing the African Commission to prioritize the promotion and protection of their rights. So far about 8-12 indigenous representatives have been participating in each session of the African Commission.

The engagement of Indigenous Peoples in international decision-making processes is an important step towards the recognition of their rights at the national level. Many indigenous communities are in fact adversely affected by policies, projects and programs, since their distinct visions of development, their concerns and way of life are all too often ignored by national or local level policy makers and administrators. Identification of participatory and consultative mechanisms linked to both State and relevant non-State institutions and decision-making processes affecting indigenous

peoples as well as challenges in their effective implementation is very important.

In the recent years 2005 to 2009 Indigenous Peoples from Africa started working closely with African Governments representatives in the processes of the establishment of the international Regime on Access and Benefit sharing in a process funded by Access and Benefit Sharing Capacity development initiative for Africa. This initiative with main objectives of enabling African States and stakeholders to use benefits generated by the use of genetic resources for biodiversity conservation and poverty alleviation has brought the need of participation of Indigenous and local communities of Africa recognition and inclusion in the Environment agenda. It is here where African government have clearly appreciated and recognized the need for the inclusion of Indigenous peoples and local communities in discussions and contribution in different thematic areas of the convention of Biological diversity. This of course also influences directly the capacity of the African Group (53 countries) to negotiate the international ABS regime.

It is essential that the capacity development starts before the actual conclusion of an International Regime (IR) on ABS in 2010. This will enable the African countries to identify suitable national ABS strategies while negotiating and developing the International Regime. Many of us see this as a success creating dialogue with governments who at one point did not want to hear any one mention Indigenous peoples in Africa. This has given us as development agencies of our people to transmit and share the outcome of many indigenous and local communities recommendation shared and given in our many training sessions on capacity building and need to increase participation for our communities in Africa.

Indigenous peoples regularly regard international law as a very important tool for the advancement of their various political goals. This is probably due to the fact that in many nation-states their possibility to influence the political development is rather limited. By influencing the development of international law, which legally obligates all states (customary law) or states parties to an international treaty, it would indeed seem a good strategy for them to have an impact on the development within the nation-state they individually are part of via influencing the development of international law. Where policy and service delivery models are targeted towards indigenous communities, they often operate in a non-inclusive, top-down manner, which creates dependency on government services and does not promote

sustainable, human development that protects and promotes the cultural, political, social and economic integrity of indigenous communities. Besides the ethical and cultural implications of such lack of participation, development experts have by now realized that such programs are not even financially sustainable.

It should be noted that not all international instruments are legally binding treaties. Identification of key measures and challenges related to the efforts to guarantee the right of indigenous peoples to participate in decision-making is crucial for the advancement of Indigenous Peoples of Africa.

The emergence of international legal and policy frameworks, especially in the United Nations system, that advocate specifically for full and effective participation of indigenous peoples in matters that concern them in national and local governance. These frameworks are premised on the human-rights based approach to development, which is now policy in the United Nations system and which changes the relationship of addressees of development programs, including indigenous peoples, from passive recipients to rights holders and active participants. The United Nations Declaration on the Rights of Indigenous Peoples is an important emerging instrument which explicitly recognizes the principle of free, prior and consent when indigenous peoples are affected by policies, programs and development projects (articles 10, 20, and 30. Article 10 of the Declaration)

Since its inception, the United Nations Permanent Forum on Indigenous Issues (UNPFII) has been formulating and advocating policies for the full and effective participation of indigenous peoples in all matters that concern them and stands firmly behind the human rights based approach to development and the principle of free, prior and informed consent.

One of the fundamental emerging frameworks, which provides the rationale of fully and meaningfully engaging indigenous peoples in governance is the principle of free prior and informed consent. The principle is acknowledged in various documents within the field of international human rights law, such as Article 6 of the ILO Convention (No.169) Concerning Indigenous and Tribal Peoples in Independent Countries, which refers to the principle of free and informed consent in the context of establishing mechanisms for free participation at all levels of decision-making in "elective institutions and administrative bodies responsible for policies and programmes which concern them". The article also refers to consultations through representative

institutions whenever consideration is being given to legislative or administrative measures which may directly affect indigenous peoples. Furthermore, Article 7(1) and (2) of the ILO Convention state that:

“The peoples concerned shall have the right to decide their own priority for the process of development as it affects their lives, beliefs, institutions, and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, the extent possible over their own economic, social and cultural development. In addition they shall participate in the formulation, implementation and evaluation of plans and programs for national and regional development, which may affect them directly...Governments shall ensure that whenever appropriate, studies are carried out, in cooperation with the peoples concerned, to assess the social, spiritual, cultural and environmental impact on them of planned development activities. The results of these studies shall be considered as fundamental criteria for the implementation of these activities”.

On March 15, 2006, United Nations Member States approved the establishment of a new Human Rights Council to replace the Geneva-based Commission on Human Rights, which had come under fire for excessive politicization. The Council held its first session in Geneva from June 19-30, 2006. In this first session of the council, the Declaration on the Rights of Indigenous Peoples was adopted. This universal human rights instrument is celebrated globally as a symbol of triumph and hope. Effective implementation of the Declaration would result in significant improvements in the global situation of Indigenous Peoples.

The only worry for Indigenous Peoples of Africa is with all this instruments which are already set in place is Africa ready to accept them and embrace the rights of Indigenous peoples? Can they ratify and implements human rights as they have done those of the Convention on Biological Diversity, climate change and other environmental, health and development conventions? If participation has to be real then Governments have to allow Indigenous peoples to contribute in the planning, implementations and monitoring and evaluation of the human rights policies and international policies in the respective countries.

Recommendations

It should be noted that not all international instruments are legally binding treaties and therefore there is need for governments to take the following measures:

1. Recognize the existence of Indigenous Peoples including through the entrenchment of their rights within national constitutions
2. Secure the participation rights of indigenous peoples without any form of discrimination in: all political bodies and institutions; within decision-making processes; within processes aimed at conflict resolution; in the allocation and distribution of land and in access to natural resources, most notably in cases where they have been expelled from their traditional lands, cut off from traditional means of livelihood and denied the opportunity to benefit from the natural resources located on these lands.
3. Progressively realize the right to education Indigenous Peoples and other minorities groups with the aim of strengthening their capacity to participate in decision-making processes that affect them and the countries in which they live.
4. Donors, International Organizations and NGOs should step up contributing funding that can help the advancement of Indigenous peoples worldwide and especially those from Africa who are more vulnerable to marginalization, exclusion and recognition.
5. Indigenous Peoples organization should work together as a team without excluding, discriminating other groups from participation.
6. Awareness creation, capacity building on the rights of Indigenous Peoples and especially those of women and youth should be encouraged and be mainstreamed in all activities.
7. Gender mainstreaming should be encouraged as key to activities of Indigenous Peoples with a hope to be inclusive in participation of all genders in the community and at all levels of decision making.

Government and partners should help strengthen and identify together with Indigenous peoples decision-making processes and institutions as well maintaining and developing those institutions for Indigenous peoples

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