

TONATIERRA

Comment by Tupac Enrique Acosta

29th session of the Human Rights Council Advisory Committee
February 20-24, 2023
Geneva, Switzerland

In regard to the Advisory Committee's draft report on the impact on human rights of new technologies for climate protection (A/HRC/AC/29/CRP.2)

Good greetings.

The prohibition against discrimination is a preemptive norm in international human rights law. My testimony before this session of the Human Rights Advisory Committee is to call for the postponement of the publication of this draft report until such time as the contradictions, weak analysis, weak recommendations, and systematic discrimination in methodology *vis-à-vis* the Human Rights of **Indigenous Peoples** are addressed and corrected.

Specifically, TONATIERRA calls the Advisory Committee to review our submission of April 8, 2022, during the informal consultation held by the Human Rights Council's Advisory Committee on this issue. By invitation, TONATIERRA participated in this virtual consultation. During this session, a point of discussion was the exclusion and marginalization of the Indigenous Peoples of the world in the conceptualization, design, implementation, and evaluation of the "new" climate technologies being identified for the purposes of review by the Human Rights Council.

NTCP and the Right of Free, Prior and Informed Consent

Article 48 of the draft report mentions the SCoPEX experiment in Tucson Arizona and refers to the "extra-constitutional sovereignty over traditional territories" to be exercised by the Indigenous Peoples. This article is poorly written and misleading.

For example, in referring to the O'odham Nations in whose traditional territories the SCoPEX was to be located, the report says that these Original Nations of Indigenous Peoples "live in the area" as if our indigenous nations were mere "populations" and not "peoples" with the full right of Self Determination as "*Peoples, equal to all other peoples...*"

This article states that the extra constitutional character of the jurisdiction of the Indigenous Nations Right to Self Determination and Free, Prior, and Informed consent is a delegated right under US law. This is ridiculous and misleading. How can an extra constitutional right be the construct of a domestic legal system, in this case the US constitution?

Article 48 mentions the Memoranda of Understanding between federal entities and the tribal governments about their use of O’odham airspace, acknowledging their “special rights” to it. The Human Rights of the Indigenous Peoples are not “special rights”, they are inherent and of international character and import, to be recognized, respected, and guarantees for the protection of the same must be affirmed by the international community.

Additionally, Article 48 neglects to reveal that the “tribal governments” referenced are the product of the domestication and assimilation policies of the same US government, and whose basis is the Commerce Clause of the US Constitution, specifically the Howard Wheeler Indian Reorganization Act of 1934.

Article 71 of the draft report accurately states that the right of Free, Prior and Informed Consent has very often been ignored. Yet in making a recommendation on this critical issue, the best the report has to offer in terms of recommendation is a weak call for “procedures”, not human rights law, to “seek” Free, Prior, and Informed Consent by Indigenous Peoples for development projects impacting their inherent human rights and traditional territories.

Conclusion

Reiterating our position as stated in our submission of April 8, 2022, before the Advisory Committee, TONATIERRA once again calls for the application of the principles of **UNHRC Resolution 48/7 “Negative impact of the legacies of colonialism”** (A/HRC/RES/48/7) to address the institutionalized and systemic legacies of discrimination and colonialism within the UN system, specifically as regards the methodologies of analysis in the draft report.

We call for the Advisory Committee to recognize that the report neglects entirely the International Treaty Rights of the Original Nations of Indigenous Peoples, as a fundamental dimension of the human rights considerations that must be considered.

Therefore, we call the Advisory Committee to integrate the International Treaty Rights of Indigenous Peoples over traditional territories when making the necessary corrections in the draft report.

In this regard, we once again invoke the **“Study on treaties, agreements and other constructive arrangements between States and indigenous populations”** E/CN.4/Sub.2/1999/20, Final Report by Miguel Alfonso Martínez, Special Rapporteur.