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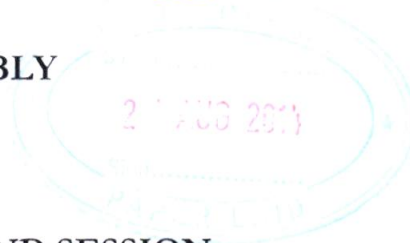


REPUBLIC OF KENYA



paper laid by
Hon. Shinali Jon
27/8/2014
Shumbi

THE NATIONAL ASSEMBLY



ELEVENTH PARLIAMENT-SECOND SESSION

The International Parliamentary Conference on the Rights of the Indigenous
Peoples
in Santa Cruz de La Sierra, Bolivia

Report of the Kenyan Parliamentary Delegation
7 -9 April, 2014

July, 2014

Clerk's Chambers
Kenya National Assembly

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ABBREVIATIONS AND ACRONYMS

FPIC: Free, Prior, and Informed Consent

IP: Indigenous People

ILO: International Labour Organization

IPU: Inter-Parliamentary Union

UN: United Nations

UNDP United Nation Development Programme

EXECUTIVE SUMMARY

Between 7 and 9 April 2014, it was my pleasure to attend together with two members of the Kenya National Assembly the **International Parliamentary Conference on Parliaments and the Rights of the Indigenous Peoples**, jointly organized by the Inter-parliamentary Union and the Plurinational Assembly of Bolivia which took place in the city of Santa Cruz de la Sierra, Bolivia.

The conference was attended by different participants from over 28 parliaments together with international organizations such as the UNDP. The conference was a follow up to the International Parliamentary Conference on **“Parliaments, Minorities and Indigenous Peoples: Effective Participation in Politics”**, held in Tuxtla Gutiérrez, Chiapas, Mexico, from 31 October to 3 November 2010, which generated the *Chiapas declaration*.

The strategic objective of the conference was to prepare guidelines for preparing a parliamentary contribution to the World Conference on Indigenous Peoples. It also provided a platform to affirm the validity of the *Chiapa declaration* to engage parliament to move towards constitutional and legislative action on the rights of the indigenous peoples.

The Kenyan delegates actively participated in the proceedings of the conference and contributed both at the plenary discussions and the group discussions. It was a

fulfilling experience for the members of the delegation to participate in the International Conference.

The Conference adopted the Santa Cruz declaration with recommendation for parliamentary action which urged parliaments to implement its call for its action where every parliament will work towards:

1. Recognizing the diversity in society and adopt a Plan of Action to make the right to equal participation and non-discrimination a reality for indigenous peoples everywhere;
2. Ending discrimination and providing meaningful participation of indigenous peoples, and in particular indigenous women, in decision-making in parliament and elsewhere;
3. Ensuring that indigenous peoples effectively monitors activities of their representatives in Parliament and hold them to account for their actions and omissions.

The complete resolution of the conference with recommendations for parliamentary action and the Santa Cruz Declaration are annexed to this report

(See Annexure 1&2)

The Kenyan delegation to the conference consisted of the following:

1. The hon. Benard M. Shinali, M.P. **Leader of the Delegation**
2. The hon. John Munyes, Senator.

3. The Hon. Protus Ewisit Akujah, M.P.

The delegation was accompanied by Mr. Mwebi George, Assistant Hansard Editor and Mr. Ahmed Hassan Odhwa, Senior Research Officer (**Delegation Secretaries**).

Mr. Speaker sir,

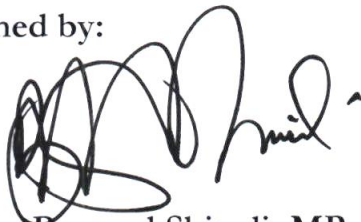
The delegation is most grateful to the Office of the Speaker and the Clerk of the National Assembly for the necessary support and arrangements made to facilitate the delegation to travel and participate in the conference. I can confirm to you that the Kenya Parliament was adequately represented in the conference.

Finally, I thank my fellow delegates for their foresight and thoughtful participation in the delegation's activities and their dedication to our program throughout the visit.

On behalf of the delegation, I now present with great honour and pleasure this Report and request the House to consider and adopt it.

Thank you.

Signed by:

A handwritten signature in black ink, appearing to read 'Bernard Shinali', with a stylized flourish at the end.

Hon. Bernard Shinali, MP

CHAPTER 1 INTRODUCTION

This report gives an account of the Kenya Parliamentary delegation participation in the International Parliamentary Conference on Parliaments and the Rights of the Indigenous held in Santa Cruz de la Sierra on 7- 9 April 2014.

Aims and Objectives of the Conference

1.1 The conference's long-term goal was to underscore the pivotal role of parliaments in the realization of the rights of the indigenous people. The strategic objective of the conference was to prepare guidelines for preparing a parliamentary contribution to the World Conference on Indigenous Peoples. This World Conference, convened by the United Nations General Assembly, will be held in September 2014 in New York. It will provide a unique opportunity to better understand indigenous peoples, the difficulties they have faced historically and the ones they are currently facing. It will also provide an opportunity to share best practices on the realization of their rights.

1.2 The Conference provided a platform for participants to exchange information about the experiences, good practices and challenges encountered by parliaments in their efforts to guarantee the political representation of indigenous peoples and the effective protection of their rights

1.3 In addition, the conference provided the delegation a welcome opportunity to strengthen parliament to parliament relations between the Kenyan parliament and the Plurinational Assembly of Bolivia.

The delegation also had an opportunity to meet and discuss issues of mutual concern with the participants from the other parliaments. The programme of the delegation

ended with a dinner hosted by Plurinational Assembly of Bolivia for the conference participants.

Acknowledgement

1.4 The delegation extends its gratitude to the President of the Senate and Speaker of the Chamber of Deputies of the Plurinational Assembly of Bolivia and the Secretary General of the Inter-parliamentary Union for inviting the Kenya Parliament to participate in this important conference.

1.5 The delegation wishes to acknowledge the efforts of the many people who contributed to the successful participation of the conference by the delegates, particularly the officers of the Plurinational Assembly of Bolivia and the Inter-parliamentary Union who extended necessary support and provided logistical arrangements during the conference.

1.6 Finally, the delegation appreciates the expert presenters for sharing their time, views and knowledge with the delegates. The delegation indeed appreciates them deeply.

CHAPTER 2

THE INTERNATIONAL PARLIAMENTARY CONFERENCE ON PARLIAMENTS AND THE RIGHTS OF THE INDIGENOUS PEOPLES

Background

2.1 The Inter-Parliamentary Union (IPU) is the international body of parliaments of member states, which provides a platform for world-wide parliamentary dialogue and engagements. IPU's primary goals are peace and democracy. It gives special priority to preventing and eliminating conflict through political dialogue. It responds to crises which affect world or regional security and monitors certain conflict situations. A strong and efficient parliament is critical to democracy. IPU works to make parliaments more effective in fulfilling their government oversight and legislative roles, in guaranteeing people's rights and liberties and in securing peace and development. Parliaments play a critical role in social and economic development. IPU supports parliaments on key international development goals, on making development aid more effective and on strengthening parliamentary action on climate change.

2.2 IPU works closely with the United Nations and other multi-lateral bodies to ensure there is a parliamentary dimension to international cooperation, global governance as well as in the resolution of major international issues.

2.3 There are currently 162 national parliaments who are members of the IPU and ten regional parliamentary assemblies who are associate members.¹ Members of IPU are affiliated with one of the six geopolitical groups that are currently active in the IPU.

Agenda for the International Parliamentary Conference on: Parliaments and the Rights of the Indigenous Peoples

2.4 The agenda of the International Parliamentary Conference on Parliaments and the rights of the Indigenous Peoples, which was held in Santa Cruz de la Sierra, Bolivia from 7 to 9 April 2014, addressed the following agenda items:

- The current legislative framework for the rights of indigenous peoples, including the 2007 United Nations Declaration on the Rights of Indigenous Peoples.
- Parliamentary action to promote the rights of indigenous peoples.
- Free, prior, and informed consent (FPIC)
- Parliamentary contribution to the World Conference on Indigenous Peoples

2.5 In addition to participating in each of these sessions and participating in the deliberative sessions at the plenary, members of the Kenyan Parliamentary delegation participated in:

Hon. Bernard Shinali, MP participated in panel discussion, explaining to the delegates the country's achievements on the protection of the rights of the indigenous peoples

- Group discussions in coming up with the conference declarations
- Informal sessions with other members of the delegations

The current legislative framework for the rights of indigenous peoples, including the 2007 United Nations Declaration on the Rights of Indigenous Peoples

2.6 The Participants discussed the expected outcomes of the World Conference on Indigenous Peoples to be held in New York in September 2014. Participants examined the provisions of the UN Declaration, assessed the extent to which it has responded to the expectations and rights of indigenous peoples identified lessons learnt and flagged issues that needed to be addressed during and after the next World Conference.

Parliamentary action to promote the rights of indigenous peoples

Membership of IPU is available on the IPU website:

<http://www.ipu.org/english/whatipu.htm>

2.7 Participants identified the role of parliaments: what parliaments have done and are doing to follow up on the Chiapas Declaration adopted at the International Parliamentary Conference on minorities and indigenous peoples in November 2010. They identified relevant good practice as well as challenges encountered.

Free, prior, and informed consent (FPIC)

2.8 FPIC is a basic right to be observed in the process of making decisions and devising policies that affect indigenous peoples. Participants reviewed how this right is observed or is not observed, what the challenges are and how they can be overcome.

Parliamentary contribution to the World Conference on Indigenous Peoples

2.9 The World Conference will take place in the context of the UN General Assembly in September. Participants agreed on the message that should be conveyed to that conference identifying what parliaments should do in implementing its outcome. They identified how the rights of indigenous peoples will be promoted in the post-2015 development agenda.

CHAPTER 3 THE CONFERENCE RESOLUTIONS AND RECOMMENDATIONS FOR PARLIAMENTARY ACTION

3.1 Following the conclusion of the International Parliament Conference on parliaments and the rights of the indigenous people, participants unanimously adopted the Santa Cruz declaration with recommendations that should inform future constitutional and legislative reforms, actions taken in parliament to ensure transparency and accountability, and other parliamentary measures to ensure respect for the rights of indigenous peoples with recommendations for parliaments.

3.2 Promote the political participation of indigenous peoples by advocating the participation of indigenous peoples in political processes; placing special emphasis on indigenous women's participation; introducing special legislative measures to facilitate their election; providing training for indigenous candidates; introducing capacity-building programmes for members of parliament on issues related to indigenous peoples; encouraging parliaments to conduct a survey/study on the political participation of indigenous peoples.

3.3 Ensure respect for the principle of free, prior and informed consent making sure that indigenous peoples are involved at all levels of the decision-making process

relating to their rights and, in particular, implementation of the principle of free, prior and informed consent;

3.4 Prepare and adopt National Action Plans to implement the UN Declaration on the Rights of Indigenous Peoples; setting a baseline to be able to gauge progress; and identifying a funding mechanism to ensure implementation of national action plans.

3.5 Take other measures in support of indigenous peoples' rights, such as: encouraging parliaments to discuss the post-2015 agenda and to promote the inclusion of indigenous peoples' concerns in the agenda and promoting a third UN decade on indigenous peoples.

3.6 Request the IPU to pursue its involvement in support of indigenous peoples' rights collecting and disseminating good practices on the political participation of indigenous peoples; mapping the presence of indigenous peoples in parliaments (initially in 72 countries); conducting an audit of parliamentary mechanisms that address issues related to indigenous peoples; working closely with UN agencies, funds and programmes in all activities in support of indigenous peoples.

ANNEXURE 1

1. Declaration of Santa Cruz De La Sierra



Inter-Parliamentary Union
Interparlamentarische Union



INTERNATIONAL PARLIAMENTARY CONFERENCE ON: PARLIAMENTS AND THE RIGHTS OF INDIGENOUS PEOPLES

Jointly organized by the Plurinational Legislative Assembly of Bolivia and the Inter-Parliamentary Union

7 - 9 April 2014 – Santa Cruz de la Sierra, Bolivia

Declaration of Santa Cruz de la Sierra

We recognize that important progress has been made in many countries to combat discrimination and uphold the rights of indigenous peoples. New laws have been adopted and existing laws have been strengthened. Several States now provide for indigenous peoples to have a say in decision-making that affects their lives through mechanisms that seek their free, prior and informed consent.

We note, nonetheless, that we have a very long way to go. Indigenous peoples have the inalienable right to full and equal membership of our nations and this right has yet to be translated into public policies that are sensitive to their situation, needs and aspirations and accompanied by sufficient resources. This requires a meaningful participation of indigenous peoples in all countries at all levels of government and parliament. This also means that all public policies must be submitted for their prior consultation.

We affirm the continued validity of the *Chiapas Declaration*.¹ We urge all Parliaments to implement its call for action whereby every Parliament will work to:

1. Recognize the diversity in society and adopt a Plan of Action to make the right to equal participation and non-discrimination a reality for indigenous peoples everywhere;
2. End discrimination and provide for meaningful participation of indigenous peoples, and in particular indigenous women, in decision-making in parliament and elsewhere;
3. Ensure that indigenous peoples can effectively monitor the activity of their representatives in Parliament and hold them to account for their actions and omissions.

The United Nations Declaration on the Rights of Indigenous Peoples enshrines the rights of indigenous peoples and proposes procedures for their implementation. We urge Parliaments to translate the Declaration into national law and to seize every opportunity to promote awareness of it among all sectors of society, including among indigenous peoples themselves in their traditional languages and among the judiciary. In the same vein, we urge parliaments to work closely with national human rights institutions.

¹ Declaration adopted by the participants of the International Parliamentary Conference on "Parliaments, Minorities and Indigenous Peoples: Effective Participation in Politics", held in Tuxtla Gutiérrez, Chiapas, Mexico, from 31 October to 3 November 2010.

We draw attention to the *Quebec City Declaration*,² which recommends additional measures for parliaments to implement the Declaration on the Rights of Indigenous Peoples, including by using the Declaration as a basis for reconciliation processes.

We invite Parliaments to ensure that all legislative proposals are accompanied by an assessment of their potential impact on indigenous peoples. We suggest that such assessments must be based on the standards contained in the Declaration on the Rights of Indigenous Peoples and that they include an analysis of their impact on indigenous women and men.

We are encouraged by recent advances to ensure that indigenous peoples are consulted on matters that affect their lives and to implement their right to free, prior and informed consent. We emphatically reiterate that the operative word is “consent” and that mere consultation does not meet the requirement of the Declaration on the Rights of Indigenous Peoples and ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries. We insist that the fundamental objective of all consultation procedures should be to obtain free, prior and informed consent.

We are concerned by the exploitation of indigenous peoples’ land, territories and resources without their free, prior and informed consent. We call on industry, private businesses and other parties to uphold the standards contained in the Declaration on the Rights of Indigenous Peoples, abide by the Guiding Principles on Business and Human Rights endorsed by the UN Human Rights Council and follow the Business Reference Guide to the UN Declaration on the Rights of Indigenous Peoples issued by the United Nations Global Compact.

We welcome the decision to convene a World Conference on Indigenous Peoples and urge States to reach an early agreement that will allow indigenous peoples to have a meaningful role in the proceedings of the Conference and in the formulation of its outcome document.

We call on States to ensure that the Conference outcome document builds on the Declaration on the Rights of Indigenous Peoples and in no way detracts from the global minimum standards it contains. We thank the Government of Mexico for its invitation to host a preparatory meeting and hope that this meeting can take place as soon as possible.

We call on the World Conference to draw attention to the need for the post-2015 sustainable development agenda to emphasize well-being in all its dimensions as opposed to mere economic growth. For indigenous peoples, a sustainable development agenda can only be one that is respectful of their cultures, lands, territories and resources.

We would like to see the World Conference call for the inclusion of clear goals and targets related to participation, transparency and accountability in the new sustainable development agenda. Being able to participate in decision-making that affects our lives and the social and environmental context around us is in itself a key dimension of well-being and particularly essential for indigenous peoples.³

We also call on the World Conference to recognize the role of parliaments in ensuring that indigenous people have access to decision-making and that their rights are upheld. We will submit a series of specific parliamentary actions for the consideration of the World

² Declaration summarizing the debate during the 127th IPU Assembly (Quebec City, October 2012) on the theme “Citizenship, identity and linguistic and cultural diversity in a globalized world”

³ See also the *Quito Communiqué* adopted by the 128th IPU Assembly (Quito, March 2013) summarizing the debate on the theme of *From unrelenting growth to purposeful development “buen vivir”: New approaches, new solutions.*

Conference.

We invite the United Nations to declare a third international decade of the world's indigenous people.

We call on the IPU to monitor implementation of this Declaration and to promote parliamentary follow-up of the outcome of the World Conference. We invite the IPU to work with United Nations agencies, funds and programs to develop programmes of activities to strengthen the participation of indigenous peoples in parliaments and to facilitate parliamentary action in support of making their rights a reality. We encourage the IPU to facilitate networking among parliaments and invite it to convene a first global conference of indigenous members of parliament.

ANNEXURE 2

2. Recommendations for the Parliamentary Action



INTERNATIONAL PARLIAMENTARY CONFERENCE ON: PARLIAMENTS AND THE RIGHTS OF INDIGENOUS PEOPLES

Jointly organized by the Plurinational Legislative Assembly of Bolivia and the Inter-Parliamentary Union

7 - 9 April 2014 – Santa Cruz de la Sierra, Bolivia

Recommendations for parliamentary action

These recommendations should inform future constitutional and legislative reforms, actions taken in parliament to ensure transparency and accountability, and other parliamentary measures to ensure respect for the rights of indigenous peoples.

The United Nations Declaration on the Rights of Indigenous Peoples should serve as the point of departure in all follow-up activities, together with the Chiapas Declaration and the Declaration of Santa Cruz de la Sierra that was adopted at the International Parliamentary Conference.

Promote the political participation of indigenous peoples by:

- Launching a broad sensitization campaign on the rights of indigenous peoples;
- Advocating the participation of indigenous peoples in political processes;
- Placing special emphasis on indigenous women's participation;
- Introducing special legislative measures to facilitate their election;
- Providing training for indigenous candidates;
- Introducing capacity-building programmes for members of parliament on issues related to indigenous peoples;
- Encouraging parliaments to conduct a survey/study on the political participation of indigenous peoples;
- Making every possible use of parliament's oversight role to ensure the effective implementation of laws pertaining to the rights of indigenous peoples;
- Creating all-party groups in parliament on issues related to indigenous peoples;
- Promoting bilateral exchanges between such groups; and

- Encouraging UN agencies, funds and programmes to use all available channels to support parliaments on issues related to indigenous peoples.

Ensure respect for the principle of free, prior and informed consent by:

- Incorporating the principle of free, prior and informed consent in domestic legislation and ensuring its implementation;
- Making sure that indigenous peoples are involved at all levels of the decision-making process relating to their rights and, in particular, implementation of the principle of free, prior and informed consent;
- Paying special attention to the full implementation of free, prior and informed consent in relation to the extractive industries;
- Encouraging the use of guiding principles on business and human rights and the UN Global Compact Business Reference Guide;
- Disseminating information about the work done by parliaments on free, prior and informed consent among other parliaments, the United Nations and the IPU;
- Requesting that the World Conference adopt a general standard on free, prior and informed consent;
- Encouraging National Human Rights Commissions to report to parliaments about the status of implementation of the principle of free, prior and informed consent; and
- Fostering parliamentary involvement in international human rights reporting mechanisms.

Prepare and adopt National Action Plans to implement the UN Declaration on the Rights of Indigenous Peoples by:

- Taking ownership of the United Nations Declaration;
- Organizing sensitization campaigns for different stakeholders on the Declaration;
- Incorporating the five recommendations issued by the Chiapas Declaration in the national action plans drawn up by parliaments;
- Setting up a multi-sectoral national committee (including civil society) to assist in drawing up such a plan;
- Setting a baseline to be able to gauge progress; and
- Identifying a funding mechanism to ensure implementation of national action plans.

Take other measures in support of indigenous peoples' rights, such as:

- Encouraging parliaments to discuss the post-2015 agenda and to promote the inclusion of indigenous peoples' concerns in the agenda;
- Promoting a third UN Decade on indigenous peoples;

- Taking action on the existing declarations and recommendations at the United Nations and country levels;
- Ensuring respect for nationality, biodiversity and the right to natural resources;
- Working with different parliamentary organizations and mechanisms to debate and develop common legislative proposals concerning indigenous peoples, following the example of UNASUR and PARLATINO, and to promote them through different forums;
- Working with the UN Indigenous Peoples Partnership;
- Promoting gender equality in parliament;
- Adopting a law to facilitate coordination between indigenous and ordinary justice systems;
- Setting up a Secretariat to draft, implement and follow up a binding resolution for countries to respect the rights of indigenous peoples;
- Becoming familiar with international instruments related to indigenous peoples such as the Convention on Biological Diversity (CBD), and ILO Convention No. 169; and
- Highlighting respect for self-determination, freedom of expression and peace in the world.

Request the IPU to pursue its involvement in support of indigenous peoples' rights by:

- Facilitating a parliamentary presence at the 2014 World Conference on Indigenous Peoples and transmitting a common parliamentary message to the World Conference;
- Providing capacity-building support to parliaments based on the Handbook for Parliamentarians on the Rights of Indigenous Peoples;
- Collecting and disseminating good practices on the political participation of indigenous peoples;
- Mapping the presence of indigenous peoples in parliaments (initially in 72 countries);
- Conducting an audit of parliamentary mechanisms that address issues related to indigenous peoples;
- Working closely with UN agencies, funds and programmes in all activities in support of indigenous peoples; and
- Convening future parliamentary meetings to track and follow up progress in implementing the Chiapas Declaration, the Declaration of Santa Cruz de la Sierra and the outcome of the 2014 World Conference.