



## **Overview of United Nations Mechanisms Related to Indigenous Issues**

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## 1. Preface

Whether it concerns the Cree in the Canadian province of Québec or the numerous Saami cultures in the Scandinavian nations, the Maori of Aotearoa (in New Zealand) or the Andean People in Peru, no corner of the globe is beyond reproach for the abuse and oppression recurrently wrought against the region's autochthonous and more often than not minority inhabitants. As such, the topic of indigenous peoples has fast become an important aspect of human rights discourse. This is due in no small part to the organising and lobbying efforts exerted by various indigenous communities throughout the world and resulting in the establishment of various supportive UN instruments such as the Working Group on Indigenous Populations (WGIP).

It is estimated that well over 3000 indigenous nations live within the borders of some 200 countries with the majority, approximately 150 million indigenes, residing in Asian nations. These peoples, in addition to being the *original* inhabitants of a particular region, often practice unique cultures and customs in their personal as well as social settings. As a community, they are characterized by the diversity of their cultural, religious, environmental, and economic organisational structures. Though most maintain traditional lifestyles while some do not, as a whole, indigenous peoples are personified by the profound attachment they feel to their ancestral land and their desire to maintain the uniqueness of their identities. Their rich traditions are of exceptional value from countless perspectives; whether it is their educational and anthropological worth, or their historical and didactic capabilities, indigenous communities are marvels of cultural heritage that must be protected from the ravages of both short-term thinking and narrow-minded *development*.

Historically, indigenous peoples have faced many hurdles in their attempts to protect their traditional way of life. During European colonialism, indigenous peoples throughout the world suffered under massacres, forced relocation, systemic assimilation programmes, residential schools (in both Canada and Australia for instance), disruptive artificial colonial borders (such as those applied to the continents of Africa and Asia), and in the most extreme cases, outright genocide. Indigenous peoples' ability to survive, endure, and eventually adapt merely buttresses the validity of their claims to distinctiveness.

To a non-indigenous person, the loss of life is regarded as the ultimate injury. While to both indigenous persons and indigenous communities, it is the loss of land and culture that represents the supreme violation. Accordingly, it was not European boorishness that caused the most damage but European cupidity as represented by land theft and *cultural* genocide, for its destructive impact reached beyond the flesh and touched the very spirit of the victims. It is for these reasons, *inter alia*, that the three most basic and fundamental categories slated for protection under indigenous peoples' claims are self-determination, land & resource rights, and cultural heritage. These topics are not only vital for their economic and moral well-being but for their very survival as a people.

## 2. Indigenous People and the UN

Until the 1971 appointment of Jose Martinez Cobo as Special Rapporteur for a study on discrimination against indigenous peoples, they were virtually excluded from the UN system. It was only as a result of Cobo's comprehensive report (completed a full ten years after his appointment) in which widespread inequality was documented, that indigenous peoples were welcomed into the UN structure.

The first step towards formal recognition came by way of the UN Working Group on Indigenous Populations established in 1982. The mandate of the WGIP is rather straight forward. It is to assess developments in the protection of human rights as they relate to indigenous peoples by combining the concerns and aspirations of a variety of disparate indigenous societies and transforming them into international protection standards. The second portion of its mandate, the establishment of international standards, has led to the preparation of a Draft Declaration on the Rights of Indigenous Peoples. This document, which we will examine shortly, was subsequently submitted to the Sub-Commission on the Prevention of Discrimination and Protection of Minorities and adopted in 1994.

As a result of the increasing activities of indigenous peoples within the UN framework, most importantly the presentation of the Draft Declaration and their participation in the 1993 UN World Conference on Human Rights, the General Assembly, in a 21 December 1993 resolution, proclaimed the years 1995-2004 as the International Decade of the World's Indigenous People. This act was intended to serve two distinct purposes. On the one hand, it was an implicit recognition of the dire circumstances characterising indigenous communities the world over, particularly in the areas of education, health, human rights, and the environment. On the other, it was also meant as a call to action; a decisive request for international solidarity and cooperation in the resolution of the troubles faced by indigenous peoples. The commonality aspect of this endeavour was best exemplified by the adopted theme of the Decade: 'Partnership in Action'. As for the practicalities, the UN High Commissioner for Human Rights was appointed Coordinator of the Decade and a Voluntary Fund was established for the purpose of providing financial assistance to the various projects launched under the programme.

Before reviewing the successes and failures of the International Decade, let us briefly examine the fundamental constructs of indigenous life.

### A. What does it mean to be *Indigenous*?

For a variety of reasons, some laudable others not, the UN has never approved a formal definition of the term *indigenous*, whether applied to a person, people, community, or nation. This notwithstanding, a draft definition prepared by former Special Rapporteur Jose Martinez Cobo has been frequently cited by various bodies including the WGIP. Accordingly, the term indigenous people should be understood to include groups who:

1. Have *historical continuity* with pre-invasion and pre-colonial societies that encroached on their territories;

2. Consider themselves distinct from other societies now established in those territories;
3. Form non-dominant sectors of society;
4. Wish to preserve and transmit to future generations their ancestral territories, cultural patterns, social institutions, and legal systems so as to continue their existence as a distinct people.

The term indigenous *person* is also quite specific distinguishing only those individuals that both self-identify as indigenous and that are recognized and accepted by the group itself as being a member.

## **B. Which issues are of importance to indigenous peoples?**

Though indigenous peoples tend to vary as much in ideology as they do in location, for the most part, the rights these varied groups fight for tend to fall within three broad categories: 1) Self-determination, 2) Land & resource rights, and 3) Cultural heritage.

### **Self-determination**

Even prior to the establishment of the WGIP, indigenous representatives have been continuously and passionately asserting their right to self-determination. To appease cynics, indigenous groups have often voiced this claim on official texts of the dominant paradigm: that is, both initial articles of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, when read together, jointly formalised the right of self-determination for *all* peoples and with regards to *all* aspects of their existence. Any qualification of this right as it is applied to indigenous peoples would thus only further evidence the inferior status granted them by the international community and bolster their claims for complete separation.

For indigenous nations, this entitlement is rooted in the fundamentally unique status they hold as both autochthonous peoples and as self-governing societies, regardless of the status they were relegated to during the maelstrom known as colonisation. It is of the utmost relevance that we acknowledge that their dispossession and eventual subjugation came by way of force and not consent. Furthermore, it should be also noted that their claims are asserted in the most vehement language because the vast majority of indigenous groups (not to say all them), do not wish to be participants in the dominant state where they now find themselves, whether it be in the US, Brazil, Australia, or Indonesia. Both historically and presently, indigenous nations have attempted to negotiate with governmental representatives for a comprehensive separation between the parties on political, cultural, and physical levels. Integration, or even assimilation, *was never* and *is not* an option to them. They are thus seeking to renegotiate their political status and thereby participate in the establishment of equitable relationships with the contemporary states.

In many countries, this process would occur by way of constitutional reviews which would redefine existing notions of territorial and political sovereignty. Some states such as Argentina, Canada, Chile, Denmark, Mexico, and Peru have shown a readiness to at least dialogue with indigenous peoples about self-determination so

long as the language used does not in anyway imply a threat to the territorial integrity of the state.

This appears to be the most difficult (and sometimes provocative) point for states and non-indigenous people to grasp (and the only one I will address for a stance on this issue predetermines a stance on all others). In the end, and contrary to popular perception, indigenous peoples do not wish to join *modern* civilization; they only wish to be left alone.

Let us now return to our review of the Decade.

### **3. The International Decade**

As noted above, increased activity on the part of indigenous peoples coupled with a greater willingness of states and NGOs to engage this matter led to the inauguration of the International Decade of the World's Indigenous People (1995-2004). This chapter was purposely proclaimed during the 1993 World Conference on Human Rights as a way to underscore the organic connection between human rights discourse and the plights' of indigenous peoples.

Though the tone of the proclamation was both passionate and hopeful, for a number of reasons, the energy subsequently exerted did not match the initial bombast. First, the General Assembly required a full two years to adopt a Programme of Activities for the Decade with the document's approval being repeatedly postponed until December 1995. Second, within the gaggle of priorities listed, we remark that the main objective of the Decade appeared to be somewhat cosmetic in nature: rather than adopt clear goals, the Assembly focused on the abstract aim of achieving greater international cooperation in the search for a solution to the problems faced by indigenous peoples. Consequently, involved parties were charged with the somewhat academic task of developing international standards that could make the basis for a future treaty on the protection of indigenous peoples and with preparing recommendations that could be applied to domestic legislation for that same purpose. Another main objective of the Decade was to *give consideration* to the establishment of a Permanent Forum for indigenous peoples within the UN system. Though a PF was later established, its final composition is hardly as authoritative as it was originally envisioned.

To assess the real outcomes of the Decade, two conferences were scheduled: the first was to take place midway through, in 1999, and the second following its completion in 2004.

#### **A. Coordination of the Decade's Activities**

In keeping with the lackadaisical disposition prevalent in the Assembly's approach towards the Decade, a coordinator for the Decade was only appointed in December of 1997. It was then decided that the UN High Commissioner for Human Rights would double as both human rights and indigenous peoples' tsar. In addition to overseeing the implementation of the programme, the coordinator was commissioned to submit annual progress reports to the Assembly via the Secretary-General. Lastly, the coordinator was also responsible for preparing a mid-term report where she was to

identify any obstacles to the achievement of the Decade's goals and to make recommendations for the resolution of these obstacles. The coordinator was expected to consult with states, agencies, and indigenous peoples bodies for the preparation of the report.

## **B. The Secretary-General's Midway Report**

In the fall of 1999, the Secretary-General laid the groundwork for the first conference when he reported on the interim achievements being made in the implementation of the Decade's Programme of Activities. This report was found by most to be lacking in several respects. Principally, the Secretary-General failed to adequately address the lack of cohesion between UN agencies and bodies, and the fundamental impediment this caused towards the realisation of the Decade's goals. Further, the report, in addition to wholly disregarding the varied activities undertaken by disparate indigenous groups to further the Decade, did not acknowledge the specific domestic steps taken by individual states that effectively ran counter to the overriding objectives of the Decade. Despite these failings, the Secretary-General did call for a formal conference to discuss progress in the implementation of the Decade's objectives and strategies for the second half.

## **C. The Millennium Conference**

The Millennium Conference was held in May 2001 with a two-fold purpose: 1) to assess the Decade's advancement; and 2) to prepare a critical review of the UN's failings in this regard. A final press statement from the Indigenous Delegates (sometimes referred to as the Indigenous caucus) succinctly sums up their findings:

“Although states have not fulfilled their obligations under the Decade's Program of Action, we note with great pride that the Indigenous Peoples of the world have achieved several significant goals. Substantial progress has been made in establishing the First Permanent Forum for Indigenous Peoples in the United Nations' System. Indigenous strategies to educate our communities and peoples have been developed in all regions in the areas of sustainable development, genetic engineering, and in the functioning of the United Nations and its specialized agencies. Through education we have demystified the complex structure of the World Bank, the International Monetary Fund, and the World Trade Organization. Through collective action with civil society we have ensured the voices of Indigenous Peoples, once silenced and marginalized, will be heard, understood and that our concerns will be addressed.”

Finally, in addition to the conceptual remarks noted above, practical analysis gathered from the countless delegates also led to a series of concrete recommendations adopted by way of a conference declaration.

## **D. Successes of the Decade**

### **i. The Permanent Forum on Indigenous Issues**

Enthusiasm for the promotion of indigenous peoples' rights soared towards the end of the 1980s, culminating in discussions for the establishment of a *Permanent Forum*. Indigenous peoples in general and the Working Group in particular were of the joint opinion that the formal constructs of the UN were such so as to discourage, even prohibit the possibility of sincere deliberations on their concerns. This was especially obvious when it came to the participation of indigenous representatives within official UN bodies. Accordingly, the objective underlying the PF was the creation of a body with both the political mandate and independent will necessary to advocate for the interests of indigenous groups within the UN framework. The PF was thus regarded as a potential global forum for the articulation of grievances and real time solutions by indigenous groups, paving the way to the *effective participation* they felt they were entitled to.

On an official level, the prospective composition of the PF was first considered in Vienna during the 1993 World Conference on Human Rights. In its concluding Declaration and Programme of Action, a joint recommendation was made that the establishment of the PF be included as part of the Decade's agenda (later recognised by the General Assembly in the Decade's Programme of Activities as a primary objective).

To further this lofty goal, in 1995 a workshop was held in Copenhagen to discuss the intricacies of the project. The participants mostly came from three main bodies: government, indigenous groups, and academia. In addition to discussing the proposed mandate of the PF, issues of accountability, reporting, membership, participation, activities, and financial support were all raised during the talks. A report was completed by the participants and distributed to governments, indigenous peoples' organisations, and NGOs with a specific request for feedback on the workshop's findings. In 1997, a follow-up workshop was held in Santiago where, in addition to the original participants, NGOs, specialised agencies, and various UN bodies took part in the discussion. They mutually considered the findings of the earlier workshop as well as the Secretary-General's review of those same findings, following which they developed concrete proposals for the creation of the PF. These proposals were subsequently submitted to the Commission on Human Rights with a suggested development schedule.

For their part, indigenous peoples throughout the world organised local conferences to discuss the proposals. Each conference produced a formal declaration with broad recommendations concerning all relevant topics.

These varied stages of the process culminated in the formation of an ad hoc working group for the purpose of evaluating the multitude of proposals compiled over the years. The working group first met in 1999 and again in early 2000. It was during the second session that the group concluded its review and fashioned specific suggestions for the foundation of the PF which was then forwarded to the Commission on Human Rights for discussion.

In the end, the establishment of the *Permanent Forum on Indigenous Issues* was created by way of a Commission on Human Rights Resolution, which was later endorsed by the Economic and Social Council. The PF now serves as a Council Sub-Committee with a general mandate to consider global indigenous issues; specifically, the PF is to 1) advise the Council on the economic and social aspects of education, health, environment, development, culture, and human rights; 2) promote cohesion and coherence in the treatment of indigenous issues within the UN system; 3) prepare and disseminate information as related to indigenous issues; and 4) hold yearly meetings to review progress on these topics.

Though the creation of the PF is, for the most part, seen as one of the few successes of the Decade, a number of organisations have already expressed their discontent with the arrangement. Essentially, the bulk of the complaints can be summarised in two points. First, that issues such as budget, staff, and location were omitted from the final draft was seen as somewhat of a stalling tactic that would only slow the momentum indigenous issues were gaining. And second, the failure to create a PF on *Indigenous Peoples* rather than *Indigenous Issues* demonstrates, to some, the insincerity of the entire procedure. An unwillingness to acknowledge an unqualified right of self-determination to indigenous peoples seemed to be at the root of the verbal gymnastics witnessed.

## **ii. Special Rapporteur on the Situation of Human Rights & Fundamental Freedoms of Indigenous People**

In 2001, the Commission on Human Rights appointed Rodolfo Stavenhagen of Mexico as Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples. The appointment came at a time when popular criticism of the discriminatory practices inflicted against the world's indigenous peoples had reached troublesome levels.

As an expert of the Commission, the SP's role includes both research and advisory segments. In addition to his duties of gathering and exchanging information from the relevant sources (i.e. indigenous groups, states, etc.) on any human rights and fundamental freedoms violations suffered, he is also expected to make recommendations to the Commission on suggested measures that would remedy and prevent such violations.

Since his appointment, the SP has mainly focused on three tasks: research, country visits, and communications analysis.

### **a. Research:**

Through consultations with indigenous groups, states, and the WGIP, the SP identified a number of specific issues deserving of greater investigation by the Commission. These issues included: 1) the impact of development projects on indigenous communities; 2) domestic legislation and its relationship with indigenous peoples; 3) modern justice systems and their effect on customary indigenous practices; 4) the preservation and development of indigenous cultures; 5) the trafficking of indigenous children; 6) self-determination; and 7) old and new forms of discrimination against indigenous peoples.

These topics are to be sequentially targeted for evaluation by the SP on a yearly basis. For instance, in 2003 the SP presented a first report in which he evaluated a series of industrial development projects and the impact occasioned on the human rights of indigenous peoples. Particular attention was given to the social & economic effects of the projects. The report was later submitted to indigenous groups, states, and various industries. This year, the SP is examining the relationship between indigenous social systems and modern justice constructs with the purpose of achieving a balance between their distinctive customary practices and the dominant national ones.

**b. Country visits:**

So as to encourage positive dialogue between the state and indigenous groups, the SP is expected to conduct a number of on-site country visits, following which a report is to be submitted to the Commission detailing the treatment of indigenous peoples within the state. In addition to providing opportunity for the evaluation of local and national initiatives taken with regards to the protection and assistance of indigenous peoples, such visits raise global awareness by reframing the indigenous topic in a collaborative light.

**c. Communications:**

The SP receives a multitude of communications from indigenous groups, NGOs, and other organisations alleging violations of indigenous peoples' human rights and fundamental freedoms. Because of the potential political implications such communications undoubtedly carry, particularly for the indicted states and (often) participatory corporations, sources are encouraged to prepare *complete* reports so as to enhance the credibility of the communication. Though the relevant information will vary when the allegation concerns individual or communal rights, the objective is to provide as much detail as possible as to the specific violation as well as the redress sought.

In extreme cases, those where there is imminent danger of a human rights violation of either an individual or a community, the SP will send an 'urgent appeal' to the concerned state requesting that the threatening action be halted until a more detailed review can be completed. In less urgent situations, the SP will send an 'allegation letter' to the state so as to inform it of the charge and provide it with an opportunity to reply. Because of the importance of sustained accountability, the SP has been pushing for a third type of communication: "follow-up letters on earlier communications." It should be noted that all of these procedures remain confidential until the SP publishes the annual report. Further, the SP is only required to provide a summary of the communications and replies as opposed to the actual texts.

## **E. Failings of the Decade**

### **i. Funding**

By way of the General Assembly resolution that established the decade, a United Nations Trust Fund for the International Decade of the World's Indigenous Peoples was established to receive and manage funds for the various projects. In addition, an

advisory group, whose members are all Indigenous experts specialised in project and program management, was created to assist the Secretariat of the Fund in the coordination of the Decade's activities.

Despite the myriad of objectives and goals set forth by the General Assembly and the optimistic language voiced by the various governmental representatives, in the end, few states have been willing to back their pronouncements with adequate funding for the Decade. It is no exaggeration to say that a lack of adequate financial support, which also implies a lack of human resources, has been the central impediment to the achievement of the Decade's goals.

This problem has been exacerbated by the voluntary nature of the funding program: i.e. according to the resolution, the United Nations Trust Fund is meant "to accept and administer *voluntary* contributions from governments". As a result, the advisory group to the Secretariat of the Fund as well as indigenous groups have had to act more as fundraisers than program managers, petitioning states for assistance by way of fundraising events and informational sessions. UN records exemplify the difficulties faced with regards to financial support: for the period of January 1995 until October 1999, a grand total of 1.1 million USD was received by the Voluntary Fund with over 70% of contributions coming from three countries (40% of which came from Denmark).

## **ii. Fragmentation of the System: A Fundamental Lack of Cohesion**

*"Within the UN system the issues of indigenous peoples are at different stages of evolution."*

*Kofi Annan*

*21 October 1999 Midway Report*

By the time the Secretary General's report was completed, only 25% of UN organisations had designated a specific unit to deal with the issues of indigenous peoples as they related to their respective agendas. For example, though some UN bodies such as UNHCR have adopted precise policy directives to address indigenous issues, the bulk of them, such as WHO, WIPO, and UNDP have not. This lack of cohesion within the UN system has exasperated attempts by indigenous groups to encourage a strategic approach to the treatment of indigenous peoples' needs. Because of the varying guidelines (in the rare cases where guidelines exist) petitions and plans must be shaped to fit each individual body. In addition to the time constraints such an exercise imposes, the disparate procedures also command the need for adequate funding and proper training if the various groups are to lobby their causes effectively.

## **iii. Structural Apathy**

Indigenous peoples, indigenous populations, autochthones, aboriginals, tribes, sub-tribes, etc. A slew of designations are used to identify indigenous groups. Missing from the list is the term *nation*. As defined by international organizations such as the UN, to be regarded as a nation, the following components must be present within a group: 1) Common culture and heritage; 2) Internal laws of behaviour managed by the members; 3) Common language; 4) Territorial boundaries; and 5) Territorial stability

(the final two appear to be embodiments of a sedentary ideology, explicitly excluding nomadic nations such as the Navajo). Though many (if not all) indigenous peoples satisfy these criteria, as is demonstrated by the attitude of the various colonial powers who willingly negotiated numerous treaties with indigenous nations (see France, Spain, Australia, Canada, the UK, and not least of all the US), today they are repeatedly refused 'nation status', this term having now been appropriated by the *nation-state*. There are, in my opinion, two obvious reasons for the change in discourse: guilt and apathy.

First, dealing with the indigenous question raises feelings of guilt and shame among former (and contemporary) colonial powers. Evidence of the mistreatment of indigenous nations, ranging from acts of land theft to slavery to outright genocide, is ample in its availability and, as history shows, quite recent in its realization. Consequently, today's *powers* are rather reluctant about broaching this topic, going so far as to accuse indigenous nations of bad manners or lack of diplomacy for even attempting to remind them of historical events.

Second, and more wickedly I would say, is the loathsome atmosphere that widespread guilt has fostered among governments and global institutions. For the most part, indigenous nations' demands are quite simple: a return of their land, a respect for the treaties, and an acknowledgement of their right to live their lives in a traditional manner that respects their communal values and preferences. As minimal as these may seem, to a capitalist and hierarchical society such as ours these demands are quite preposterous. Further, the confrontational attitude taken by states towards indigenous needs and demands only leads to greater animosity between the parties. Practically, both individual states and international organizations such as the UN can also postpone, ignore, or quite simply refuse to discuss issues that they are unwilling to confront. And because states hold the cards, that is, they have the land, the military power to guard it, and the financial ability to overwhelm indigenous claims, without a readiness from states to engage the issues, then little remains to be achieved by indigenous nations alone (save for the collaborative efforts undertaken with civil society movements, efforts which have been gaining ground in recent years). This paradigm represents the structural apathy I referred to in the title of this section. With wicked irony, 16<sup>th</sup> century gunship diplomacy has been replaced by 21<sup>st</sup> century bureaucratic diplomacy, albeit with the same goal in mind. (Though some may disagree with my repeated use of the term 'wicked' in the preceding paragraph, I stand behind it for, to me, there is something immoral about the frivolous justifications we find to marginalize indigenous needs. Ultimately, it is our vanity and pretentiousness that feeds our feeling of superiority, thereby making it perfectly acceptable to minimize and even denigrate what we regard as anomalous ways of life. As if our experience is the only genuine one, with all others falling behind on the evolutionary scale. Wicked indeed.)

As the Decade nears its end, preparations have already begun for the concluding assessment conference. Whether these last ten years are regarded as a success or not is a matter of opinion and perspective. What is not debatable though is the fact that the once fickle whispers voiced by indigenous nations' have developed into roars of coordination and mobilisation. If I were a betting man, I would wager that they will not be going away anytime soon.

#### **4. The International Labour Organisation and Indigenous Peoples**

Not surprisingly, the ILO was the first international organisation to develop uniform standards for the protection of indigenous peoples. The tradition began in 1930 with the Forced Labour Convention (No 29) and has maintained steam throughout the decades culminating in the 1989 Convention Concerning Indigenous and Tribal Peoples in Independent Countries (No 169). This latest text is an update and reform of the 1957 Convention Concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries (No 107) which, having adopted the integrationist philosophy of 1950s, was regarded by indigenous peoples as counter-productive for their goals.

The general theme of this document is best reflected by article 7: “[To codify the right of indigenous peoples] to decide their own priorities 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, to the extent possible over their economic, social and cultural development. In addition, [the goal of this document is to allow for indigenous peoples’ participation] in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly.”

Pursuant to the wording of this text, governments are expected to consult with the indigenous peoples cohabitating within the borders of the contemporary state. Governments are also to use appropriate procedures when dealing with them; this includes negotiation with the legitimate native representative institutions rather than the puppet organizations often established with state help (such as the various ‘Tribal Councils’ manufactured under the US Indian Reorganization Act).

The Convention is a comprehensive document containing provisions related to, *inter alia*, customs and institutions, traditional practices in penal settings, rights as to land and resource ownership, social security and health, education and means of communication, and cross-border contacts and co-operation.

#### **5. Draft Declaration on the Rights of Indigenous Peoples**

As noted above, the Draft Declaration on the Rights of Indigenous Peoples was submitted to the Sub-Commission on Human Rights in 1994. Since then, it has painfully drifted through the halls of governmental and inter-governmental offices. Though an “open-ended inter-sessional working group” was established to review the proposal of the WGIP and to elaborate a draft declaration based on the submission, progress has been quite limited, due in no small part to the structural apathy previously discussed.

Notwithstanding the progressive language employed, the potential justiciability of the declarations is questionable. That is because once it is adopted by the UN General Assembly, the Draft Declaration will constitute a non-binding declaration, unlike a convention or treaty which would carry legal obligations for a state. This being said, it will however contribute significantly to the growing body of customary international law in the area of indigenous peoples’ rights and hopefully provide a powerful tool in changing popular attitudes (apathy) towards indigenous issues.

## **A. Overview**

The Draft Declaration is divided into a series of parts, each of which addresses particular thematic concerns.

### **Part I: General Principles (Articles 1-5)**

Articles 1, 2, and 5 proclaim the rights of indigenous peoples to equality, freedom from adverse discrimination and nationality, while article 3 provides for the right of self-determination including the freedom to determine “their political status and freely pursue their economic, social and cultural development.” Article 4 establishes indigenous peoples’ right to maintain and develop distinct legal systems.

### **Part II: Life, Integrity and Security (Articles 6-11)**

In this part, the right of indigenous peoples to physical existence, integrity, and security is affirmed including guarantees against genocide and the removal of indigenous children (see residential schools and so-called child protection services). Further, they must not be subjected to ethnocide or cultural genocide, including dispossession, imposed assimilation and integration nor may they be forcibly removed from their lands or territories. They must be permitted to maintain and develop distinct identities and characteristics, to belong to an indigenous community or nation, and to special protection and security in periods of armed conflict.

### **Part III: Cultural, Spiritual and Linguistic Identity (Articles 12-14)**

Within this section, rights connected with the cultural, spiritual and linguistic identity of indigenous peoples are proclaimed in the strongest language. These include the right to “practise and revitalise cultural traditions and customs” (including to restitution of cultural, intellectual, religious and spiritual property), “to practice and develop spiritual and religious traditions (including to have access to religious and cultural sites and to the repatriation of human remains); and “to the revitalisation, use and transmission of histories, languages, oral traditions, writing systems and literature”.

### **Part IV - Educational, Information and Labour Rights (Articles 15-18)**

Indigenous children are granted the right to all forms and levels of education of the State, as well as the right of indigenous peoples to their own educational institutions, providing education in indigenous languages. While indigenous peoples are provided the right to have their cultures and aspirations reflected in both education and public information. Lastly, indigenous nations lay establish media in their own languages and to enjoy the benefits of international and national labour legislations.

### **Part V - Participatory, Developmental and other Economic and Social Rights (Articles 19-24)**

Indigenous peoples notably have the rights to:

- 1) Participate in all levels of decision-making and implementation in matters affecting their rights, lives and destinies including legislative or administrative measures that may affect them (states must obtain their consent before adopting and implementing such measures);
- 2) To develop their political, economic and social systems, via their own means of subsistence, development, and economic activities;
- 3) To practice traditional medicine.

#### **Part VI - Land and Resources (Articles 25-30)**

The distinctive relationship indigenous peoples enjoy with their lands, waters, and other resources, is both recognised and protected within this section. As such, indigenous peoples may own, develop, control and use the lands, territories, waters and other resources they have traditionally occupied or used. Lands, territories and resources confiscated or used without their consent must be returned or justly and fairly compensated. They may conserve and protect the total environment and productive capacity of their lands, territories and resources, to own and control their intellectual and cultural property, and finally, to require that States obtain their free and informed consent prior to the approval of projects affecting their lands, territories or other resources, particularly in connection with the exploitation of mineral and water resources.

#### **Part VII - Exercise of Self-Determination, Indigenous Institutions (Articles 31-36)**

Because of the intrinsic right self-determination, indigenous peoples may establish autonomous and self-governing bodies. Such bodies would have the right to administer internal and local affairs, to determine citizenship, to develop and maintain institutional structures and juridical customs and traditions, to determine the responsibilities of individuals to their communities, to maintain and develop relations and co-operation with other peoples across borders, and to recognise and enforce treaties and other agreements concluded with States.

### **6. Conclusion**

For a multitude of reasons, the evolutionary process in contemporary human rights discourse as it concerns indigenous rights is barely in its embryonic stages. We need only glance at the level of sophistication indigenous advocacy has achieved over the last twenty years to appreciate this fact. Moreover, the metaphorical *re-birth* a number of indigenous nations have undergone during this same time period merely corroborates the fact that indigenous nations are not relics of the past to be studied in anthropology departments, but burgeoning societies whose contributions to past and present life are just coming to the surface. Consequently, it is my opinion that reaching a conclusion at this point would be a rather ill-founded, even futile exercise. The forthcoming achievements we should expect from indigenous groups would likely make any such conclusions moot before the ink even had a chance to dry.

Instead, I will end this report with a statement made by Opegtaw Mataemoh, a Menominee Indian woman, during a speech she gave to an audience of non-Indian

activists who had gathered to discuss and strategize about the promotion of indigenous rights (as quoted in Jerry Mander's *In the Absence of the Sacred*):

“The traditional Indian people are protecting something that is important for everyone. They are trying to keep the land alive, and the world in balance. Sometimes I get the feeling that you [looking at the audience] don't really get the point. You are not really helping us. We are helping you.”

(\*) This research work was carried out during an internship at HRWF Int. in 2004