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By Lola García-Alix

This edition of Indigenous Affairs brings together contributions written by experts with many years of experience in advocating and lobbying for the recognition and protection of indigenous peoples’ rights indifferent international processes, some as academics and others as indigenous activists or international lawyers. The objective of these articles is primarily to analyse the achievements, challenges and perspectives of the different international processes for indigenous peoples. The articles compiled for this edition will give our readers information on recent developments in international fora, and we hope that they will inspire and contribute to debate on future strategies.

The articles included are indicative of the extraordinary achievements indigenous activists have accomplished within the UN system over the short span of three decades. Indigenous activists have not only spearheaded debates within international law and politics about the collective rights of peoples. They have also, from the very start, insisted on the indigenous peoples right to self-determination as well as on their legitimate place within the international community.

In this respect, the establishment of the Permanent Forum on Indigenous Issues is a significant milestone in the decades-long struggle of indigenous peoples to gain standing within the international community and it is considered an historical and urgent step that can help bring forth peace, justice and sustainable development for the world’s indigenous peoples.

As Chief Oren Lyons of the Haudenosaunee Confederacy said on the occasion of the Substantive Session of ECOSOC in 2002, in which the final decision to establish the UN Permanent Forum was taken: “The UN took no recognition of us. Our issues could not even be found on the agenda. We did not exist. We pounded on the doors of the UN in 1977 and they barely budged. For many years it looked like very little was happening. But today, when we look back, we can see how far we have come.”

In the UN context, the Permanent Forum is a rather unique phenomenon. For the first time in history, representatives of states and civil society are given equal status within a permanent UN organ. Indeed, the UN is an organisation of states, and so is one of the most important institutions within the UN, the Economic and Social Council or ECOSOC. This practice has now been broken. As stated by one of the future members of the Permanent Forum, Cree Indian and lawyer, Willie Littlechild, “The establishment of the Permanent Forum is a step in the direction of recognition of our right to self-determination. We shall participate in the Permanent Forum on an equal footing with members appointed by the states. For the first time in history we will be part of the UN family.”

One of the most important challenges facing indigenous peoples relative to the establishment of the Permanent Forum was control over the nomination of their own candidates. In this respect, the indigenous peoples, on many occasions, expressed the idea that regional consultations were the best way of ensuring broad consultation of indigenous organisations as established in the resolution on the Permanent Forum. The indigenous regional processes for nominating candidates took place during the last half of 2001.

Regional consultations were held for the nomination of candidates from Asia, Central America, South America, Russia, the Pacific and the Arctic. The processes by which these consultations were achieved were often arduous and, in some cases, a source of controversy, but they represent the first really significant effort of the indigenous organisations to reach a consensus in terms of nominating their own “experts” and legitimising the status of the eight indigenous members of the Permanent Forum. There is no doubt that these processes will need to be improved and perfected on future occasions, but the experience has established a highly constructive precedent for the election and legitimisation of indigenous “experts”.

Unfortunately, the ECOSOC president did not appoint all the candidates elected through the regional consultations; nevertheless, it is a significant recognition of the indigenous peoples’ own processes that six out of the eight indigenous experts nominated as members of the Forum are those recommended by the indigenous regional consultations.

The Permanent Forum is an advisory organ to all of the UN’s organisations and committees; its mandate consists of advancing cooperation among these latter, of making recommendations, and generally providing information about the conditions of indigenous peoples. The range of issues covered by the Forum encompasses human rights, economy, culture, health and development. The mandate may seem a rather vague one but
much depends on the will of the indigenous peoples, governments and others to use this new instrument as a catalyst for improving the lives of indigenous peoples. Being placed high within the UN system, just below ECOSOC and on a par with, for example, the Commission on Human Rights, the Permanent Forum is assured considerable status and a broad spectrum of action. Hopefully, the Permanent Forum will consolidate the work of the UN and make it more efficient.

Although the Permanent Forum in its present form does not fully capture the aspirations of indigenous peoples, it does approach fulfilling the promise of a direct voice for indigenous peoples within the United Nations system. Furthermore, it reflects the willingness of states to build a new partnership with indigenous peoples.

Indeed, not only will indigenous peoples obtain great rewards from the new partnership the Forum promises, the United Nations system in general will also gain major advantages. Indigenous peoples are approaching the Permanent Forum with proposals for collaboration with member states, offering important, alternative and positive visions, ideas, advice and knowledge. More than ever before, the international community needs indigenous peoples in its midst as part of the UN efforts to promote peace, sustainable development, eradication of poverty and strengthening of democracy.

There is no doubt that the establishment of the Permanent Forum marks an historical step, but it also marks the beginning of a long process that will require great efforts on the part of all those involved so that the Permanent Forum can fulfill its role within the United Nations system successfully. The members of the Forum, governments, representatives of indigenous peoples and NGOs face the challenge of establishing and developing ways of working for the Permanent Forum that will not reduce its capacity for action and that will enable it to implement its broad mandate in the most appropriate way possible. It is clear that the process required for the Permanent Forum to move from theory to action, from political discourse and good intentions to concrete results, that will benefit the indigenous peoples and consolidate the recognition and
protection of their fundamental rights within the United Nations system, will be a long and difficult one. Through the greatest efforts, the first hurdle has been overcome but many obstacles remain up ahead. The firm and coordinated support of all those involved in the process will be essential if we are to move forward successfully, and if the Permanent Forum is to be able to respond to indigenous peoples’ expectations of it.

The first two articles in this issue focus on the Permanent Forum and are written by Dr. Ted Moses, Grand Chief of the Council of the Cree's, and Suhas Chakma respectively. Whereas, in his article, Ted Moses presents a proposed initial program of work for the Permanent Forum on Indigenous Issues and identifies some of its immediate priorities, Suhas Chakma focuses on some of the immediate challenges that should be taken into consideration in the discussions on the Forum’s ways of working in its first years of work. In their articles, both authors strongly advocate the need for the Permanent Forum to have its own secretariat staffed by qualified indigenous persons. Furthermore, Suhas Chakma points out the fact that the lack of a separate secretariat for the Permanent Forum will seriously hamper fulfillment of the mandate of the Permanent Forum. He fears that, without its own secretariat, the Permanent Forum will be reduced to a body holding a ten-day working session each year without any additional program of activities.

The adoption of the Universal Declaration on Indigenous Rights is, like the establishment of the Permanent Forum, one of the objectives established in the programme of the UN International Decade for Indigenous Peoples. Unfortunately, it is increasingly unlikely that the Declaration will be adopted before 2004. Very little progress has been made in relation to the discussions that have been ongoing since 1995 within the Working Group established by the Commission on Human Rights to consider the draft Declaration on the Rights of Indigenous Peoples, which was drawn up by the Working Group on Indigenous Populations and adopted by the Sub-Commission.

Discussions within this Group seem to be deadlocked. During the six years of discussion, and although the indigenous peoples have managed to maintain the original text, only two articles have actually been adopted, Articles 5 and 43, which relate directly to the individual rights of indigenous peoples.

In spite of the fact that the majority of governments state they have no major problems with the general principles of the Declaration, the reality is that a large number of them continue to be firmly opposed to recognition of the right to self-determination and, consequently, to use of the term “peoples” and to collective rights.

In the last meeting of the Working Group, held in Geneva in January 2002, there continued to be a clear lack of indication that the member states of the United Nations have the political will to adopt a Declaration that will respond to the demands of the indigenous peoples.

To indigenous peoples, however, the recognition of their right to self-determination by international law is a crucial issue. Milliani Trask in her article “Future Perspectives on the Draft Declaration on the Rights of Indigenous Peoples: Human Rights at a Crossroad” strongly defends the universality of human rights standards and, in particular, the rights of peoples to self-determination. The author firmly rejects the attempts to produce international legal instruments that attempt to establish “double standards” in relation to the right of indigenous peoples to self-determination, by means of additional texts that limit or clarify the way in which this fundamental right can be enjoyed by Indigenous peoples. ILO Conventions nos. 107 and 169, along with the proposed OAS Inter-American Declaration on the Rights of Indigenous Peoples are, for Milliani, two clear examples of texts that are in absolute contradiction with the universality of human rights. The only text that is based on the universality of human rights is the UN Draft Declaration. In her article the author expresses serious worries about the proposals for amendments to the Draft Declaration made by the states in the Working Group process, and she fears that the declaration may devolve into a document that allows continuing human rights abuses against indigenous peoples.

Whilst reality shows that the indigenous movement has, in an overwhelming number of cases, never sought secession but rather justice, peace and the right to determine their own future on the basis of the fair sharing of natural resources, the governments’ desire to limit the right of self-determination continues to be fuelled by a fear that exercise of this right by indigenous peoples could put the “territorial integrity” of the states in danger.

That the right to self-determination is the major issue for indigenous peoples in international human rights processes was clearly reflected at the World Conference Against Racism (WCAR), held in Durban, South Africa last August. The WCAR was one of the international events in which the indigenous peoples’ high expectations of making progress in terms of recognition of their rights as peoples were not met, and this fact demonstrates once more the intransigence of the governments to recognize the rights of indigenous peoples.

Throughout the WCAR preparatory process, and even more so during the Conference itself, indigenous representatives called on governments to recognize indigenous peoples as peoples within the full significance of international law and to delete any expressions limiting indigenous rights to land and natural resources from the governments’ draft declaration. Instead they were confronted with a clause in the draft text questioning the term “Indigenous Peoples”. The Durban Declaration proposed that the use of the words “Indigenous Peoples” should not prejudice the outcome of ongoing international negotiations on other texts, particularly the Draft Declaration on
the Rights of Indigenous Peoples still being negotiated within the UN Commission on Human Rights.

In his analysis of the WCAR in this publication, Alberto Saldamando states that, “The outcome of the WCAR regarding indigenous rights is a considerable setback from previous World Conferences to combat Racism and its declaration nullified and impaired indigenous internationally recognized human rights.” According to Alberto Saldamando, the WCAR Declaration and Programme of Action was “an act of racial discrimination against indigenous peoples by the United Nations”.

Two additional articles in this issue deal with another significant achievement of indigenous peoples’ lobbying and advocacy work at the UN: the appointment, by the Commission on Human Rights in 2001, of a Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples for a three-year period. The Special Rapporteur is extremely important to indigenous peoples as he is mandated to investigate specific human rights complaints. The mandate also includes making visits to the countries alleged to have violated, or that are violating, the human rights of a particular indigenous community. The Special Rapporteur is authorized to make recommendations and proposals to the state concerned and to the Commission on steps, measures and actions that can be undertaken to remedy violations of indigenous peoples’ human rights and fundamental freedoms, and to prevent future violations.

In her article, Maureen Tong reflects on the possible benefits that the Special Rapporteur may have for indigenous peoples in Africa. Indigenous peoples in Africa are faced with a wide range of problems, and they suffer serious violations and infringements of their human rights on a daily basis. In spite of this, the issue of the recognition and protection of the rights of indigenous peoples in Africa continues to be an extremely sensitive one, given the controversy that exists regarding the applicability or not of the term “indigenous” in the African context. Maureen Tong encourages the indigenous organisations in Africa to make use of this special mechanism of the Commission on Human Rights in order to officially document their situation. To this end she invites the indigenous organisations to send as much information as possible concerning the violation of their rights, and to lobby their governments to invite the Special Rapporteur to visit their countries. It is important to note that the Special Rapporteur’s interest in the situation of the indigenous peoples of Africa is already reflected in his first report, which makes specific reference to the fundamental rights of indigenous peoples, and concretely to the situation of the San people of Botswana, the Hazabe people in Tanzania and the Maasai, among others.

In his second article, Suhas Chakma draws attention to another UN mechanism that can be used for the protection and promotion of indigenous peoples’ human rights: the UN Treaty bodies such as the Committee on the Elimination of Racial Discrimination and the Human Rights Committee. The Treaty bodies have a mandate to supervise the fulfilment of UN human rights treaties by the signatory states. It is important to note that these bodies have significantly contributed to the gradual development of indigenous rights by means of their general interpretation of human rights application and, in their recommendations and reports, they have taken account of and protected the collective rights of indigenous peoples. Both the CERD and the Human Rights Committee have been used by a limited number of peoples and indigenous organisations with very favourable results in terms of recognition of their rights. Unfortunately, their procedures and possibilities seem to be unknown to the majority of indigenous or indigenous support organisations.

The three remaining articles of this issue deal with three other inter-governmental institutions that are highly relevant to indigenous peoples. The article by Fergus MacKaye gives detailed information on the process and gains achieved for indigenous peoples in relation to the discussions held within the Working Group established by the OAS to develop a proposal for the Inter-American Declaration on the Rights of Indigenous Peoples.

Tom Griffith’s article “The World Bank, Indigenous Peoples and International Development” provides important information about the World Bank’s policies, its difficulties in implementing those policies, the process for revising its current policy, and an analysis of the new draft policy. Griffiths presents concrete proposals for improving the World Bank’s internal policy standards and for ensuring a better quality of development.

Finally, the World Intellectual Property Organisation’s acknowledgment in 1998 that the question of protection of the heritage of indigenous peoples was within its mandate, opens up important opportunities for indigenous peoples that need consideration. In this context the last article of this publication, by Saami lawyer Mattias Arhem, focuses on the World Intellectual Property Organisation’s first attempts to consider the protection of the heritage of indigenous peoples. His article on the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore offers us an introduction to the work of this intergovernmental committee and describes its activities so far, along with expectations for the future. In particular, the author examines the impact the IGC could have on the rights of indigenous peoples.

We hope that the information and recommendations contained within these articles will be useful and relevant to indigenous organisations, activists and human rights experts and, concretely, be pertinent in discussions on the rights of indigenous peoples within the international bodies. We also hope that the articles featured in this issue will be of general interest to all those concerned and involved with the subjects.
POSSIBLE PRIORITIES FOR THE FIRST YEARS OF WORK OF THE PERMANENT FORUM ON INDIGENOUS ISSUES

INTERNATIONAL DAY OF THE WORLD'S INDIGENOUS PEOPLES

By Ted Moses
Cree ambassador and Grand Chief

The purpose of this paper is to encourage discussion and provide recommendations on the initial programme of work to be undertaken by the United Nations Permanent Forum on Indigenous Issues that is being implemented pursuant to ECOSOC Resolution 2000/22 of 28 July 2000.

I am going to approach the programme of work for the Permanent Forum from a functional perspective based primarily on the present failings or shortcomings of the United Nations system with regard to indigenous peoples and indigenous issues.

After all, the call for the creation of a permanent forum for indigenous peoples came from the indigenous peoples themselves, who had come to the conclusion that the United Nations was not serving the needs and interests of the world's indigenous peoples. Thus it was, in the summer of 1993 that Rigoberta Menchu Tum and I addressed the plenary session of the World Conference on Human Rights in Vienna and called for the creation of a permanent forum. We were supported in our efforts in Vienna by the Government of Denmark.

The idea for a permanent forum is of course much older than that, and might be traced back to the persistent efforts...
of the Haudenosaunee to seek representation in the League of Nations before the Second World War. In any case, the principal rationale for the creation of a permanent forum is based on the need for indigenous peoples and indigenous issues to be given full and effective consideration by the international community.

My recommendations are based largely on the report of the Secretary-General entitled, "A review of the existing mechanisms, procedures and programmes within the United Nations concerning indigenous people". This report resulted from the contentious negotiations in which we were engaged in order to obtain approval of the report of the first workshop on the possible establishment of a permanent forum held in Copenhagen in 1995. One of the workshop participants, the Ambassador of India, objected strenuously to the proposal to establish a permanent forum for indigenous peoples, contending, as she did, that indigenous peoples were already being well served by the United Nations system. In order to substantiate her contention, she proposed a Secretary-General's report, clearly expecting vindication of her views.

Instead, the Secretary-General's report demonstrates, as I explained in Santiago, Chile in 1997:

the very limited scope of United Nations activity with regard to indigenous peoples, and;

The serious exclusion of the consideration of indigenous peoples' interests and considerations from inter alia, economic development, banking, international aid, peacekeeping, trade, intellectual and cultural property, policing, international law, intergovernmental agreements and treaties, and scientific research and exploration;”

I have focused, therefore, on the work of the permanent forum in the context of the known deficiencies that came to light during the research for the preparation of the Secretary-General's report. Explicit conclusions can be drawn regarding the programme of work that will be required to make the United Nations system responsive to the needs of the world's indigenous peoples.

This rather pragmatic and functional approach to defining the programme of work can be summarized as follows:

1. The Permanent Forum must facilitate greatly improved access to the United Nations system for indigenous peoples, so that they will be able to participate meaningfully in the work of the United Nations, its bodies and affiliated agencies.

2. The Permanent Forum must coordinate the activity of the various United Nations bodies and agencies to assure the provision of adequate and appropriate services to indigenous peoples, and responsiveness to the concerns and interests of indigenous peoples.

3. The Permanent Forum must evaluate the performance and availability of services within the United Nations system for indigenous peoples, and make recommendations for improvement based on this oversight.

4. The Permanent Forum must assume an advocacy role within the United Nations system with regard to indigenous peoples and indigenous issues. It must promote the provision of services to indigenous peoples and communities, and take innovative steps and make recommendations to sensitize the United Nations system to indigenous peoples' issues, and to seek the necessary intervention of United Nations bodies and agencies to address situations where indigenous peoples and indigenous communities are threatened with harm or other violations of their human rights.

5. The Permanent Forum must facilitate effective consultation with indigenous peoples with regard to any activities that will impact upon indigenous peoples and communities. Where consultation is required by other United Nations bodies and affiliated agencies, the Permanent Forum should assume responsibility for the conduct and coordination of this consultative activity.

6. The Permanent Forum must assure that indigenous programmes or United Nations activities directed primarily at indigenous peoples receive equitable resources within the United Nations system for effective delivery.
7. The Permanent Forum must be an information source within the United Nations system on indigenous peoples and indigenous issues. As such, it must have well-developed communications and research capabilities, and enjoy good access within the entire United Nations system. It must also provide information on United Nations activities for indigenous peoples, and must organize itself to keep indigenous peoples informed about all activity within the United Nations that may in any way be relevant to indigenous peoples and indigenous communities.

These activities are consistent with operative paragraph (2) of ECOSOC Resolution 2000/22, which mandated the Permanent Forum on Indigenous Issues to:

...serve as an advisory body to the Council with a mandate to discuss indigenous issues within the mandate of the Council relating to economic and social development, culture, the environment, education, health and human rights; in so doing the Permanent Forum shall:

a) Provide expert advice and recommendations on indigenous issues to the Council, as well as to programmes, funds and agencies of the United Nations, through the Council;

b) Raise awareness and promote the integration and coordination of activities relating to indigenous issues within the United Nations system;

c) Prepare and disseminate information on indigenous issues;

This mandate has sufficient scope to fully encompass the programme of work that I have outlined above, and it addresses explicitly the founding mandate set out by ECOSOC.

Perhaps, more importantly, these activities are generally consistent with the recommendations that have been made by indigenous peoples and international experts in the intervening years since the idea of a permanent forum was formally endorsed in the Vienna Declaration and Programme of Action.

A few examples will suffice: in the 1994 "Report by the secretariat" to the Working Group on Indigenous Populations regarding the creation of a permanent forum, it was proposed that the permanent forum address, on a permanent basis, one of the goals of the International Decade of the World's Indigenous People:

...the strengthening of international cooperation for the solution of problems faced by indigenous people in areas such as human rights, the environment, development, education and health... on the basis of full consultation and collaboration with indigenous people.

In order to accomplish these objectives, it was proposed that the permanent forum would provide indigenous peoples the opportunity:

a) To take part in decision-making in the United Nations system;

b) To offer advice to the appropriate organs and agencies of the United Nations system on matters of concern to them, particularly in areas such as development, health, environment and culture;

c) To present information on violations of human rights with a view to receiving attention and action by the relevant bodies and mechanisms, including possibly the monitoring of the implementation of the declaration on the rights of indigenous peoples;

d) To engage in dialogue with States and to elaborate research and other activities of mutual interest.

Professor Dr. Erica-Irene Daes, the Chairman/Rapporteur of the Working Group on Indigenous Populations, and author of numerous studies and reports on the rights of indigenous peoples, made the following four recommendations in Santiago, Chile, to the second workshop on the establishment of a permanent forum: "Most critically," she said the functions of the permanent forum had to include:

a) Overview and coordination of all United Nations standard-setting activities and operational programmes to the extent that they have direct effects on indigenous peoples;

b) Impact assessment and evaluation of United Nations-sponsored projects, which are aimed at or have direct effects on indigenous peoples, and using the findings to promote fiscal responsibility, as well as accountability to the intended beneficiaries;

c) Mobilization of relevant expertise from all sources, including indigenous peoples themselves, and making expertise accessible through, among other things, a clearing house mechanism;
d) Strengthening indigenous participation in international affairs by providing indigenous peoples with a visible, influential and economical platform for sharing expertise and concerns with the States Members and the secretariats of the United Nations system.

I want to underline the remarkable consistency between all of these recommendations made in various meetings and at various times, and the actual mandate of the Permanent Forum on Indigenous Issues.

A working example may help to explain the programme of work proposed by the Grand Council of the Crees in this discussion paper.

In November 1996, the United Nations Food and Agriculture Organization (FAO) convened a World Food Summit in Rome on universal food security. The proposed agenda for that important meeting failed entirely to take into consideration of the food obtained by hunting and gathering peoples. It also failed to take non-commercial fisheries into account. It thus excluded the main sources of food for millions of the world’s indigenous peoples, although it purported to address the issue of world food security.

It was only through the last minute interventions of a few indigenous peoples’ organizations that the concerns of indigenous hunters and gatherers were heard at all. The existing bodies and mechanisms of the United Nations that could possibly have addressed this serious instance of exclusion of the interests of indigenous peoples took no action.

In the end, the conference promoted the interests of commercial agriculture to expand farm lands into forests and other hunting and gathering areas, thus threatening the food security of indigenous peoples.
Our proposed programme of work for the Permanent Forum would foreclose the possibility of indigenous peoples being left out of such conferences in the future. The Permanent Forum would inform indigenous peoples at the earliest planning stages of such a summit, and would be involved in the planning of the summit itself. It would circulate the draft agenda for consultation with indigenous communities and experts, and would intervene to assure that the agenda took indigenous peoples’ issues into proper consideration. The Permanent Forum would convene regional seminars or workshops on food security for indigenous peoples, and assure that the reports of these consultations were taken into consideration in the drafting of the outcome documents of the summit. The Permanent Forum would coordinate indigenous peoples’ participation in the summit, and would provide for indigenous participation in the plenary, and in the drafting committees. The Permanent Forum would coordinate among the agencies participating in the summit, and provide information on food security for indigenous peoples. It would also seek funding to assure adequate indigenous participation at the summit. Finally, it would provide follow-up on any recommendations and actions that might be proposed by the summit.

In this one example that I have cited, we can see all or most of the seven functional activities for the Permanent Forum as they would be put into practice. This example is not hypothetical. The Rome World Food Summit did take place. Indigenous peoples were largely excluded—both from the agenda and from participation in the work of the summit.

This raises another consideration. Until now, the United Nations’ interest regarding indigenous peoples has been largely confined to human rights issues. During the prolonged consultations leading to the establishment of a permanent forum, it was universally noted that the forum’s mandate would include human rights but would be broadened to include, inter alia, development, health, education and the environment.

The Secretary-General’s report noted that some United Nations agencies did not think that their activities were relevant to indigenous peoples. I see frequent references to the need to consult indigenous peoples on “issues which directly concern them”. I want to express a caution here. Who will determine what it is that directly concerns us?

In our experience, we are often excluded because of preconceived notions about our interests and capabilities. We have been excluded from consultations with large financial institutions, and from consultations on large development projects. We are largely excluded from the strictly commercial sectors of international debate and decision-making. Indigenous peoples are rarely identi-
When they engage in actions that violate United Nations instruments prohibiting discrimination against indigenous peoples. The Permanent Forum will commission expert legal opinions to substantiate these human rights advisories.

I think these are expectations that can be realistically realized during the Permanent Forum’s first few years of work. This is an ambitious agenda—but not unreasonably so.

The Permanent Forum will be charged with the task of making the United Nations system “work” for the world’s indigenous peoples. In this context, we have continuing violations against the human rights of indigenous peoples, a racism summit in South Africa that took place in South Africa and that must be followed upon, an international decade, a Commission on Sustainable Development, an uncompleted Declaration on the Rights of Indigenous Peoples—all involving important work, none of which can be delayed or ignored. All of this must be given priority.

In the light of these requirements, the Permanent Forum’s very first activity must be the establishment of a secretariat equipped with the resources and machinery that will enable it to efficiently and effectively approach this work.

**Notes**

4. See E/2008/INF/2/Add.2, pp. 50-52.
7. Id. at 1.

**Dr. Ted Moses** is the Grand Chief of the Grand Council of the Crees (Eeyou Istchee). Dr. Moses is presently the Ambassador to the United Nations for the Grand Council of the Crees, an NGO in consultative status with the Economic and Social Council of the United Nations (ECOSOC). He is also the Cree Negotiator for federal negotiations regarding the obligations of the federal government to the Crees, including the implementation of the JBNQA, and the Crees’ outstanding claim on Offshore Islands.
The establishment of the Permanent Forum on Indigenous Issues (PFII) by the Economic and Social Council (ECOSOC) through its resolution 2000/22 is an historic milestone for indigenous peoples at the United Nations. A subsidiary body of ECOSOC, the PFII is the highest body within the United Nations system that indigenous peoples can expect to be established. The establishment of any organ higher than the PFII i.e. at the level of ECOSOC or functional commissions, would require amendment of the United Nations Charter, an impossible task. In that sense, in terms of establishing an organ in the UN system, indigenous peoples have reached the peak. The challenges of the PFII are therefore quite high and the ability of the UN to address the enduring effects of colonialism, discrimination and domination of indigenous peoples will largely hinge on the effectiveness of the Forum.

The first session of the Permanent Forum will be held from 13-24 May 2002 in New York. While the methods of functioning of the Forum will be developed over the years, some of the immediate challenges are discussed below.

The issue of Rules of Procedure
The ECOSOC resolution on the Permanent Forum provides:

"3. Further decides that the Permanent Forum shall apply the rules of procedure established for subsidiary organs of the Council as applicable, unless otherwise decided by the Council; the principle of consensus shall govern the work of the Permanent Forum;"

The development of Rules of Procedure by the PFII will be one of the agenda items of the first session of the PFII. While the Rules of Procedure for the Economic and Social Council serve as the basis of the rules of procedures of all the subsidiary organs unless otherwise provided by ECOSOC, the caveat—that the principle of consensus shall govern the work of the Permanent Forum—is unprecedented.

Consensus has often been misused in the UN as the right to veto, especially in the standard-setting processes. ECOSOC, in its resolution 1835 (LVI) of 14 May 1974, defined "consensus" as general agreement without a vote, but not necessarily agreed by everyone. In United Nations organs, the term "consensus" is
used to describe a practice under which every effort is made to achieve unanimous agreement; but if that could not be done, those dissenting from the general trend were prepared simply to make their position or reservations known and placed on the record” (ST/LEG/SER.C/12/1974).¹

While any decision/resolution that has budgetary implications will definitely require approval of ECOSOC, it is unclear as to whether “consensus” extends to the conduct of the business of the PFII. The caveat on consensus is a stricture ostensibly aimed at severely limiting, if not preventing, censure of specific countries for violations of indigenous peoples’ rights. It does, however, have the potential to paralyse the Permanent Forum. Unless, “consensus” is interpreted as given in ECOSOC resolution 1835 of 14 May 1974, consensus can become synonymous with “veto” power to ensure that the lowest common denominator prevails in all decision-making by the Forum.

**Serious violations of human rights in any country**

The ECOSOC Resolution 2000/22 on Permanent Forum provides that:

> “the Permanent Forum on Indigenous Issues shall serve as an advisory body to the Council with a mandate to discuss indigenous issues within the mandate of the Council relating to economic and social development, culture, the environment, education, health and human rights.”

Can the PFII address serious violations of human rights in any country? While the Working Group on Indigenous Populations (WGIP) undoubtedly highlighted all the critical indigenous issues, the WGIP is primarily a standard-setting body consisting of five Sub-Commission members elected on a geographical basis. Consequently, it cannot address either individual cases or country situations. Each year, during the WGIP session in July, hundreds of indigenous peoples make thousands of oral interventions. But the report of the WGIP does not reflect the oral statements of the indigenous peoples. The Chairperson, because of the restrictions of the mandate, initially reprimanded the speakers, stating that WGIP is not a forum for complaints. As thousands of oral interventions are lost into oblivion each year, the interest in the WGIP has gradually been diminishing.

There is no bar on the PFII to adopt country resolutions, as long as they are adopted by “consensus”. The question
remains as to how the PFII will reflect the interventions of its members or the observers in the final report of the PFII.

The present working methods of the Sub-Commission on Human Rights provide an interesting lesson. Until its 51st session in August 2000, the Sub-Commission could adopt country resolutions and mention a country in thematic resolutions. However, under the agenda item “enhancing the effectiveness of the mechanisms of the Commission”, the Commission on Human Rights, instead of enhancing, reduced the mandate of the Sub-Commission by prohibiting adoption of country resolutions or reference to a country in thematic resolutions. The Commission on Human Rights, in its decision 2000/109 of 26 April 2000 which was also reiterated through resolution 2001/60, restricted the mandate of the Sub-Commission in the following way:

a) Its decision that the Sub-Commission should not adopt country-specific resolutions and, in negotiating and adopting thematic resolutions, should refrain from including references to specific countries;

b) That the Sub-Commission should continue to be able to debate country situations not being dealt with in the Commission, as well as urgent matters involving serious violations of human rights in any country, and that its discussions would be reflected in the summary records of its debates, which should continue to be forward to the Commission.

Although the resolution of the CHR provides little clarity as to what it means by “country situations not being dealt with in the Commission, as well as urgent matters involving serious violations of human rights in any country” the report of the summary records of the debates of the Sub-Commission on country situations is an interesting precedent. Unless the Permanent Forum is able to develop such a precedent, there is a danger that the PFII may fall into the trap of being a standard-setting body like the WGIP.

The expert advice of the Permanent Forum will extend beyond “programmes, funds and agencies of the United Nations”. There are large number of international organisations, such as the World Bank, the Asian Development Bank etc. that are not part of the United Nations and yet are engaged in developing international policies on indigenous peoples because of the serious negative impacts of its programmes and projects on indigenous peoples. As an organ dealing with indigenous issues, the Permanent Forum should have a particular interest in providing expert advice to such bodies.

Moreover, the United Nations Committee on Economic, Social and Cultural Rights is unambiguous about the applicability of international human rights standards to international agencies such as the World Bank. In its General Comment on Article 22 of the International Covenant on Economic, Social and Cultural Rights, it states:

“Recommendations, in accordance with article 22, may be made to any organs of the United Nations, their subsidiary organs and specialized agencies concerned with furnishing technical assistance. The Committee considers that this provision should be interpreted so as to include virtually all United Nations organs and agencies involved in any aspect of international development cooperation. It would therefore be appropriate for recommendations in accordance with article 22 to be addressed, inter alia, to the Secretary-General, subsidiary organs of the Council such as the Commission on Human Rights, the Commission on Social Development and the Commission on the Status of Women, other bodies such as UNDP, UNICEF and CDP, agencies such as the World Bank and IMF, and any of the other specialized agencies such as ILO, FAO, UNESCO and WHO.”

Since the World Bank is presently engaged in revising its policy on Indigenous Peoples: Operational Directives 4.20, the Permanent Forum may have to provide expert comments on the Indigenous Peoples: Draft Operational Policies (OP.10) and the Indigenous Peoples: Draft Bank Procedures: BP.4.10 in its first session. The World Bank’s Draft OP/BP 4.10 was criticized by indigenous peoples as a serious regression from its OD: 4.20; and that “it virtually encourages the borrower State to derogate from its treaty obligations by financing projects that will result in violation of the borrower States’ obligations under international law.”

Standard-Setting

The ECOSOC resolution provides that one of the functions of the PFII is to:

“2: (a) Provide expert advice and recommendations on indigenous issues to the Council, as well as to programmes, funds and agencies of the United Nations, through the Council”;
In addition to providing expert advice, the Permanent Forum will have to engage in standard-setting. While the Draft Declaration on the Rights of Indigenous Peoples will continue to be negotiated by the members of the Commission on Human Rights, the Permanent Forum will gradually need to develop further standards on indigenous peoples' rights.

Integration and coordination of activities relating to indigenous issues within the United Nations system

The ECOSOC resolution 2000/22 states that one of the important tasks of the Forum is to:

"b) Raise awareness and promote the integration and coordination of activities relating to indigenous issues within the United Nations system;"

Apart from submission of an Annual Report and its recommendations through ECOSOC, it is unclear as to how the integration and coordination will be promoted with the UN organs in the absence of a Separate Secretariat for the PFII. Nonetheless, the Permanent Forum could play an effective role in ensuring that the United Nations programmes reach out to indigenous peoples.

The Durban Declaration and Programme of Action of the Third World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance is a pointer in that direction. It states:

"209. Invites financial and development institutions and the operational programmes and specialized agencies of the United Nations, in accordance with their regular budgets and the procedures of their governing bodies:

a) To assign particular priority to and allocate sufficient funding, within their areas of competence, to the improvement of the status of indigenous peoples, with special attention to the needs of these populations in developing countries, including the preparation of specific programmes with a view to achieving the objectives of the International Decade of the World's Indigenous People;

b) To carry out special projects, through appropriate channels and in collaboration with indigenous peoples, to support their initiatives at the community level and to facilitate the exchange of information and technical know-how between indigenous peoples and experts in these areas;"
Although the Office of the High Commissioner for Human Rights (OHCHR) has been entrusted with the responsibility for implementation of the Durban Declaration and Programme of Action, the Permanent Forum can play a crucial role in making the Durban Declaration and Programme of Action effective.

One of the important tasks of the Forum will be to elaborate upon the Durban Declaration and Programme of Action and draft Principles on Integration of Indigenous Peoples’ Issues in the United Nations system for consideration of the Secretary General of the United Nations. The Secretary General should subsequently develop principles binding on all UN agencies, funds and programmes such as to ensure that indigenous peoples’ priorities are properly reflected in the Country Strategy Note and Common Country Assessment; and that the development impact of United Nations assistance under the United Nations Development Assistance Framework reaches indigenous peoples. The Secretary General should be requested to prepare a report on Integration of Indigenous Peoples’ Issues in the United Nations system for discussion by the Forum.

At the same time, the Voluntary Fund for Indigenous Populations and Voluntary Fund for the International Decade of Indigenous Peoples have been attempting to assist indigenous peoples. The Voluntary Fund for the Decade will come to an end in 2004 at the end of the International Decade of the World’s Indigenous People.

The Permanent Forum, a key objective of the International Decade itself, can play a crucial role in evaluating the effectiveness of the International Decade. As ad hoc programmes such as the Voluntary Funds cannot reach out to the majority of indigenous peoples, the United Nations should attempt to establish a “United Nations Development Fund for Indigenous Peoples” to reach out to indigenous peoples all over the world in order to promote the economic, social and cultural development of indigenous peoples. The PFII can play an effective role in contributing to the debate on the need for a “United Nations Development Fund for Indigenous Peoples”. Many of the conflicts with indigenous peoples, which are accentuated by economic deprivation and exploitation, could be reduced through developmental activities for indigenous peoples. There is a precedent in the UN for the establishment of such a fund. The UN previously established the UN Voluntary Fund for Women. Following this, United Nations Development Fund for Women (UNIFEM) was established and today UNIFEM has programmes all over the world to address women’s issues.

Establishing linkages with the National Human Rights Institutions

Since the Vienna World Conference on Human Rights, a large number of National Human Rights Institutions (NHRIs), popularly known as National Human Rights Commissions, have been established across the world, from Nepal to Mexico. The Paris Principles on National Human Rights Institutions provides guidelines for the establishment of NHRIs. One of the recommendations of the Paris Principles is “to ensure that the composition of the membership of National Human Rights Institutions reflects the diversity of the country and population, and to ensure that members of groups which are victims of or vulnerable to racism, racial discrimination, xenophobia and related intolerance have adequate access to these institutions”. In the spirit of this recommendation, the Aboriginal Torres Strait Islanders’ Commission has been created as a part of the Australian Human Rights and Equal Opportunities Commission. Most National Human Rights Commissions across the world have yet to emulate Australia’s example.

The NHRIs are like double-edged swords. They can enhance protection and promotion of human rights. At the same time, they can form part of a Government’s machinery to scuttle international criticism of a poor human rights record. Nonetheless, the NHRIs are fast developing as one of the mechanisms available to address human rights violations. The PFII should engage in dialogue with the NHRIs in order to raise awareness of indigenous peoples’ issues, implement the Paris Principles on NHRIs, including the possibility of appointing indigenous members to the Commissions and enhance promotion and protection of indigenous peoples’ rights at national level.

The indispensability of a separate Secretariat for the growth of the PFII

“6. Further decides that the financing of the Permanent Forum shall be provided from within existing resources through the regular budget of the United Nations and its specialized agencies and through such voluntary contributions as may be donated;”
A separate Secretariat is fundamental for the healthy growth of the Permanent Forum. Yet the issue of a separate Secretariat has become unnecessarily controversial due to the United States’ consistent opposition to any new mechanisms, refusing to contribute funds and, most importantly, showing a lack of enthusiasm, if not covert opposition, in the Office of the High Commissioner for Human Rights (OHCHR), to the idea of a separate Secretariat.

During the second Ad hoc Working Group meeting on the establishment of the Permanent Forum, Mr. Giuliano Comba, representative of the Administration Section of the Office of the High Commissioner for Human Rights, quoting unnamed UN authorities in New York, stated that the UN Headquarters in New York had informed him that the Permanent Forum could not have a separate secretariat and, therefore, the Permanent Forum would have to be attached to the Office of the High Commissioner for Human Rights. Moreover, Mr. Comba explained that a separate secretariat could be established only through a convention or treaty.  

The assertion that a separate secretariat can be established only through a convention or treaty is simply false. ECOSOC has established many specialised agencies, such as UNESCO, UNIFAR, UNFPA, UNICEF, FAO, WHO, WIPO, HABITAT, ILO, OHCHR, UNDP, WTO etc. in the establishment of a separate Secretariat is also crucial. Otherwise, under the big “banyan tree” that is the OHCHR, the Permanent Forum will be deprived of sunshine, to the detriment of its growth.

Although the Secretary General has designated the OHCHR as the lead agency of the first session, the PFII needs to bear in mind that there are no resources for the Forum beyond the first session. In its first session, either through a unanimous resolution or decision, PFII should therefore recommend to the Secretary General of the UN, through ECOSOC, that he should establish a separate Secretariat for the Permanent Forum, to be funded through the regular budget of the UN and staffed by qualified indigenous candidates. After all, according to the PBI provided by the OHCHR, “a separate secretariat with a staff of five persons would cost about US$ 1.5 million per annum”, peanuts by UN budgetary standards. It is also essential that states support the idea of a separate Secretariat and make commitments, including providing Junior Professional Officers (JPOs) only for a separate Secretariat of the Forum. The support of other UN agencies, such as UNESCO, UNIFAR, UNFPA, UNICEF, FAO, WHO, WIPO, HABITAT, ILO, OHCHR, UNDP, WTO etc. in the establishment of a separate Secretariat is also crucial. Otherwise, under the big “banyan tree” that is the OHCHR, the Permanent Forum will be deprived of sunshine, to the detriment of its growth.

Notes
5. For a basic understanding of UNDAF, CCA, CSN please refer to: www.unhchr.ch/development/mainstreaming-04.html
7. ibid.
8. ibid.

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FUTURE PERSPECTIVES ON THE DRAFT DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES: HUMAN RIGHTS AT A CROSSROAD

By Mililani B. Trask

There is a crisis emerging in the field of human rights, a crisis that will unfold in the new millennium, a crisis that will have tremendous implications in a shrinking world beset by poverty and terrorism. At stake is nothing less than the fundamental principle that Human Rights are universal. The Charter of the United Nations, the Universal Declaration on Human Rights and the International Human Rights Conventions are founded upon this principle.

This crisis is unfolding within the UN system. It arises as part of the legacy of colonialism inherited by the UN system through the codification of Western legal and juridical principles and values, which excluded and oppressed the indigenous peoples of the world over the last millennium and which continue to be the cause of armed conflict, bloodshed and war in the new millennium. It is a crisis that will test the capacity of the United Nations system to achieve world peace through the provision of human rights and self-determination for all peoples.

The first international legal effort to codify the human rights of the world’s 300 million indigenous peoples was undertaken 40 years ago by the International Labor Organization (ILO), a specialized agency of the United Nations. In the years that have elapsed since then, three separate standard-setting initiatives have been spawned by the UN system and its member States, resulting in four documents with conflicting and contradictory provisions. The ILO has produced two sets of standards, ILO 107 and ILO 169. The Organization of American States (OAS) has initiated a regional effort on a Proposed American Declaration on the Rights of Indigenous Peoples. In addition to these efforts, the UN system continues its primary effort to achieve passage of the Draft Declaration on the Rights of Indigenous Peoples, which began in 1985.

A simple comparison of the four documents leads to the inescapable conclusion that some states, and at least one specialized agency of the UN (the ILO), are intent on violating the fundamental and guiding principle of international human rights law - that human rights are universal. Significant contradictions emerge when the provisions of the four documents are compared. The most significant and critical of these disparities relates to the right of self-determination.

Setting double standards in the field of human rights

ILO Convention 107 was passed in 1957. Its purpose was to enumerate standards for the "recruitment, training and employment" of indigenous peoples, who were viewed as laborers. ILO 107 called for the "progressive integration" of indigenous "populations" into the dominant society of the state. It contained no recognition that indigenous peoples had any rights under international law, including rights to their own traditional lands or cultural identities.

ILO 107 was widely condemned as an assimilationist and racist document by indigenous peoples, human rights advocates and international jurists alike. When it became evident that the ILO was losing international credibility as a promoter of human rights, the ILO undertook a review process, the end product of which was ILO 169.

Under ILO procedures, indigenous peoples were prohibited from direct and meaningful participation but representatives of states, employees and employee delegates were allowed to alter the definition of terms in the Convention. Because a report of experts who reviewed ILO 107 found that "the... use of the term 'populations' would unfairly deny (indigenous peoples) their true status and identity as indigenous peoples..." the ILO was compelled to utilize the term 'peoples' in Convention 169. In order to satisfy states that opposed granting indigenous peoples the right of self-determination, a last minute amendment to Article 1(3) was included which states:

"The use of the term 'peoples' in this Convention shall not be construed as having any implications as regards the rights which may attach to the term under international law."

It was in this way that a double standard was created in international law, a standard which denied the world's 300 million indigenous peoples the right to determine
their political status and their right to freely pursue their economic, social and cultural development”.

The OAS was created by Charter in 1948. It is a regional body composed of the colonial states of indigenous America, who banded together “to defend their sovereignty, their territorial integrity and their independence”. In 1979, the Inter-American Commission on Human Rights was formed as a subsidiary body of the OAS. Its mandate is the promotion and defense of human rights. Following the establishment of the UN Decade of the World’s Indigenous Peoples in 1993 and the Summit of the Americas in 1994, the Commission undertook the drafting of a proposed American Declaration on the Rights of Indigenous Peoples. The document was drafted in secret by seven individuals. Indigenous peoples were excluded from the drafting process, consultations with indigenous peoples were undertaken only after the document was created.

The OAS Declaration further diminished the human rights of indigenous peoples by adopting language more limiting than ILO 169. Section 1(3) of the OAS Declaration states:

“The use of the term ‘peoples’ in this instrument shall not be construed as having any implication with respect to any other rights that may be attached to that right under international law.”

The OAS standard not only denies the world’s 300 million Indigenous Peoples the right of self-determination, it denies them all collective rights, thereby denying them their cultural identity and lifestyle.

**Justifying racism – the unfounded fear of secession**

In order to justify setting double standards in the field of human rights, some states argue that acknowledging the right of indigenous peoples to self-determination will result in their secession from states. This, they claim, would violate states’ rights to maintain the ‘territorial integrity’ of their geographic boundaries and violate the principle of ‘non-interference’ in the internal affairs of States.

The speciousness of this argument is self-evident when existing international legal principles relating to self-determination, territorial integrity and non-interference are analyzed and applied. In 1998, a conference of experts held in Barcelona addressed this issue. They found:

“The principle of territorial integrity is clearly invoked in connection with self-determina-

... shall not be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples and thus possessed of a Government representing the whole people belonging to the territory without distinction of any kind.” (Emphasis added)

This paragraph imposes a requirement of legitimacy on a state invoking the principle of territorial integrity against a self-determination claim, which threatens that integrity. This means that a state that oppresses destroys or unduly exploits a people or community instead of protecting it or representing its interests has no legitimate right to invoke the principle of territorial integrity against that people or community. A state that gravely violates its fundamental obligations to its citizens loses the legitimacy to rule over them. This also applies with respect to a state’s obligation towards a distinct people or community within its boundaries.

Jose Ramos-Horta concluded that the maintenance of territorial integrity lies in the hands of the governments in power. By accepting its obligations, including full respect for the right to self-determination with all its consequences, and engaging in dialogue with all sectors of society, a government can maintain the territorial integrity of the state or ensure that peaceful change occurs in a manner beneficial to the state.

Self-determination also imposes responsibilities on the claimants to respect the human rights, including the rights of minorities and indigenous peoples and of other peoples and communities within their jurisdiction, and to constructively resolve problems that arise from the implementation of the right.

States advancing the fear of secession always overlook two essential points. The first is that the UN system and international law specifically recognize the right of independence in trust and non-
self-governing territories. The second and most significant point is that the overwhelming majority of indigenous peoples participating in the UN Declaration process have not demanded secession or declared independence. Quite the contrary, the record indicates that "indigenous Peoples have invoked the right of self-determination in order to continue as distinct communities free from oppression"14.

The indigenous perspective – The UN Draft Declaration on the Rights of Indigenous Peoples

In stark contrast to the opinion of states is the perspective of the world’s indigenous peoples, who assert that indigenous peoples are peoples entitled to the full protection of international human rights instruments, including the unqualified right to self-determination.

The unanimity of opinion expressed by the representatives of the indigenous world is truly remarkable given the great diversity in race, ethnicity, religion, language, culture and geographies that are characteristic of the global indigenous family. Even more astounding is the fact that the indigenous peoples of the world represent the poorest, most marginalized and most politically disenfranchised people of the world. Despite great poverty and diversity, indigenous leaders from all regions have repeatedly reaffirmed that their right to self-determination is not negotiable.

Unlike the ILO and OAS standards, which were created without the direct input of indigenous peoples, the UN Draft Declaration process has afforded indigenous delegates direct participation for 20 years. From 1985 to the present, indigenous leaders have worked to ensure that the unqualified right of self-determination would be the central pillar of the Declaration. This position has been reiterated in numerous indigenous global and regional statements, including the Kari-Oka Declaration, the Mataatua Declaration on Cultural and Intellectual Property Rights of Indigenous Peoples, the Recommendations of the Voices of the Earth Congress, the Charter of the Indigenous-Tribal Peoples of the Tropical Forests15 and, most recently, the statement to the World Conference Against Racism of the Indigenous Peoples’ Millennium Conference16.

The reason why indigenous leaders have taken this position relates to the fact that the world’s indigenous peoples have one thing in common – the historical and contemporary impact that western colonization wrought on their cultures. Colonization denied indigenous peoples political status equal to that which colonizers had attained under western legal regimes. In addition to this, colonization and neocolonialism prevented indigenous peoples from freely determining their economic, social and cultural development. Indigenous peoples distinguish themselves from others in the dominant society because of their cultural ties to each other, to their communities and to their territories and lands17. Without the right to determine their political status and to pursue their economic, social and cultural development, indigenous peoples cannot survive.

Human rights at a crossroad

Through the different efforts of the ILO, the Inter-American system and the UN Working Group on Indigenous Peoples, three contradictory sets of standards relating to the human rights of indigenous peoples have emerged. The standards set by the Working Group currently contained in the Draft Declaration are based upon and maintain the principle of the universality of human rights. Article 3 of the Draft Declaration incorporates the language of the Human Rights Conventions, the Charter of the United Nations and the Universal Declaration on Human Rights. This language addresses the concerns of Indigenous Peoples of the Trust Territories and is applicable to special situations such as East Timor. Article 31 of the Draft Declaration provides for the right of autonomy as an expression of self-determination. This provision addresses the needs of the vast majority of the world’s indigenous peoples seeking self-governance on indigenous territories located within state boundaries.

The standards set by the ILO and OAS purport to limit the human rights of indigenous peoples and run afoul of fundamental principles of international law, including the principle that human rights are universal. These standards create an untenable contradiction in international human rights law.

Most importantly, the ILO and OAS standards do little to address the issue of secession and territorial integrity, which states and the ILO have repeatedly advanced as the justification for lowering human rights protections for indigenous peoples.

The ILO and the OAS could have addressed state fears by referencing legal principles and tenets already well
established in international law and enshrined in the Declaration on the Granting of Independence to Colonial Countries and Peoples, the Declaration on Friendly Relations and the Vienna Declaration. The fact that this was not done leads to the inescapable conclusion that some states do not want to accept the responsibility of "conducting themselves in compliance with the principle of equal rights and self-determination of peoples" when it comes to indigenous peoples.

In 1993, the Working Group on Indigenous Populations completed its work on the Draft Declaration. Indigenous Peoples called for the Declaration to be expeditiously moved to the General Assembly. The Declaration was presented to the Sub-Commission in August of 1994. That same month, the Sub-Commission experts referred the Declaration to the Commission on Human Rights (CHR) without amendment or change. This event is extremely significant because the Sub-Commission is made up of international legal experts.

In March 1995, the CHR established an open-ended Inter-Sessional Working Group (IWG) to elaborate a Draft Declaration. This was done to appease the states who had participated in the ILO and OAS process. Since that time, the Declaration has languished in the IWF and been subject to an onslaught of criticism and proposed amendments advanced in large part by the same states that were active in the ILO and OAS processes.

The proposals of states for amendments to the Draft Declaration diminish the standards for human rights of Indigenous Peoples in the original text of the Declaration.

For example: Article 12 of the Draft Declaration states:

"Article 12

Indigenous peoples have the right to practice and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artifacts, designs, ceremonies, technologies and visual and performing arts and literature."

States have proposed changes as follows:

"Article 12

1. Indigenous [peoples] have the right to practice and revitalize their cultural traditions and customs in conformity with domestic laws. [Recognizing this right,] [States should/shall facilitate the efforts of indigenous peoples,] [This includes the right as far as practicable] to maintain, protect and develop the [past, present and future] manifestations of [their] cultures, such as archaeological and historical sites, artifacts, designs, ceremonies, technologies and visual and performing arts and literature.

2. States should/shall [make] [best] [appropriate] efforts, [to] [promote] [facilitate] the return to indigenous [peoples] of their cultural, [intellectual], and religious and spiritual property [taken without their free and informed consent] [after the present Declaration comes into effect] [or in violation of their laws, traditions and customs] [and] [or] [in violations of relevant laws and regulations]." See E/CN.4/2001/85 at P.31.

Under the state proposal, there is no international standard to protect the cultural practices of indigenous peoples and each state may, through domestic law, regulate or fail to regulate the cultural practices of indigenous peoples. Under the state proposal, indigenous peoples’ rights to protect their cultural patrimony are accommodated by states, “as far as practicable.” Presumably, there will be no such protection if states deem that it is not practicable, etc., etc.

If the IWG process continues in this manner, the Draft Declaration will become a document that affirms the colonial practices of the past and allows continuing human rights abuses against indigenous peoples. If this occurs, the implications for international human rights law will be profound and the ramifications in the political arena will be tragic. It is undeniable that in today’s world many wars are fought and much blood shed over claims of self-determination.

The UNESCO dialogue

This simple fact has been the focus of the UNESCO Division of Human Rights Democracy and Peace since 1985 when UNESCO undertook a series of five international meetings of experts with the objective of exploring general concepts of human rights, placing the emphasis on cultural identity. These sessions took place in Harare in 1985, in Canberra in 1987, in Paris in 1989, in Budapest in 1991 and in Barcelona in 1998.

The UNESCO initiative provides states, indigenous peoples and all of civil society with a practical approach to resolving global armed conflict and addressing the contradictions in international human rights law relating to self-determination. The UNESCO initiative lays the foundations for the "constructive and proactive use of the concept and right of self-determination as an integral part of conflict resolution.""

The strength of the UNESCO effort has been its ability to bring the divergent perspectives of states and indigenous peoples into consensus by addressing self-determination within the context of Article 1 of the UN Charter (and the international human rights covenants) while
remaining focused on the need to preserve peace, security and friendship amongst peoples, communities and states. To this end, the initiative has achieved agreement by consensus on the following fundamental principles. First, that self-determination is a process with no predetermined outcome. Second, that self-determination is a right of choice, participation and control inseparably linked to the concept of democracy. Third, that the concept of self-determination can take into account cultural identity, control and management of land and natural resources and the indigenous relationship with the earth. Fourth, that self-determination may be expressed in many ways, extending beyond the act of secession and including autonomous relationships with States.

The UNESCO initiative provides the UN system with an alternative to the approach being pursued by the ILO, OAS and a handful of powerful states — that of setting double standards in the field of human rights. It challenges states and indigenous peoples alike to work towards peace through a process of self-determination. Under this enlightened approach, self-determination can be realized by all peoples, including indigenous peoples, through dialogue and constructive arrangements for self-governance.

Conclusion

The Draft Declaration can be an instrument for extending human rights protections to include those peoples who were marginalized and oppressed by colonization and heretofore excluded from the protections of international human rights law. It can serve as a basis for the resolution of conflict and provide a new framework within which indigenous peoples, states and the UN System can establish peaceful arrangements for co-existence in the new millennium.

Alternatively, the Draft Declaration can become a vehicle that maintains the inequities of colonization by diminishing human rights standards. The outcome of this controversy will determine whether the United Nations system is itself capable of providing flexible, humanitarian and peaceful solutions to the challenges the world faces in the new millennium.

Notes

2 Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries, ILO, 40th sess. No. 107, Article 2(1).
3 Venne, Our Elders Understand Our Rights, at 70-71.
4 Ibid at 90.
7 International Covenant on Civil and Political Rights, ICCPR; and International Covenant on Economic, Social and Cultural Rights, ICESCR, Adopted 16 Dec. 1966, 999 UNTS and 993 UNTS 3. See Article 1 of the Covenants that define the term 'self-determination'.
9 Venne supra Note 2, Our Elders Understand Our Rights, at 37-39.
10 OEA/Ser/L/V 11.95, Doc. 6, Feb. 26, 1997, approved by the Inter-American Commission on Human Rights at its 133rd Session.
12 This position has been repeatedly advanced by the CANZUS States (Canada, Australia, New Zealand and the United States) and other States in the Working Group on Indigenous Populations, and the Open-ended Inter-sessional Working Group on the Draft Declaration.
16 A/Conf.189/10/Add.8, 20 August 2001, Contribution submitted by the Netherlands Centre for Indigenous Peoples.
17 For a complete analysis of colonization and its impact on indigenous peoples, see Venne supra Note 2, Our Elders Understand Our Rights, and Roxanne Dunbar Ortiz, Indians of the Americas, Human Rights and Self-determination. (New York, Praeger Publishers 1988).
18 UNESCO Barcelona Report, supra note 14 at 19-29.
19 The recommendations of the UNESCO Report are broader and more detailed than the Summary provided by the author. The Report includes consensus on points including cultural identity, external elements of self-determination, globalization, means of attainment of self-determination, armed conflict and prevention of conflict.

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The use of UN human rights mechanisms by indigenous peoples:

By Suhas Chakma

In the United Nations system, human rights issues are addressed by UN Charter-based bodies¹ or Treaty Bodies², although UN Specialised Agencies – such as the United Nations International Children's Education Fund (UNICEF), the United Nations High Commissioner for Refugees (UNHCR), International Labour Organisation, the United Nations Economic, Social and Cultural Organisation (UNESCO) etc – have human rights components and mechanisms³. In 1970, the Economic and Social Council created the 1503⁴ Confidential Procedure⁵ to address a "consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms"⁶.

In 1980, prompted by the phenomenon of disappearances across Latin America, the Commission on Human Rights created its first Special Procedure, establishing the Working Group on Enforced or Involuntary Disappearances. A range of Special Procedures – in the form of thematic Rapporteurs or Working Groups, Country Rapporteurs and Special Representatives of the Secretary General on specific thematic issues have since been established.

The first Special Procedures focused on civil and political rights. They were followed by Special Procedures for economic and social rights issues such as the dumping of toxic waste, the right to food, the right to education, the right to housing etc. In 2001, the Commission on Human Rights appointed a Special Rapporteur to examine the human rights and fundamental freedoms of indigenous people.

UN mechanisms and the role of the indigenous peoples' organisations

In most countries, treaties and covenants are not self-executing but require enabling legislation, or constitutional and legal amendments in cases where existing provisions of law and the constitution are not in consonance with the obligations arising from the Treaty or Covenant.

Even if a State's constitution accepts the applicability of international law at domestic level, its enforcement remains wanting. Article 133 of the Mexican Constitution stipulates that international treaties con-
 past practices and emerging challenges

cluded by the President of the Republic, with the approval of the Senate, shall, together with the Constitution and the laws enacted by the Federal Congress, represent the supreme law of the nation. Accordingly, these international human rights treaties are part of Mexico's national law and may serve as the basis for a suit in a court of law. The CERD Committee's particular concern — that Mexico "does not seem to perceive that pervasive discrimination being suffered by the 56 indigenous groups living in Mexico falls under the definition given to racial discrimination in article 1 of the Convention" — reflects the status of international treaties at the domestic level in Mexico.

Most Charter-based bodies consist of member States of the UN. They are political entities; an unprejudiced assessment of a country's human rights record by Charter-based bodies is therefore easier said than done. It is only the Treaty bodies that can objectively scrutinize the record of the ratifying states or deal with individual cases if a State party has accepted the jurisdiction of the Treaty body to receive individual complaints. However, Special Procedures can intervene in individual cases irrespective of whether the State party has ratified any treaty or not and can undertake a country visit at the invitation of the State party.

The effectiveness of international or national mechanisms depends on the vigilance of civil society. In most situations, Special Procedures cannot be effective without the support of civil society actors in individual cases. Unless NGOs file complaints about individual cases, it is difficult for the Special Procedures to initiate suo motu action.

Most governments' periodic reports to the Treaty bodies are economical with the truth. For example, with regard to Argentina, the CERD Committee stated: "A primary concern of CERD is the lack of adequate information regarding indigenous peoples in terms of census data and representation in the civil service, police, judicial system and congress." The last census of indigenous peoples was taken between 1965 and 1968.

Unless civil society actors provide timely and credible information, Treaty bodies may not be able to effectively examine the periodic reports of the State
Use of the CERD Committee by the aborigines

Acting under its early warning and urgent procedures, the CERD Committee adopted decision 1(53) on Australia on 11 August 1998 (A/53/18, para. 22), requesting information from Australia on three areas of concern: the proposed changes to the 1993 Native Title Act; the changes in policy on Aboriginal land rights; and the changes in the position or function of the Aboriginal and Torres Strait Islander Social Justice Commissioner. In its decision, the CERD Committee recognised that, within the broad range of discriminatory practices that had long been directed against Australia’s Aboriginal and Torres Strait Islander peoples, the effects of Australia’s racially discriminatory land practices had endured as an acute impairment of the rights of Australia’s indigenous communities. The Committee recognised further that the land rights of indigenous peoples were unique and encompassed a traditional and cultural identification of the indigenous peoples with their land that has been generally recognised.

The CERD Committee welcomed the decision of the High Court of Australia in the case of Mabo v. Queensland and noted that, in recognising the survival of indigenous title to land where such title had not otherwise been validly extinguished, the High Court case constituted a significant development in the recognition of indigenous rights under the Convention. The Committee welcomed, further, the Native Title Act of 1993, which provided a framework for the continued recognition of indigenous land rights following the precedent established in the Mabo case.

The CERD Committee, however, expressed concern over the incompatibility of the amended Native Title Act with the State party’s international obligations under the Convention. While the original Native Title Act recognises and seeks to protect indigenous title, provisions that extinguish or impair the exercise of indigenous title rights and interests pervade the amended Act. While the original 1993 Native Title Act was delicately balanced between the rights of indigenous and non-indigenous title holders, the amended Act appears to create legal certainty for Governments and third parties at the expense of indigenous title.

The Committee noted, in particular, four specific provisions that discriminate against indigenous title holders under the newly amended Act. These include the Act’s “validation” provisions; the “confirmation of extinguishment” provisions; the primary production upgrade provisions; and restrictions concerning the right of indigenous title holders to negotiate non-indigenous land uses.

The CERD Committee further stated: “The lack of effective participation by indigenous communities in the formulation of the amendments also raises concerns with respect to the State party’s compliance with its obligations under article 5(c) of the Convention. Calling upon States parties to ‘recognise and protect the rights of indigenous peoples to own, develop, control and use their common lands, territories and resources,’ the Committee, in its general recommendation XXIII, stressed the importance of ensuring ‘that members of indigenous peoples have equal rights in respect of effective participation in public life, and that no decisions directly relating to their rights and interests are taken without their informed consent’.”

In a further decision 2(55) on Australia on 16 August 1999, the CERD Committee reaffirmed the decisions concerning Australia taken during its 54th session in March 1999.

In March 2000, the CERD Committee reviewed Australia’s periodic report and provided its “comments and recommendations”. The Committee drew specific attention to Aboriginal rights, including concerns the Committee had about hot-button issues in Australia—(i) the government’s unwillingness to apologise for the State’s earlier policy of forced removal of Aboriginal children from their families and (ii) the racially discriminatory impact of mandatory sentencing laws for minor property offences.

Taking the Committee’s concerns as an affront, the Australian government threatened to withdraw from the Convention and announced it would officially review its relations with the Treaty system as a whole. The Foreign Minister also questioned the integrity of CERD Committee members on the basis of their national origin.

While the rights of the indigenous peoples in Australia have yet to be established, the interventions by the CERD Committee strengthened the indigenous peoples’ rights under international law.

Human Rights Committee: the case of the Armed Forces Special Powers Act, 1958 of India

In 1958, the Indian Parliament passed the Armed Forces Special Powers Act (AFSPA) to tackle “arson, murder,
loot, dacoity etc by certain misguided sections of the Nagas" in the words of then Home Minister, Mr G B Pant\(^8\). Amended in 1972, the AFSPA allows arbitrary arrest, search without warrant and summary execution with virtual impunity. It was supposed to be on the statute book for one year. But 44 years have elapsed, the Act is still in operation, and the political problem of the Nagas remains as acute as when it was originally passed.

Comments by some Members of Parliament in 1958 while opposing the imposition of the Armed Forces Special Powers Act, reflect the draconian nature of the AFSPA:

"It pains me that we have an occasion in this House to give our assent to martial law which was forced on us by an Ordinance... Why have they (Government) smuggled this legislation in this way? It is really a challenge to the concept of democracy and freedom that we have," – the Deputy Speaker of the Lok Sabha while chairing the afternoon session on 18 August 1958\(^7\).

"This (Indian) Parliament is giving its seal of approval to a legal monstrosity to quell another kind of monstrosity," – Mr Mohanty, Member of Parliament\(^9\).

"Does the Honourable minister feel that this is the procedure, he can shoot if it is a disturbed area, that is the procedure established by law? He can shoot. Anybody can be killed or shot at, but is this procedure established by law, does it go to that extent? Article 21 says that no person can be deprived of his life. Here any person can be deprived of life by any commissioned officer, he can shoot." – the Speaker of Lok Sabha while questioning then Home Minister Mr G B Pant \(^8\).

Although a petition was filed in 1980 challenging the constitutional validity of the AFSPA, it was not heard even once by the Supreme Court until 1997. In its Alternate Report to India’s Third Periodic Report to the Human Rights Committee in July 1997, the South Asia Human Rights Documentation Centre (SAHRDC) stated: "By failing to consider the constitutional validity of the Act (AFSPA) even once in the last (...) decade, the judiciary has not risen to its obligations under the Indian Constitution and international law."

During the hearing in August 1997, India’s Attorney-General promised the Human Rights Committee that the hearing into the petitions\(^9\) questioning the constitutional validity of the AFSPA would be heard. The Committee, in its Concluding Observations, noted that "the examination of the constitutionality of the Armed Forces (Special Powers) Act, long pending before the Supreme Court is due to be heard in August 1997, (...) hopes that its provisions will also be examined for their compatibility with the Covenant."\(^21\)

The Supreme Court subsequently heard the petitions and, in its judgement on 27 November 1997, the Supreme Court upheld the constitutional validity of the AFSPA and issued certain guidelines to the army. What is important to note is that the hearing took place only after the Human Rights Committee intervened. It is up to the NGOs once again to monitor the implementation of the Supreme Court judgement and inform the Human Rights Committee during the examination of India’s next periodic report.

**Unheard voices**

In August 2001, Vietnam’s periodic report to the CERD Committee was examined. Being a closed country,
there is little information available on the plight of the Mountain Peoples in Vietnam. This is despite the fact that the first major democratic uprising of the ethnic minorities in Vietnam took place in Dak Lak and Gia Lai provinces in Central Highlands on 2-6 February 2001 and hundreds of them fled to Cambodia to seek refuge. The need to provide credible information to the CERD Committee was of enormous importance. IWGIA and the Asian Indigenous and Tribal Peoples Network submitted an alternate Report entitled "Discrimination Against Indigenous Mountain Peoples of Vietnam: An Alternate Report to the CERD Committee to the sixth to ninth Periodic Report of Vietnam (CERD/C/357/Add.2)" with specific recommendations.

The Final Concluding Observations of the CERD Committee on Vietnam reflects the similarities in the recommendations of the IWGIA-ATIPN and the CERD Committee, especially with regard to the allegations of forced sterilisation of mountain ethnic minority women and their rejection by the State party’s delegation, discrimination in the exercise of religious freedom by minority ethnic groups, absence of reference to any case of race-related acts of discrimination and failure to make the optional declaration provided for in article 14 of the Convention and population transfer of the majority Kinh population. This once again reflects the usefulness of the information provided by IWGIA and ATIPN in assisting in the effective examination of the periodic report of the Government of Vietnam.

Emerging challenges:

The establishment of the Permanent Forum on Indigenous Issues and the appointment of the Special Rapporteur on human rights and fundamental freedom of indigenous people will go a long way towards raising awareness on the use of international human rights mechanisms. While the Special Rapporteur’s methods of work are clear, given the methods of work of the existing Special Procedures, how and whether the Permanent Forum will be able to develop its mechanisms to implement its mandate remains to be seen.

The majority of indigenous peoples’ activists do not have experience in using international human rights procedures. Consequently, many suffer from tunnel vision — they attend the Working Group on Indigenous Populations under the Sub-Commission on Human Rights, which is not mandated to intervene in individual cases or discuss country situations, or the Working Group on the Draft Declaration under the Commission on Human Rights, another standard-setting body. The practice of oral interventions made at the WGIIP is also suffering from the law of diminishing returns. Indigenous peoples must not restrict their activities to mechanisms or bodies dealing only with indigenous peoples’ issues. The usefulness of using all the relevant international human rights mecha-
nisms, despite their obvious limitations, must be understood.

International organisations working on the rights of the indigenous peoples, too, have traditionally conducted studies from academic and anthropological perspectives. These studies were indispensable for highlighting indigenous peoples’ issues or for promoting indigenous peoples’ rights.

The main focus of the mainstream human rights movement has shifted from the promotion of human rights as a concept to the protection of human rights by using national and international human rights procedures. However, a large majority of indigenous peoples’ organisations or their support groups are lagging behind. While many indigenous peoples’ activists have developed an expertise in international standard-setting because of their experience with the Draft Declaration on the Rights of Indigenous Peoples and the process of establishing a Permanent Forum on Indigenous Issues, interventions in concrete individual cases, especially where human rights violations occur on a daily basis, by using national or international human rights mechanisms, is wanting.

Protection of indigenous peoples’ rights calls for innovation and dynamism in documentation, research and campaign techniques or methods. Indigenous peoples’ rights activism can no longer simply be about issuing urgent action appeals, holding demonstrations, writing reports or asking members and supporters to write letters expressing their concerns to different governmental authorities. Participation in the UN does not only mean making oral interventions but also using the procedures. Urgent Action Appeals and other traditional methods of activism are still effective but they are gradually suffering from what in economics is called the law of diminishing returns. Many governments now receive a large number of Urgent Action Appeals and have learnt to give one-line, standard replies. Moreover, while for an organisation like Amnesty International it is possible to exert pressure through Urgent Action, it may not be the same for other NGOs. Other NGOs need to realise that Amnesty International has over a million members to respond to Urgent Actions. Indigenous peoples’ organisations, like the rest of the NGOs, must realise that, rather than copying Amnesty International’s Urgent Action model, there is a better chance of obtaining positive results by filing complaints with National Human Rights Commissions (whenever they exist) and the UN procedures. Establishing the credibility of indigenous peoples’ organisations remains crucial and fundamental.

Notes

1. The General Assembly, the Security Council, the Economic and Social Council, the Commission on Human Rights, Sub-Commission on Human Rights, the Commission on the Status of Women and the Commission on Crime Prevention and Criminal Justice are some of the Charter-based bodies dealing with human rights.
2. The principal Treaty-based bodies are the Human Rights Committee, the Committee on the Elimination of All Forms of Racial Discrimination, the Committee on Economic, Social and Cultural Rights, the Committee Against Torture, the Committee on the Rights of the Child and the Committee on the Elimination of Racial Discrimination.
3. ILO and UNESCO have monitoring mechanisms.
5. The 1503 Procedure was developed at a time when complaints made to the UN could not refer to the country alleged to have committed human rights abuses. The confidentiality in dealing with complaints is one of the principal features of the 1500 Procedure and has been an obstacle to obtaining sufficient information about its functioning and effectiveness.
6. The Economic and Social Council sometimes decides - on its own initiative, after the study of a particular situation has concluded, or on the recommendation of the Commission on Human Rights - that the requirement of secrecy may be lifted. This was the case with Equatorial Guinea in 1979, Argentina and Uruguay in 1985 and the Philippines in 1986. In 1987, the Council decided that the confidential report by the Special Representative of the Commission on the human rights situation in Haiti should be made public.
8. A/50/18, para. 382.
9. The only Charter-based body consisting of independent experts, the Sub-Commission on Human Rights, can no longer adopt country resolutions, nor can it refer to a country in its thematic resolution, under the Enhancing Effectiveness of the Commission on Human Rights process, since its 2000 session.
10. The Committee on Economic, Social and Cultural Rights does not have individual complaint mechanisms.
11. Not all Special Procedures, such as the Special Rapporteur on the right to food, address individual cases.
17. ibid.
18. ibid.
19. ibid.
21. CCRP/C/79/Add.81
22. CERD/C/59/Misc.21/Rev.3.

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The United Nations Special Rapporteur on Indigenous Human Rights

By Alberto Saldamando
The Commission Resolution:

On April 24, 2001, at their 57th Session, the United Nations Commission on Human Rights adopted a resolution calling for the appointment of a Special Rapporteur on Human Rights and Indigenous Issues. Another historic achievement by Indigenous Peoples and their organizations and representatives at the United Nations, the resolution was adopted by a consensus of the members of the Commission.

The rapporteur is authorized by the resolution to take complaints from Indigenous individuals, groups or communities, including requests for urgent action, to investigate them, to make visits to the countries where the complaints originate, and to make recommendations to the Country violating Indigenous human rights and the various human rights organs of the United Nations as to steps they should take to remedy the violations or to prevent future violations.

Under the United Nations system, complaints concerning human rights violations are normally only possible where a State has agreed, by signing and ratifying a human rights convention or protocol, that it will be subject to complaints. Most human rights conventions do not contain such procedures. And relatively few States have agreed to be subject to such complaints, called "individual complaints," under the few conventions that have such mechanisms or procedures.

Because of the lack of real and effective mechanisms for the protection of human rights, in 1959 the UN began a process that resulted, in 1967, in the 1503 procedure. This procedure allows individuals, NGOs and groups to file complaints, called communications, on situations that reveal a consistent pattern of gross violations of human rights in any country of the world. The 1503 procedure is country specific, and is used only for a consistent pattern of gross violations of human rights, for countries that are violating the human rights of many peoples. This was the first non-conventional or extra-conventional mechanism for the protection of human rights. These mechanisms are called non-conventional because they do not depend on a treaty or convention, nor do they depend on the state's agreement to be subject to them.

In the 1980s, the United Nations began a system of non-conventional or extra-conventional mechanisms for the protection of human rights that extended beyond individual countries. These mechanisms also do not require a state to agree to be bound. The UN began by considering themes of human rights, such as torture, extra-judicial executions, arbitrary detentions, and disappearances, anywhere in the world. Normally, under this system, the Economic and Social Council of the UN mandates the Commission on Human Rights to appoint an independent expert on human rights, called a Special Rapporteur, or a Working Group, composed of independent experts, to receive complaints and make recommendations to the State involved and to the UN system, on redressing the violations and preventing future violations.

Although these mechanisms proved very useful in protecting the rights of Indigenous individuals suffering from such violations, no procedure or mechanism existed for the protection of Indigenous Peoples as a group, and their collective human rights.

Taking into account that no human rights mechanism exists to specifically protect the human rights and fundamental freedoms of Indigenous Peoples, the resolution authorizes the Special Rapporteur to receive communications from Indigenous Peoples and their communities and organizations, on violations of their human rights and fundamental freedoms. The Special Rapporteur's mandate (authorization) includes paying special attention to discrimination against Indigenous women and the violations of human rights and fundamental freedoms of Indigenous children.

There were some concerns voiced by Indigenous representatives and States that this initiative would duplicate or diminish the role of the Working Group on Indigenous Populations (WGIP) and the newly created and now appointed Permanent Forum for Indigenous Issues.

The resolution notes that the WGIP's mandate is to study and review developments pertaining to the promotion and protection of human rights and the evolution of standards concerning Indigenous Peoples' human rights. The WGIP can only undertake studies on developments, and apply those studies to the development of standards. It was with this mandate that the WGIP developed the proposed Declaration on the Rights of Indigenous Peoples, now before the Commission.

The WGIP mandate has never included the investigation of human rights complaints or their resolution. Many of us who have attended the WGIP have grown accustomed to its excellent Chairwoman interrupting oral interventions, warning Indigenous speakers that the WGIP cannot address their specific case of human rights violations.

The Permanent Forum's mandate generally is to discuss indigenous issues relating to economic and social development, culture, the environment, education, health and human rights, and make recommendations to ECOSOC, its parent body. It is meant to examine the work of the UN in these areas as the work relates to Indigenous Peoples and to rationalize that activity. The Permanent Forum's mandate does not allow it to investigate individual human rights complaints nor to appoint rapporteurs or investigators to look into specific human rights situations.

The International Indian Treaty Council and other Indigenous NGOs worked for this resolution with the firm belief that the Special Rapporteur would complement and strengthen the work of these other two most important fora. The WGIP and the Permanent Forum, with the Special Rapporteur, will be able themselves to refer matters to each other and provide a wider range of options to more effectively address the wide range of concerns and threats to the survival of Indigenous Peoples.
We have all attempted to use the Commission as well as the Sub-Commission and the WGIP to raise the specific human rights violations of our communities. Although sometimes receptive, these fora are normally notable to follow these up, except by resolution for further study. And working for a resolution at the Commission or Sub-Commission is a long and laborious process.

Many of us saw a need, given the persistent, grave and massive attacks on the human rights and fundamental freedoms of our communities, to have a mechanism within the UN that could receive complaints and investigate them as they should be investigated. We saw an urgent need to have a UN mechanism that could put a stop to these gross and massive attacks on the survival of Indigenous communities or at least denounce them for the grave violations that they are.

The Special Rapporteur, unlike the WGIP or the Permanent Forum, can investigate specific human rights complaints. The mandate includes making visits to the countries alleged to have violated or that are violating the human rights of a particular Indigenous community or group. The Special Rapporteur is authorized to make recommendations and proposals to the State and to the Commission on steps or activities they should take to remedy violations of Indigenous Peoples’ human rights and fundamental freedoms and to prevent future violations.

A most important aspect is the reality faced by Indigenous Peoples worldwide, a harsh reality of racist and colonialist practices that continue unabated to threaten their very existence, might be more effectively addressed.

The Rapporteur, Mr. Rodolfo Stavenhagen of Mexico:

The Resolution authorized the President of the Commission to appoint the Special Rapporteur. The Chairperson of the Commission on Human Rights is elected every year at the beginning of its regular session. In 2001, the Commission elected Ambassador Leandro Despuy of Argentina as President.

A most important qualification was an understanding of the cultures and traditional ways of life of Indigenous Peoples and a willingness to consult fully with Indigenous Peoples in the exercise of the mandate. In addition, many Indigenous Peoples called for the appointment of an Indigenous Rapporteur. The IIITC also encouraged Ambassador Despuy to consider the appointment of a Rapporteur who demonstrated a thorough knowledge of the UN system, including its specialized agencies such as the ILO.

Ambassador Despuy received various suggestions from many sources, including Indigenous NGOs, states and interested individuals. The list of candidates suggested to the President of the Commission, as published by the High Commissioner’s Office, included Nobel Laureate Rigoberta Menchu Tum of Guatemala and James Anaya of the United States, both Indigenous persons, as well as non-Indigenous experts, Ms. Erica Irene Daez, Mr. Agusto Wilhemsen Diaz of Guatemala, and Mr. Rodolfo Stavenhagen of Mexico.

On 25 June 2001, the President of the Human Rights Commission, Mr. Despuy, named Mr. Rodolfo Stavenhagen of Mexico as the Special Rapporteur. According to the Mexican Embassy in Paris, he is the first Mexican to be appointed as a Special Rapporteur.

A press release by the High Commissioner issued 10 August 2001, marking the International Day of the World’s Indigenous Peoples, described his qualifications:

Mr. Stavenhagen has extensive qualifications for the position. The author of many books on sociology, ethnic conflicts, development and human rights in general and indigenous rights in particular, he currently is a research professor at the University of Mexico. He was founding president of the Mexican Academy for Human Rights and a member for 10 years of the Council of the National Commission on Human Rights. Currently, he is a member of the Commission on the Monitoring and Follow-up of the San Andrés Peace Accords between the federal Government and the Zapatista National Liberation Army. He has been visiting professor at Harvard and Stanford Universities, and elsewhere. On occasion he writes for Mexican newspapers on social, cultural and political affairs.

The Mandate:

Although the Commission’s resolution as described above does not set out the procedural mandate of the Special Rapporteur, the Rapporteur himself will define his mandate in terms of his method of work and the human rights and fundamental freedoms that he will address. His first report, due at the 58th Session of the Commission in 2002, should address his method of work and those human rights and fundamental freedoms of Indigenous Peoples that he will address as a matter of priority.

In many cases, the Resolution establishing the creation of a Rapporteur will itself provide guidance as to the human rights of particular concern. But this resolution only cites the Universal Declaration of Human Rights in particular and, generally, the problems faced by Indigenous Peoples “in areas such as human rights, the environment, development, education and health.”

The International Indian Treaty Council has suggested to Mr. Stavenhagen that he should prioritize the exercise of his mandate on the human rights problems faced by Indigenous Peoples and their rights to land. The IIITC suggested that he focus his mandate on the taking of Indigenous Lands and territories, the forced displace-
ment of Indigenous Peoples from their lands and the ruination of their environment and means of subsistence by state and transnational development schemes.

The human rights and fundamental freedoms of Indigenous Peoples displaced from their lands and the ruination of their environment have not been addressed in a manner adequate to the urgent need. The IITC believes and respectfully suggests to the Special Rapporteur that the loss of indigenous lands and the ruination of Indigenous Peoples’ environment, directly linked to their very survival, are the most pressing human rights problem faced by Indigenous Peoples today. 9

The Universal Declaration on Human Rights, the only specific human rights document referred to in the Resolution, is generally a declaration of individual human rights save one: Article 7, the right to own property alone as well as in association with others.

In our letter, the IITC suggests to the Special Rapporteur that the collective right of Indigenous Peoples to their lands, territories and natural resources are well-established in international law. We also suggest to him that the content of that right with regard to Indigenous Peoples, including its collective nature, as well as the spiritual, cultural and economic relationships are also well established under international law. We suggest to him that the loss of lands and their ruination are real and present threats to the very existence of Indigenous Peoples and should be prioritized.

Certainly, there may be others who would suggest other priorities. But the fact remains that Indigenous Peoples are facing extinction. We approach the Special Rapporteur on Indigenous Human Rights, Mr. Stavenhagen, with the hope that he may do much to address that plight.

Notes

2 The International Covenant on Civil and Political Rights (ICCPR) has Protocol 1, which allows for individual (non-state) complaints. Less than half of the States that have signed and ratified the ICCPR have also signed and ratified Protocol 1. The Convention Against Torture (CAT) has an individual complaints procedure in its article 22, and the Convention on the Elimination of all Forms of Racial Discrimination (CERD) has a procedure under its article 14. Very few states have adopted the procedures. The CERD Committee has adopted an urgent action procedure that is also useful for raising complaints under the CERD convention with regard to Indigenous Peoples.
3 The Human rights website, http://www.unhcr.ch has a great deal of information on the ILO 1903 procedure and other non-conventional mechanisms, including a list of the existing Rapporteurs and Working Groups, their human rights themes and scope of the work.
4 Email message to ittcas@ak.net, from the office of Julian Berger, signed by Inge Parys, 5 June 2001, relating the list of candidates at that time.

7 Resolution, perambulatory paragraph 2.
8 Id., at perambulatory paragraph 4. The resolution, in its preamble, is also mindful of Part II, paragraph 29, and Part III, paragraphs 32 to 37, of the recommendations adopted by the Vienna World Conference on Human Rights, Part I Paragraph 29 “strongly reaffirms the commitment of the international community to [Indigenous peoples’] economic, social, and cultural well-being, and their enjoyment of the fruits of sustainable development”.
The UN Special Rapporteur on the Situation of Human Rights and Fundamental Rights of Indigenous People: Benefits for Indigenous People in Africa

By Maureen Tong
Indigenous people in Africa face much bigger challenges compared to indigenous people in other parts of the world. This is partly because of the controversy over the applicability of the concept of indigenous people to Africa. This controversy is manifested to a large extent by the view of African heads of state that all people of African descent are indigenous to Africa. This narrow political view is used in order to avoid addressing the rights of indigenous people within their territories. Many heads of state in Asia also argue that the concept is not applicable to their territories.

Only six African states ratified International Labour Organisation (ILO) Convention 107 of 1957. None have so far ratified ILO Convention on Indigenous and Tribal Peoples No. 169 of 1989. Only 14 countries ratified ILO Convention 169 of 1989. Nine are from Latin America, three from Europe, one from the Caribbean and one from Oceania. Despite having large populations of indigenous peoples within their territories, Australia, New Zealand, Canada and the United States of America have not ratified either ILO Convention 107 of 1957 or ILO Convention 169 of 1989. The controversy is therefore not limited to Africa. Debates within the United Nations Working Group on Indigenous Populations and the open-ended inter-sessional Working Group on the Draft Declaration on Indigenous People reveal that many heads of states contest the 'definition' of indigenous people. Many are concerned about the issue of self-determination, hence the debate of whether or not to adopt the term 'peoples'. The issue of the right of indigenous people to self-determination is highly contested and is particularly sensitive to African political leaders. Apart from resisting the very relevance of the concept of indigenous people to Africa, African heads of state argue that recognition of the right of indigenous people to self-determination threatens territorial integrity and national cohesion. The African Charter on Human and Peoples' Rights recognises the right of 'peoples' to self-determination. It has been argued that this right to self-determination relates to national liberation of Africans from colonial rule and is therefore not applicable to people within their national territories, claiming this right in post-colonial Africa.

Although countries like Canada, Australia and New Zealand have not ratified ILO Convention 107 of 1957 or ILO Convention 169 of 1989, there have been significant court decisions in those countries that uphold the rights of indigenous people. The legal recognition of the concept of aboriginal title (also called radical title/Indian title/original title/native title) has led the courts to make decisions that protect land rights and other human rights of aboriginal (first/indigenous) people in such countries. Indigenous people in the Americas had significant success in the decision of the Inter-American Court on Human Rights on 31 August 2001 involving the Mayagna Indian Community of Awas Tingni. The court decided that the government of Nicaragua had violated the human rights (namely economic, social and cultural rights) of the Awas Tingni Community by granting foreign companies licenses to log the tropical forest where the community resides. The first Australian case of *Mabo v Queensland* decided that negative and different treatment of aboriginal rights by official organs of the State was racially discriminatory. The Canadian case of *Delgamuukw v British Columbia* decided that aboriginal title arises from the physical fact of occupation of land by aboriginal peoples prior to colonisation.

By placing undue high emphasis on the requirement of 'aboriginality', ILO Convention 107 of 1957 and the UN Special Rapporteur Martinez Cobo's study on the Problem of Discrimination against Indigenous Populations, released in 1986, have led to the view that the concept of 'indigenous people' is more applicable to Latin America than to Africa. This is partly because of the history of population migrations in Africa over centuries that have resulted in many people living across a number of national boundaries. ILO Convention 107 of 1957 refers to people who inhabited a country or geographical territory at the time of colonisation or conquest. No country within the continent of Africa is still subject to colonial rule, hence the view that the concept of indigenous people is not applicable. Unlike in the Americas, Australia, New Zealand and the Pacific Islands, settler communities left many African countries at the time of independence.

Very few countries in Africa recognise, either in their constitutions or national legislation, the existence - and therefore the need to protect - the rights of indigenous people within their territory. Some took advantage of the recent constitutional review processes in their countries to include the right of indigenous people. These include Ethiopia, Cameroon, Uganda, Algeria and South Africa. While indigenous people in other parts of the world struggle against the extent to which their rights are violated, indigenous people in Africa have to struggle for their very existence to be recognised.

The African Commission on Human and Peoples' Rights (African Commission) has only recently started to open up the debate on the rights of indigenous peoples. The African Commission adopted the Resolution on the Rights of Indigenous People/Communities in Africa as recently as 6 November 2000. The said resolution was submitted to the 37th Ordinary Session of the Organisation of African Unity in Lusaka, Zambia in July 2001. The African Commission has established a Working Group on Indigenous People/Communities in Africa, which met for the first time in Banjul, The Gambia on 12 October 2001. The Working Group will submit a framework document to the next session of the African Commission in April/May 2002 in Pretoria, South Africa. These are bold and unprecedented steps on the part of the African Commission, given the hostility of many African states to the concept of indigenous people. Much still needs to be done. The regional strategy of the Project to Promote ILO Policy on Indigenous and Tribal Peoples identifies seven African countries in which it plans to operate. They are:
Cameroon, Central African Republic, Ethiopia, Kenya, Morocco, Tanzania and South Africa. This paper will focus on the ‘institutions’ of the United Nations Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People to see how this can assist indigenous people in Africa in their struggle for their existence to be recognised and their rights to be respected and protected.

The UN Commission on Human Rights adopted resolution 2001/57 on 24 April 2001 to appoint a Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people. Prof. Rodolfo Stavenhagen (from Mexico) was appointed for a period of 3 years. His mandate is:

a) To gather, request, receive and exchange information and communications from all relevant sources, including Governments, indigenous peoples themselves and their communities and organisations, on violations of their human rights and fundamental freedoms;

b) To formulate recommendations and proposals on appropriate measures and activities to prevent and remedy violations of the human rights and fundamental freedoms of indigenous people; and

c) To work in close relation with other special rapporteurs, special representatives, working groups and independent experts of the Commission on Human Rights and of the Sub-Commission on the Promotion and Protection of Human Rights.

The mandate of the Special Rapporteur relates to violations of (all) human rights and fundamental freedoms of indigenous people. The rights are not limited to those contained in either ILO Convention 107 of 1957 or ILO Convention 169 of 1989.

The Special Rapporteur, Prof. Rodolfo Stavenhagen, has included the continent of Africa in his work. This is despite the view by some experts within the United Nations, notably the Special Rapporteur on Treaties, Mr. Don Alfonso Martinez, that people who identify themselves as ‘indigenous’ in Africa will do better at the UN Working Group on Minorities since their governments do not recognise their existence.

Prof. Stavenhagen’s first annual report to the Commission on Human Rights included special concerns relating to the human rights and fundamental freedoms of indigenous people in Africa. He referred to, among others, the interference of land rights faced by the San in Southern Africa, the violation of the social, economic and cultural rights of the Hadzabe hunter-gatherers, the Maasai pastoralists in East Africa as well as the Bagyeli of Central Africa and the Twi in the Great Lakes Region. The report also referred to the demand by the Amazigh people of North Africa for recognition of their cultural rights. The Ogik people of Kenya demand that the new Constitution currently being drafted must recognise them as a distinct indigenous people. An addendum to the first annual report will come out shortly. It highlights other cases concerning human rights of indigenous people in Africa.

**Self-identification**

ILO Convention 169 of 1989 recognises self-identification of indigenous and tribal peoples as a fundamental criterion. Article 1.2 states that:

‘self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply’

ILO Convention 169 therefore adopts both objective and subjective criteria. The objective criterion determines whether a specific indigenous or tribal group meets the requirements of Article 1.1, while the subjective criterion is concerned with whether the person identifies themselves as belonging to an indigenous or tribal group or people, or the group considers itself to be indigenous or tribal under the Convention as stated in Article 1.2.

The principle of self-identification contained in Article 1.2 of ILO Convention 169 of 1989 is significant for indigenous people in Africa. Despite the denial of their governments that they exist, once people identify themselves as indigenous, they have the right to bring allegations of violations of their human rights to the Special Rapporteur. The Special Rapporteur has the mandate to ‘enquire’ into such allegations irrespective of whether the government recognises the people concerned as indigenous or not. For the purposes of enquiring into the allegation of violation of human rights and fundamental freedoms, the debate on the applicability of the concept of ‘indigenous people’ in Africa is less significant. For example, the San people of Botswana can provide information to the Special Rapporteur on the violations of their rights without the need to prove that they are indigenous. Most African states are members of the United Nations and ILO Conventions are international human rights instruments.
1. Gather information and communications from indigenous people themselves, and their communities and organisations, on violations of their human rights and fundamental freedoms

Despite their governments’ denials of their existence, the social movement of indigenous people in Africa is growing in significance and influence. Indigenous people in Africa actively participate in fora set up by the United Nations, for example, the Working Group on Indigenous Populations. They have a representative, Dr Godfrey Koevu (from Togo), on the Permanent Forum on Indigenous Issues.

Indigenous people have direct access to the UN Working Group on Indigenous Populations (WGIP) as well as the Working Group on Minorities. The mandate of the WGIP is two-fold: (a) to review developments pertaining to the promotion and protection of human rights and fundamental freedoms of indigenous peoples; and (b) to give attention to the evolution of international standards concerning indigenous rights.19

The Working Groups are not complaints ‘mechanisms’ and hence do not have the function of receiving and dealing with complaints of violation of rights. The mandate of the Special Rapporteur is significant in that it allows for the receipt of such allegations of violations of rights of indigenous people.

Indigenous people have established a number of organisations. Although these organisations are still young and many suffer from a lack of resources and training, they have helped indigenous people to organise themselves and to ‘have a voice’. Two umbrella organisations exist in Africa, namely, the Indigenous People of Africa Coordinating Committee (IPACC) with a secretariat based in Cape Town, South Africa and the Organisation of Indigenous People of Africa (OIPA) based in Tanzania. There are many ‘community-based’ organisations of indigenous people that are part of IPACC and OIPA. IPACC and OIPA represent a network through which information about violations of the rights of indigenous people can be presented to the United Nations through the office of the Special Rapporteur.

2. The mandate to request information on violations of human rights and fundamental freedoms of indigenous people

The Special Rapporteur may request information from all relevant sources, including Governments and indigenous people themselves or their organisations and communities. This means that, once it has come to the attention of the Special Rapporteur that certain governments are violating such rights, he or she has a mandate to request further information from the responsible government relating to the allegation. An example here is if the San/Basarwa in Botswana were to provide information to the Special Rapporteur concerning their ‘forcible’ removal from the Central Kalahari Game Reserve.

3. Formulate recommendations and proposals on appropriate measures

Another significant advantage about the mandate of the Special Rapporteur is that, more than just receiving and sharing information received, the Special Rapporteur has the power to make recommendations. For example, the Special Rapporteur may make recommendations on how the Government of Botswana should deal with the matter of the removal of the San from the Central Kalahari Game Reserve.

4. Work in close relation with others

The African Commission is under-resourced. There is a serious need to assist the newly appointed Working Group on Indigenous People/Communities in Africa in formulating issues for debate and how to facilitate the debate on the still controversial issue of the applicability of the concept of indigenous people in Africa. The need is much more serious considering that the Working Group operates in an environment where there is little support both within the Organisation of African Unity (OAU) and the African Commission for the work it is supposed to carry out. The Special Rapporteur, being an ‘official’ of the United Nations and therefore an ‘objective’ and ‘independent’ actor in relation to the African Commission, is ideally placed to help the Working Group of the African Commission.

5. Country visits

The Special Rapporteur may visit countries where indigenous people exist for the purpose of investigating their situations. The visits may only take place at the invitation of governments. The Special Rapporteur may request a government to invite him to their country for an official visit. A report of the visit will be recorded.

This may be difficult to achieve in Africa due to lack of acceptance by many African states of the existence of indigenous people in their territories. The strategy may be to approach those states that are open and supportive of the recognition of rights of indigenous people, for example, South Africa. One way is for organisations of indigenous people in South Africa to encourage their government to invite the Special Rapporteur for an official visit. The secretariat of the umbrella organisation, the Indigenous Peoples of Africa Coordinating Committee (IPACC) is based in Cape Town, South Africa. IPACC could facilitate this process. An official visit to South Africa could be used as a ‘model’ as well as a ‘platform’ for the rest of Africa.
6. Undertake studies

The Special Rapporteur has the mandate to undertake studies on specific issues relating to indigenous people. There is a need for much research on issues affecting indigenous people in Africa. One area is the impact of development projects on the human rights of indigenous people. For example, the establishment of the hydroelectric dam on the Epupa Falls threatens the survival of the (indigenous) Himba people of Namibia as a people as well as that of their culture.

7. Participate in international conferences/seminars as an ‘expert’ on indigenous issues

The Special Rapporteur is appointed on the basis of his or her own expertise on the topic of indigenous issues. This expertise may be used more creatively where the Special Rapporteur is invited in his or her private capacity as an expert to attend and make valuable contributions to conferences, either regionally or in the whole continent.

The attendance of Prof. Stavenhagen at the Third Seminar on Multiculturalism in Africa: Peaceful and Constructive Group Accommodation in Situations involving Minorities and Indigenous Peoples, Gaborone, Botswana, 18 – 22 February 2002, is one example where his expertise assisted in the discussions.

Conclusion

The appointment of the UN Special Rapporteur is very useful for indigenous people in Africa. The challenge now rests with indigenous people themselves, their organisations and communities, to make good use of this opportunity. They need to submit information pertaining to violations of their rights to the Special Rapporteur so that he can act on such information. Those that can influence their governments to invite the Special Rapporteur for country visits need to do so. Academics and organisations dealing with indigenous issues need to find creative ways in which the expertise of the Special Rapporteur could be put to good use. For example, by organising conferences and seminars at which this still controversial issue of the applicability of the concept of indigenous people may be debated and hopefully resolved. The African Commission’s Working Group on Indigenous People and Communities in Africa should find ways in which they could involve the UN Special Rapporteur in their work. The Special Rapporteur, despite the limitations of resources and personnel to assist him in his work, has expressed a need to make his office more ‘user friendly’ to indigenous people.

Notes

1. They are: Angola, Egypt, Ghana, Malawi, Tunisia and Guinea-Bissau.
2. They are: Mexico, Colombia, Bolivia, Paraguay, Peru, Honduras, Guatemala, Ecuador and Argentina.
3. The Netherlands, Norway and Denmark.
5. Fiji.
6. Most countries in the Pacific Islands are still under colonial rule. They are still fighting for self-determination and national liberation. Many do not have treaty-making powers.
8. Katangese Peoples of Zaire
9. http://www.indianlaw.org/body_jachr_decision.html accessed on 22 October 2001. This was the first time that the Inter-American Court on Human Rights made a decision of this nature. The case is significant in that it was the first time that an international human rights court took a decision linking human rights and the environment using international human rights law and instruments. See also http://www.cedh.org.org/Fre/parsi-10-09-01.html accessed on 22 October 2001.
12. Southern Africa is an exception. For example, the Afrikaners did not leave South Africa at the time of the establishment of a democratic state in 1994. The same happened in Namibia in 1990.
14. Ibid.
15. Article 1.1 of ILO Convention 169 of 1989 states that it applies to:
   (a) tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations;
   (b) peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographic region to which the country belongs, at the time of conquest or colonisation or the establishment of present state boundaries and who, irrespective of their legal status retain some or all of their own social, economic, cultural and political institutions.

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The World Conference Against Racism: Continuing Racism Against Indigenous Peoples

By Alberto Saldamando
Acknowledgement:

One of the few bright moments for Indigenous Peoples at the World Conference Against Racism, in Durban, South Africa, was a reception for Indigenous delegates organized by the Ko-San Peoples of South Africa, IPACC, the Indigenous Peoples of Africa Coordinating Committee and the Griqua National Conference of South Africa. At this event, organized by Cecil Le Feur of IPACC, our Indigenous South African hosts were warm and generous in their time and greatly successful in their efforts to make us feel welcome. All Indigenous delegates to the WCAR were very appreciative and grateful.

Introduction

The United Nations (UN) has held two World Conferences to Combat Racism, in 1978 and 1983, prior to the World Conference Against Racism (WCAR) in Durban, South Africa, from August 31 – September 7, 2001. The General Assembly has also declared three Decades to Combat Racism, the third of which ends in 2003.

The first two World Conferences to Combat Racism of 1978 and 1983 took very strong positions against the apartheid system then in force in the Republic of South Africa. These first two World Conferences are credited by many as having contributed greatly to the end of the apartheid system. Yet little was accomplished by these World Conferences with regard to ending racial discrimination against Indigenous Peoples or other victims of racism’s pernicious practices and deadly results in other parts of the world.

There are few, if any, countries whose racism is not a problem today, particularly for Indigenous Peoples. Many Indigenous Peoples and their representatives participated not only at the WCAR in Durban but in all of the WCAR preparatory processes, as well as the NGO Forum held in conjunction with the WCAR, in the hope that there would be a serious commitment by the member States of the United Nations and civil society to end racism throughout the world. No such commitment was forthcoming.

At the WCAR, Indigenous Peoples were still struggling with the United Nations over the basic recognition of their collective rights as peoples. Worse, the WCAR misstated international standards recognizing Indigenous Peoples as the owners of their traditional lands, territories and natural resources. It declared Indigenous lands and natural resources subject to domestic law, “encouraging” (but not requiring) compliance with domestic and not international standards, and only “whenever possible.”

And civil society at the Durban WCAR became so entangled in the states’ ideological warfare over the state of Israel that the NGO Forum Declaration and Programme of Action are now being rejected as anti-Semitic and racist by many Northern NGOs.

This brief article, an elaboration on a written intervention to the Commission on Human Rights’ 58th Session, attempts to describe the WCAR process and outcomes with regard to Indigenous Peoples. Some may see it as unduly negative but it is not meant to be. The personal observations and opinions of the author are meant to reflect on the nature of racism within the international community and the importance of continuing the struggle against racism. Indigenous Peoples have achieved some success within the UN system but the WCAR process reminded us that racism, including racism within our international community, continues not only to impede our progress but to justify the theft of our lands and natural resources and our oppression.

Prior world conferences to combat racism

At the 1978 World Conference to Combat Racism, the States adopted a Declaration that used the word “peoples” with reference to Indigenous Peoples without qualification or restriction. The first World Conference to Combat Racism included, in its Declaration, the statement, that:

21. The conference endorses the right of indigenous peoples to maintain their traditional structure of economy and culture, including their own language, and also recognizes the special relationship of indigenous peoples to their land, and stresses that their land, land rights and natural resources should not be taken from them.

Almost immediately in UN terms, in 1983, the second World Conference to Combat Racism retrogressed. It failed to use the term Indigenous “Peoples” in its Declaration and Programme of Action, and relegated us to “populations.” But it did repeat the statements recognizing Indigenous Peoples’ special relationship to their lands and our right to our land and natural resources:

22. the rights of indigenous populations to maintain their traditional economic, social and cultural structures, to pursue their own economic, social and cultural development and to use and further develop their own language, their special re-
relationship to their land and its natural resources should not be taken away from them; the need for consultation with indigenous populations as regards proposals which concern them should be fully observed; the Conference welcomes the establishment of the (sic) United Nations Group on Indigenous Populations.

**Indigenous positions**

On August 10, 2000, over 200 Indigenous participants attended a preparatory consultation for the WCAR, at the UN Headquarters in New York City, hosted by the Office of the High Commissioner on Human Rights, on the 6th Commemoration of the International Day of the World’s Indigenous Peoples. After three breakout sessions and two full plenary sessions, the participants recommended to the Preparatory Committee of the WCAR, among other things, that the WCAR Declaration and Programme of Action should specifically recognize indigenous peoples as peoples, and should use no other word such as “populations” or “people”.

Lamenting the fact that the statements of the first two World Conferences had not been observed, this gathering of Indigenous Peoples also recommended that the WCAR Declaration and Programme of Action recognize Indigenous Peoples’ right to own and control their lands and territories. It recommended that the WCAR recognize that Indigenous Peoples have a right not to be deprived of their lands, natural resources and means of subsistence, and that the WCAR should call upon the states to take effective measures to protect Indigenous Peoples’ rights to their land, territories and natural resources.

This call was repeated at the May, 2000 Prepcom II, by its Indigenous Caucus and by the Indigenous Initiative for Peace, in its satellite conference from Mexico City, in November 2000. At the same time, in November 2000, the hundreds of Indigenous Delegates attending the Intersessional Working Group on the United Nations Draft Declaration on the Rights of Indigenous Peoples issued a statement on Racism Against Indigenous Peoples and the WCAR, calling upon the states to use the word Peoples with regard to Indigenous Peoples and no other word, and to specifically recognize indigenous peoples as peoples. They also called upon the states to take immediate and effective measures to demarcate and protect indigenous lands, territories and natural resources from encroachment and ruination.

Indigenous Peoples at the Americas Preparatory Conference to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, in Santiago de Chile on 3rd and 4th December 2000, adopted a Declaration calling for full recognition of Indigenous peoples as peoples, and recognition of indigenous peoples’ rights to lands, territories and natural resources. Again, Indigenous Peoples meeting in Quito, Ecuador, in March 2001, at a UN-sponsored NGO Forum, also described racism in the Americas as an extension of colonialism, calling for the full recognition of indigenous peoples as peoples with the right of self determination, and the recognition of indigenous systems of governance of their territories.

Indigenous Peoples from all parts of the world held numerous other consultations, meetings and conferences, at national and regional level, in preparation for the Durban WCAR. At the Regional Meeting of Indigenous Peoples on the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, held in Sydney, Australia, February 2001, Indigenous Peoples from Australia, New Zealand, Canada, Hawai’i and the United States, in their long and eloquent report, also called not only for the recognition of indigenous peoples as peoples but, in particular, the recognition of our inherent right of self determination and of ownership and control of our territories and resources.

The Indigenous Peoples’ Millennium Conference, hosted by NAPGUANA, and held in Panama City, Panama, in May of 2001, gathered what had become a global consensus of Indigenous Peoples from all over the world on recommendations to the WCAR. The consensus included the outcomes of the above named conferences, as well as the Community Consultation on Racism, Racial Discrimination, Xenophobia and Related Intolerance, Kampala, Uganda, April-May, 2001; the Abokabi Declaration of Ghana, April 2001 and, the Kidal Declaration of Mali, January 2001.

The Indigenous worldwide consensus called upon the states to recognize Indigenous Peoples as Peoples within the full meaning of international law, and their right of self determination, as well as the reiteration of the first two World Conferences’ recognition of the special physical and spiritual relationship between indigenous peoples and their lands, and that their lands and natural resources should not be taken from them.

Indigenous Peoples and their representatives issued many more statements and declarations on racism and recommendations to the WCAR than are listed above. Many, such as the Santiago Declaration, and particularly the Sidney Report, eloquently reflect the feelings of indigenous peoples after 500 years of colonization, religious persecution and intolerance, genocide and its contemporary manifestations.

the continuing militarization of Indigenous lands, the new and pernicious manifestation of environmental racism, the unabated loss of sacred lands and sacred sites, the consistent failures of governments to consult indigenous peoples and their free and informed consent on matters that affect their environments, subsistence and very survival, and many other issues already recognized as subjects of Indigenous rights under international standards. Correctly, Indigenous Peoples viewed these historically persistent gross and massive violations of the human rights and fundamental freedoms of Indigenous Peoples as grounded on an equally historical and persistent racism.
Bearing in mind the definition of racial discrimination in the CERD Convention, that of any distinction based on race or ethnic origin that has the purpose or effect of nullifying or impairing the recognition or enjoyment of other human rights, Indigenous Peoples were in global consensus that the refusal of states to use the word Peoples, without restriction or condition, was itself racist. Article 1 in Common of the Universal Bill of Human Rights, states: "All Peoples have the right of self-determination." We continued to ask, Why not Indigenous Peoples?

All that was asked of the states by Indigenous Peoples for the WCAR Declaration and Programme of Action was a reaffirmation of our already internationally recognized collective rights as Peoples, as reflected by the two prior World Conferences.

The outcomes

1. The UN Preparatory Processes: The United Nations sponsored 5 Experts Meetings, beginning in December 1999, in preparation for the WCAR: two in Geneva (Refugees and Multiethnic States, and Remedies) and one each in Santiago de Chile (Legal Measures), Addis-Ababa, Ethiopia (Preventing Ethnic Racial Conflict), Bangkok, Thailand (Migrants and Trafficking) and Warsaw, Poland (Protection of Minorities and other Vulnerable Groups).

In addition, beginning in October 2000, the Commission on Human Rights sponsored 4 Regional Preparatory Meetings: the Council of Europe (Strasbourg, France), Americas (Santiago de Chile), Asia (Teheran, Iran) and Africa (Dakar, Senegal).

Although Indigenous Peoples are found all over the world and face severe problems of racial discrimination and survival in every region of the world, the only meeting out of all those mentioned above that addressed Indigenous Peoples to any significant degree was the America’s Experts and Regional Meetings. We understand that Indigenous Peoples and their NGOs were not even invited to many of the other Experts and Regional Prepcoms, even where organized by non-Indigenous NGOs themselves.

2. The Santiago Latin American and Caribbean regional seminar of experts: The Experts meeting of the Americas used the term "indigenous peoples" without any qualification or restriction of the term “peoples” under international law. The seminar concluded that Indigenous Peoples’ collective rights to land and territories, and natural resources, should be recognized and exercised. It recommended to the WCAR that it is up to the states to: "Recognize the right of indigenous peoples to the ownership, exploitation, control and utilization of their lands and territories, including natural resources."

3. The Santiago Regional Conference on the Americas: Unlike the regional seminar of experts meeting (to which it was not invited), the United States did attend the Regional Conference of the Americas, also held at Santiago de Chile. At the insistence of the United States, the Conference adopted language in its preamble, that the “rights associated with the term “peoples” have a context-specific meaning that is appropriately determined in the multilateral negotiations in the texts of the declarations that specifically deal with such rights." The word “peoples” was rendered an empty word, one without any meaning.

Sections repeating the first two World Conferences’ language related to Indigenous Peoples’ rights to lands and natural resources were dropped. Instead, the Santiago Prepcom referred only to the “well-being of indigenous peoples and their enjoyment of the benefits of sustainable development...”.

There was a struggle in Santiago between Indigenous Peoples’ representatives and the United States that included calls to the Clinton White House. It went on until the final day’s final hour. And although many Latin American and Caribbean States supported our demands, the United States would not agree to a consensus until their language was adopted.

And at the following Prepcom in Geneva, the Preparatory Committee, the Commission on Human Rights, decided that it would consider the Santiago Regional Prepcom language as the draft for the Indigenous sections of the WCAR documents.

The Durban World Conference Against Racism

In spite of great participation by Indigenous Peoples throughout the process, and support from many states, upon the insistence of the North, led by the United King-
dom, the WCAR retrogressed from previous World Conferences to Combat Racism.

With regard to the word "peoples," the WCAR Declaration defines the term "indigenous peoples," as a term that, "... cannot be construed as having any implications as to rights under international law." The word "peoples" in the WCAR Declaration is thus an empty word, devoid of meaning, devoid of rights.

Equally offensive to our human dignity is the regressive change made in relation to the previous two World Conference Declarations with regard to land and natural resources:

We also recognize the special relationship that indigenous peoples have with the land as the basis for their spiritual, physical and cultural existence and encourage States, wherever possible, to ensure that indigenous peoples are able to retain ownership of their lands and natural resources to which they are entitled under domestic law.

The WCAR thus only "encourages" observance of our internationally recognized human rights and fundamental freedoms (even though human rights are legally binding obligations under international law) and only where "possible". Worse, internationally recognized rights to our lands and natural resources are subjected to domestic law, in effect approving state thefts of land that have been condemned by both the Human Rights Committee and the CERD Committee.

Language suggesting that our human rights were "negotiable" at the Internsional on the Draft Declaration was dealt a blow at the WCAR, primarily because Indigenous Peoples forced a re-opening of the consensus that adopted it. But the result adopted by the WCAR, that the meaning of the word "peoples" awaits the adoption of the proposed Declaration on the Rights of Indigenous Peoples, is, in the end, offensive enough, even if no reference is made to "multilateral negotiations".

Whether intentionally or not, the United Nations nullified and impaired our internationally recognized human rights. The WCAR Declaration and Programme of Action was an act of racial discrimination by the United Nations itself.

Conclusion

Mr. Theodor van Boven, a highly respected and long-standing United Nations expert on human rights and member of the Committee for the Elimination of Racial Discrimination, the treaty monitoring body of the Convention on the Elimination of All Forms of Racial Discrimination, wrote a background paper for the WCAR preparatory process, examining the lack of effectiveness and commitments of the two prior World Conferences to Combat Racism. Much of his criticism can be applied to the Durban WCAR.

Noting the apparent ineffectiveness of commitments made by the first two World Conferences, he cites the European Union's (to which we would add the United States, and call this collectively the "North") lack of commitment to United Nations processes, such as the CERD Convention and CERD Committee and its monitoring processes, preferring their own, "conspicuously ignoring the existence of United Nations standards and pronouncements on the same subject even though 14 of the 15 EU States (and the United States) are signatories to the CERD Convention".

As reasons for the failures of the first two World Conferences to effectively deal with the problem of racism, he cites the North's "perception" that the United Nations is influenced by forces hostile to its interests, reminding us that Europe (and the United States) have boycotted prior racism conferences over the issue of Israel and Zionism. And, indeed, the United States and Israel did boycott this WCAR, for exactly the same reason. In keeping with the declared reasons for the continuing boycotting of these conferences on racism, van Boven cites the North's use of the UN to promote their own perceived interests and not the interests of the victims of racism.

He cites the North's guilt with regard to colonialism and its racism, as well as a political unwillingness to come to terms with racism in a manner consistent with the views expressed by the victims of their racist history and present practices.

And, indeed, it is obvious that certain deeply rooted patterns of racism and racial discrimination are closely related to the colonial past with its white supremacy and that nefarious doctrines of racial superiority were preached and practiced by Europeans.

The very same criticisms can be said of the Durban WCAR, particularly with regard to the North's colonialism and "deeply rooted patterns of racism and racial discrimination".

What the WCAR did accomplish, in the end, was to underscore the need to continue our vigilance and struggle against racism. To Indigenous Peoples, the WCAR only revealed, once again and in bold strokes, that racism underlies all other denials of our human rights and fundamental freedoms. It demonstrated that racism and racist practices continue, even by the Commission on Human Rights as it consciously and purposefully decided to evade the world "peoples" of all meaning. Equally disturbing is the Commission's mis-statements about existing international standards on the rights of Indigenous Peoples to their lands, territories and resources being dependent on domestic law.

The WCAR process, including the WCAR itself, did have one very positive effect, that of solidifying the Global Indigenous movement. It is no small accomplishment that all Indigenous Peoples from all regions of the world spoke with one voice throughout. But, in the end, the WCAR only revealed that it is our lands and natural resources they still hunger for. It is our common reality.
There are some states that lent us substantial support and encouragement. Understanding of our plight on the part of states and NGOs is growing. But, as the Indigenous Peoples of America, constituting an historic problem with deep roots in colonialism and the enslavement of entire peoples, a problem that began with the invasion of 1492 and which continues to this very day, denying Indigenous Peoples their self-determination;

It is racism that fuels our oppression.

Notes


4 See, eg., Reports of the European Preparatory Conference (A/Conf.189/PC.2/6, 13 October 2000); the Asian Preparatory Meeting (A/Conf.189/PC.2/9, 21 February 2001); and the Regional Conference for Africa (A/Conf.191/VC.2/8, Dakar, 24 January 2001). In these three reports, Indigenous Peoples are only mentioned along with other vulnerable groups. No other references are made to Indigenous Peoples. The African Report refers to “indigenous populations” (op. cit. at para 24).

5 Much of the criticism that can be leveled at the states with regard to deeply ingrained racist attitudes and indifference toward Indigenous Peoples can be also attributed to many non-indigenous NGOs. See, ICARE website, fn. 2.

6 Report of the Latin American and Caribbean regional seminar of experts on economic, social and legal measures to combat racism with particular reference to vulnerable groups. (A/CONF.189/PC.2/5, 27 April 2001). Noteworthy is the fact that Atencio Lopez, an Indigenous Kuna, was invited as an expert and presented a paper on NGOs (Acción de Las Organizaciones No Gubernamentales y de la Sociedad Civil: Perspectivas y Prácticas mas Idóneas). Although there may have been other Indigenous NGOs attending, the International Indian Treaty Council was probably the only visible Indigenous NGO in attendance at this meeting (see, Para 33, page 10 of the report).


8 Id, at para 47. (c). The section on Indigenous Peoples in the Latin American and Caribbean regional report (Indigenous peoples, paras 44-49) also contains some other excellent recommendations, including the full and free participation in all phases of the process of decision-making on subjects of concern to them.

9 Documents adopted by the Regional Conference of the Americas. Santiago Chile, 5-7 December 2001, WCR/IC/2001/ Misc.5.

10 World Conference Against Racism Declaration, paragraph 24, found at the Human Rights website, http://www.hchr.ch, visited January 10, 2002. Ironically this paragraph is found on the website under the section entitled, “Sources, causes, forms and contemporary manifestations of racism, racial discrimination, xenophobia and related intolerance.”

11 Id, at para 43.

12 See list of citations. Fn. 3.

13 Fn 10.

14 Fn 1.

15 Fn. 1, at para 2.

16 Id.


18 Van Boven, fn 1, at para 3(c).

19 Id, at para 3. (b).

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The OAS Working Group on the Proposed American Declaration on the Rights of Indigenous Peoples

Background

In what was widely regarded as a reaction to the adoption of ILO 169, the OAS General Assembly passed a Resolution in 1989 directing that an Inter-American instrument on the rights of Indigenous peoples be drafted. An official draft of an OAS Declaration was approved and made public in September 1995. Shortly thereafter, the Inter-American Commission on Human Rights (IACHR) held a number of regional consultations on the draft (Canada, Guatemala, Ecuador) — widely considered inadequate by Indigenous peoples and others — where it sought comments. After the consultations, the IACHR approved a revised version of the draft declaration in February 1997 and issued it to the public as the proposed American Declaration on the Rights of Indigenous Peoples. The proposed Declaration and the various comments were then considered by the Meeting of Governmental Experts, held in Washington from 10-12 February 1999, under the auspices of the Permanent Council of the OAS and its Committee on Juridical and Political Affairs (CJPA).

The governmental experts had full authority to modify and amend the OAS Declaration and did so by completing a first reading of the preambular paragraphs, changing the language of some and deleting others entirely. Indigenous participation was not formally included in the meeting but last minute efforts by Indigenous peoples permitted their attendance as observers. The Government of Antigua and Barbuda also allowed Indigenous persons to sit on its delegation and thereby make interventions. The Experts Meeting agreed that there should be further discussion on the proposed Declaration and that Indigenous peoples should participate fully in these discussions.

At its 1999 session, the OAS General Assembly decided to establish a working group of its Permanent Council to continue consideration of the proposed Declaration. The working group, formally installed on 28 July 1999, was invited by the General Assembly to “provide for the appropriate participation in its efforts by representatives of indigenous communities, so that their observations and suggestions may be considered.”

The first session of the Working Group (November 1999)

The first session of the Working Group on the proposed Declaration was contentious. At the opening session, the Indigenous delegations rejected the participation procedures as inadequate and discriminatory and called for measures to enhance participation so as “to ensure our right to form part of the consensus in the adoption of the proposed Declaration.” When this demand was ignored by the Chair, the Indigenous delegations walked out in
protest, returning only two days later after a compromise had been reached.

The remainder of the session was taken up by interventions on the text of the Declaration. Some states raised the issue of a definition for the term ‘Indigenous’. Some also objected to the use of the term ‘peoples’ (the United States, Argentina, Chile, Suriname), while others proposed that language used in ILO 169 be used to deprive ‘peoples’ of its meaning in connection with self-determination (Brazil). Many of the Indigenous delegations stated that removing the term ‘peoples’ from the proposed Declaration would render any discussion of the subsequent articles meaningless and of little interest to them.

While some governments noted that self-determination was an evolving concept in international law and could be achieved through negotiated agreements between Indigenous peoples and states at the national level (Canada, Colombia), the discussion in many ways tracked that taking place in the UN, with some governments rejecting outright the application of the right to Indigenous peoples (Argentina, Chile, United States); some supported inclusion of the right provided that it excluded any right to secede (Canada); most raised concerns about territorial integrity and state sovereignty; and most attempted to define the right as limited to autonomy and self-government, thereby creating a second class expression of the right in the case of Indigenous peoples (e.g., Brazil, Mexico). The Indigenous delegations stated that the right to self-determination is well established in and defined by international law and that it was inappropriate for the OAS to attempt to define the right otherwise. They proposed that the right to self-determination, as found in common Articles 1 of the International Covenants and Article 3 of the UN draft Declaration on Indigenous rights, be added to the proposed Declaration.

Some governments supported inclusion of the right to autonomy and self-government (Canada, United States, Bolivia, Colombia, Guatemala) but others stated that the use of the terms ‘autonomy’, ‘self-government’ and ‘political status’ were unacceptable (Brazil, Chile, Argentina). Concerning the recognition of Indigenous legal systems, some governments stated that a parallel legal system was unacceptable and proposed that the article be deleted in its entirety (Argentina, Brazil and Chile); others proposed minor modifications to the text but accepted the principle (United States, Mexico), while others accepted the principle but stated that it should be tied to respect for fundamental rights defined by national and international law (Colombia, Guatemala). With the exception of the United States, which objected to their collective nature, there were no serious objections raised to the language on political participation rights.

In their concluding statements, many of the Indigenous delegations noted once again that they were dissatisfied with the procedures for their participation in the Working Group, hoped that states had realized that they
had nothing to fear from Indigenous participation and urged that the participation procedures be revised and strengthened prior to the next session of the Working Group. This point was reiterated in a final closing statement read on behalf of the Indigenous delegations.

The second session (April 2001)

The second session was opened with speeches from the OAS Secretary General and others. The first day was an informal session aimed at building trust between the Indigenous and state delegations. Overall it was a positive discussion about some of the concepts found in the Declaration and set the tone for a much more open dialogue than had occurred at any point during the first session. At the initiative of the Chair, Ambassador Ronalith Ochaeta of Guatemala, the issue of changing the title from ‘Indigenous populations’ to ‘Indigenous peoples’ was discussed and approved by consensus. This was a major achievement and ensures that ‘peoples’ will be used throughout the Declaration. Some states are pushing to retain a caveat along the lines of ILO 169 to qualify the use of ‘peoples’ (Brazil, Argentina, Chile, Venezuela), while others are seeking to develop and include a definition of self-determination at odds with article 1 of the International Covenants (Guatemala, U.S.A., Mexico, Paraguay, Peru and, to a lesser extent, Canada).

The other point that deserves attention from the second session concerns the position of the US delegation, particularly as it is also very relevant in terms of progress on the UN Draft Declaration. In the last days of the Clinton Administration, an Executive Order was issued, reversing 20 years of US policy on Indigenous peoples in international fora. Most importantly, the US position now accepts and advocates recognition of collective rights, the use of ‘peoples’ and the right to (internal) self-determination. This is highly significant as the previous US position contributed to stagnation of the UN process and caused many problems during the first session of the OAS Working Group.

Generally, the second session was encouraging and marked a clear advance in thinking over the first session. Most notable was the change in the US position, which has removed one of the main blockages to progress on some of the core themes in the proposed Declaration. However, some states appeared to take more conservative positions than they had done in the first session (Mexico, Colombia, Ecuador). Argentina and Chile remain major problems in the process. Together with Ecuador, Brazil and Venezuela, they form a block intent on substantially weakening the proposed Declaration or at least tying the rights recognized therein to domestic laws.

Despite the original intention of the OAS to expedite submission of the proposed Declaration to the OAS General Assembly for adoption, it appears that the Working Group will continue to operate for a number of years to come. The second session only partially dealt with six of a total of 27 articles and those articles were not very
contentious. The issue of definitions will require substantial discussion. Recent developments, however, indicate that this may not be the case and the Declaration, if the work plan of the new Chair of the Working Group from Peru is followed, may be submitted to the General Assembly in June 2002 (see below).

Finally, while the second session was somewhat encouraging, much work is still needed to educate state delegations and ensure that Indigenous proposals are seriously considered and incorporated. Indigenous delegations continued to stress concerns about participation and most confined comments on the Declaration to general statements about the core themes and general principles involved. The proposals of some states to include a definition of self-determination contrary to the classic formulation used in the Covenants and the UN Draft Declaration is disturbing and must be countered.

**Developments since the second session**

After the 2001 OAS General Assembly, Ambassador Eduardo Ferrero Costa of Peru was elected as Chair of the Working Group. The new Chair developed a work programme for the Declaration, approved in October 2001, that substantially departs from the previous procedure and, in many ways, represents a setback for Indigenous peoples. This work programme is divided into five phases, one of which has been partly completed at the time of this writing. The first phase (October-December 2001) involved consideration of comments and proposals for the language of the proposed Declaration submitted by states and consideration of legal opinions drafted by OAS bodies. It culminated with the Chair preparing “a preliminary draft declaration” based on these submissions. This is to be followed by phase II (15 December 2001- 15 January 2002), which will involve internal discussions between state delegations at the OAS and their home governments and, “if possible ... national consultations with civil society/indigenous peoples, in preparation for the next phase”. No consultations with Indigenous peoples have been held to-date.

The third phase, which encompasses the second half of January 2002 and February 2002, will include: consideration of the preliminary draft declaration prepared by the Chair; a two-day technical meeting with member state experts on the human rights of Indigenous peoples and an exchange of views among representatives of the member states with the participation of representatives of Indigenous peoples. The fourth phase (March 2002) involves finalization and approval of the proposed Declaration by the Working Group and approval of the proposed Declaration by the CIPAC and Permanent Council. Finally, the fifth phase (April-June 2002) is presentation of the proposed Declaration to the OAS General Assembly for adoption.

This work programme is problematic to say the least. Assuming that national consultations are held, as proposed in phase II, Indigenous peoples will only have two chances to provide input on the language of the Declaration before it is submitted for approval to the General Assembly. Only states participated in the meetings held during phase I and no record of those meetings has been made public so far. The ‘preliminary draft
declaration", developed by the Chair, will be based primarily upon the conclusions of these meetings. It is unclear to what extent the IACHR’s language will remain in the Chair’s draft and it is equally unclear whether Indigenous proposals will be accorded sufficient, if any, weight.

Given that Indigenous peoples were and remain, despite improvements in the second session, deeply dissatisfied with the level of their participation in the Working Group to date, the process adopted by the present Chair will likely be viewed as a return to the closed door policies of the OAS and rejected. What this means for the future is unclear; the Chair can either push forward with sending the document to the General Assembly and, as a consequence, face condemnation by Indigenous peoples, or the work plan will have to be modified to ensure adequate and active Indigenous participation. While the latter may be rejected by some states, it is clear that the majority of states participating in the Working Group are wary of approving a Declaration that will be rejected by Indigenous peoples and may therefore support further discussions on the substance of the Declaration with some degree of Indigenous participation.

Concluding remarks

The OAS proposed Declaration and the United Nations draft Declaration on the Rights of Indigenous Peoples are two of the most important exercises currently underway to address the human rights of Indigenous peoples. While the latter is by far the more responsive to Indigenous peoples’ concerns and aspirations, the OAS instrument does include a number of important rights and guarantees. In some countries, Belize, Suriname and Guyana, to name only a few, the OAS instrument may accurately be described as a substantial and far-reaching leap forward relative to existing rights found in domestic law. As such, the OAS proposed Declaration deserves the attention of Indigenous peoples, Indigenous organizations and others.

While Indigenous participation in the OAS process has been substantially inadequate to date, especially when compared with the UN process, it is important to note that, as much as the open participation procedures adopted by the UN Working Group were and are considered to be ground-breaking and extraordinary within the UN system, Indigenous access to the latter stages of the OAS process is equally ground-breaking. It should not be forgotten that, unlike the UN, the OAS has no mechanism for accrediting or incorporating the participation of non-state actors in its activities and deliberations and has only begun to discuss doing so in the past two years. Therefore, Indigenous peoples are once again leading the way in opening space for non-state voices in intergovernmental organizations.

As the OAS and UN processes cannot be viewed as separate and distinct, a number of challenging questions are raised about how to address the OAS process, given the precedence that must be given to acceptable progress on the UN Declaration. This is especially the case as it is clear that some governments are seeking to use the OAS process and Declaration to undermine the UN Declaration. The Indigenous delegations were clearly concerned that their attendance and participation in the OAS Working Group would lend legitimacy to the approval of the proposed Declaration and may be interpreted as Indigenous approval for the final product. In this context, it was noted that the implications of the OAS Declaration and process for the UN process must be fully evaluated and accounted for and there was consensus that the UN Declaration must be prioritized.

During the formal discussions on the UN Draft Declaration, Indigenous peoples have consistently stated that to recognize anything other than an unqualified right to self-determination is illogical and discriminatory. The OAS Declaration certainly does not recognize this right. Given that the right to self-determination will undoubtedly be discussed extensively during future sessions of the UN Working Group on the Draft Declaration and it appears that the OAS instrument may be adopted prior to the UN, the OAS Declaration poses a number of tactical and strategic problems, especially with regard to the manner in which Indigenous peoples respond to it. While these concerns can be met with a simple condemnation of the OAS process and Declaration, the positions taken both within the OAS Working Group and concerning the final product must be considered carefully.

Finally, the challenge for the next session of the Working Group (scheduled for March 11-15, 2002) appears to be two-fold: first, to increase the level of Indigenous participation in the process to ensure that there is a real dialogue and that Indigenous peoples are part of the consensus on the Declaration ultimately sent to the General Assembly for adoption. Second, to improve upon the proposed Declaration, or at least to ensure that it is not weakened as some of the governments have proposed. The alternative is to walk away from the process entirely, thereby delegitimising and discrediting it, a prospect that most of the governments seems sufficiently concerned about that it may force some form of compromise, at least on the participation procedures.

Notes

1 A fuller discussion of the OAS Declaration and Working Group’s first and second sessions can be found in English and Spanish at www.forestpeoples.org/
2 This is a very rough appraisal of the positions of the various states based upon their written and oral statements.

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The World Bank, indigenous peoples and international development

Forwards or backwards?

By Tom Griffiths
The impact of World Bank projects and programmes on indigenous peoples has been the subject of controversy for several decades. In response to protests from grassroots indigenous movements and persistent criticism from international human rights NGOs and environmentalists, the World Bank has adopted its own internal policies and established new departments to address the social and environmental impacts of its development operations. In some regions such as Latin America, the Bank has recently introduced “do good” projects targeting indigenous peoples, which aim to support poverty reduction, ethno-development, natural resource management and land tiling.

Despite these reforms, indigenous organisations and civil society groups monitoring the World Bank point out that much of the Bank’s business continues to directly or indirectly promote unsustainable, top-down development based on foreign direct investment, export-led growth, structural adjustment and the industrial extraction of natural resources. They complain that these largely accountable development interventions continue to have severe negative consequences for indigenous peoples and their territories throughout the world. At the same time, indigenous peoples and activists are alarmed by disturbing evidence that the World Bank’s internal policies are falling far behind international standards on human rights and sustainable development.

This article traces the evolution of the Bank’s Indigenous Peoples (IP) Policy and its other social and environmental policies and emphasises their importance as the only existing accountability mechanism in World Bank operations. The discussion notes ongoing problems with the implementation of these policies and argues that the Bank’s internal initiatives to improve compliance are insufficient as they stand, and fail to properly take account of the changing nature of Bank business and its impact on indigenous peoples and their environment. Serious concerns regarding the weakening of the Bank’s safeguard policies and the current revision of the Bank’s IP policy are highlighted and indigenous and civil society recommendations for improving development standards, accountability and development quality in World Bank operations are summarised.

World Bank policies

In response to severe international criticism of the destructive impacts of its projects on indigenous peoples during the 1960s and 1970s, the World Bank adopted its first policy on “tribal” peoples in 1982. Known as Operational Manual Statement 2.34 (OMS 2.34), this policy required Bank staff to include measures to protect affected peoples’ land rights, health, cultural integrity and ensure their participation in project planning and implementation. However, due to a lack of social science staff and a failure to mainstream the policy into its operations, the policy did little to reform Bank practice. Bank projects therefore continued to have serious negative impacts on indigenous peoples throughout the 1980s. A Bank internal review of the implementation of the policy, carried out in 1987, found that more than half of the projects affecting indigenous peoples had ignored the policy altogether.

In an effort to improve implementation, the World Bank began to employ more social and environmental staff in the late 1980s and, in 1991, adopted a revised policy on Indigenous Peoples known as Operational Directive 4.20 (OD4.20). Indigenous peoples’ organisations complained at the time that they had not been involved in the revision of the policy. Although the 1991 policy has serious deficiencies, such as its failure to make explicit reference to ILO Convention 169 and its disregard for the right to prior informed consent, most indigenous commentators agree that, if implemented properly, it can help safeguard the rights of indigenous communities affected by World Bank projects.

The 1991 policy, which is still in force, seeks to ensure that Bank staff take positive action to safeguard indigenous rights by: securing land tenure and resource rights; mitigating negative development impacts; guaranteeing participation and assuring receipt of benefits. Crucially, the policy contains provisions for the rejection of projects where negative impacts cannot be adequately ameliorated or where borrowers have failed to submit suitable plans to comply with the policy.

During the late 1980s and early 1990s, the Bank adopted additional “safeguard policies” in an effort to ensure that Bank-funded operations did not cause adverse environmental and social impacts in borrower countries. These included, among others, policies on Environmental Assessment (OD4.01), Involuntary Resettlement (OD4.30), Forests (OD4.36) and Cultural Property (OPN11.03). Some of these policies, such as the Forest Policy, contain provisions that emphasise the need to address the rights of indigenous and local communities. Many of these progressive standards were established as a direct result of long campaigns for improvements in World Bank social and environmental performance run by Southern and Northern NGOs - often in partnership with indigenous peoples’ organisations.

Indigenous peoples’ and community-based organisations, NGOs and development academics all stress that these policies are of crucial importance because they are the only means by which indigenous peoples and civil society groups can hold the World Bank accountable when its development projects go wrong. Indigenous peoples and other affected citizens are able to refer to policy standards in order to raise concerns with Bank staff and implementing agencies. If problems continue, they can take these concerns to the Bank’s complaint mechanisms known as the Inspection Panel and the Compliance/Advisor Ombudsman (CAO) (see below). Mandatory policy provisions are also very important because
they provide affected indigenous peoples with grounds for inserting their concerns into project design17. The social and environmental standards contained in operational policies also provide a clear basis for negotiating loan agreements and legal covenants with borrower governments.

The World Bank's internal policies also have an impact on the international development industry as a whole. International and bilateral aid agencies, donors and large corporations and even governments often develop their own guidelines for development practice based on the World Bank's operational policies18. The World Bank itself boasts that it has "blazed the trail of social and environmental standards setting in the multilateral development system"9 and that its policies "have become internationally recognized references" for development practitioners10. In recent years, private sector financial institutions, under pressure from NGO watchdogs, have also agreed to abide by World Bank policy standards in their investments in developing countries - as is the case with the German WestLB Bank, which is financing the controversial heavy crude oil (OCP) pipeline in Ecuador11.

Ongoing problems with implementation

Unfortunately, the Bank's track record in implementing its social and environmental policies is patchy at best12. A 1999 Bank study of the application of the 1991 IP policy in Latin America between 1992 and 1997 found that more than one third of projects affecting indigenous peoples had failed to include an Indigenous Peoples' Component or Indigenous Peoples' Development Plan (IPDP) as required by OD4.20 (para.13)13. Independent case studies of World Bank projects in Latin America, Africa and Asia carried out by indigenous peoples themselves have also found that compliance with OD4.20 is often weak and sometimes highly unsatisfactory, especially with regard to the critical needs for indigenous peoples' participation and secure land rights. Compliance is often highly variable both within projects and across projects in the same country. Repeated patterns of poor compliance include:

- No harmonisation of borrower policies with international standards and Bank policies
- Baseline studies superficial or absent in project preparation
- Required legal reforms omitted
- Procedural oversights in appraisal
- Indigenous peoples' land and resource rights not secured
- Required Indigenous Peoples' Development Plan omitted
- Ineffective supervision
- Disinclination to enforce loan agreements14

Both Bank and independent studies show that poor compliance is often due to institutional and incentive structures within the World Bank Group, which remain geared towards moving money to meet annual loan targets15. Acceptable performance has also been hindered by the deficient allocation of funds to meet the "transaction costs" of planning and supervising projects.

Compliance tends to be better in projects that target indigenous peoples. Case studies reveal that effective implementation of OD4.20 has been the result of long project preparation times, intensive staff inputs, willingness to pay unusually high transaction costs, strong borrower commitments to reform and genuinely participatory decision-making both in project preparation and implementation. One example of high quality implementation is found in the Natural Resource Management Project in Colombia, where a successful land titling programme for indigenous peoples and Afro-Colombians was supported by the Bank under complex and difficult local circumstances. Participants in the project report that its relative success was due to its inclusive procedures for participatory design, implementation and monitoring16.

However, even so-called "do good projects" can result in negative impacts on indigenous peoples when policy implementation is inadequate. In Bolivia, for example, a lack of proper indigenous participation in the design stage resulted in the Bank-assisted National Land Administration Project introducing damaging technical rules that threatened to diminish and fragment indigenous territories17. This harmful project is eventually being revised after repeated national demonstrations by the indigenous movement in Bolivia18. Even in apparently benign conservation projects financed by the Global Environment Facility (GEF), indigenous peoples have been made worse off where project schemes have failed to provide adequate compensation for the loss of customary livelihood resources19.

In one case relating to the GEF-funded Ecodevelopment Project in India, indigenous communities have been forcibly relocated outside their forest territories. Complaints made by local indigenous organisations and sent to the Inspection Panel were upheld in the Panel's 1998 investigation report. Regrettably, several years later no appropriate remedial and compensation measures have been taken to address the grievances of affected Adivasi communities20.

Bank initiatives to improve development quality

During the 1990s, the World Bank introduced a number of measures to try and improve its social and environmental performance. It decentralised its operations by devolving administration to its regional offices to try and improve participation and supervision. A Committee on Development Effectiveness (CODE) was also established
along with a Quality Assurance and Compliance Unit (QACT). The Bank’s 2001 Environment Strategy proposes a new internal compliance monitoring system for safeguard policies as well as new incentive structures to encourage staff to adhere to operational standards\textsuperscript{32}. In the mid-1990s, the Bank established its semi-independent Inspection Panel to receive citizens’ complaints regarding the violation of Bank policies and, in 1999, the Compliance/Advisor Ombudsman (CAO) office was set up to fulfill a similar role for the International Finance Corporation (IFC) and Multilateral Investment Guarantee Agency (MIGA)\textsuperscript{32}. It is still too early to judge the effectiveness of some of these reforms and many remain proposals that have yet to be implemented. At this stage, there is little evidence to demonstrate that the Bank’s decentralised structure has improved engagement with indigenous peoples and citizens within borrower countries. In addition, while the Inspection Panel has proved relatively successful in highlighting compliance problems, its complaints procedure is cumbersome for grassroots communities and has so far shown limited capacity to stimulate adequate corrective actions to address local grievances\textsuperscript{33}.

Shifting nature of Bank lending

Over the last decade, the World Bank Group’s International Bank for Reconstruction and Development (IBRD) and International Development Association (IDA) have moved away from financing high-risk infrastructure projects towards more loans for poverty reduction, health and social development\textsuperscript{34}. At the same time, however, the Bank continues to support large infrastructure and resource extraction investments directly through the IFC - its private sector arm - as is the case with the controversial Chad-Cameroon pipeline project\textsuperscript{35}. Mining, pipeline and agricultural projects are also supported indirectly by MIGA - the Bank’s insurance arm - whose guarantees for foreign direct investment had reached a total of $9 billion by 2001\textsuperscript{36}. The tendency for increased partnerships with the private sector has caused concern among NGOs tracking Bank activities due to secrecy in some aspects of these operations plus the lack of clarity over safeguard procedures and lines of responsibility for private firms engaged in Bank-assisted projects\textsuperscript{37}.

A substantial amount of Bank lending is also made through structural and sectoral adjustment loans, and which now accounts for between one third and one fifth of annual lending. Indigenous peoples’ organisations complain that these macroeconomic and technical-assistance loans promote increased levels of commercial resource extraction and involve legislative reforms relating to land and natural resources that disregard the rights of indigenous peoples and have direct consequences for their territories. They point out that these operations lack transparency and are largely unaccountable to the public.

In some countries such as Ecuador, for example, indigenous organisations argue that the few benefits provided by the Bank’s poverty reduction projects are undermined by the Bank’s structural adjustment loans, which have deepened poverty and intensified commercial pressures on indigenous lands and natural resource bases\textsuperscript{38}. For this reason, indigenous peoples often accuse the Bank of operating a “double agenda” whereby positive social development initiatives only serve to limit the worst effects of a broader unsustainable development model\textsuperscript{39}.

In 1999, the World Bank began to introduce Poverty Reduction Strategy Papers (PRSPs) in highly indebted countries (HIPCs) with the aim of replacing its top-down adjustment loans with more participatory strategic poverty alleviation programmes driven by grassroots priorities. However, the PRSP process has so far failed to foster alternative macroeconomic models. Civil society groups have felt frustrated that their own plans for economic and social development have been sidelined by the PRSP process, which has continued to apply the conventional adjustment remedies based on privatisation, foreign-direct investment and export-led growth.

Revision of the World Bank’s safeguard policies

Since the mid-1990s, OD4.20 and other safeguard policies, including the Forest Policy (OD4.36), have been undergoing a process of revision as part of a Bank-wide “conversion” process that intends to standardise and clarify operational guidelines for staff and borrowers. The Bank argues that simplifying and streamlining its policies is necessary because clearer guidance will improve the quality of compliance with safeguard provisions. However, the whole conversion process has been surrounded by controversy as NGOs and academics have detected regressive forces shaping the redrafting of the policies to minimise binding rules and limit coverage of the policy provisions. NGOs fear that policies are being “panel proofed” to restrict the grounds for claims to the Inspection Panel. These negative forces are thought to stem from powerful borrower countries, which see the Bank’s policies as costly and time-consuming impositions on national sovereignty. NGOs and activists have countered these flawed arguments by maintaining that, in the long term, the social and environmental costs of failing to apply adequate development standards are much higher than the short-to-medium term costs of safeguard work.

Strong NGO campaigns have prevented weakening of the Bank’s Environmental and Pest Management policies\textsuperscript{40}. Unfortunately, similar campaigns to strengthen the Bank’s involuntary resettlement policy have proved less successful. In October 2001, indigenous and civil society organisations were dismayed to learn that the Bank had approved a backward policy on resettlement,
which disregards the progressive standards recommended by the World Commission on Dams and ignores numerous public recommendations for improved development standards. Analysis by the Forest Peoples Programme shows that the revised resettlement policy (OP/BP4.12) is at odds with fundamental human rights guarantees for indigenous peoples. However, calls by the global indigenous movement and international NGOs for substantial amendments to rectify the policy were rejected by the World Bank’s Board of Directors.

Indigenous peoples reject 2001 draft revised Indigenous Peoples Policy

Serious concerns now surround the Bank’s draft revised IP policy, which was finally released for public comments in July 2001. Indigenous peoples have been disappointed to see that the revised draft, now known as OP/BP4.10, has disregarded almost all the key recommendations made by them in the first round of public consultations in 1998. During those initial consultations, indigenous peoples sent a consistent message to the Bank that any new policy should be stronger than the existing one, particularly regarding its provisions on land and resource security. They also recommended that any revision of the policy must be based on a thorough participatory implementation review of the existing policy to ensure that any revisions are derived from practical lessons based on the actual experience of indigenous peoples with World Bank operations.

Indigenous peoples are especially disheartened because the draft revised policy is less useful than the existing policy. Despite assertions by the Bank that there has been no dilution of standards, independent analyses show that the draft policy is weaker than the existing policy because it no longer contains mandatory provisions to safeguard indigenous peoples’ rights to land. It has also lost vital preconditions that must be met before a project is approved. In addition, the draft policy introduces confused criteria for the identification of indigenous peoples, fails to recognize the right to prior informed consent, does not prohibit forced resettlement, lacks requirements for indigenous tracking and monitoring of Bank operations and has not been extended to cover structural adjustment loans. It has also introduced discriminatory provisions that exclude urban indigenous populations from coverage under the policy.

Critics of the draft policy, including the Forest Peoples Programme and Survival International, point out that its provisions fail to meet international human rights standards for indigenous peoples. They argue that it therefore cannot comply with its own central objective, which is to respect the human rights of indigenous peoples affected by Bank loan operations (Draft OP/BP4.10 para. 1).

In the second round of public consultations held in the summer and winter of 2001, indigenous peoples’ organizations have rejected the policy as a backward step that will not further the rights of indigenous peoples in development. The consultation process has also been roundly condemned for being rushed and for lacking informed and representative indigenous participation.

Implementation review of OD4.20

Despite the disappointment with the regressive draft revised IP policy, indigenous peoples and NGOs welcomed the Bank’s decision in April 2001 to finally launch a two-year review of the implementation of its existing IP policy (OD4.20) over the period 1992-2000. Although tardy, the initiative of this evaluation study marks a victory for IPOs and NGOs who have been campaigning for such a review since 1995. The review, which is being carried out by the Bank’s Operations Evaluation Department (OED), is being undertaken in two stages. The first phase involves a desk-based study and will be completed by the spring of 2002. The second phase will involve a participatory field assessment in selected countries and will submit its final report in the spring of 2003. In the summer of 2001, the OED formally invited inputs from indigenous peoples and NGOs regarding their experiences of World Bank operations and also requested recommendations for improving the policy and its implementation.

To date, the separate Bank team overseeing the IP policy review has only committed itself to incorporating the preliminary Phase 1 OED study into the final revisions of the policy, which is scheduled for approval in mid-2002. These flawed plans for finalising the policy have been challenged repeatedly by indigenous participants in the 2001 consultations, who are calling for the policy revision process to be delayed to take proper account of the full findings of the OED implementation review (see below).

Proposals for improved standards and better development quality

Indigenous peoples and civil society organizations maintain that improved social and environmental performance in World Bank operations can only be achieved with appropriate internal policy standards coupled with effective institutional mechanisms to apply those standards in practice. Some key recommendations are summarised below.

a) Apply international standards

Indigenous peoples and NGOs assert that, as a minimum, the Bank’s internal policies should be consistent with international standards on human rights and sustain-
able development. Legal analyses undertaken by the Forest Peoples Programme conclude that the World Bank Group is legally bound by international law. It therefore follows that the Bank's own policies and its operations should not contravene such law nor cause borrower governments to violate binding international instruments they have ratified. The World Bank's existing Environmental Assessment Policy already sets this precedent on conservation issues, as it prohibits Bank funding of operations that contravene borrower obligations under international environmental agreements (OP4.01: para.3). It is therefore perfectly reasonable and right to extend this essential minimum standard to human rights agreements.

b) Adopt a rights-based approach

At the same time, indigenous peoples and civil society organisations are also calling on the World Bank to adopt a rights-based approach to development, in line with UN multilateral agencies and bilateral donors like the UK Department for International Development (DFID). A rights-based approach would nullify the usual objection that the Bank is violating country sovereignty by imposing "Northern" agendas on Southern governments. Most borrowers are party to international human rights and environmental agreements and requirements that they adhere to these commitments cannot be construed as an infringement of sovereignty. In December 2001, the UN High Commissioner for Human Rights invited the World Bank to collaborate with the UN in developing practical methods for ensuring that Bank policies and practice are consistent with human rights standards. In preparatory meetings for the World Summit on Sustainable Development (WSSD), held in January 2002, indigenous peoples have again called on the World Bank and other development agencies to adopt a rights-based development framework and to recognise fundamental rights of indigenous peoples, including the right to prior informed consent.

c) Introduce new accountability mechanisms

Indigenous and civil society organisations tracking the World Bank acknowledge that certain internal initiatives are being taken to try and address implementation problems, as already noted above. Some of these are certainly positive, especially the plans to introduce new incentives for Bank staff to comply with operational policy requirements - something NGOs have been advocating for years.

However, activists tracking the Bank argue that there is also a need to introduce new agile complementary accountability mechanisms at the project and programme level to empower local communities and establish effective feedback procedures to ensure corrective action is taken quickly when things start to go wrong in a specific operation. These local mechanisms would fit with the rights-based approach. Rights would form the basis of "rules of the game" that could be negotiated between the different actors involved in a specific development operation. These rules would be set out in enforceable legal agreements or contracts binding on all parties including the Bank, borrower government, private sector and affected indigenous peoples. Such new mechanisms would have to be backed up by an independent project ombudsman or a local tribunal to hear grievances and sanction violations of agreements and make requirements for remedial action. In this context, Inspection Panel and CAO procedures would only be used as a last resort when these more local complaints mechanisms fail.

d) Establish participatory monitoring and evaluation

Indigenous peoples have for some years advocated participatory monitoring of Bank operations by local people and representative indigenous organisations. Local monitoring ensures that problems are identified immediately and that local beneficiaries are informed about project commitments and expected outputs. Local monitoring would be linked to the multi-sector project or programme agreement described in (c) above. Since 1992, the International Alliance of Indigenous-Tribal Peoples of the Tropical Forests has advocated the establishment of tripartite commissions - including funders, government agencies and indigenous representatives - to design, implement, monitor and evaluate development projects affecting indigenous peoples.

e) Involve indigenous peoples in project/programme governance

In the same way, indigenous peoples also recommend that effective participation in the development process should be facilitated through direct involvement in project administration and implementation. To prevent token pro-forma participation, participatory project management mechanisms such as intersectoral committees must ensure equitable structures and appropriate decision-making powers for indigenous representatives. The mandate for such bodies must therefore be negotiated in an open and transparent manner during project or programme preparation.

f) Extend the safeguard framework to adjustment and programmatic lending

Faced with trends towards increased adjustment and programmatic lending, indigenous peoples and civil society groups have in recent years consistently called on the World Bank to modify its safeguards to fully cover these operations. Numerous internal and independent studies have demonstrated that international financial institu-
tions like the World Bank and IMF need to develop instruments to deal with the cross-sectoral impacts of macroeconomic conditionalities and sectoral adjustment loans on poor people and the environment. Although the World Bank's new Environment and Forest strategies pay lip service to cross-sectoral approaches and the mainstreaming of social and environmental issues into adjustment loans and Economic and Sector work, critics point out that these are simply aspirational, non-binding plans. Advocates of Bank reform stress that these upstream strategic goals need to be backed up by new binding standards downstream at the operational level.

**g) Take indigenous peoples' visions of development seriously**

Indigenous peoples' organisations in Latin America and other regions have developed their own alternative agrarian, conservation and development policies based on their own values and cultural understandings of wellbeing. They argue that international agencies like the World Bank need to rethink current macroeconomic policies that create pressures on indigenous lands and undermine indigenous livelihoods. Rethinking development will require serious dialogue with indigenous peoples' own representatives and integration of their development proposals in national-level plans and programmes.

**Recommendations for Improving the World Bank Indigenous Peoples Policy**

These general principles are all expressed in immediate specific indigenous and NGO recommendations for rectifying the World Bank's flawed draft IP policy (OPBP4.10). These recommendations include the need to:

- Delay the revision of the IP policy to take account of the full findings of the OED Implementation review. The incorporation of the review findings in the policy revisions should be the subject of a thorough public discussion with indigenous peoples and civil society;
- Ensure that the revised policy is consistent with existing and emerging international human rights and development standards and adheres to the principles in the UN Draft Declaration on the Rights of Indigenous Peoples;
- Include binding safeguards to respect and secure indigenous rights to land and natural resources;
- Respect the principle of free and informed prior consent;
- Apply the principle of self-identification as the primary trigger for the policy;
- Prohibit involuntary resettlement of indigenous peoples and adopt standards established by the World Commission on Dams;
- Include language that prevents the Bank from financing operations that contravene the obligations of borrowers under ratified international human rights instruments and other international agreements on environment and development;
- Include clear benchmarks or preconditions that must be met for project or program approval;
- Require participatory field baseline studies for all investment operations affecting indigenous peoples;
- Include mandatory requirements for participatory monitoring and evaluation;
- Extend the coverage of the policy to address structural adjustment and programmatic lending;
- Require enforceable legal covenants in loan agreements (at a minimum) between the World Bank, borrower governments and affected indigenous peoples;
- Ensure the participation of indigenous representatives in equitable, multi-sector executive agencies for implementation;
- Require the establishment of independent local-level dispute-resolution mechanisms through which indigenous peoples can appeal and seek redress for grievances in connection with Bank projects.

It remains to be seen how the World Bank will react to the strong rejection of its March 2001 draft revised IP policy. Will the World Bank take up the challenge to move international development standards forward and adopt a rights-based approach to development? Or will it send the wrong signal to the international development community by moving backwards and advocating less mandatory rules and voluntary standards for development to facilitate the unrestricted flow of public money to borrowers? If the Bank fails to take heed of the concerns of indigenous peoples, then its credibility and its resolve to live up to its mandate for sustainable poverty reduction will be further questioned. At this stage, all the signs are that indigenous peoples' organisations and all those interested in improving global development standards will have to continue to fight hard to prevent the Bank adopting another regressive and stagnated policy.

While the World Bank internally debates what to do about the rejection of its draft policy, indigenous peoples and NGOs can try to advance their struggle for improved standards by sending information and recommendations to the OED team overseeing the current implementation review. If the request for a delay in the revision process is heeded, then taking the time now to send information and proposals to the OED team, however brief, may pay dividends and reinforce the growing call for improved development standards and practice in the future.

**Notes**

1 For a list of current World Bank projects directly targeted at indigenous peoples, see:


Amazon Alliance (2000) "Bolivia: March to La Paz begins in protest at weak agreement with government" See also CIDOB (2000) Bolivia: acuerdo histórico entre pueblos indígenas y el gobierno nacional.

Email circular via amazon@amazonalliance.org.


Current and planned World Bank loans can be viewed and listed by country, region or theme via its Monthly Operational Summary web pages at http://www4.worldbank.org/siprojects/


http://www.miga.org/screens/about/about.htm
Tom Griffiths is an Oxford-trained social anthropologist with prior qualifications and experience in protected area management. He is currently working as the IFIs Programme Coordinator with the Forest Peoples Programme. His work focuses on international standard setting in development and the environment, and also involves participatory field assessments of development projects.
An Introduction to the WIPO Intergovernmental Committee on Intellectual Property, Genetic Resources, Traditional Knowledge and Expressions of Folklore

By Mattias Åhrén
Introduction

In 1998, the World Intellectual Property Organization ("WIPO") initiated a new programme of activities, aimed at exploring current and future possibilities to protect traditional knowledge ("TK"), genetic resources ("GR") and folklore. During 1998 and 1999, WIPO conducted a number of fact-finding missions on the intellectual property ("IP") needs and expectations of TK-holders (the "FFM"). Prior to the FFMs, there had been no systematic global exercise to document and assess the IP needs of TK holders. Following an evaluation of the FFMs, in 2000 WIPO decided to establish an Intergovernmental Committee on IP, GR, TK and Expressions of Folklore (the "IGC"). The purpose of the IGC is to advance consensus on how such knowledge and resources should be protected. This article aims to give a short introduction to the IGC, to describe what its activities have been so far and what can be expected in the future. In particular, the impact that the IGC might have on the rights of indigenous peoples will be examined. In order to understand the possible relevance of the IGC to indigenous peoples, it is, however, necessary first to investigate the relationship between GR, TK and folklore, on the one hand, and traditional IP rights, on the other.

GR, TK and folklore and its protection under existing intellectual property legal systems

There are numerous examples of exploitation of indigenous peoples' GR, TK and folklore. Indigenous peoples' contributions to e.g. plant breeding, genetic enhancement, bio-diversity and drug development are rarely recognized or compensated. Traditional IP legal systems are not designed, and therefore often fail, to protect GR, TK and expressions of folklore. GR, TK and folklore often do not meet the criteria of novelty and originality generally required for work to be protected under traditional IP legal systems. IP protection has a limited time duration, and does not apply to "old" creations. Moreover, it is normally impossible to identify individual creators behind GR and TK.

That said, one should note that existing IP legal regimes sometimes do apply to TK etc. Indigenous artists, craftsmen etc. have been able to achieve copyright protection for work such as wood carvings, silver jewelry, songs and sculptures. Trademarks have also been used to identify e.g. traditional art, food products and clothing, and indigenous craftsmen have used design protection to prevent others from copying their work. As the IGC secretariat has emphasized, just because TK is traditional, it is not necessarily "old" in an IP context. "Tradition" refers to the manner of producing such knowledge, not to the date on which the knowledge was produced. Communities, the secretariat notes, are producing TK everyday in response to their environmental demands and needs. Moreover, it is often not the time of invention but the time of disclosure that establishes whether the condition of novelty has been met. Knowledge is thus protected even if it is "old", as long as it has not entered into the public domain. With regard to the problem of identifying the creator behind GR, TK or folklore, the secretariat argues that this does not necessarily prevent IP protection, since there are many examples of IP assets being owned by collective entities. As another example, patent legislation often allows the issuance of a patent letter even though the inventor has not been identified. Thus, sometimes, exploitation of indigenous knowledge and resources is not a result of limitations in the IP legal system. Rather, even if adequate IP protection does exist, indigenous peoples might not be able to enforce their rights because of a lack of knowledge of the IP legislation, because of infringement proceedings being too complicated and/or costly, or for other similar reasons. However, in many cases, the problem is with the IP legislation itself. Due mainly to the novelty and originality criteria mentioned above, traditional IP legal systems fail to protect GR, TK and expressions of folklore already in the public domain.

In addition, even when the novelty and originality criteria are met, there is a more fundamental problem with applying traditional IP legislation to indigenous GR, TK and folklore. Western IP legislation aims to award individuals (or corporations) the right to control the reproduction of their intellectual work. IP rights create a monopoly that maximizes the capacity of the individual owner to trade in his work. Note that the above-mentioned examples on IP protection being awarded to indigenous folklore etc. are all examples of protection granted to indigenous individuals for their individual work. In comparison, TK is not the result of one or a group of individuals' endeavors. Rather, all members of a community contribute to such knowledge. TK is modified and enlarged over time, and passed on from one generation to the next. The motivation behind innovations derived from TK is not individual gain but rather the welfare and common good of the community. TK is vested in the collective. Indigenous peoples generally regard themselves as the custodians, not the owners, of their GR, TK and folklore, and do not look upon their resources and knowledge as a commodity. Consequently, indigenous peoples do not seek to protect their GR, TK and folklore for commercial purposes.

Traditional IP legislation is therefore badly designed to protect GR, TK and folklore. If such knowledge and resources were to be protected under existing IP legal systems, it would be privatized. It would be vested in one or more individuals and/or corporations, rather than in the people. The possibility of forming collective entities to hold TK etc. does not offer a remedy. The GR, TK and folklore would still be private property, free to dispose of without any possibility of the people from which the knowledge or resources originate intervening. A legal
system that aims to adequately protect indigenous peoples' GR, TK and folklore must recognize that indigenous peoples regard their knowledge and resources as vested collectively in the community, rather than with individuals or groups of individuals. In this context, one can note that the WIPO General Assembly has acknowledged the importance of recognizing collective rights with regard to TK etc. Such a regime can be established through a sui generis system. One example is Panama's "Special intellectual property regime on collective rights of indigenous peoples for the protection and defense of their cultural identity as their traditional knowledge." Under this regime, indigenous authorities register collective indigenous exclusive rights to elements of TK, which serve as a basis for opposing unauthorized third party claims to the TK in question.

**GR, TK and folklore and the relationship to human rights**

Indigenous peoples' perception that their GR, TK and folklore are vested in the collective reflects an understanding that such knowledge and resources form an integral part of their cultures, in which the connection between natural resources, knowledge and art forms an organic whole. As Stephen Brush has pointed out, indigenous knowledge is culture specific, whereas formal knowledge is decultured. Further, according to Geaves, "indigenous knowledge is ... supplying the foundation on which members of a traditional culture sense their communitas, personal identity, and ancestral anchorage." Protection of GR, TK and folklore is therefore essential if indigenous peoples are to be able to maintain and develop their cultural identity. The IGC secretariat has acknowledged the connection between TK and culture, stating that TK is knowledge that has been developed based on the traditions of a certain community or nation and that TK, therefore, is culturally driven.

As a consequence, it is a human right of indigenous peoples not to be deprived of their GR, TK and folklore. Indigenous peoples are "peoples" within the full legal meaning of that term. As peoples, indigenous peoples are entitled to collective human rights, including the right to self-determination, expressed in e.g. the common Art. 1 of the International Covenants on Civil and Political Rights and Economic, Social and Cultural Rights. The right to self-determination is said to have one external and one internal aspect. Included in the internal right to self-determination is a people's right to freely pursue its economical and cultural development, to dispose of its natural resources and not to be deprived of its means of subsistence. Given the special relationship between indigenous peoples and their land and natural resources, international law has, when addressing indigenous peoples' right to self-determination, focused on this aspect of self-determination. For example, Art. 31 of the UN Draft Declaration on the Rights of Indigenous Peoples ("DRIP") declares that "Indigenous Peoples, as a specific form of exercising their right to self-determination, have the right to autonomy and self-government in matters relating to their ... culture ... [and] land and resource management." Further, the Human Rights Committee has, in its concluding observations on e.g. Norway and Canada, confirmed that indigenous peoples' right to control their natural resources falls within the scope of their right to self-determination, emphasizing that "the right to self-determination requires, inter alia, that [indigenous peoples] must be able to freely dispose of their wealth and resources and that they must not be deprived of their means of subsistence."

Further, the World Commission on Environment and Development calls for "the recognition and protection of [indigenous peoples'] traditional rights to land and other resources that sustain their way of life — rights they may define in terms that do not fit into standard legal systems." In conclusion, it is not possible to adequately address indigenous peoples' GR, TK and folklore if it is not acknowledged that such knowledge and resources form an integral part of indigenous peoples' cultures and, as a consequence thereof, to deprive indigenous peoples of their GR, TK and folklore, violates those peoples' human rights.

**The IGC**

The IGC held its first session in April 2001, with very few indigenous representatives participating. In addition, despite the efforts of the indigenous organizations present, the discussions at the first session made no reference to indigenous peoples. The first session predominantly focused on organization of the future work of the IGC. The IGC secretariat was given the mandate of outlining operational principles for model clauses for contrac-
tual agreements with regard to access to GR. The IGC further decided that the member states should compile, compare and assess information on the availability and scope of IP protection for TK and folklore as well as identify elements that require additional protection. This task includes a survey on whether existing forms of IP protection can or have been applied to protect TK and folklore, as well as a discussion on whether new legal standards, possibly in the form of sui generis mechanisms, could be used to improve the protection.

The IGC met for the second time in December. Indigenous presence at the second session was somewhat higher than at the first session. In addition, a few governmental delegations included indigenous representatives. Others announced that they intend to include indigenous representatives in their future delegations to the IGC. The second session focused mainly on two subjects: operational principles for contractual agreements concerning access to GR and benefit-sharing, and TK as prior art. Due to time constraints, discussions on national experiences of legal protection of expressions of folklore were postponed until the third session.

Contrary to the first session, the discussions at the second session reflected the fact that indigenous peoples are perhaps the biggest stakeholders with regard to GR, TK and folklore. The IGC stressed the importance of capacity building, legal assistance, and mechanisms for dispute settlements, specifically recognizing the needs of indigenous peoples. The importance of observing the principle of full and informed consent was underlined. Moreover, several delegations stressed the importance of appropriate benefit-sharing and the right of each country to exercise sovereignty over its GR and TK. From an indigenous perspective, most notably, however, the IGC recommended the establishment of a fund for financial support for indigenous peoples' participation in the future work of the IGC. Further, the IGC decided to cooperate closely with organizations such as the CBD, FAO and WTO.

With regard to GR, the second session concluded that the work of establishing model clauses for contractual agreements should continue. Such model clauses should deal purely with IP aspects of contracts but without prejudice to possible future sui generis systems. The IGC specifically underlined that drafting of such clauses must be undertaken with the full and effective participation of indigenous peoples. In addition, particular attention should be given to situations where the parties have different bargaining power, such as when commercial actors deal with indigenous communities. The IGC further decided that the work of documenting TK in the public domain should continue. The aim is to prevent patents extending to TK from being improperly awarded. Some delegations stressed that such work must be without prejudice to the development of a possible sui generis system for the protection of TK. Future considerations should also address information that member states have provided on the availability and scope of IP protection for TK and folklore as well as the elements they have identified that require additional protection.

The future work of the IGC

The indigenous community is always alarmed when organizations such as the World Bank, WTO or WIPO announce their intention to address issues relevant to indigenous peoples. Based on past experience, the presumption is that initiatives like the IGC constitute yet another attempt to exploit and commercialize indigenous peoples' cultures and resources. It remains to be seen whether WIPO can prove the scepticism within the indigenous community wrong. Obviously, it is not possible to draw any conclusions in this regard after only two sessions but some observations can be made.

There were few, if any, references to indigenous peoples during the first session of the IGC. The interventions made by the indigenous organizations present received little attention from the governmental delegations. However, the second session mitigated the anxiety that indigenous interests would not be reflected in the work of the IGC. At the second session, several governmental delegations indicated that they recognize the special position that indigenous peoples have with regard to GR, TK and folklore, reflected in the decision to establish a fund for indigenous participation in the future work of the IGC. It appears that the IGC does aspire to take indigenous peoples' particular concerns into consideration when elaborating systems for the protection of GR, TK and folklore.

One should note, however, that not all participants in the IGC may share the aspiration to promote indigenous interests with regard to GR, TK and folklore. To date, the IGC has navigated forward rather smoothly. The proposals for future work that the IGC secretariat prepares before each session have been accepted without any real disagreements. Despite this efficiency, one can sense some potential conflicts building up, one being of direct relevance to indigenous peoples. Although the IGC has not dealt with the issue of who are the rightful holders of GR, TK and folklore, one can perceive a potential conflict in this regard between indigenous peoples and some governments, particularly in Africa and Asia. Several of these countries have stressed the important role that the state plays with regard to TK and GR, and some have openly declared that all such resources belong to the state. Naturally, developing countries, plagued by financial deficits etc., see GR and TK as potential sources of income that can boost their economies. They are not too happy to find out that they might have to share that income with an indigenous people. Such countries appear to be in a minority but cannot be expected to promote indigenous interests or facilitate indigenous participation in the future work of the IGC.

In addition, even though most of the IGC's member
states do recognize the special relationship between indigenous peoples and GR, TK and folklore, the mandate of the IGC might limit the relevance of the work of the IGC to indigenous peoples. WIPO is an IP organization, and the IGC addresses TK etc. solely from an IP perspective. It does not allow e.g. human rights or environmental aspects to influence its work. As outlined above, this constitutes a problem for indigenous peoples. Traditional western IP legislation aims to create a monopoly that maximizes the capacity of a creator to trade in his work, and does not recognize the collective aspect of indigenous GR, TK and folklore. Nor does traditional IP legislation recognize that such knowledge and resources form a central part of indigenous cultures, and are included in indigenous peoples right to self-determination.

One should not expect the IGC to remedy this problem and broaden its mandate within the foreseeable future. Several governmental delegations have declared that they wish the IGC to continue to discuss TK etc. purely within an IP framework. These governments are concerned with a duplication of work if the IGC addresses issues such as human rights and sustainable development, and believe that such issues are better dealt with in other fora. Admittedly, it is not an ideal situation if several fora deal with the same issue. The question is, however, whether other international bodies will adequately address environmental, human rights etc. aspects relating to GR, TK and folklore. WIPO expects the CBD system to guarantee that environmental concerns are taken into account when regulating GR and TK. It is, however, a widespread sentiment that the outcomes of the CBD process rarely have any impact on WIPO or other international fora. Similarly, the Working Group on DRIP ("WGDD") is understood to cover the human rights aspects with regard to natural resources and TK. However, when discussing what
articles in DRIP the WGDD should deal with at its seventh session, some argued that articles addressing GR, TK and folklore could be left for future consideration, since the IGC will handle these issues. The problem is aggravated by the efficiency of the IGC. The IGC is equipped with a very competent secretariat. The documents that the secretariat prepares before each session are of high quality. In addition, the secretariat appears to have a good feel for what steps forward the IGC members are prepared to take. As a result, the secretariat’s proposals for future action are generally accepted, and the IGC moves forward rapidly compared to the other bodies that are supposed to deal with GR, TK and folklore. It is therefore an apparent risk that the UN system will deal with GR and TK almost solely from an IP perspective. As pointed out above, this will result in an incomplete treatment of the subject. To be relevant to indigenous peoples, the international community must address TK etc. not only from an IP perspective. One cannot adequately address TK etc. if disregarding the rights of the peoples from whom the GR and TK spring. If isolating indigenous knowledge from indigenous peoples, one runs a clear risk of violating their human rights. As Dr. Mugabe has pointed out, “it is difficult to isolate or archive traditional knowledge from traditional people”28. Some of the IGC member states have recognized this problem, stating that the IGC must take human rights and environmental aspects into account in its work. However, as mentioned above, the IGC has not been prepared to take this step, fearing that it would result in a duplication of work. As a compromise, it has been decided that the IGC secretariat should cooperate closely with e.g. the CBD secretariat. It remains to be seen, however, whether such cooperation is sufficient to guarantee that environmental, human rights etc. aspects are adequately addressed when the international community deals with GR, TK and folklore.
Moreover, one can detect a dividing line within the IGC between those countries, generally from the developing world, that favor sui generis systems for protection of GR, TK and folklore and those countries, particularly from the northern hemisphere, that prefer to find such protection within existing IP legal systems. As previously pointed out, traditional IP legal systems are badly adapted to protecting indigenous peoples’ TK etc. The reluctance to discuss a sui generis system for protection of GR, TK and folklore that recognizes the collective aspect of such resources and knowledge, risks further limiting the relevance of the work of the IGC to indigenous peoples.

The IGC will hold its third session from June 13 – 21 and its fourth session from December 9 – 17, 2002. The agenda will include a review of existing IP protection for TK, a continued discussion on national experiences of the protection of folklore and, possibly, discussions on a definition of TK.

Notes

1 This article will not elaborate on particular examples of exploitation of TK etc. For numerous examples of such exploitation, see Intellectual Property Needs and Expectations of Traditional Knowledge Holders, WIPO Report on Fact-Finding Missions on Intellectual Property and Traditional Knowledge (1998 – 1999) (Geneva 2001), Part II.

2 See e.g. WIPO document WIPO/GRTKF/IC/2/9 para. 22.

3 See e.g. WIPO document WIPO/GRTKF/IC/2/9 para. 23 24.

4 See e.g. the WIPO Survey on Existing Forms of Intellectual Property Protection for Traditional Knowledge, WIPO Document WIPO/GRTKF/IC/2/5.


6 Compare Declaration of Shamans on Intellectual Property and the Protection of Traditional Knowledge and Genetic Resources, Declaration of Sao Luis do Maranhao, WIPO document WIPO/GRTKF/IC/2/14 para. 2.

7 See WIPO document WIPO/GA/6/6 para. 23.


9 See Law no. 20, of June 26, 2000.

10 See WIPO document WIPO/GRTKF/IC/2/9 para. 13.


13 See WIPO Document WIPO/GRTKF/IC/2/9 para. 23.

14 The main difference between indigenous rights and the rights of minorities in international law is that indigenous rights to a large extent are collective, i.e., are the rights of peoples, whereas minority rights are vested in individuals. Indigenous peoples are distinguished from minorities primarily by the historical and spiritual connection to their traditional territories. See e.g. José Martín Cobo, “Study of the Problem of Discrimination Against Indigenous Populations”, UN Document E-CN.4/Sub.2/1986/7/Add.4 Para. 379 – 382, and compare Dr. John Mugabe, Intellectual Property Protection and Traditional Knowledge – An Exploration in International Police Discourse, Intellectual Property and Human Rights, WIPO Publication No. 762 (E), 1999, p. 98.

15 Put simply, the external right to self-determination implies a right for a people to secede from the nation state in which it resides. This article will not deal further with the external right to self-determination.

16 See e.g. UN Committee on the Elimination of Racial Discrimination (CERD), General Comment No. 21 – Right to Self-determination, March 15, 1996.


18 In addition, Art. 29 of DRIP explicitly recognizes the indigenous peoples’ collective right to their GR, TK and expressions of folklore.

19 See UN Document CCPR/C/79/Add.112/1999.


22 Including adopting Rules of Procedures. One governmental delegation argued against NGO participation in the work of the IGC, claiming that indigenous representatives do not want such participation. This position was overruled by the rest of the participating members.

23 See WIPO document WIPO/GRTKF/IC/1/3 para. 72 to 76.

24 For example, Brazil and New Zealand.

25 The formal decision will be made by the WIPO General Assembly, based on a recommendation from the Budget and Planning Committee. The Budget and Planning Committee will meet in September 2002 and the General Assembly at the end of that year.

26 See WIPO document WIPO/GRTKF/IC/2/16 Prov. para. 94.

27 The reason being that by October 15, 2001, only 23 Member States had responded to the survey regarding TK, see WIPO Document WIPO/GRTKF/IC/2/9 para. 5. Those Member States that have not yet responded to the survey were invited to do so by February 28, 2002, see para. 26.


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IWGIA's aims and activities

The International Work Group for Indigenous Affairs - IWGIA - is a non-profit, politically independent, international membership organisation.

IWGIA co-operates with indigenous peoples all over the world and supports their struggle for human rights and self-determination, their right to control of land and resources, their cultural integrity, and their right to development. The aim of IWGIA is to defend and endorse the rights of indigenous peoples in concurrence with their own efforts and desires. An important goal is to give indigenous peoples the possibility of organising themselves and to open up channels for indigenous peoples' own organisations to claim their rights.

IWGIA works at local, regional and international levels to further the understanding and knowledge of, and the involvement in, the cause of indigenous peoples.

The activities of IWGIA include: publications, human rights work, networking, conferences, campaigns and projects.

For more information about IWGIA’s activities please, check our website at: www.iwgia.org

Publications

IWGIA publishes a yearbook, The Indigenous World/El Mundo Indígena – and a quarterly journal Indigenous Affairs/Asuntos Indígenas. Furthermore, a number of books thematically focusing on indigenous issues are published each year.

Suggestions for and contributions to IWGIA’s publications are welcome and should be submitted to the editors in charge.

IWGIA’s publications can be ordered through our website: www.iwgia.org, by e-mail: iwgia@iwgia.org or by fax: +45 35 27 05 07.

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TOWARDS A NEW MILLENNIUM

TEN YEARS OF THE INDIGENOUS MOVEMENT IN RUSSIA

This book was first published in Russian in 2000 in connection with the 10th anniversary of the Russian Association of the Indigenous Peoples of the North (RAIPON), the umbrella organisation of indigenous peoples in Russia. It consists of a variety of articles written by indigenous activists, politicians and youth in Russia. The articles range from personal experiences in the indigenous movement to health issues, to social problems, to legal and land rights issues, and they trace the developments of the indigenous movement and of RAIPON since the collapse of the Soviet Union. The book also includes an introduction for a non-Russian readership.

IWGIA and RAIPON, 2002 - ISBN 87-90730-32-6, ISSN 0105-4313

A GUIDE TO INDIGENOUS PEOPLES' RIGHTS IN THE INTER-AMERICAN HUMAN RIGHTS SYSTEM

The guide to Indigenous Peoples' Rights in the Inter-American Human Rights system sets out in detail how the Inter-American human rights system works. It summarizes what rights are protected, with a focus on those of particular importance to indigenous peoples. It also provides detailed guidance on how to submit petitions to the Inter-American Commission on Human Rights. Summaries of relevant cases and judgments that have already passed through the system or ones that are in progress are also included. These cases and judgments show how the system deals with indigenous rights and provide concrete examples of how a case can be moved through the system as a way of illustrating some of the points made in the section on how to submit a petition. The guide is available both in English and Spanish.

IWGIA and Forest Peoples Program (FFP), 2002

RACIAL DISCRIMINATION AGAINST INDIGENOUS PEOPLES WORLDWIDE

PRESENT FORMS OF RACISM IN THE AMERICAS, NORTHERN EUROPE, THE PACIFIC, ASIA AND AFRICA

The book "Racial Discrimination against Indigenous Peoples Worldwide" documents and analyses the many forms of racism, which indigenous peoples all over the world are still facing at the beginning of a new millennium, and it brings forth recommendations on how to change this situation. It is a major responsibility of the international community to address the extreme discrimination and marginalisation faced by indigenous peoples all over the world and to safeguard their human rights. The book is made in connection with the UN "World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance" in South Africa, 2001. The aim of the publication is to direct attention to the situation and demands of indigenous peoples globally.

IWGIA and A.T.P.N., 2001
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