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INDIGENOUS ISSUES

EFFECTIVE FUNCTIONING OF HUMAN RIGHTS MECHANISMS

**Written statement* submitted by the Netherlands Centre for Indigenous Peoples (NCIV),
a non-governmental organization in special consultative status**

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[9 February 2004]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

Impending failure of the international decade of the world's indigenous people

We wish to bring attention to the Commission on Human Rights an impending and critical failure of the International Decade of the World's Indigenous People.

The U.N. General Assembly has explicitly emphasized that the "adoption of a declaration on the rights of indigenous peoples [is] a major objective of the Decade" (U.N.G.A. Res. 52/108, para. 6). Yet the open-ended inter-sessional Working Group that was entrusted by the Commission to help realize this key goal has provisionally adopted only 2 of the 45 Articles of the draft U.N. Declaration on the Rights of Indigenous Peoples.

In August 1994, the independent experts of the U.N. Sub-Commission on the Promotion and Protection of Human Rights approved the complete text of the draft U.N. Declaration (Sub-Commission Res. 1994/45). It is simply unacceptable that the Working Group and the participating States have subsequently reached consensus on a mere 2 Articles during the past nine years. With only one session remaining prior to the end of the Decade in December 2004, the Working Group is highly unlikely to fulfill its mandate.

This fact would constitute a major failure within the context of the International Decade. Yet, in our respectful view, it would not be a reasonable response to the current situation for the Commission to simply terminate this unfinished process. It is essential for the Commission to support the continuation of this standard-setting mechanism. Clearly, the adoption of international Indigenous human rights norms are inseparably linked to the Purposes and Principles of the United Nations (U.N. Charter, Arts. 1, 2 and 55(c)). As the U.N. General Assembly has underlined in the context of the present Decade:

... one of the purposes of the United Nations, as set forth in the Charter, is the achievement of international cooperation ... in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion ... (U.N.G.A. Res. 48/163, preamble)

Aborting the standard-setting process would only penalize further the more than 300 million Indigenous Peoples worldwide who are relying upon the U.N. to fulfill its most basic responsibility. As a critical first step, Indigenous Peoples must have uplifting international human rights norms enshrined within a strong U.N. Declaration.

Rather than abandon this irrevocable mission, the Commission should focus its attention on how the operations of the Working Group could be substantially improved. In this regard, our organization supports the call for concrete, extensive improvements in the joint written statement submitted at this 60th session (Agenda Items 15 and 18) by the Inuit Circumpolar Conference, American Indian Law Alliance and Grand Council of the Crees (Eeyou Istchee).

Indigenous collective human rights and need for international norms

In the absence of international standards, geared specifically to the predominantly collective nature of their human rights, Indigenous Peoples globally will not have effective protections for their human rights and fundamental freedoms. Their right to equality consistent with their right to be different will, for the most part, continue to be denied.

In addition, existing human rights standards have failed to safeguard Indigenous Peoples. Such norms are too often interpreted by dominant States in a manner that does not reflect Indigenous Peoples' values, perspectives or law. For example, in practice, the right to religion or worship is understood in Christian, Buddhist, Islamic, etc. terms. In contrast, the right of Indigenous Peoples to spirituality has often been denied or suppressed.

It is important to underline that the draft U.N. Declaration does not “manufacture” new human rights standards. Rather, from an Indigenous Peoples' perspective, it elaborates upon international human rights law consistent with the principles of democracy, equality and non-discrimination. In this way, the U.N. Declaration fosters the progressive development of international law as contemplated in the U.N. Charter (Arts. 13, para. 1 and 73). As authorized by the Economic and Social Council (Res. 1982/34, 7 May 1982), the draft U.N. Declaration is intended to give:

"special attention to the evolution of standards concerning the rights of indigenous peoples, taking account of both the similarities and the differences in the situations and aspirations of indigenous peoples throughout the world." (E/CN.4/Sub.2/1993/29, 23 August 1993, p. 4, para. 1)

Without the adoption of minimum standards for the survival, dignity and well-being of the Indigenous Peoples of the world, as carefully elaborated in the draft U.N. Declaration, there is no broad-based, cohesive and commonly-shared foundation on which the U.N. specialized agencies and other bodies can base their policies and procedures. The Secretary General noted in 1999 that in actual practice U.N. bodies “are either not adopting particular guidelines or else are developing guidelines on the basis of different procedures”. (A/54/487, p. 3, para 5).

There is a growing concern that the U.N. system is not strategically implementing plans to sufficiently address Indigenous Peoples' needs, circumstances and aspirations. In regard to Indigenous Peoples, there is little evidence that the Programmes of Action adopted in Vienna (human rights), Durban (non-discrimination), Beijing (rights of women) and elsewhere are being effectively implemented.

We acknowledge that some U.N. specialized agencies are making genuine, good faith efforts to implement effective standards in relation to Indigenous Peoples. However, in the absence of a strong, cohesive human rights instrument such as the draft U.N. Declaration, it becomes much more difficult to adopt a coordinated and consistent approach that commands the respect and attention of the international community.

The creation of the Permanent Forum on Indigenous Issues is touted by States as a stellar success for the Decade. The Forum addresses health, education, development, environment and

other fundamental matters that clearly entail a very broad range of human rights issues. Yet it would appear that well over 90% of the recommendations of the Permanent Forum to ECOSOC are not being funded or implemented. We firmly believe that the adoption of the draft U.N. Declaration could act as a positive catalyst in demonstrating the urgency of taking concrete action and providing a principled approach. Conversely, in the absence of such minimum human rights standards, it in effect allows individual States to act with virtual impunity. The international community can unjustly remain complacent.

Human rights – common language of humanity

As Secretary General Kofi Annan has confirmed, human rights are the “common language of humanity” (“Human Rights: The Common Language of Humanity”, in World Conference on Human Rights, The Vienna Declaration and Programme of Action June 1993 UN DPI/1394-39399-August 1993-20 M, at p. 12). At the very least, Indigenous Peoples are entitled to elevating international human rights norms being elaborated in a formal aspirational instrument.

Adoption of the draft U.N. Declaration is also important as an affirmation of the existence of Indigenous Peoples as subjects and beneficiaries of international law. Some States continue to deny that Indigenous Peoples constitute distinct peoples with the right of self-determination under international law. Others seek to establish a lesser standard - despite Article 1 of the Human Rights Covenants. These acts are in willful disregard for the conclusions of treaty bodies, such as the Human Rights Committee, that have explicitly applied the right of self-determination under Article 1 to Indigenous Peoples (e.g., Human Rights Committee, Concluding observations of the Human Rights Committee: Canada, UN Doc. CCPR/C/79/Add.105, 7 April 1999).

In 2002, the U.N. Secretary General Kofi Annan directed that the U.N. system and all of its subsidiary organs and programs follow a human rights based approach in their work. How is this possible, if member States refuse to adopt international Indigenous human rights standards in a formal Declaration?

In the United Nations Millennium Declaration, there are strongly-worded undertakings by heads of States and Government:

"We will spare no effort to promote democracy and strengthen the rule of law, as well as respect for all internationally recognized human rights and fundamental freedoms, including the right to development." (Art. 24)

"We will spare no effort to make the United Nations a more effective instrument for pursuing all of these priorities: the fight for development for all the peoples of the world, the fight against poverty, ignorance and disease; the fight against injustice; the fight against violence, terror and crime; and the fight against the degradation and destruction of our common home." (Art. 29)

For Indigenous Peoples, these solemn commitments have yet to be given concrete meaning. In May 2003, when Assistant Secretary General Angela King delivered the message of Kofi Annan at the second session of the Permanent Forum on Indigenous Issues, she noted

that Indigenous Peoples “were still denied their cultural identities, displaced from traditional lands, and more likely than others to suffer extreme poverty” (Press Release H.R./4659 12/05/2003).

We urge the Commission to take the necessary steps to ensure the effectiveness of the U.N. system. As a very minimum, it is critical to continue the standard-setting process relating to Indigenous Peoples. This should be accompanied with suitable reforms within the United Nations. In particular, far-ranging improvements are necessary in respect to the structure and operations of the inter-sessional Working Group that is considering the draft U.N. Declaration on the Rights of Indigenous Peoples.
