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COMMISSION ON HUMAN RIGHTS  
Sixty-first session  
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**INDIGENOUS ISSUES**

**Written statement\* submitted by the Foundation for Aboriginal and Islander Research  
Action (FAIRA), 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.

[25 February 2005]

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

The Foundation for Aboriginal and Islander Research Action (FAIRA) continues to participate in all United Nations forums concerned with the human rights of Indigenous Peoples, specifically the Permanent Forum on Indigenous Issues, the Working Group on Indigenous Populations and the Working Group on the Draft Declaration on the Rights of Indigenous Peoples.

We are particularly pleased to note the achievements of the United Nations during the Decade of the World's Indigenous People, to establish mechanisms at the international level to elaborate and protect the rights of Indigenous Peoples and to report violations of the human rights and fundamental freedoms of Indigenous Peoples.

The December 2004 proclamation by the General Assembly of a Second Decade of the World's Indigenous People signifies to us that the United Nations continues both to regard the situation of Indigenous Peoples as a major issue requiring continued international attention, and to believe that substantial progress can be made through the proclamation of a further decade promoting partnership with Indigenous Peoples.

FAIRA considers that the second Decade which commenced on 1 January 2005 is the foundation and common link of many important continuing activities involving Indigenous Peoples. FAIRA will advocate that priority be given to the development of a substantial and achievable programme of activities for adoption by the General Assembly at its sixtieth session at the end of 2005.

In consideration of the programme of activities, the Commission on Human Rights should consider those elements of the programme which are likely to be most effective in achieving the objects of the decade, and recommend their inclusion in the final programme. FAIRA proposes the following priorities.

### **Declaration on the Rights of Indigenous Peoples**

There is diverse opinion on the progress being made on the elaboration of the Draft Declaration on the Rights of Indigenous Peoples. FAIRA proposes that the majority of participants in the Working Group established in accordance with Commission on Human Rights resolution 1995/32 are confident of achieving an outcome agreed by Indigenous Peoples.

However a minority of States seem determined to oppose Indigenous Peoples' right to self-determination, and rights to ownership and control of their territories and resources. These rights, in turn, affect the right of Indigenous Peoples to freely pursue economic, social and cultural development.

Some of these States deny that human rights can be collective rights. This is a political position rather than a legal position. FAIRA is opposed to the debate on global political order being centred in the determination of a declaration on the rights of Indigenous Peoples. The capacity of human rights to be expressed as collective rights is already understood in international law. The human rights of individuals are comprehensively articulated in existing human rights declarations and this declaration does not seek to alter any human rights applicable to individuals in indigenous societies.

Certain States seem intent upon ending the work on the draft declaration this year, as a punitive action against Indigenous and State parties who are advocates of self-determination and collective rights. The implied threat is to compromise to a lesser standard or the declaration will be abandoned.

In our assessment FAIRA does not consider the work on the draft declaration can be completed in 2005, given the intransigent position of certain States on these key issues. We believe more time is necessary but, like most participants, do not want the work to continue without objective targets.

We recommend that the Commission on Human Rights resolve to complete the work on the draft declaration in a new resolution which accepts that Indigenous Peoples have the equal rights to self-determination, the rights to own and control lands and resources, and collective rights.

Further, we recommend the resolution should affirm the weight, acuity and accuracy of the text of the draft declaration as submitted by the Sub-Commission on Prevention of Discrimination and Protection of Minorities. We are concerned that some parties are unaware of or dismissive of the needs arising out of the situations of Indigenous Peoples or are otherwise uninformed of the expert contributions and precedent considerations earlier in the elaboration period of twenty-plus years.

We recommend the resolution establish a methodology and reporting framework which will allow the Commission to remain fully aware of the willingness of parties to conclude the task, and the stages of progress.

### **Working Group on Indigenous Populations**

In its previous session the Commission recommended that the Economic and Social Council authorise the Working Group on Indigenous Populations (WGIP) to meet in a further session. As some States were unable to support that resolution a division exists within the Commission whether the WGIP should continue. Those members who do not support the Working Group believe the Permanent Forum on Indigenous Issues is capable of undertaking the work of the WGIP, and argue that duplication in structures exist.

FAIRA cannot support the termination of the WGIP and urges the Commission to continue support for the sessions of the Working Group. Our position is based upon fundamental issues such as:

- the lack of a mandate for the Permanent Forum on Indigenous Issues (PFII) to undertake standard-setting activities;
- the lack of adequate time in PFII sessions to consider human rights issues;
- the lack of structural coordination and communication between the PFII and the CHR (and its associated bodies and agents, including the Special Rapporteur on the situation of human rights and fundamental freedoms of Indigenous People);
- incomplete resourcing of the PFII including the need for more Indigenous staffing; and
- the high level of knowledge and expertise required to effectively participate in PFII sessions.

FAIRA recommends the CHR61 resolves to support the work of the WGIP and to recommend to the Economic and Social Council that resources be provided for the next session of the Working Group.

FAIRA also recommends to the members of the Commission that effort be made to appoint Indigenous experts to the Sub-Commission on the Promotion and Protection of Human Rights, and recommends that Indigenous representatives be included in States' delegations, as independent experts, where possible. This latter recommendation should not be interpreted as support for persons who are not qualified or authorised to represent the Indigenous Peoples.

### **Violations of the Human Rights and Freedoms of Indigenous Peoples**

In CHR 60 the Commission renewed the mandate of the Special Rapporteur on the situation of Human Rights and Fundamental Freedoms of Indigenous People for three years. Included in that resolution was the request that all States assist the Special Rapporteur in conformity with his mandate, including to respond positively to requests to visit a country and to cooperate to the fullest extent possible.

We recommend the Commission support a similarly worded resolution in the sixty-first session, taking due account of the recommendations included in his reports.

We also recommend that the Commission take note of reports which promote the coordination of activities and findings of the human rights treaty bodies, the special rapporteurs and other human rights mechanisms of the UN, especially as they relate to Indigenous Peoples, and to include appropriate wording in the resolution on human rights of Indigenous Peoples which will advance the work and outcomes of these bodies' considerations of Indigenous Peoples.

### **Specific Activities for the Second Decade of the World's Indigenous People**

The Programme of Activities for the First Decade was adopted by the General Assembly in Resolution 50/157 on 20 February 1996. While many objectives and activities were undertaken by the main bodies in the UN, most international, regional and national bodies did not address the programme.

FAIRA recommends the Commission support certain activities from the first programme being adopted and strengthened in the second Programme of Activities. The activities which should be repeated and highlighted from the first programme, as identified by FAIRA, include, in the body of the resolution, Paras 3, 10, 11, 12, 19 and 20, and, in the Annex, Paras 11, 12, 14, 15, 17, 18, 19, 21, 24, 30, 31, 32, 34, 35, 37, 39, 41, 42, 44, 45, 46, 47, 48, 49, 50, 51, 53, 54, 57, 58, 59, 63, 64 and 65.

FAIRA considers that the most important initial steps are to establish a mechanism to plan and monitor the activities of the Decade, and which has maximum Indigenous involvement. Another priority is to promote the development of plans by all relevant international, regional and national bodies. This includes States.

FAIRA will further advocate the preparation of the programme of activities at the fourth session of the Permanent Forum on Indigenous Issues (2005), where a complete draft programme should

be compiled to recommend to ECOSOC, but urges the Commission to also consider and recommend human rights- related activities for the programme to assist this process.

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