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OF 15 MARCH 2006 ENTITLED “HUMAN RIGHTS COUNCIL”**

**Written statement\* submitted by 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.

[1 March 2007]

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

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

The decision by the Human Rights Council to adopt the Declaration on the Rights of Indigenous Peoples at the historic first session of the Council in June 2006, represented a major step forward in international human rights. For many indigenous peoples the adoption of the Declaration was seen as endorsement of the efforts made eighty years ago by indigenous leaders to have the (then) League of Nations consider the situation of the colonized indigenous peoples in the Americas and the Pacific. For UN officials and most states' representatives the momentous decision of the Human Rights Council represented the successful point of resolution of twenty year's of negotiations to establish a much-needed human rights standard.

The stages important to encourage, facilitate and assist dialogues between states and indigenous peoples at the international level have been identified and completed.

The United Nations has established the Working Group on Indigenous Populations (now under review by the Human Rights Council) and the Permanent Forum on Indigenous Issues. The annual sessions of these standing bodies represent some of the largest annual meetings of the United Nations, as indigenous peoples, states, and human rights experts converge to address the continuing manifest injustices against the majority of the world's 350 million indigenous peoples. Complaints by indigenous peoples are now being investigated by the UN Special Rapporteur on the human rights and fundamental freedoms of indigenous peoples, and there is ever increasing access by indigenous peoples to the treaty bodies and other human rights special mechanisms of the UN. The UN General Assembly has declared the International Year of the World's Indigenous Peoples in 1993, the International Decade of the World's Indigenous Peoples (1995-2004) and the Second International Decade of the World's Indigenous Peoples (2005-2014). The Program of Action for the current decade, in place until 2014, sets out effective and coordinated activities that are entirely consistent with the priority to build working relationships between indigenous peoples and states (and international agencies where appropriate).

Like many active participants in the commendable, robust UN agenda on indigenous peoples, FAIRA looks forward to real gains being made through the implementation and achievements, for the first time, of development programs integrally linked to an international standard on the rights of indigenous peoples.

Unfortunately and unwisely, the Declaration on the Rights of Indigenous Peoples has over the past few months been subject to malicious attacks by a few states who have intractable opposition to changing their historical attitudes. These former colonial states have maintained rigid dominance over the indigenous populations for centuries and are now refusing to concede control of territories and resources stolen from the indigenous peoples.

Australia and New Zealand, by way of example, have become bitter opponents of the indigenous rights standards since they recently came under criticism by human rights treaty bodies for enacting new laws to extinguish property rights of indigenous peoples. They are determined to prevent this important and overdue human rights standard from final clearance by the UN General Assembly. They have methodically set about to convince unwary and less-informed states in Africa and Asia that the Declaration is a threat to national sovereignty and future economic security. Such ill-intended and unethical actions

do not bode well for the 'new look' UN and its goal of strengthening the pillar of human rights.

In point of fact, the Declaration on the Rights of Indigenous Peoples is a masterpiece of design. It is an instrument carefully negotiated to address the valid concerns for the real situation of indigenous peoples around the world. The Declaration does not mechanically repeat bland and irrelevant human rights text contained in other international instruments but sets about to give context and interpretation to how global human rights standards must be addressed in the context of situations faced by indigenous peoples. To explain these distinctive qualities, this submission relies upon key points identified by a human rights expert in the UN system, paraphrased as follows.

The Declaration is an extremely useful tool for people and organisations that work in human rights at the local, national and global levels. It has derived its contents from a number of treaties, and declarations, and guidelines, and bodies of principle. Significantly it has also relied upon the jurisprudence of the human rights bodies that have been set up by the UN and charged with monitoring the implementation of the various treaties.

The rights contained in the Declaration are not new. They are rights already codified by the member states of the United Nations. They are rights embodied in countless treaties. They are rights which have existed for the entire life of the organization since the adoption of the Universal Declaration of Human Rights. But they are rights that have been violated with impunity in relation to indigenous peoples for just as long as these rights have existed. Therefore the Declaration does something that is very useful. It helps clarify what are the normative implications and the operational requirements of the existing catalogue of human rights standards that have been adopted by the UN over the years. This clarification is 'situation-specific' in the Declaration, setting out how these pre-existing rights, already adopted and established in global standards and international law, apply to the very particular case of indigenous peoples around the world.

The Declaration is not merely a re-statement of existing rights. Through many years of hard work and difficult negotiations, taking into account many different situations and viewpoints from states and indigenous peoples, the Declaration as written has emerged as a developed and clear articulation of the nature of the obligations and entitlements that attach to those pre-existing rights, again, looking at the real circumstances of indigenous peoples. By studying the Declaration carefully you see the very practical value of language drawn from the jurisprudence, and language which helps us to understand those rights better; language like 'free, prior and informed consent', language like 'just and fair compensation' and language like 'fair and independent process'. These are certainly not new concepts but they are very well articulated in the Declaration. Because of the care and attention that has gone into the language of the Declaration the last minute efforts by some states to re-write the text of the Declaration in the General Assembly will ultimately fail, one way or the other. These states will either fail to find improved text, because of the effort and intensity that has already been put into the Declaration, or proposed new text will fail to be of value because the context and purpose is rendered inoperable or irrelevant.

The Declaration is a comprehensive standard on human rights. It covers the full range of rights of indigenous peoples (in fact, rights of all of us but as they relate to indigenous peoples). The Declaration catalogues the kinds of violations that have historically plagued

and, sadly, continue to plague indigenous peoples around the world. In particular, there are attacks upon our cultures, our lands, our identities, and our own voices. The Declaration has noteworthy detail on issues like 'cross-border' relations and discrimination suffered by indigenous groups. In toto the Declaration lays out the minimum standards for the survival, dignity and well being of indigenous peoples.

The Declaration does not take an 'either/ or' approach that historically has been forced on indigenous peoples around the world. Indigenous peoples, for example, were forced to either be restricted to 'reserves' or to suffer discrimination before official state institutions. This Declaration incorporates 'choice' as a fundamental element to which we are all entitled. For example, the Declaration gives a balance by addressing:

- respect for indigenous institutions, and equality before official institutions;
- recognition of indigenous identity, and the right to national citizenship;
- respect for traditional justice systems, and adherence to national justice systems.

This very balanced 'choice' approach to human rights is codified in countless instruments but in the Declaration it is very clearly laid out in regard to the long-term trials and struggles of indigenous peoples. It is wrong that dissenting states have targeted and exploited one side of these balanced provisions of the Declaration to try and generate wider opposition to the rights of indigenous peoples.

It is time for the United Nations to shift goals on indigenous issues. The General Assembly must somehow remind individual member states that they have Charter-based responsibilities to act in the interest of the peoples of the world. The UN's commitment to promoting and protecting human rights, recently reaffirmed by upgrading the role of the Human Rights Council must continue, recognizing that the Human Rights Council where states and civil society come together in human rights dialogue must be given respect by the General Assembly, and that decades of work, commitment, growth and concession to develop the Declaration cannot be undermined by a few states at the 'finish line'.

It is time for the United Nations, states and indigenous peoples to protect the human rights and fundamental freedoms of indigenous peoples and to develop new partnerships for development and security.

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