

# **Urgent information for Indigenous peoples of all regions**

## **UN DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES**

### **Report of the Global Indigenous Peoples' Caucus Steering Committee**

*This report contains the latest and important news on the Declaration  
Responses are needed by Tuesday, September 3, 12:00 noon, New York time.  
You will find attached four documents for your review.*

In 2006 the Global Indigenous Peoples' Caucus decided by consensus, and thereafter on several occasions confirmed, that Indigenous Peoples' work on the Declaration on the Rights of Indigenous Peoples be coordinated through the Global Indigenous Peoples' Caucus Steering Committee ("Steering Committee"). Members of the Steering Committee are appointed from each of the seven regions of the world consider issues at the global level and to coordinate communications in their regions. Les Malezer, the Pacific regional representative and Chairperson of the Global Indigenous Peoples' Caucus, is convenor of the Steering Committee.

The Steering Committee met in New York during the week of August 27-31. (A list of the participating regional coordinators is attached.) This is a report of these meetings.

### **Background**

Since the adoption of the Declaration on the Rights of Indigenous Peoples in June 2006 by the UN Human Rights Council, the Global Indigenous Peoples' Caucus has lobbied hard for the UN General Assembly to endorse the Declaration without changes or amendments. The decision in December 2006 by the UN General Assembly to delay the adoption of the Declaration was a serious setback for this effort. Nevertheless, the Global Indigenous Peoples' Caucus has continued to advocate for the Declaration in New York, in Geneva and around the world.

In recent months, the governments seeking approval of the Declaration adopted by the Human Rights Council – these governments are known as the "Co-sponsors" - have indicated that the achievement of outright adoption in the UN General Assembly was proving to be extremely difficult as they continued to engage in consultations with other states.

In May of 2006 some of the Co-sponsors - Guatemala, Mexico and Peru - engaged in serious discussions in New York with the Africa Group of States (the "Africa Group"). They undertook these consultations to see if an acceptable agreement could be achieved between the Co-sponsors and the Africa Group leading to final adoption of the Declaration.

Such consultations among states were also recommended in the report of Ambassador Davide, the "facilitator" appointed by the President of the UN General Assembly to bring the opposing States closer together.

The Indigenous Peoples Caucus has continued to call for the adoption of the Declaration as adopted by the Human Rights Council. Indigenous peoples have not been included in the discussions between the Co-sponsors and the Africa Group. We also have no capacity to participate in the final decision by the General Assembly.

### **Developments this week**

On Tuesday, August 29, the Co-sponsors met with the Steering Committee to report on their negotiations with the African Group. They reported that this has been a very difficult process, but that they were now very close to an agreement. However, a few details remained unresolved in the negotiations.

They did not present the Steering Committee with any of the language being discussed, and did not go into details as to what the emerging agreement looked like. They did reaffirm that an agreement would need to include a specific reference to State territorial integrity in the Declaration. In return, all key provisions including on land and resource rights, self-determination, free prior and informed consent and treaties remain intact.

The co-sponsors said the reason they had entered into negotiations was that it was clearly impossible to reach an agreement with the African Group that did not include at least some amendments to the Declaration text. The co-sponsor group deems it much too risky to push the Declaration through the General Assembly against opposition from the African Group. Very unfavourable amendments would be introduced during the debate at the General Assembly and it would be impossible to control the outcome. Hence, in the co-sponsor group's assessment it was necessary to enter into text negotiations with the African Group.

The Steering Committee took note of this report from the Cosponsors.

The Committee expressed its appreciation for the co-sponsors' efforts to reach an acceptable agreement on the Declaration. However the Steering Committee emphasised that it would not comment on any arrangement until they had time to see and consider all amending text under the arrangement. The States said they would provide the Steering Committee with the agreed text as soon as a formal agreement with the African Group was confirmed.

The Co-sponsors argued that there is a glaring need to now conclude negotiations and adopt the Declaration. The "opposing" states – predominantly Canada and New Zealand – are reacting strongly to signals that an agreement with the Africa Group might soon be concluded. They are demanding to be included in negotiations and that they have produced proposed language (see attachment) for amendments to the Declaration.

The Co-sponsors expressed the opinion that if the adoption of the Declaration is delayed into the 62<sup>nd</sup> session of the General Assembly (less than three weeks away) it would be impossible to keep Canada, New Zealand et al – and their proposed amendments - out of the negotiations. The only outcome would, in the co-sponsors' opinion, be a seriously diluted Declaration.

The co-sponsor group confirmed that an agreement with the Africa Group would include a pact to jointly vote down any amendments on the floor of the General Assembly, coming from Canada, or other opposing States.

The Chair of the Steering Committee distributed a document containing the amendments to the Declaration that he foresaw might be included in a negotiated agreement between the co-sponsor group and the African Group. Since these amendments were not confirmed, the Steering Committee decided not to distribute the document. It was considered better to wait for an official text before circulating the agreement in the regions.

Nevertheless, the Steering Committee discussed and analysed the amendments, as foreseen and presented by the committee Chair. The Steering Committee noted that there were much fewer amendments than had been sought by the Africa Group or the Canada Group.

The Steering Committee quickly concluded that, of the envisioned amendments, the one that caused the most concern was the inclusion of a reference to territorial integrity in Article 46. The committee understood that it would be nearly impossible to avoid a reference to territorial integrity in the Declaration. It is evidently too important to many African (and also Asian) states. Some committee members, however, thought that the proposal was discriminatory, and potentially could be harmful to Indigenous peoples and the rights in the Declaration. Other committee members did not see any problem with the proposed language.

Given that an agreement between the co-sponsor group and the African Group was imminent, the Steering Committee recognized that it would be very difficult, probably impossible, to influence the text amendments at this stage. Some committee members proposed that the language on territorial integrity, if it had to be included, should at least be stated in a way that was more consistent with text that already appeared in international law. The committee decided to make an attempt to craft more acceptable language on territorial integrity to be handled over to Mexico for use in the final negotiations with the African Group. Two paragraphs with suggested wording along those lines were drafted to present to the co-sponsors without delay.

On the evening of August 29, the Chair of the Steering Committee together with the Chair of the Permanent Forum, and also regional member of the Steering Committee, Victoria Tauli-Corpuz, met with the co-sponsors and presented the committee's suggested wording for improvements on the language on territorial integrity.

### **The Co-sponsor/ Africa Agreement**

On the afternoon August 30, the government of Mexico informed the Steering Committee by telephone call that the co-sponsor group and the African Group had reached an agreement on the Declaration. On August 31 the co-sponsors met with the Steering Committee and presented the text of the negotiated agreement, which contained nine proposals to change text in the Declaration as passed by the Human Rights Council.

Committee members first thanked the co-sponsors for all their efforts and for being able to successfully reach an agreement with the African Group. The Steering Committee reminded the Co-sponsors that Indigenous peoples in each of the seven regions would now study the

agreement. Following the hasty consultations the Steering Committee would respond to the co-sponsors. The committee agreed to meet with the Co-sponsors after the regional consultations and report back indigenous people's positions on the Declaration with the negotiated changes.

Responding to questions and concerns from members of the Steering Committee, the co-sponsors offered the following information about the agreement:

- In their view this is the final document. The African Group has committed to not come forward with any further request for additional amendments to the Declaration and has agreed to vote against any amendments made on the floor.
- The co-sponsors were satisfied that they had managed to reach an agreement with the African Group that includes amendments to very few of the provisions in the Declaration, in particular compared to the long list of amendments that the African Group initially wanted to see included in the Declaration. The co-sponsors further stated that they were very pleased to present an agreed Declaration that leaves all – in their opinion – the most central articles in the Human Rights Council Declaration intact. These include the articles on self-determination; lands, territories and natural resources; free, prior and informed consent; treaties; and pre-ambular paragraphs recognizing inherent and equal rights of Indigenous peoples.
- The co-sponsors stated that even though, technically speaking, it is not a closed document, in their view it would not be possible to open up the negotiated text for any further refinement by the Indigenous Peoples. Other interested parties – such as opposing states like Canada, New Zealand and the Russian Federation – would also find their way to the negotiating table.
- They further stated that the agreement must be seen as an integrated whole or “package”. This means that if the co-sponsor group would go back to the African Group and attempt to re-negotiate the language on territorial integrity, the African Group would instantly respond by wanting to open up the articles on lands and natural resources for negotiation, which are unchanged from the Human Rights Council text. Hence, in the co-sponsor group's opinion, it is not a viable option for Indigenous peoples to try to further amend the agreed changes as presently drafted. Their interest now is to know whether Indigenous peoples can accept the Declaration or not with the newly negotiated changes.
- They repeated what has always been the case: that the co-sponsors will not go ahead and push for adoption of a Declaration that Indigenous peoples do not want.
- If a Declaration that enjoys the support of the African Group is presented to the UN General Assembly, the co-sponsor group is certain that the vast majority of Asian, Eastern European and Caribbean states will also support the Declaration. Western Europe and Latin America's votes have already been secured. (Currently there are 67 co-sponsors, 15 additional countries who voted in favour of the Human Rights Council resolution and the African Group adds an additional 51 votes.)

- If the Indigenous peoples of the world support the adoption of the Declaration as agreed to by the co-sponsors and the African Group, the co-sponsors believe it will be adopted by the UN General Assembly with an almost unanimous vote, with only very few opposing States.

### **Discussions regarding changes to Article 46 and “territorial integrity”**

The co-sponsors were well aware that many Indigenous peoples had argued for many years against the inclusion of a provision upholding state territorial integrity in the Declaration. They explained that they understood that this might be the most difficult provision for Indigenous peoples to accept in the newly negotiated text. They also once again expressed that an agreement with the African Group would not be possible without this inclusion.

Members of the Steering Committee again asked the co-sponsors why their suggested wording on territorial integrity had not been included in the final agreed changes. The co-sponsor group reported that it was not possible to include the language on territorial integrity submitted by the Steering Committee, because it would have led to the African Group insisting on opening up the land and resource articles for changes.

They further stated that in their view it is not necessary to include the language on territorial integrity that could make the provision to more acceptable Indigenous peoples, since that language is already included in the Declaration, through reference to the Vienna Declaration and Programme of Action in the preamble.

Other Steering Committee members asked that if in the view of the co-sponsors the provision on territorial integrity now included in Article 46 would affect all the rights in Declaration since the paragraph begins “Nothing in this Declaration may be interpreted as implying...”. The co-sponsors responded that in existing international law, territorial integrity is clearly tied to the exercise of the right to self-determination and therefore would not be construed as affecting other rights.

In further discussion, members of the Steering Committee responded to concerns expressed for Indigenous peoples’ territorial integrity by affirming that in their view Article 26 left intact in fact recognizes Indigenous peoples’ territorial integrity over lands they have traditionally owned and occupied. Article 37 on treaties further affirms these rights.

### **Indigenous peoples’ responses needed immediately**

The Steering Committee is immediately sending out the Declaration as agreed by the co-sponsor group and the African Group. This document is going to Indigenous peoples globally.

This is obviously a decisive moment in the history of Indigenous peoples struggle for respect and recognition of our rights. **Indigenous peoples must now decide whether they can now accept the Declaration or not**, with the new changes. As agreed by the Global Indigenous Caucus, we now require an orderly process to decide on the Declaration.

To register your position on the Declaration, please *do not contact the states directly*, or circulate your position through list-serves etc.

Please convey your opinions to the regional coordinator in your region. The regional coordinators will report back to the Steering Committee on the responses from each region. The Steering Committee will let the co-sponsor group know whether Indigenous peoples support adoption of the Declaration with the changes or not. By using this agreed manner of communicating, we avoid confusion and disclosing of information that can be used by opposing states.

***The regional coordinators need to receive your responses by Tuesday, September 4 at 12:00 noon, New York time.***

The Steering Committee will meet with co-sponsors, to deliver the results of the consultations. If the message is that Indigenous peoples can support the Declaration with the changes, the co-sponsor group will set meetings with other States, notably the Asian and the Eastern European Groups at the end of the week to present the agreed Declaration to them.

**Please consider the attached documents.**

In taking a position on the Declaration, indigenous representatives may find it helpful to also study the African Proposal and the proposed amendments to the Declaration tabled by Canada et al. The African Proposal shows the starting point for the African Group coming into the negotiations, and the kinds of amendments that could potentially be presented on the floor. The Canada et al document shows proposed amendments that would have to be considered in any negotiations that go beyond General Assembly's 61<sup>st</sup> session.

Attached are the following documents:

- Declaration with changes ("Co-sponsor/ Africa agreed draft"). *Changes are highlighted.*
- The Canada/ New Zealand/ Russia/ Colombia proposal ("Canada et al Proposals").
- The Africa proposed amendments submitted in May 2007 ("Africa May Proposals").
- A list of the regional coordinators and their contact information.

There are very different kinds of amendments contained in these documents: the Africa Proposed Amendments contains changes to 36 provisions and the Canada et al Proposal contains changes to 20 provisions. The new Co-sponsor/ Africa agreed draft has nine amendments.

The Steering Committee is meeting with the co-sponsor group late Tuesday afternoon or early Wednesday morning, we will need you comments by Tuesday 12:00 noon. We regret the short time given to you on such an important matter, but we are not in charge of the time table. The vote on the Declaration must take place before the end of the 61<sup>st</sup> Session of the General Assembly on September 17.

Keep watch. In some regions there will be follow-up messages from the regional coordinators shortly. Again, please respond to them as soon as possible.

## LIST OF REGIONAL COORDINATORS

### GLOBAL INDIGENOUS PEOPLES' STEERING COMMITTEE MEMBERS PRESENT AT MEETING – AUGUST 27-31, 2007

Africa	Saouda Aboubacrine	saoudata@hotmail.com
Arctic	Mattias Ahren	mattias.ahren@saamicouncil.net
Asia	Joan Carling	joan@cpaphils.org
Asia	Vicky Tauli-Corpuz	vicky@tebtebba.org
Latin America & Caribbean	Jose Carlos Morales	kantan@ice.co.cr
North America	Andrea Carmen	andrea@treatycouncil.org
North America	Chief Ed John	edjohn@fns.bc.ca
Pacific	Les Malezer (Chairperson)	les.malezer@faira.org.au
Pacific	Mililani Trask	gibson@ilhawaii.net
Russia and Eastern Europe	Mikail Todyshev	mtodishev@mail.ru

## United Nations Declaration on the Rights of Indigenous Peoples

*The Human Rights Council General Assembly*

**Guided by the purposes and principles of the Charter of the United Nations, and good faith in the fulfilment of the obligations assumed by States in accordance with the Charter,**

*Affirming* that indigenous peoples are equal to all other peoples, while recognizing the right of all peoples to be different, to consider themselves different, and to be respected as such,

*Affirming* also that all peoples contribute to the diversity and richness of civilizations and cultures, which constitute the common heritage of humankind,

*Affirming further* that all doctrines, policies and practices based on or advocating superiority of peoples or individuals on the basis of national origin, racial, religious, ethnic or cultural differences are racist, scientifically false, legally invalid, morally condemnable and socially unjust,

*Reaffirming* also that indigenous peoples, in the exercise of their rights, should be free from discrimination of any kind,

*Concerned* that indigenous peoples have suffered from historic injustices as a result of, inter alia, their colonization and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests,

*Recognizing* the urgent need to respect and promote the inherent rights of indigenous peoples which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies, especially their rights to their lands, territories and resources,

*Further recognizing* the urgent need to respect and promote the rights of indigenous peoples affirmed in treaties, agreements and other constructive arrangements with States,

*Welcoming* the fact that indigenous peoples are organizing themselves for political, economic, social and cultural enhancement and in order to bring an end to all forms of discrimination and oppression wherever they occur,

*Convinced* that control by indigenous peoples over developments affecting them and their lands, territories and resources will enable them to maintain and strengthen their institutions, cultures and traditions, and to promote their development in accordance with their aspirations and needs,

*Recognizing also* that respect for indigenous knowledge, cultures and traditional practices contributes to sustainable and equitable development and proper management of the environment,

*Emphasizing* the contribution of the demilitarization of the lands and territories of indigenous peoples to peace, economic and social progress and development, understanding and friendly relations among nations and peoples of the world,

*Recognizing in particular* the right of indigenous families and communities to retain shared responsibility for the upbringing, training, education and well-being of their children, consistent with the rights of the child,

~~*Recognizing that indigenous peoples have the right freely to determine their relationships with States in a spirit of coexistence, mutual benefit and full respect,*~~

*Considering* that the rights affirmed in treaties, agreements and constructive arrangements between States and indigenous peoples are, in some situations, matters of international concern, interest, responsibility and character,

*Considering also* that treaties, agreements and other constructive arrangements, and the relationship they represent, are the basis for a strengthened partnership between indigenous peoples and States,

*Acknowledging* that the Charter of the United Nations, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights **as well as the Vienna Declaration and Programme of Action**, affirm the fundamental importance of the right of self-determination of all peoples, by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development,

*Bearing in mind* that nothing in this Declaration may be used to deny any peoples their right of self-determination, exercised in conformity with international law,

*Convinced* that the recognition of the rights of indigenous peoples in this Declaration will enhance harmonious and cooperative relations between the State and indigenous peoples, based on principles of justice, democracy, respect for human rights, non-discrimination and good faith,

*Encouraging* States to comply with and effectively implement all their obligations as they apply to indigenous peoples under international instruments, in particular those related to human rights, in consultation and cooperation with the peoples concerned,

*Emphasizing* that the United Nations has an important and continuing role to play in promoting and protecting the rights of indigenous peoples,

*Believing* that this Declaration is a further important step forward for the recognition, promotion and protection of the rights and freedoms of indigenous peoples and in the development of relevant activities of the United Nations system in this field,

*Recognizing and reaffirming* that indigenous individuals are entitled without discrimination to all human rights recognized in international law, and that indigenous peoples possess collective rights which are indispensable for their existence, well-being and integral development as peoples,

***Recognizing also that the situation of indigenous peoples varies from region to region and from country to country and that the significance of national and regional particularities and various historical and cultural backgrounds should be taken into consideration,***

*Solemnly proclaims* the following United Nations Declaration on the Rights of Indigenous Peoples as a standard of achievement to be pursued in a spirit of partnership and mutual respect,

### *Article 1*

Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law.

### *Article 2*

Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.

### *Article 3*

Indigenous peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

### *Article 4*

Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

### *Article 5*

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their rights to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

### *Article 6*

Every indigenous individual has the right to a nationality.

### *Article 7*

1. Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person.

2. Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.

### *Article 8*

1. Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.

2. States shall provide effective mechanisms for prevention of, and redress for:

(a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;

(b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;

(c) Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights;

(d) Any form of forced assimilation or integration ~~by other cultures or ways of life imposed on them by legislative, administrative or other measures;~~

(e) Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them.

#### *Article 9*

Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No discrimination of any kind may arise from the exercise of such a right.

#### *Article 10*

Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

#### *Article 11*

1. 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, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.

2. States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.

#### *Article 12*

1. Indigenous peoples have the right to manifest, practice, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.

2. States shall seek to enable the access and/or repatriation of ceremonial objects and human remains in their possession through fair, transparent and effective mechanisms developed in conjunction with indigenous peoples concerned.

### *Article 13*

1. Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons.

2. States shall take effective measures to ensure this right is protected and also to ensure that indigenous peoples can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means.

### *Article 14*

1. Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.

2. Indigenous individuals, particularly children, have the right to all levels and forms of education of the State without discrimination.

3. States shall, in conjunction with indigenous peoples, take effective measures, in order for indigenous individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language.

### *Article 15*

1. Indigenous peoples have the right to the dignity and diversity of their cultures, traditions, histories and aspirations which shall be appropriately reflected in education and public information.

2. States shall take effective measures, in consultation and cooperation with the indigenous peoples concerned, to combat prejudice and eliminate discrimination and to promote tolerance, understanding and good relations among indigenous peoples and all other segments of society.

### *Article 16*

1. Indigenous peoples have the right to establish their own media in their own languages and to have access to all forms of non-indigenous media without discrimination.

2. States shall take effective measures to ensure that State-owned media duly reflect indigenous cultural diversity. States, without prejudice to ensuring full freedom of expression, should encourage privately-owned media to adequately reflect indigenous cultural diversity.

### *Article 17*

1. Indigenous individuals and peoples have the right to enjoy fully all rights established under applicable international and domestic labour law.

2. States shall in consultation and cooperation with indigenous peoples take specific measures to protect indigenous children from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development, taking into account their special vulnerability and the importance of education for their empowerment.

3. Indigenous individuals have the right not to be subjected to any discriminatory conditions of labour and, inter alia, employment or salary.

#### *Article 18*

Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

#### *Article 19*

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

#### *Article 20*

1. Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.

2. Indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress.

#### *Article 21*

1. Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security.

2. States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities.

#### *Article 22*

1. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities in the implementation of this Declaration.

2. States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.

### *Article 23*

Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.

### *Article 24*

1. Indigenous peoples have the right to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, animals and minerals. Indigenous individuals also have the right to access, without any discrimination, to all social and health services.

2. Indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health. States shall take the necessary steps with a view to achieving progressively the full realization of this right.

### *Article 25*

Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.

### *Article 26*

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.

2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.

3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

### *Article 27*

States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.

### *Article 28*

1. Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, of a just, fair and equitable compensation, for the lands, territories and

resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.

2. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.

#### *Article 29*

1. Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.

2. States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.

3. States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented.

#### *Article 30*

1. Military activities shall not take place in the lands or territories of indigenous peoples, unless justified by a significant threat to relevant public interest or otherwise freely agreed with or requested by the indigenous peoples concerned.

2. States shall undertake effective consultations with the indigenous peoples concerned, through appropriate procedures and in particular through their representative institutions, prior to using their lands or territories for military activities.

#### *Article 31*

1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.

2. In conjunction with indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.

#### *Article 32*

1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.

2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed

consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of **their** mineral, water or other resources.

3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

#### *Article 33*

1. Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of indigenous individuals to obtain citizenship of the States in which they live.

2. Indigenous peoples have the right to determine the structures and to select the membership of their institutions in accordance with their own procedures.

#### *Article 34*

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

#### *Article 35*

Indigenous peoples have the right to determine the responsibilities of individuals to their communities.

#### *Article 36*

1. Indigenous peoples, in particular those divided by international borders, have the right to maintain and develop contacts, relations and cooperation, including activities for spiritual, cultural, political, economic and social purposes, with their own members as well as other peoples across borders.

2. States, in consultation and cooperation with indigenous peoples, shall take effective measures to facilitate the exercise and ensure the implementation of this right.

#### *Article 37*

1. Indigenous peoples have the right to the recognition, observance and enforcement of Treaties, Agreements and Other Constructive Arrangements concluded with States or their successors and to have States honour and respect such Treaties, Agreements and other Constructive Arrangements.

2. Nothing in this Declaration may be interpreted as to diminish or eliminate the rights of Indigenous Peoples contained in Treaties, Agreements and Constructive Arrangements.

*Article 38*

States in consultation and cooperation with indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration.

*Article 39*

Indigenous peoples have the right to have access to financial and technical assistance from States and through international cooperation, for the enjoyment of the rights contained in this Declaration.

*Article 40*

Indigenous peoples have the right to have access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.

*Article 41*

The organs and specialized agencies of the United Nations system and other intergovernmental organizations shall contribute to the full realization of the provisions of this Declaration through the mobilization, inter alia, of financial cooperation and technical assistance. Ways and means of ensuring participation of indigenous peoples on issues affecting them shall be established.

*Article 42*

The United Nations, its bodies, including the Permanent Forum on Indigenous Issues, and specialized agencies, including at the country level, and States, shall promote respect for and full application of the provisions of this Declaration and follow up the effectiveness of this Declaration.

*Article 43*

The rights recognized herein constitute the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world.

*Article 44*

All the rights and freedoms recognized herein are equally guaranteed to male and female indigenous individuals.

*Article 45*

Nothing in this Declaration may be construed as diminishing or extinguishing the rights indigenous peoples have now or may acquire in the future.

*Article 46*

1. Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of

the United Nations **or 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.**

2. In the exercise of the rights enunciated in the present Declaration, human rights and fundamental freedoms of all shall be respected. The exercise of the rights set forth in this Declaration shall be subject only to such limitations as are determined by law; **and** in accordance with international human rights obligations. Any such limitations shall be non-discriminatory and strictly necessary solely for the purpose of securing due recognition and respect for the rights and freedoms of others and for meeting the just and most compelling requirements of a democratic society.

3. The provisions set forth in this Declaration shall be interpreted in accordance with the principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance and good faith.

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**PROPOSAL BY AFRICA – 8 MAY 2007**  
**DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES**

*The General Assembly*

*Affirming* that indigenous peoples are equal to all other peoples, while recognizing the right of all peoples to be different, to consider themselves different, and to be respected as such,

*Affirming also* that all peoples contribute to the diversity and richness of civilizations and cultures, which constitute the common heritage of humankind,

*Affirming further* that all doctrines, policies and practices based on or advocating superiority of peoples or individuals on the basis of national origin, racial, religious, ethnic or cultural differences are racist, scientifically false, legally invalid, morally condemnable and socially unjust,

*Reaffirming* that indigenous peoples, in the exercise of their rights, should be free from discrimination of any kind,

*Concerned* that indigenous peoples have suffered from historic injustices as a result of, inter alia, their colonization and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests,

*Recognizing* the urgent need to respect and promote the inherent rights of indigenous peoples which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies, especially their rights to their lands, territories and resources, **in accordance with the national laws,**

*Recognizing also* the urgent need to respect and promote the rights of indigenous peoples affirmed in **applicable existing** treaties, agreements and other constructive arrangements with States,

*Welcoming* the fact that indigenous peoples are organizing themselves for political, economic, social and cultural enhancement and in order to bring an end to all forms of discrimination and oppression wherever they occur,

*Convinced* that control by indigenous peoples over developments affecting them and their lands, territories and resources, **where appropriate,** will enable them to maintain and strengthen their institutions, cultures and traditions, and to promote their development in accordance with their aspirations and needs,

*Recognizing* that respect for indigenous knowledge, cultures and traditional practices contributes to sustainable and equitable development and proper management of the environment,

*Emphasizing* the contribution of the **demilitarization** of the lands and territories of indigenous peoples to peace, economic and social progress and development, understanding and friendly relations among nations and peoples of the world (**Seek clarification of what is meant by demilitarization**)

*Recognizing in particular* the right of indigenous families and communities to retain shared responsibility for the upbringing, training, education and well-being of their children, consistent with the **international instruments on the rights of the child**,

*Recognizing* that indigenous peoples have the right **on equal basis with other citizens to freely** ~~freely to~~ determine their relationships with state in a spirit of coexistence, mutual benefit and full respect,

*Considering* that the rights affirmed in **applicable existing** treaties, agreements and constructive arrangements between States and indigenous are, in some situations, matters of international concern, interest, responsibility and character,

*Considering also* that treaties, agreements and other constructive arrangements, and the relationship they represent, are the basis for a strengthened partnership between indigenous peoples and States,

*Acknowledging* that the Charter of the United Nations, , the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, affirm the fundamental importance of the right of self-determination of all peoples, by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development,

*Bearing in mind* that nothing in this Declaration may be used to deny any peoples their right of self-determination, exercised in conformity with international law,

*Convinced* that the recognition of the rights of indigenous peoples in this Declaration will enhance harmonious and cooperative relations between the State and Indigenous peoples, based on principles of **territorial integrity, sovereignty**, justice, democracy, respect for human rights, non-discrimination and good faith,

*Encouraging* States to comply with and effectively implement all their obligations as they apply to indigenous peoples under international instruments, in particular those related to human rights, in consultation and cooperation with the peoples concerned,

*Emphasizing* that the United Nations has an important and continuing role to play in promoting and protecting the rights of indigenous peoples,

*Believing* that this Declaration is a further important step forward for the recognition, promotion and protection of the rights and freedoms of indigenous peoples and in the development of relevant activities of the United Nations system in this field,

*Recognizing and reaffirming* that indigenous individuals are entitled without discrimination to all human rights recognized in international law, and that indigenous peoples possess collective rights which are indispensable for their existence, well-being and integral development as peoples, (**Seek clarification on what is meant by “collective rights which are indispensable...”**)

**Recognizing that the situation of indigenous peoples varies from region to region, country to country and from community to community, every country or region shall have the prerogative to define who constitutes indigenous people in their respective countries or regions taking into account its national or regional peculiarities. (African Group Proposal)**

*Solemnly proclaims* the following United Nations Declaration on the Rights of Indigenous Peoples as a standard of achievement to be pursued in a spirit of partnership and mutual respect:

*Article 1*

Indigenous peoples have the right to the full enjoyment, as a collective or individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law.

*Article 2*

Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the rights to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.

*Article 3*

Indigenous peoples have the right to ~~self-determination. By virtue of that right they~~ **freely determine their political status and freely participate in the political affairs of the State and to pursue their economic, social and cultural development on an equal basis with others.**

*Article 4*

~~Indigenous peoples, in exercising their right to self-determination,~~ **indigenous peoples** have the right, to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions **in accordance with the provisions of national laws.**

*Article 5*

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their rights to participate fully, if they so choose, in the political, economic, social and cultural life of the State **where these are not incompatible with fundamental rights defined by the national legal system and with internationally recognized human rights.**

**5bis. The application of paragraph 1 of article 5 shall not prevent the indigenous people from exercising their rights granted to all citizens and from assuming the corresponding duties**

*Article 6*

Every indigenous individual has the right to nationality.

*Article 7*

1. Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person.
2. Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.

*Article 8*

1. Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.
2. States shall provide effective mechanism for prevention of, and redress for:
  - (a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their, cultural values or ethnic identities;
  - (b) **Subject to the applicable legal system**, any action which has the aim or effect of dispossessing them of their lands, territories or resources;
  - (c) **Subject to the applicable legal system** any form of forced population transfer which has the aim or effect of violating or undermining any of their rights;
  - (d) Any form of forced assimilation or integration by other cultures ~~or ways of life imposed on them by legislative, administrative or other measures;~~

- (e) Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them.

#### *Article 9*

Indigenous peoples have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No discrimination of any kind may arise from the exercise of such a right. **This right shall be exercised in accordance with the rule of law, respect for national boundaries and the principle of national and territorial integrity. Agreed**

#### *Article 10*

Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place, without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

#### *Article 11*

1. Indigenous peoples have the right to practice and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the historical sites, artifacts, designs, ceremonies, technologies and visual and performing arts and literature.
2. States shall provide redress through effective mechanisms, which may include restitution, development in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.

#### *Article 12*

3. Indigenous peoples have the right to manifest, practice, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.
4. States shall seek to enable the access and/or repatriation of ceremonial objects and human remains in their possession through fair, transparent and effective mechanisms developed in conjunction with indigenous peoples concerned.

#### *Article 13*

1. Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems

and literatures, and to designate and retain their own names for communities, places and persons.

2. States shall take effective measures to ensure this right is protected and also to ensure that indigenous peoples can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means.

#### *Article 14*

1. Indigenous peoples have the right to establish, **in accordance with the provisions of national laws**, and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.
2. Indigenous individuals, particularly children, have the right to all levels and forms of education of the State without discrimination.
3. States shall, in conjunction with indigenous peoples, take effective measures, in order for indigenous individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language.

#### *Article 15*

1. Indigenous peoples have the right to dignity and diversity of their cultures, traditions, histories and aspirations which shall be appropriately reflected in education and public information.
2. States shall take effective measures, in consultation and cooperation with the indigenous peoples concerned, to combat prejudice and eliminate discrimination and to promote tolerance, understanding and good relations among indigenous peoples and all other segments of society.

#### *Article 16*

1. Indigenous peoples have the right to establish their own media in their own language and to have access to all forms of non-indigenous media without discrimination.
2. States shall take effective measures to ensure that State-owned media duly reflect indigenous cultural diversity. States, without prejudice to ensuring full freedom of expression, should encourage privately owned media to adequately reflect indigenous cultural diversity.

### *Article 17*

1. Indigenous individuals and peoples have the right to enjoy fully all rights established under applicable international and domestic labour law.
2. States shall in consultation and cooperation with indigenous peoples take specific measures to protect indigenous children from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development, taking into account their special vulnerability and the importance of education for their empowerment.
3. Indigenous individuals have the right not to be subjected to any discriminatory conditions of labour and, *inter alia*, employment or salary.

### *Article 18*

Indigenous peoples have the right to participate in decision-making, in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

### *Article 19*

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them. **This right shall be exercised in accordance with the constitutions and national laws of States.**

### *Article 20*

1. Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions **in accordance with the provisions of national laws**, to be secure in the enjoyment of their traditional and other economic activities.
2. Indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress. **(OK)**

### *Article 21*

1. Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, *inter alia*, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security.

2. States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities.

*Article 22*

1. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities in the implementation of this Declaration.
2. States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection guarantees against all forms of violence and discrimination.

*Article 23*

Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.

*Article 24*

1. Indigenous peoples have the right to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, animals and minerals. Indigenous individuals also have the right to access, without any discrimination, to all social and health services.
2. Indigenous individuals have an equal right to the enjoyment of the highest attainable standards of physical and mental health. States shall take the necessary steps with a view to achieving progressively the full realization of this right.

*Article 25*

Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationships with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources, and to uphold their responsibilities to future generations in this regard.

*Article 26*

1. **Subject to the provisions of national laws**, indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired
2. **This includes** ~~Indigenous peoples have~~ the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.
3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned **as well as the national laws of the country concerned.**

*Article 27*

States shall establish and implement, in conjunction with indigenous people concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws **where appropriate**, traditions, customs and land tenure system, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.

*Article 28*

1. **Subject to the provisions of national laws**, indigenous peoples have the right to redress, by means that can include restitution or, when this no possible, or a just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which they have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.
2. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of land, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.

*Article 29*

1. Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources.

States shall establish and implant assistance programmes for indigenous peoples for such conservation and protection, without discrimination.

2. States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.
3. States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented.

#### *Article 30*

- ~~1. Military activities shall not take place in the land or territories of indigenous peoples, unless justified by a significant threat to relevant public interest or otherwise freely agreed with or requested by the indigenous peoples concerned.~~
2. States shall undertake effective consultations with the indigenous peoples concerned, through appropriate procedures and in particular through their representative institutions, prior to using their lands or territories for military activities.

#### *Article 31*

1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.
2. In conjunctions with indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.

#### *Article 32*

1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories, **where applicable**, and other resources.
3. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands

or territories and other resources, particularly in connection with the development, utilization or exploitation of ~~their~~ minerals, water or other resources.

2. States shall provide effective mechanisms for just and fair redress for any other activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

#### *Article 33*

1. Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of indigenous individuals to obtain citizenship of the States in which they live.
2. Indigenous peoples have the right to determine the structures and to select the membership of their institutions in accordance with their own procedures.

#### *Article 34*

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with **national laws and** international human rights standards.

#### *Article 35*

Indigenous peoples have the right to determine the responsibility of individuals to their communities.

#### *Article 36*

1. **States shall take appropriate measures to enable** indigenous peoples, in particular those divided by international borders, ~~have the right~~ to maintain and develop contacts, ~~relations and cooperation~~, including activities for spiritual, cultural, ~~political~~, economic and social purposes, with their own members as well as other communities peoples across borders.
2. States, in consultation and cooperation with indigenous peoples, shall take effective measures to facilitate the exercise and ensure the implementation of this right.

#### *Article 37*

1. Indigenous peoples have the right **where applicable** to the recognition, observance and enforcement of **existing** treaties, agreements and other constructive arrangements concluded with States or their successors and to have States honour and respect such treaties, agreements and other constructive arrangements.

2. Nothing in this Declaration may be interpreted as to diminish or eliminate the rights of Indigenous Peoples contained in **existing** treaties, agreements and constructive arrangements.

*Article 38*

States in conjunction and cooperation with indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration. **(This Article should come after Article 42)**

*Article 39*

Indigenous peoples have the right to have access to financial and technical assistance from States and through international cooperation **in accordance with national laws**, for the enjoyment of the rights contained in this Declaration.

*Article 40*

Indigenous peoples have the right, **on equal basis with other citizens**, to have access to and prompt decision through just, fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.

*Article 41*

The organs and specialized agencies of the United Nations system and other intergovernmental organizations shall contribute to the full realization of the provision of this Declaration through the mobilization, inter alia, of financial cooperation and technical assistance. Ways and means of ensuring participation of indigenous peoples on issues affecting them shall be established.

*Article 42*

The United Nations, its bodies, including the Permanent Forum on Indigenous Issues, and specialized agencies, including at the country level, and States shall promote respect for and full application of the provisions of this Declaration and follow up the effectiveness of this Declaration.

*Article 43*

The rights recognized herein constitute the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world.

*Article 44*

All the rights and freedoms recognized herein are equally guaranteed to male and female indigenous individuals.

*Article 45*

Nothing in this Declaration may be construed as diminishing or extinguishing the rights of indigenous peoples have now or may acquired in the future.

*Article 46*

1. Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations.
2. In the exercise of the rights enunciated in the present Declaration, human rights and fundamental freedoms of all shall be respected. The exercise of the rights set forth in this Declaration shall be subject only to such limitations as are determined by law, in accordance with international human rights obligations. Any such limitations shall be non-discriminatory and strictly necessary solely for the purpose of securing due recognition and respect for the rights and freedoms of others and for meeting the just and most compelling requirements of a democratic society.
3. The provisions set forth in this Declaration shall be interpreted in accordance with the principles of **territorial integrity, sovereignty**, justice, democracy, respect for human rights, equality, non-discrimination, good governance and good faith.

Permanent Mission of Canada  
Permanent Mission of Colombia  
Permanent Mission of New Zealand  
Permanent Mission of the Russian Federation

Excellency,

Re: Draft Declaration on the Rights of Indigenous Peoples

The Permanent Missions of Canada, Colombia, New Zealand and the Russian Federation are pleased to forward to you the attached non-paper on the Draft Declaration on the Rights of Indigenous Peoples.

This non-paper is a contribution to the ongoing discussions. It has been prepared by a cross-regional group of States, and offers possible amendments to address key concerns with the current Declaration text. These suggestions focus on a limited number of key Articles, with a view to providing "clear and tangible adjustments" to the text using a "minimal change" approach. As has been observed by the Facilitator, "action on the current text of the Declaration, without allowing room for certain adjustments to address the concerns raised, might result in wide-ranging polarizations ... among Member States." We are committed to finalizing the text of the Declaration during UNGA61, and we stand ready to discuss our proposals with other delegations. It is in this spirit that we add these suggestions to other proposals for change that are being considered, and reiterate our desire for negotiations as the best means to build a greater consensus for a final Declaration text.

August 13, 2007

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[Please note that this document does not place Articles of the *UN Declaration on the Rights of Indigenous Peoples* in numerical order.]

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

### **Non-Paper on Proposed Amendments**

**Articles: 3, 4, 10, 11, 19, 26, 27, 28, 29, 30, 31, 32(2), 46 (13Articles)**

#### **International Law, National Constitutional Frameworks and Third Party Rights**

##### Article 46

2. In the exercise of the rights enunciated in the present Declaration, human rights and fundamental freedoms of all shall be respected. The exercise of the rights set forth in this Declaration shall be subject only to such limitations as are determined by law, **in accordance with international human rights obligations. Any such limitations shall be non-discriminatory and strictly necessary** solely for the purpose of securing due recognition and respect for the rights and freedoms of others and for meeting the just **and most compelling** requirements of a democratic society. **Any such limitations shall be non-discriminatory.**

3. The provisions set forth in this Declaration shall be interpreted in accordance with **international law, constitutional frameworks and** the principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance and good faith. **The Declaration shall not be construed as authorising or encouraging any actions to nullify or impair agreements, arrangements or settlements between indigenous peoples and the State.**

#### **Self-Determination, Self-Government and Indigenous Institutions**

##### Article 3

Indigenous peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

**2bis In accordance with the Declaration on Principles of International Law concerning Friendly Relations and Cooperation Among States in accordance with the Charter of the United Nations, this shall not be construed as authorising 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 principles of equal rights and self-determination of peoples and thus possessed of a government representing the whole population belonging to the territory without distinction of any kind.**

#### Article 4

Indigenous peoples, in exercising **the right of** self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions, **in cooperation with the State.**

#### **Lands, Territories and Resources**

#### Article 26

1. Indigenous peoples have **the** rights to the lands, territories and resources which they **own, and may have rights to the lands, territories and resources which they** have traditionally owned, occupied or otherwise used **or acquired.**
2. **This may include Indigenous peoples have** the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.
3. States shall give legal recognition and protection **to rights** to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

#### Article 29

2. States shall take effective measures to ensure that no storage or disposal of hazardous **materials waste** shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.
3. States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by **such hazardous** materials, are duly implemented.

## **Veto Power over the State**

### Article 19

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions **in order to obtain their free, prior and informed consent** before adopting and implementing legislative or administrative measures that may affect them.

### Article 32(2)

2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions **in order to obtain their free, prior and informed consent** prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of their mineral, water or other resources.

## **Military Issues and the Protection of People on the Territory of the State**

### Article 10

Indigenous peoples shall not be forcibly removed from their lands or territories, **unless justified by a significant public interest**. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned **where possible**, and just and fair compensation and, where possible, with the option of return.

### Article 30

1. Military activities shall **not only** take place in the lands or territories of indigenous peoples, **unless where** justified by a significant **threat to relevant** public interest or otherwise freely agreed with or requested by the indigenous peoples concerned, **in accordance with constitutional frameworks**.
2. **Where military activities take place by agreement or upon request**, States shall undertake effective consultations with the indigenous peoples concerned, through appropriate procedures and in particular through their representative institutions, prior to using their lands or territories for military activities.

## Consistency with International Intellectual Property Rights

### Article 11

1. Indigenous peoples have the right to practice and revitalize their cultural traditions and customs. This includes the right to maintain, **protect preserve** and develop the past, present and future **tangible** manifestations of their cultures, **such as that may include** archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.

### Article 31

1. Indigenous peoples have the right to maintain, **control, protect preserve** and develop their cultural heritage, traditional knowledge and traditional cultural expressions, **as well as which may include** the manifestations of their sciences, technologies and cultures, human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also **may** have the right to maintain, control, protect and develop **their** intellectual property rights over such cultural heritage, traditional knowledge, and traditional cultural expressions.

## Redress and Restitution

### Article 11.

2. States shall provide **redress through** effective mechanisms **for redress**, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, **intellectual**, religious and spiritual property taken without their free, prior and informed consent **or in violation of their laws, traditions and customs**.

### Article 27

States shall establish and implement, in conjunction with indigenous peoples concerned, **effective mechanisms including** a fair, independent, impartial, open and transparent process, giving due **recognition consideration** to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and **adjudicate the rights resolve the claims** of indigenous peoples pertaining to **their** lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.

### Article 28

1. Indigenous peoples have the right to **pursue claims for** redress, **by means** that can include restitution or, when this is not possible, of a just, fair and equitable

compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.

2. **Unless otherwise freely agreed upon by the peoples concerned, Compensation shall may** take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.