

Voices

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Promoting the rights, voices, and visions of indigenous peoples



Thar desert Jaisalmer, Rajasthan, India.

RECOGNIZING INDIGENOUS PEOPLES' HUMAN RIGHTS

By Ellen L. Lutz

The world's indigenous peoples have a serious human rights problem: The nations of the world refuse to recognize that indigenous peoples *have* human rights.

All countries are ready to recognize that individual indigenous persons have rights. Those rights are the same as the rights of all human beings, and are now well secured by international human rights law and by the laws of many countries. The problems arise when indigenous peoples claim rights as "peoples." As indigenous advocates frequently point out, the whole debate is over the letter "s."

WHAT ARE THE RIGHTS THAT INDIGENOUS PEOPLES SEEK?

First, they want to be recognized for who they are: distinct groups with their own unique cultures. Indigenous peoples want to enjoy and pass on to their children their histories, languages, traditions, modes of internal governance, spiritual practices, and all else that makes them who they are. They want to be able to pray on their ancestral lands without finding that those lands have been dug up to construct a gold mine, fenced off to create a safari park, or watered with sewage effluent pumped from a nearby city.

Second, they want the governments of the countries in which they live to respect their ability to determine for themselves their own destinies. For indigenous peoples, "self-determination" has a different meaning than it did for colonial-dominated nations in the mid-20th century. Self-determination relates to autonomy, not the right to secede from the state. It means the right to freely determine their political status and freely pursue their economic, social, and cultural development inside the country in which they live. They want to govern themselves in matters relating to their internal and local affairs, and to retain their distinct political, legal, economic, social, and cultural institutions. They want to educate their children in their own languages, and about their own traditions; to worship in their

own ways; to establish media in their languages; to retain their traditional modes of resolving internal disputes; and to fully participate in any outside decision-making that could have an impact on their lives. At the same time, recognizing their interdependence with the country in which they live, they want to be able to participate in the political and economic life of that country, if they so choose.

Third, indigenous peoples want to enjoy the same rights as all other people without discrimination of any kind. They want to be regarded by everyone as full and equal human beings. They want to be protected from genocide, arbitrary execution, torture, forced relocation, or assimilation, and they want to enjoy their rights to freedom of expression, association, and religion. They want to be treated equally with respect to opportunities for education, health care, work, and other basic needs.

But because they are different, indigenous peoples want to be part of the decision-making process when it comes to the forms of their education, health care, economic development, and other services. They often talk about this in terms of the right to give their "free, prior, and informed consent" to state policies or practices that affect them, to ensure that those policies are compatible with their cultures and are not imposed upon them.

Fourth, indigenous peoples want to enjoy their rights to the lands, territories, and resources that they have traditionally owned, occupied, or otherwise used. Where such rights conflict with the needs of the state or other peoples, they want to participate as equals in an impartial and transparent process for resolving the conflict in a fair and respectful way. If the resolution is that indigenous peoples must move, they want equitable reparation, preferably in the form of lands

**This issue of
Cultural Survival
Voices focuses on
the UN Declaration
on the Rights of
Indigenous Peoples.**

A Brief History
Spotlight
Indigenous Voices
UN Declaration
on the Rights of
Indigenous Peoples
Views of the Declaration

continued on page 3

A Brief History of the Declaration

1923 – Haudenosaunee Chief Deskaheh travels to the League of Nations to defend the rights of his people to live under their own laws, on their own land and under their own faith. He was not allowed to speak, but his vision nourishes the generations that follow.

1982 – The United Nations Economic and Social Council's Sub-Commission on the Promotion and Protection of Human Rights establishes a Working Group on Indigenous Populations to report on the human rights and fundamental freedoms of indigenous peoples.

1985–1993 – As part of their work, members of the Working Group, with the full participation of indigenous peoples, draft a Declaration on the Rights of Indigenous Peoples.

1993 – The Working Group adopts the Declaration and sends it to the Sub-Commission, which in turn approves it and sends it to the Commission on Human Rights.

March 3, 1995 – The General Assembly declares the International Decade of the World's Indigenous People (1993–2004). Soon after the Commission on Human Rights establishes its own Working Group to elaborate the draft Declaration.

1995–2004 – The new Working Group, with the regular input of indigenous peoples and NGOs, meets annually, but fails to reach consensus by the end of the Decade.

April 20, 2005 – The Commission on Human Rights adopts resolutions to continue the work of both the Working Group on Indigenous Populations (WGIP) and the Working Group on the Draft Declaration on the Rights of Indigenous.

February 2006 – Luis-Enrique Chavez of Peru, Chairman of the Working Group on the Draft Declaration on the Rights of Indigenous Peoples, writes compromise wording for the handful of articles still under debate and submits his text of the Declaration to the Human Rights Commission.

June 29, 2006 – At its inaugural session, the Human Rights Council (which replaced the Commission on Human Rights) adopts the Declaration, by a vote of 30 in favor, 2 against, and 12 abstentions.

November 28, 2006 – The Declaration goes to the Third Committee of the General Assembly, but Namibia puts forward a proposal on behalf of the Group of African States to delay the vote. The committee adopts that proposal by a vote of 82 in favor, 67 against, and 25 abstentions. Action on the Declaration is deferred until the end of the General Assembly's session in September 2007.

December 2006 – The UN General Assembly adopts the Third Committee's proposal to postpone a vote on the Declaration.

Solola, Guatemala



Cultural Survival

Cultural Survival promotes the rights, voices, and visions of indigenous peoples. Cultural Survival has two main goals:

- (1) To increase global understanding of indigenous peoples' rights, cultures, and concerns;
- (2) To empower indigenous peoples to be better self-advocates, and to partner with them to advocate for their human rights.

Cultural survival partners with indigenous peoples to enable them to:

- secure their rights in international and national law;
- promote respect for their right to self-determination;
- ensure their right to full and effective participation in the political, economic, and social life of the country in which they live; and
- enjoy their rights to their lands, resources, languages, and cultures.

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The Indigenous Peoples' Caucus

The Indigenous Peoples Caucus is made up of delegations from indigenous peoples from all seven regions of the world. They represent indigenous interests in the United Nations General Assembly and they were key participants in the Working Group on the Declaration on the Rights of Indigenous Peoples.

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RECOGNIZING INDIGENOUS PEOPLES' HUMAN RIGHTS CONTINUED FROM PAGE 1

Aboriginal man on Circular Quay, Sydney, Australia.

MATT HICKLEY



of equal quality and value.

Fifth, indigenous peoples want to be left alone. They want the armed conflicts that embroil the states in which they live to take place somewhere other than on their lands. All too frequently, indigenous lands become favored battle zones because fighting forces see them as “vacant” or regard the resources they contain as being up for grabs. In such circumstances, indigenous leaders become military targets. Combatants hope that, with their leaders gone, indigenous residents will flee and leave them the territorial spoils.

Similarly, indigenous peoples want the loggers, miners, environmentalists, and development policy planners to acknowledge that they own or have rights to their lands and resources, and that they have the right to make free and informed decisions about what happens to their lands.

Indigenous peoples recognize that any act of conferring rights necessarily imposes obligations on the rights-holders. In addition to recognizing that they are part of the sovereign states in which they live, they also recognize that the full body of international human rights standards applies to them. Just as states must yield a degree of sovereignty in order to live under a global system that requires respect for human rights, so too must indigenous peoples. What they seek is to be officially recognized within that global regime, and to have their rights explicitly stated.

In identifying themselves as indigenous peoples, they do not mean to undermine

the rights of anyone else, nor do they mean to undermine the global state system. In Africa, governments say “we are all indigenous,” by which they mean “we were all here before European colonists invaded.” The fact that all Africans are “indigenous” to Africa does not alter the fact that throughout the continent there are a handful of small ethnic groups with distinctive worldviews, socio-economic practices, and political marginality, who desire to retain their traditional ways as globalization washes over the continent. Similarly, throughout Asia there are many groups that are small in number, live in remote places, tend not to have access to educational resources, are marginal to the national economy, and have a long history of being politically marginalized.

These groups share with their indigenous brethren in the Americas, Australia, the Arctic, and the Pacific the experience of being marginalized, manipulated, and abused by colonial powers and their successors. As they always have, they look inwards to maintain their identities and their dignity. But for the past quarter century, they have looked outward as well. They have turned to one another—including to neighboring groups with whom they have had historic enmity—for support as they endeavor to persuade the countries of the world to recognize that they have rights. Through the United Nations they also have turned to states, appealing to

All too frequently, indigenous lands become favored battle zones because fighting forces see them as “vacant,” or they regard the land’s resources as being up for grabs.

them to formally issue a declaration that encompasses their rights.

A declaration is a simple, nonbinding description of rights, with no formal enforcement mechanism attached. But 26 years into the process, a United Nations Declaration on the Rights of Indigenous Peoples is still in limbo. No other group of human beings—women, children, refugees, workers, disabled peoples, victims of disappearance, or any other category—has waited so long.

Indigenous peoples will tell you that they are used to being patient. “After all,” say those in the Americas, “we’ve been waiting 500 years. We can wait a little longer.” That may be true, but it is nonetheless in states’ own interest not to keep them waiting any longer. Indigenous peoples are increasingly organized, well-educated, empowered, and united. It is incumbent on all states to ensure that their considerable energies are harnessed for the good of their peoples, and for humanity. No good can come from states’ continued refusal to recognize that they—like all people on this planet—possess human rights.

WHERE DO THINGS NOW STAND AT THE UNITED NATIONS WITH RESPECT TO THE DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES?

After being adopted by the UN Human Rights Council at its historic first session in June 2006, the Declaration on the Rights of Indigenous Peoples was forwarded to the UN General Assembly, where it was taken up by that body’s Third Committee, which considers social, humanitarian, and cultural matters. On a motion from Namibia, backed by the entire bloc of African states, the Third Committee recommended that the General Assembly withhold action until the end of its current session (September 2007) to give delegations more time to consult with their governments before voting. This recommendation was adopted by the General Assembly Plenary in December. Meanwhile, at the January 2007 session of the Organization of African Unity, African states decided to continue to act by consensus and as a bloc with respect to this document. Thus, if any states in Africa continue to have difficulty with the text, all the African states will oppose it.

African states’ concerns relate to the definition of “indigenous peoples,” the concept of self-determination, ownership of land and resources, establishment of distinct political and economic institutions, and national and territorial integrity.

RECOGNIZING INDIGENOUS PEOPLES' HUMAN RIGHTS



A young mother and her child from the hill tribes of Thailand.
PHOTO BY STEVE EVANS - WWW.BABASTEVE.COM

Their concerns about the establishment of distinct political and economic institutions undoubtedly arise because African countries are made up of many different ethnic groups that regularly compete for power. In some countries, such as Rwanda, ethnic identity has been manipulated by power-mongers to horrific ends. It is not surprising that those governments would want to exercise extreme care before recognizing distinct ethnically based political or economic institutions. But as Cultural Survival pointed out in a previous issue of this magazine, Rwanda's only indigenous group, the Batwa, represents a tiny minority of the population who have never held any form of political power. They were victimized by both sides during the genocide and continue to live under the most unimaginably impoverished and marginal circumstances. To allow them to form a civil-society organization to protect their rights threatens no one but those who would seek to impose power blindly rather than through transparent democratic processes.

DEFINING INDIGENOUS PEOPLES

The biggest stumbling blocks for African nations involve the questions of the definition of indigenous peoples, and ownership of land and resources.

No definition of "indigenous peoples" appears in the Declaration on the Rights of Indigenous Peoples, just as no definition appears in the mandate for the Permanent Forum on Indigenous Issues or any of the other United Nations bodies or special procedures that relate to indigenous peoples. This is deliberate. It has proved impossible to achieve a precise definition that takes in all the various types of peoples who self-identify as indigenous and are accepted by other indigenous peoples. All the wordings put forward to date have been either over-inclusive or under-inclusive. Neither is helpful. Among indigenous peoples, intergovernmental organizations, and most states, consensus has emerged that it is better not to define "indigenous peoples" and to focus instead on defining and protecting their rights.

As Rodolfo Stavenhagen, the UN Special Rapporteur on the Situation on Human Rights and Fundamental Freedoms of Indigenous People, wrote in his 2001 UN report,

It is better not to define "indigenous peoples" and to focus instead on defining and protecting indigenous rights.

There is no internationally agreed upon definition of indigenous peoples. Different states adopt different definitions in terms of their particular contexts and circumstances. The term "indigenous" is frequently used interchangeably with other terms, such as "aboriginal," "native," "original," "first nations," or else "tribal" or some similar concepts. In some states, local terms might be commonly used that are not easily translatable. In other countries, no formal designation exists even though there might be general agreement that such populations do in fact inhabit certain areas of the country. And in still other countries, the existence their definition becomes even more problematic, yet the absence of an international definition should not prevent constructive action in the promotion and protection of the human rights of indigenous peoples.

In international law, deciding to forego a definition is not new. Past experience has taught that definitions can sometimes undermine effective action to protect human rights in our diverse and rapidly changing world. In the late 1970s and early 1980s there was much debate about whether the horrific suffering that was taking place in Cambodia constituted genocide, since the victims did not seem to fit within any of the categories in the Convention on the Prevention and Punishment of Genocide. The definition of "refugee" in the Convention and Protocol Relating to the Status of Refugees has created similar problems for meeting the needs of displaced people who have fled from violence or persecution but have not crossed an international border.

When the United Nations adopted the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, it did so with a precise definition of torture, but no definition of cruel, inhuman, or degrading treatment or punishment (CID). But both types of acts are clearly prohibited. The problem was that consensus on the definition of torture could be reached, whereas states and human rights advocates felt it was better to leave it to regional or national arenas to negotiate the precise scope of CID. An act that constituted CID in Western Europe might be acceptable in a country with legal system based on Shar'ia law, or in the United States, where the constitution already had a more restrictive notion of "cruel and unusual punishment"—one that the government was not prepared to expand.

Both definitional over-inclusiveness and under-conclusiveness pose risks for a workable Declaration on the Rights of Indigenous Peoples. Too narrow a definition could leave vulnerable indigenous groups—particularly in those regions of the world where fair and efficient legal systems are still emerging from the havoc of colonialism—without even the most modest international recourse. Too wide a definition could flood international indigenous rights machinery with claims by large minority groups who have resources and political clout that indigenous peoples lack.

Despite the lack of a definition, there is consensus around the general indicators of who is indigenous. The International Labor Organization, the World Bank, and various intergovernmental bodies have offered functional definitions that describe the characteristics of these peoples. They all include such features as self-identification as a distinct ethnic group; experience of or vulnerability to severe disruption, dislocation, or exploitation; long connection with a particular territory; and the wish to retain a distinct cultural identity.

But the precise combination of factors will necessarily vary from country to country and from group to group. In some cases, whether or not a group is indigenous will have to be negotiated, or even adjudicated. What factors are relevant also may depend on what rights allegedly are being violated. What is critical, and still missing, is official international acknowledgement that all indigenous peoples are entitled to all of the human rights established under international law, and that small, marginalized groups who suffer abuses directed at their group as a whole have rights that correspond to their status as a group and not merely as individuals.

Given these definitional circumstances, and Africa's longstanding insistence that all Africans are "indigenous," some African states might choose to define "indige-

But the precise combination

RECOGNIZING INDIGENOUS PEOPLES' HUMAN RIGHTS CONTINUED FROM PAGE 4

nous peoples" in a way that excludes small minority ethnic groups with radically different cultures—the very peoples we would identify as indigenous. Doing so would have a snowball affect, with some Asian countries similarly wanting to define away their duty to respect the rights of their distinct, small-numbered vulnerable populations in the same way. Not only would this divide the globe into regions with and without indigenous peoples, it would instantly divide the indigenous peoples' movement, which is made up of indigenous peoples from all parts of the world.

INDIGENOUS LANDS AND RESOURCES

The other stumbling block, indigenous lands and resources, is one that all regions of the world face equally. It is hard for states to accept the notion that small populations that do not fit easily into the national body politic and are culturally and linguistically hard to communicate with might have the right to control territories or resources that states could use to address the needs of the majority of their citizens. In many countries the problem hits a sore nerve, since indigenous peoples possess those lands or resources because of past forced relocation or other abuses.

The easiest and most common solution is for states to use their legal powers to quash indigenous peoples' rights to their lands and resources. Without question, the Declaration on the Rights of Indigenous Peoples would make this more difficult to do. Even if indigenous peoples' rights were annulled at the national level, they would still have recourse to the court of international public opinion and perhaps even to international juridical bodies.

Fortunately, the Declaration provides states with a means to balance multiple interests without violating indigenous peoples' rights. It insists that states consult with indigenous peoples to obtain their free and informed consent prior to the approval of any project affecting their lands or resources. And it requires that states provide effective mechanisms for redress should indigenous peoples suffer adverse impact from such projects.

This can be to the state's own benefit. When states negotiate in good faith with indigenous communities they may discover that the community itself can identify solutions that could lead to positive outcomes for all. For example, many indigenous groups use some locations within their territories only occasionally for ceremonial purposes. If a state were willing to guarantee that these would remain undisturbed, the community might agree to yield access to other lands or resources for the common good. In the case of large-scale economic development projects or mines, it might be the case that a local indigenous community cares more about access to jobs than it does about maintaining all of its territory for traditional uses. Thus, in exchange for a guarantee of jobs, the community might be willing to yield territory. In other cases, an indigenous group might believe that its true territory lies somewhere other than where it now lives, and would be willing to exchange one territory for another.

But the state will never know this if it does not make the effort to approach the indigenous group in the same way that it would approach any other owner of land or resources it desires: respectfully, mindful of the prevailing rights of the party being approached, and with the willingness to negotiate to achieve a fair result.

MAKING THE DECLARATION A REALITY

The challenges facing the world's indigenous peoples to achieve General Assembly adoption of the Declaration on the Rights of Indigenous Peoples this year are daunting. Indigenous peoples have participated in a decades-long process to achieve consensus on an acceptable text, and now the General Assembly now holds all the cards. There are no regular procedures for indigenous peoples to participate in this final round, and the General Assembly has the full power to rewrite the text



Mount Hagen, Papua New Guinea

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and adopt the new version without indigenous peoples' participation or consent.

Doing so would be the ultimate affront to indigenous peoples who have worked long and hard and engaged in much compromise to achieve the current text. Solutions that split the world into indigenous and non-indigenous geographic divisions, or that water down the text to satisfy the interests of a handful of states are unacceptable. For indigenous peoples, it would be better to have no declaration at all than one that, after such a long labor, is born in this way.

So now it falls to the states, through the UN General Assembly, to do what is long overdue and what is right: adopt the Declaration on the Rights of Indigenous Peoples as presented by the Human Rights Council at this General Assembly session.

Ellen L. Lutz is the executive director of Cultural Survival.

OUR LAND, OUR IDENTITY, OUR FREEDOM

A ROUNDTABLE DISCUSSION

Among the states of the United Nations, the ones that have concerns about the Declaration on the Rights of Indigenous Peoples tend to focus on three elements: the lack of a definition of “indigenous,” land rights, and the concept of self-determination. For those states, these elements seem to threaten economic and political chaos on several fronts. But that is largely because states do not entirely understand what it is indigenous peoples are seeking. To help dispel fears and misapprehensions, we asked four indigenous leaders to talk about their understanding of the terms of the declaration and to reflect on what the practical implications would be if the Declaration is adopted by the United Nations and implemented around the world.

Cultural Survival: The Declaration does not have a definition of who is indigenous. How can a state know to whom the rights in the Declaration should apply?

Naomi Kipuri: I think sensitive governments should not talk of definitions; I think they should talk of the actual situation of indigenous peoples in their countries. You don't have to define an elephant to know what it is. And in fact, that is what our experience as members of the African Commission on Human and Peoples Rights Working Group of Experts on Indigenous Populations/Communities has been. Sensitive governments have asked the right questions and have gotten the right answers. They then have dealt with the problems in their own areas. When the Working Group conducted a sensitization seminar in September 2006 in Cameroon, there was resistance in the beginning, but Cameroon is now one of the supporters of the Declaration. And it didn't take too long or too much effort; it just took thinking and listening and hearing. So I think we should enlighten resistant states with information, facts, and the reality within their own countries. Tell them not everything can be defined. Just listen to the issues that these peoples are talking about. These are the issues that go beyond a definition.

Take my case. I am Maasai. Our situation—whether political, social, or cultural—is similar to that of indigenous peoples all over the world. We have lost our lands and our resources; we're not quite recognized within our state which is always trying to



Les Malezer, native Australian of the Gabi Gabi community, is the general manager for the Foundation for Aboriginal and Islander Research Action in Woolloongabba, Australia. He also is the chairperson for the international Indigenous Peoples' Caucus. He has been the prime lobbyist at the United Nations for the declaration and is a member of Cultural Survival's Program Council.



Naomi Kipuri is an anthropologist and the director of the Arid Lands Institute, which grew out of the Arid Lands and Resource Management Network, a regional project on pastoralism in Eastern Africa. She is a member of the Working Group on Indigenous Peoples/Communities of the African Commission on Human and Peoples' Rights. She also is on the advisory board of the Kenya National Commission on Human Rights and the Technical Advisory Council on Land Policy.



Ramona Peters (Nosapocket of the Bear Clan) is a Mashpee Wampanoag from Cape Cod, Massachusetts. She is a nationally known artist who has revived her tribe's traditional pottery-making techniques. She is a teacher, spokesperson, curator, interpreter, consultant, and indigenous rights activist. She also is a member of Cultural Survival's Program Council.



Stella Tamang was chair of the International Women's Caucus at the third session of the Permanent Forum on Indigenous Issues and is the chair of the South Asia Indigenous Women Forum and an advisor of Nepal Tamang Women Ghedung. She founded Bikalpa Gyan Kendra in Nepal to provide an education and contribute to students' livelihood by combining book learning with practical skills. She also is a member of Cultural Survival's Program Council.

transform us into farmers or whatever else. We're not included in policy discussions. There is constantly a lack of consultation, even on matters touching on our own livelihoods. We're marginalized in almost everything. We don't have health services; we have very few educational resources; we have none of the infrastructure to which all people should be entitled. In a lot of ways, we're dependent on natural resources that are being expropriated. These are the things that need to change in order for us to enjoy the rights in the Declaration.

Stella Tamang: In the case of Nepal, indigenous peoples would be those peoples who were living in a specific territory with their own control before the region was conquered by outsiders. We know who owned the land before the present Nepal was created.

Les Malezer: In Australia there is a clear demarcation between who was here before 1788 and who was here after. What we've always maintained in Australia is that indigenous peoples are the original tenants of the country who are tied spiritually and legally to their country. That is, we identify ourselves by our country and our relationship with that country. That definition doesn't always work elsewhere around the world.

Cultural Survival: Let's turn now to land rights. How do you see your community's land, and

why is land so important to you?

Stella Tamang: Not all indigenous groups have geographical territory—some have cultural territory. But suppose we are talking about indigenous peoples with historic, cultural, and linguistic connections to their land. They have an intimate connection to the land; the rationale for talking about who they are is tied to the land. They have clear symbols in their language that connect them to places on their land. For example, in Nepal we have groups that only can achieve their spiritual place on the planet by going to a certain location.

Ramona Peters: I'd like to think that we can still draw strength from the land, regardless of who lives there, although a lot of my people don't feel that way. They see other people's houses in our territory and they see that land as dead or corrupted. I disagree with that. But the relationship between land and identity is still very strong, to the point where overdevelopment devastates us emotionally. Eight-two percent of our adult men are diagnosed as being depressed. We grew up in a fishing, hunting, and planting society that has been transformed into a lost group of people. Now we have health issues that we did not have 25 years ago. Not being in control of the land, or not being able to protect it or have access to the natural foods and medicines that grow on it, gives us a really shaky future.



UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES



07

The following text was adopted by the United Nations Human Rights Council in resolution 2006/2 on the 29th of June 2006.

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 also 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,

Also considering 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 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,

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.





UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES



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



UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES



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.





UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES



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.

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 justice, democracy, respect for human rights, equality, non-discrimination, good governance and good faith.

OUR LAND, OUR IDENTITY, OUR FREEDOM *continued from page 6*

Stella Tamang: Our lands are the places where we get our medicines, where we might know about some special plant.

Ramona Peters: For us, it's access to natural resources— foraging, access to waterways and fishing grounds. People try to block us with private-property signs or by telling us that the clams are their pets. They call the police any time natives are

in the area. One of the few reasons that I would be an advocate for federal recognition is the partnership it would provide to protect the land from pollution and random dumping. That dumping is now sometimes state sanctioned or town sanctioned: dredging up one area to make a marina and dumping material on what might seem like a vacant lot. But that lot is not vacant. There are things that live there, things that we use and that others don't.

Stella Tamang: Free prior and informed consent, which the Declaration requires states to get from indigenous peoples before taking action affecting them, is essential. Consider the Sherpa on Mt. Everest. Mountaineering is something that should be governed by Sherpa people. They receive no benefit from the number of people who come to climb, nor do they control the criteria. Sherpa feel that people die there because they are failing to respect the mountain. It is immoral for people to climb the mountain to “conquer” it because the mountain should be respected. The Sherpa should get the benefit as well as the decision-making authority to decide who climbs the mountain.

Cultural Survival: What should be the basis for determining which lands are subject to the rights in the Declaration?

Naomi Kipuri: Indigenous peoples know their territory, all the way back to the pre-colonial period. But deciding on the cut-off point to determine ownership is the question which would have to be agreed upon between the indigenous peoples and the government. In fact, in Kenya, according to the new land policy that is currently being drawn up, 1885 has been proposed as the cut-off date. Different people have given different dates, but it is possible to propose a date and to agree upon it. It is not so difficult.

Ramona Peters: In the United States there are already laws on the books that define Indian territories. That definition is based on ancestral homelands. Wampanoag people had a nation that was once 69 tribes, and there are only 3 tribes left: Aquinnah, Herring Pond, and Mashpee. We three tribes can probably claim all the Wampanoag homelands, straight into Rhode Island. We could legitimately claim the city of New Bedford, but we're not doing that. You end up with “tribal lands,” which are basically the lands you're living on. So the Aquinnah Wampanoag may have claimed all of the homelands (several

counties), but they end up with a little village, a tribal footprint, at the far end of Martha's Vineyard.

Cultural Survival: What about a situation where traditional lands are now occupied by non-indigenous people? What should happen to those people and that land?

Les Malezer: That's in Article 46 of the Declaration. There are clear statements that all other rights are recognized. So if other people now occupy those lands and have interests in those lands, their rights must be respected; they also have a right to the very same property.

Cultural Survival: What does “self-determination” mean to you?

Stella Tamang: To some people in Nepal today, self-determination appears to be a threatening topic. They think that self-determination means that indigenous peoples will have their own land and autonomy. But that isn't true. I once talked with a Maoist lady in Nepal who was claiming a “special” right to self-determination. I explained to her that self-determination is not a special right. It is something



A Maori warrior comforts his son following the ferocious *haka*, a tribal war dance used to strike fear into enemies, which was performed to welcome the *Te Waka* (canoes) Melbourne, Australia.

PHOTO BY CLAYTON SCOTT

that indigenous peoples already have, at the individual level, the community level, and the national level.

In Nepal, as part of our constitutional process, we are talking about regional autonomy. We do not want to divide Nepal up into lots of little pieces. Nepal is a small, land-locked country. Geographic reality makes our existence as small, separate indigenous nations impossible. Instead, self-determination requires regional autonomy under a single, federal system. We need a national government that deals with monetary, defense, and foreign-policy matters. But there needs to be power sharing among different groups of people, a system that includes the peoples who traditionally have been excluded. Everyone should have equal rights, but for some groups there should be special provisions to address special needs. The key is power sharing and developing a coalition culture at the national level. In indigenous areas indigenous peoples could decide their own educational structures, and if the government wanted something from an indigenous region for a national purpose, then the rule of free, prior, and informed consent would apply. Regions would police themselves in the ways that make most sense at the regional level. The Swiss cantonal system is what would work best for us.

continued on page 12

OUR LAND, OUR IDENTITY, OUR FREEDOM

Cultural Survival: Even though self-determination does not include the right to secede from the state, how can the state be sure that granting the right won't lead to loss of territory or inspire rebel groups, for example, to push for independence?

Naomi Kipuri: Rebel groups tend to result from certain communities being excluded from the affairs of the state. They are actually struggling to be "legitimized" with the simplest form of self-determination: the recognition that they exist. Indigenous peoples are often not even allowed to say who they are because they've been subsumed by the majority population and their languages and their cultures are denied. In North Africa, indigenous peoples are not even allowed to give their children their own names; they have to give names that the state proposes. It is the failure of the state to listen to these basic needs—like being able to impart their cultures and languages to their children—that leads to rebel groups taking up arms and pushing for a different social order. There was no more rebellion in Casamans province in Senegal, for instance, after talks with the government were initiated. And rebellion in Mali has been replaced with ongoing talks with the Mali government. I think Africa should be pleased by these examples. The Declaration would stop such conflicts rather than allow more of them.

Cultural Survival: What about the responsibilities that accompany rights? Should indigenous peoples be subject to taxes? Could their members be drafted into the military?

Naomi Kipuri: I would say that if the right to self-determination were granted, indigenous communities would be like all other communities. They would be happy, they would be wealthy; they would be proud to be citizens of their own respective countries. And they would also be proud to be provided the services that members of majority communities get. I would not worry about them refusing to be drafted to the military; they would be proud to serve the nation in any way possible. I also think they would be glad to pay taxes. They would finally have the means to pay their taxes. At the moment, they're taxed and they don't have the means to pay their taxes, so they're getting poorer by the day.

All this will be possible because once passed, the Declaration will allow them to have a measure of control over the resources in their areas—resources which, at present, are often expropriated by the central government for other development purposes.

Les Malezer: In terms of the Declaration, self-determination is a legal concept. It is a right guaranteed to all peoples. It's also guaranteed in the UN Covenant on Civil and Political Rights and the

Covenant on Economic, Social, and Cultural Rights. Article 3 of the Declaration, which says indigenous peoples have the right to self-determination, is simply a re-statement of the rights in the two covenants and in Article 1 of the United Nations Charter. It's exactly the same wording: "All peoples have the right to self-determination." And that language was deliberately set when the documents were made because colonization was a big part of the history in the Indian subcontinent and African regions. Self-determination was not a right of peoples in many places. And to deal with that issue, the UN established a de-colonization process that is still under way. But unfortunately, the process is not ensuring self-determination for indigenous peoples.

The United States is very strongly advocating that self-determination should be a right subject to state law. In a domestic situation, that would create a discriminatory provision in which all peoples of the world except indigenous peoples would have the right to self-determination. The whole intention is that all peoples should have the same rights.

Cultural Survival: We know that the text of the Declaration is a compromise, but it is one that indigenous peoples are supporting. Why is the Declaration, as it is now written, so important to indigenous peoples?

Les Malezer: The whole theme of the Declaration is partnership between states and indigenous peoples to reach new arrangements. As you say, there was never agreement between states and indigenous peoples in relation to what the wording should be. The final proposed wording was a compromise, representing what the chairman believed would be most acceptable to the overwhelming majority of states and indigenous peoples. And it's on that basis that there has been support for the Declaration from indigenous peoples and from the Human Rights Council. Indigenous peoples would prefer less ambiguity. New Zealand, along with Australia, USA, and Canada, is the culprit in continually proposing ambiguity. The text those countries want is one that justifies their current views on using resources, which are discriminatory, as determined by the UN General Assembly's Third Committee and by the UN Committee on Elimination of Racial Discrimination.

Ramona Peters: At this point there is hardly any dialogue between Western thinking and Indian thinking. The Declaration would open the dialogue so both can communicate about rights and consult about the uses of resources. Who's to say that a state doesn't want to protect a certain area? And you have the indigenous community right there saying "Let's protect it. We'll help you. In fact, we'll help you know which species is missing, because without that one, the rest of the species located there are doomed." If this Declaration succeeds in anything, it needs to succeed in consultation, because once people start talking with one another, they'll find mutual good.



Karo tribesman in the Omo Valley, Southern Ethiopia.

PHOTO BY ERIC ELLIOTT

The UN Special Rapporteur on the Rights of Indigenous People:

December 4, 2006

“The Declaration on the Rights of Indigenous Peoples was adopted by the Human Rights Council during its first session in June 2006. The Declaration is the result of many years of discussion and negotiation among the states members of the Human Rights Commission, with the active participation of representatives of the world's indigenous peoples.

It is now incumbent upon the Human Rights Council to reaffirm its commitment in promoting and protecting the dignity, survival, and well-being of the millions of indigenous people around the world whose rights have long been ignored and neglected, when not actually breached in practice.

Indigenous people expect the Human Rights Council as well as the Office of the High Commissioner for Human Rights and other UN agencies to continue promoting the provisions of the

Declaration for the protection of the human rights of their members and communities. Much can be done over the next few years, and in the current restructuring of the Council's mechanisms a space must be found to ensure the continuing participation of indigenous representatives in debates concerning the application of international human rights standards to the particular circumstances of indigenous peoples.

The Special Rapporteur hopes that the General Assembly may reconsider its position and adopt the Declaration on the Rights of Indigenous Peoples at the earliest possible moment.”

Rodolfo Stavenhagen, UN Special Rapporteur on the Rights of Indigenous People.



From left: Special Rapporteur Rodolfo Stavenhagen; Cultural Survival board member Victoria Tauli-Corpuz; and anthropologist James Anaya at the conference, Bridging the Gap between Law and Reality for Indigenous Peoples in the Americas, in Arizona.

The Chairperson of the UN Permanent Forum on Indigenous Issues:

December 10, 2006

“At its Fifth Session in May 2006, the Permanent Forum on Indigenous Issues adopted the following recommendation:

The Permanent Forum is convinced that a Declaration on the rights of indigenous peoples will be an instrument of great value through which to advance the rights and aspirations of the world's indigenous peoples. The Permanent Forum therefore recommends the adoption without amendments of the draft Declaration on the Rights of Indigenous Peoples . . . by the General Assembly during its 61st session in 2006. This would represent a major achievement for the Second International Decade of the World's Indigenous People.

To the credit of the newly established Human Rights Council, it adopted this Declaration on June 29, 2006, at its first session. All the regional caucuses of indigenous peoples spoke with one voice and echoed the resolution of the Human Rights Council that this be adopted by the General Assembly at its 2006 fall session.

Indigenous peoples were shocked and deeply disappointed at the decision of the Third Committee of the General Assembly on November 28th, 2006, to defer the adoption of the Declaration, following an initiative of some members states. I am also deeply disappointed by this move to defer the adoption of the Declaration because this is illustrative of the

continuing discrimination against indigenous peoples in many parts of the world.

The Declaration stands out as one of the most extensively discussed and negotiated texts in the history of the UN, with the full participation of the subjects of those rights—a process for which the international community should stand proud. The non-participation of some governments in more than 20 years of drafting and negotiations on the Declaration does not justify a further delay of its adoption. This Declaration represents the minimum standards for the survival, dignity, and well-being of indigenous peoples.

I urge all governments to demonstrate that the UN stands for human rights for all, including indigenous peoples, and to adopt the Declaration without amendments. It is the responsibility of all UN member states to address the past and continuing injustice, racism, and discrimination against indigenous peoples.”

Victoria Tauli-Corpuz, Chairperson of the The United Nations Permanent Forum on Indigenous Issues.

In the process of submitting the Declaration on the Rights of Indigenous Peoples to the Human Rights Council and the General Assembly's Third Committee, a number of states, UN officials, and others gave statements endorsing the Declaration. Excerpts from some of those statements are collected here.

Amnesty International:

November 1, 2006

“The Declaration fills an important gap. It addresses Indigenous Peoples' protection against discrimination and genocide. It reaffirms their right to maintain their unique cultural traditions and recognizes their right of self-determination, including secure access to lands and resources essential for their survival and welfare.

Adoption of the Declaration by the UN General Assembly is long overdue. UN treaty bodies have repeatedly affirmed state obligations to protect indigenous peoples, but the grave human rights violations they have experienced have continued unabated in every region of the world. Indigenous peoples are among the most marginalized and the most vulnerable.

The UN Declaration on the Rights of

Indigenous Peoples is the product of unique collaboration between states and indigenous peoples themselves. The result is a text that is grounded in existing rights protections but that also provides states with the necessary guidance on ensuring indigenous people's effective means to enjoy their rights, recognizing their distinct aspirations and their unique ways of life.

The Declaration provides a good framework for addressing the wrongs of the past and a vision of future collaboration and partnership between states and indigenous peoples on the basis of justice and respect for the rights of all. The General Assembly must seize this historic opportunity to adopt this text with the strongest possible support.”

The delegation from Brazil:

June 27, 2006

“We believe that the Declaration on the Rights of Indigenous Peoples is a major achievement . . . Maybe the text proposed is not the ideal. It is necessarily the result of an effort by all to accommodate on one hand the rights of indigenous peoples and on the other hand the preoccupations expressed by states. In essence, the Declaration as proposed revitalizes the core principle of nondiscrimination, which inspires the whole system of human rights in the United Nations and asserts the importance of the indigenous peoples in our societies. It also acknowledges diversity as a richness of countries and underlines the past and present contribution of indigenous peoples to the material and spiritual development of all states.

Brazil, as a multiethnic and multicultural country, is convinced that the

Declaration on the Rights of Indigenous Peoples will be of the utmost importance not only to fight discrimination against indigenous peoples and distortions created by centuries of exclusion, but also to promote harmony in the relationship between indigenous peoples and the other segments of society where they live.

At the same time, it is our understanding that the exercise of the rights of indigenous peoples the Declaration acknowledges is consistent with the respect for the political unity and territorial integrity of the sovereign and independent states that they inhabit. Political unity, territorial integrity and indigenous rights are mutually reinforcing perspectives and serve the cause of a harmonious relationship within our societies. possible support.”

European Union:

June 27, 2006

“The negotiation process of the Working Group on the Draft Declaration was unique in UN standard-setting practice by involving representatives of indigenous peoples on an equal footing with states. This made the negotiations challenging given the breadth of interests represented; but importantly, it also made the process as inclusive as possible. The European Union regrets that it was not possible to reach

agreement on all articles of the draft Declaration, and particularly that some states with indigenous peoples do not feel able to join consensus on the text. Indeed, no party to the negotiations can claim that the result is perfect. However, the EU is of the opinion that the final compromise text offers the best achievable outcome to the working-group process. The EU therefore . . . supports adoption of the text.”



Dega woman and children, Vietnam.
Photo copyright White Russian Media & Design.

Reasons Why the Declaration on the Rights of Indigenous Peoples, as Adopted by the Human Rights Council, Should be Adopted by the General Assembly

Les Malezer, Chairperson, Indigenous People's Caucus
November 12, 2006

1. The Declaration is based on core international principles and values. The Declaration is based on core international principles and values that embrace tolerance, peace, and respect for the dignity of all cultures and peoples. In particular, the Declaration is described as a "standard of achievement to be pursued in a spirit of partnership and mutual respect."

2. The human rights of all must be respected. Human rights are generally relative in nature and not absolute. Consistent with the U.N. Charter, the Declaration specifically requires that the "human rights and freedoms of all shall be respected."

3. Provisions must be read in overall context. Each provision of the Declaration cannot be read in isolation, but rather interpreted in the context of the instrument as a whole. To do otherwise would lead to extremist and absolute interpretations that could not be justified under the Declaration or international human rights law as a whole. Regrettably, the CANZUS group - Canada, Australia, New Zealand and United States - continues to interpret the Declaration in this fragmented and erroneous manner.

4. No new rights created. The Declaration does not create new rights. It elaborates upon existing international human rights standards as they apply to indigenous peoples.

5. The Declaration respects the rule of law and other core international principles. Every provision of the Declaration must be "interpreted in accordance with the principles of justice, democracy, respect for human rights, equality, nondiscrimination, good governance and good faith." This allows for both flexibility and balance. The reference to "good governance" ensures that the rule of law within states is fully considered in every instance without exception. As an aspirational instrument, the Declaration does not upend the rule of law domestically or internationally.

6. Broader agreement is not possible. As the chair of the intersessional Working Group on the Declaration has concluded, along with many States, additional time will not lead to any broader agreement. This is in large part because of the obstructionist role repeatedly played by United States, Australia, and New Zealand during the Working Group.

7. Re-opening negotiations is likely to kill the Declaration. Re-opening negotiations on the Declaration is certain to create serious new divisions and prevent its adoption by the General Assembly. Such an extreme step would be unconscionable.

8. The Declaration encourages harmonious relations. The Declaration explicitly encourages "harmonious and cooperative relations" between states and indigenous peoples. Nine preambular paragraphs and fifteen operative articles specify consultations, cooperation, or partnership between indigenous peoples and states.

9. Over 20 years of discussion. There have already been more than 20 years of discussions on the Declaration among states and indigenous peoples in UN Working Groups. This makes the Declaration one of the most



Indigenous delegations representing all regions of the world during this session of the UN General Assembly

discussed and studied declarations in UN history. All revisions by the chair were based on prior discussions.

10. Any "procedural" resolution for delay would be highly detrimental. Any amendment or resolution to re-open negotiations on the Declaration is not procedural since it could destroy the Declaration.

11. Delaying strategy already attempted at Human Rights Council. Last June, Canada tried and failed with a similar strategy at the first meeting of the Council. In its statement on June 27, 2006, Canada quoted its Minister of Indian Affairs as saying issues could be resolved by all parties "in a few more months." This claim was knowingly false. Just the day before, Canada's Prime Minister Stephen Harper indicated in writing the need for a "two-year negotiation mandate."

12. The CANZUS group of states is politicizing rights in the Declaration. Based on their own domestic agendas, a few Western states are actively encouraging other states to delay the adoption of the Declaration under the guise of seeking "improvements." In so doing, the CANZUS group is continuing to politicize Indigenous peoples' human rights. Such actions severely undermine the Council and current UN reforms.

13. Delaying for consultation is disingenuous. The CANZUS group already had the past eight months to consult with indigenous peoples within their own respective countries on any state concerns with the Declaration. Yet none of these states engaged in any consultations with Indigenous peoples. None of these states are genuinely seek to "improve" the Declaration.

14. Canada is violating its constitutional and international obligations. Despite its constitutional obligations to consult indigenous peoples, Canada has opted to vigorously and unilaterally oppose the Declaration through procedural and other strategies during the past eight months. As a Human Rights Council member, Canada is failing to "uphold the highest standards in the promotion and protection of human rights . . . [and] fully cooperate with the Council," as required by the General Assembly.

15. The Declaration is essential for the survival, dignity and well-being of Indigenous peoples. The Declaration promotes equality and nondiscrimination for all. The Declaration is essential for the survival, dignity, and well-being of the indigenous peoples of the world.

16. The Declaration strengthens the international human rights system. Adoption of the Declaration by the General Assembly supports the vital work of the Human Rights Council and strengthens the international human rights system as a whole.



General Assembly action on the Declaration on the Rights of Indigenous Peoples was delayed this fall by the Third Committee, which requested more time for states to consider the text.

We respectfully submit that the time for further study has passed. If anyone needs international protection for their human rights, it is indigenous peoples, who are among the poorest and most marginalized on earth. The text presented to the General Assembly by the new Human Rights Council was 24 years in the making. After such a long process, General Assembly approval ought to be pro forma.

The world's indigenous peoples are united behind the Human Rights Council's text. Any attempt to reopen the text now would deal a blow to indigenous peoples everywhere, who are looking to the General Assembly to finally recognize that they, too, have human rights. We appeal to you to exercise your good offices to persuade states to adopt the Declaration as presented by the Human Rights Council at this session of the General Assembly.

