

22 May 2006



# Economic and Social Council

## HR/4894

Department of Public Information • News and Media Division • New York

Permanent Forum on Indigenous Issues  
Fifth Session  
9<sup>th</sup> & 10<sup>th</sup> Meetings (AM & PM)

### UN FORUM SPEAKERS URGE RAPID ADOPTION OF LONG-NEGOTIATED

#### DRAFT DECLARATION ON RIGHTS OF INDIGENOUS PEOPLES

Representatives of indigenous and tribal communities today urged the United Nations panel charged with drawing attention to their plight to press Member States to rapidly adopt a long-negotiated draft declaration on the rights of indigenous peoples, as the surest way to promote the human rights of 370 million people worldwide and to protect the fragile traditional lands and resources on which they depended for survival.

Gathered in New York for the fifth annual session of the United Nations Permanent Forum on Indigenous Issues -- which runs through Friday -- indigenous representatives today praised the draft as the most comprehensive statement of their individual and collective fundamental rights, which were uniquely tied to the lands on which many of their communities lived.

Cut off from resources and traditions vital to their welfare and survival, and with the disruption of their traditional ways of life by waste dumping, strip mining, overfishing, and rapid urbanization, speakers said the draft reinforced the rights of indigenous peoples to the protection of their cultural property and identity, as well as the rights to education, employment, health, religion, language and more. It also protected the right of indigenous peoples to own land collectively.

Opening the discussion today, Rodolfo Stevenhagen, Special Rapporteur on the Human Rights and Fundamental Freedoms of Indigenous Peoples, echoed the sentiment of many speakers when he told the Permanent Forum that the "health of the world was being severely challenged", from the Arctic Circle to the Amazon jungle, because of the unsustainable use of natural resources and the destruction of woodland and aquatic habitats. The obvious impact was being felt by the indigenous people living in, and dependent on, those resources, especially medicinal plants and flora, which were being devastated by air and water pollution.

The "implementation gap" was one of the main obstacles standing in the way of human rights by indigenous groups, he said, noting that, on the one hand, some legislation was not always consistent with other laws, which tended to be enforced with a greater priority. On the other, there was a delay in the adoption of regulatory and secondary legislation, coupled with a lack of consultation with indigenous communities and deep-seated bias against indigenous rights among many politicians and legislatures.

Recalling several recent country visits, he said that from South Africa to Ecuador and Guatemala, there were still "great challenges" hindering the creation of a fair and equitable society that recognized and protected the human rights of indigenous people. With that in mind, he urged Governments to assign a high priority to the search for concrete actions and measures to close the gap and lead to effective implementation. And while adoption of the draft declaration was critical in that regard, at the same time mechanisms must be instituted for participation and consultation on all measures on a general scope, with special attention for legislation on natural resources and the development process, he added.

The Deputy Grand Council of the Cree Nation was among the speakers stressing that ongoing denial of indigenous peoples' collective and individual rights was a root cause of debilitating poverty and injustice. Past and ongoing dispossession of lands and resources continued to gravely impact on indigenous communities, including far-reaching effects on development, peace and security, as well as the integrity of traditional territories, he added.

Adopting the declaration would, therefore, be a major step towards eliminating widespread human rights violations suffered by over 370 million indigenous people worldwide, he said, noting that the text called for the need to promote harmonious relations and mutual respect between indigenous peoples and States. And while some States had expressed reservations about the text -- many of which had been or were currently the subjects of "early warning and urgent action measures by the Committee on the Elimination of Racial Discrimination -- the United Nations must not bend to "discriminatory voices" by delaying action.

Along with matters concerning the draft declaration, a number of speakers addressed the impact on indigenous people of United Nations reform gathering momentum after the 2005 World Summit. A representative of the Global Indigenous Caucus said indigenous groups were closely watching the exercise and were acutely aware of the process and structure of the newly created Human Rights Council. The world's tribal and indigenous communities continued to depend on the United Nations and its main bodies to draw attention to and support their struggles, defend their rights and provide avenues of redress for violations.

To that end, she called on the Permanent Forum to ensure that indigenous peoples' human rights remained a distinct, ongoing item on the Human Rights Council's agenda and that indigenous peoples could participate actively and fully in the work of the new Council when matters concerning their rights were being discussed. She also recommended that the Human Rights Council include as one of its permanent agenda the human rights impacts of militarism, armed conflict, forced migration and forced displacement of all peoples.

Shortly thereafter, Julian Burger, a representative of the Geneva-based Office of the United Nations High Commissioner for Human Rights, said that many indigenous delegations had spoken to him or written the Office expressing concern and confusion about the abolishment of the Commission on Human Rights and creation of the Council. They had also expressed concern over the status of the relevant special rapporteurs, the draft declaration and the Working Group on Indigenous Peoples.

He reminded the Forum that the Assembly resolution that created the Council had stressed that the new body "would assume the responsibilities" for all the Commission's mandates and functions as of its first session, set for 19 June, with a review of such mandates and functions set for next year. While he could not give a specific date by which the Working Group would begin its next session, he said that the Council would guarantee a space for all indigenous peoples. He urged the representatives of indigenous groups not to look at the new Council as a threat to their peoples, but as an opportunity for the United Nations to enhance the promotion and protection of their rights.

The Forum also took up matters related to indigenous children, youth and women, as well as data collection, and "free, prior and informed consent" with speakers highlighting, among other things, the strong need to scale up investments in youth, and to ensure that they were partners in achieving the Millennium Development Goals. There was also a call to pay special attention to various disadvantaged groups towards improving the level of basic education, skill training and literacy among their youth.

The Forum will reconvene at 3 p.m. Tuesday, 23 May, to continue its interactive discussions.

#### Statement by Special Rapporteur on Indigenous People's Human Rights

Opening discussions today, RODOLFO STAVENHAGEN, Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, said the implementation gap was one of the main obstacles standing in the way of human rights for indigenous groups. In that context, there were two broad problematic areas. On the one hand, many cases in legislation were not

consistent with other laws that tended to be enforced with a greater priority. On the other hand, there was a delay in the adoption of regulatory and secondary legislation. There was a lack of consultation with indigenous peoples and bias against indigenous rights that still existed among many participants in political life, and there was a lack of mechanisms to follow up indigenous legislation to ensure practical enforcement.

There was also a lack of adequate consultation and participation mechanisms for indigenous peoples that would allow them to take into account needs and points of view in relevant legislation in the decision-making process. That frequently engendered frustration among parties and could lead to failure of the consultation process, in general. Evidence also existed that various courts had blocked the reforms. That was why it was vital that the Government assign a high priority to the quest for concrete actions and measures to close the gap and lead to effective implementation. Mechanisms must be instituted for participation and consultation on all measures of a general scope, with special attention for legislation concerning natural resources and the development process.

From South Africa to Ecuador to Guatemala, there were still great challenges standing in the way of achieving a fair and equitable society. There was a growing awareness of the need to see to the human rights of the indigenous populations and important spaces had been opened to provide for the needs to indigenous peoples. The violation of the human rights of the indigenous peoples took place within the framework of the exploitation of natural resources. From the arctic circle to the Amazon, the health of the world was being severely challenged, because of the lack of control, and the most obvious impact was being suffered in indigenous communities -- serious diseases, polluted waters and endless impacts that endanger their traditional ways of life. In such a situation, the international community must act urgently in a global manner.

#### Interactive Discussion on Indigenous People's Human Rights

Among the Governments that took the floor during the first interactive panel, Mexico's representative backed the current compromise draft declaration on the rights of indigenous peoples, calling it "balanced and well-drafted" and perhaps capable of generating consensus. It was not possible for the negotiations to go any farther or to remain inactive. After 25 years of negotiation and the serious momentum gained over the past decade or so, the text must be now forwarded to the new Human Rights Council and then on to the General Assembly for adoption. Mexico would, however, stress that the declaration would not establish or create new rights -- or interfere with the rights of third parties -- and would comprehensively protect the human rights of indigenous peoples.

The representative of the Global Indigenous Caucus said that indigenous groups from around the world were closely watching the broad efforts to reform the United Nations and were acutely aware of the process and structure of the newly created Human Rights Council. The world's tribal and indigenous communities continued to depend on the United Nations and its main bodies to draw attention to and support their struggles, defend their rights, and provide avenues of redress for violations.

To that end, she called on the Permanent Forum to ensure that indigenous peoples' human rights remained a distinct, ongoing item on the Human Rights Council's agenda, that Organization-wide reform maintained the key roles of independent experts in developing and monitoring human right standards, and, among other things, ensure that the full and active participation of indigenous peoples in the work of the new Council when matters concerning their rights were being discussed. She also recommended that the Human Rights Council include, as one of its permanent agenda items, the human rights impacts of militarism, armed conflict, forced migration and forced displacement of all peoples.

Shortly thereafter, JULIAN BURGER, a representative of the Geneva-based Office of the United Nations High Commissioner for Human Rights, said that many indigenous delegations had spoken to him or written the Office expressing concern and confusion about the abolishment of the Commission and creation of the new Council. They had also expressed concern over the status of the relevant special rapporteurs, the draft declaration and the Working Group on Indigenous Peoples.

He stressed that the Assembly resolution that had created the Council had stressed that the new body “would assume the responsibilities” for all the Commission’s mandate and functions as of its first session, set for 19 June, with a review of such mandates and functions set for next year. He said that his Office would have the opportunity to meet with the Council and would stress the need for the new body to take up matters related to the draft declaration and the ongoing work of the Working Group.

While he could not give a specific date by which the Working Group would begin its next session, he said that the Office looked at the Council as an opportunity to guarantee a space for all indigenous peoples, and he urged the representatives of indigenous groups to look at the Council not as a threat to their peoples, but as chance a for the United Nations to enhance the promotion and protection of their rights.

The Deputy Grand Council of the Cree Nation said that rampant denial of indigenous peoples’ collective and individual rights was a root cause of debilitating poverty and injustice. Past and ongoing dispossession of lands and resources continued to gravely impact on indigenous communities, including far-reaching effects on development, peace and security, as well as the integrity of traditional territories. Indigenous women and children particularly suffered the ill-effects of such activities, as their education and access to health care and medical treatment were consistently being undermined.

He stressed that, if adopted, the declaration would be a major step towards eliminating widespread human rights violations suffered by over 370 million indigenous people worldwide. A key aspect of the text was the need to promote harmonious relations and mutual respect between indigenous peoples and States. He said that even though some States had expressed reservations about the text -- many of which had been or were currently the subjects of “early warning and urgent action” measures by the Committee on the Elimination of Racial Discrimination -- the United Nations must not bend to “discriminatory voices” by delaying its adoption. All efforts should be made not to erode or water down the draft, particularly since the Action Plan of the Second International Decade of the World’s Indigenous Peoples stipulated that the declaration “shall not fall below existing international standards”.

A representative for the United Nations Voluntary Fund for Indigenous Populations of the Office of the High Commissioner for Human Rights said, during the recent years, the Fund had provided financial assistance to many representatives to allow them to participate in forums where decisions were made that affected them. The value of the knowledge of the relations established had proven to be useful for beneficiaries and participants. In the most recent meeting, 203 applications for financial aid were received, examined by five independent experts, and they agreed on 46 subsidies. The Fund had only been able to cover 25 per cent of requests received.

She said they had some 50 beneficiaries for the coming meeting who were awaiting a decision to facilitate their participation. She also recommended enhancing the mandate of the Voluntary Fund to facilitate the contributions of indigenous peoples in other forums.

The speaker from the National Indians Caucus of Venezuela said inter-culturality is a reality on the planet. Speaking of human rights meant the rights of indigenous peoples. It meant they were interrelated. They affected the actions of peoples as a whole. There was one right that comprised almost all rights, which was the right to one’s land, because it determined the right to life, citizenship, environment, culture, economic and political rights. All other rights were birth rights and could not be negotiated. He had seen Governments that did not acknowledge its fellow man. Ancestral lands were our medicine and our food, and that was why acknowledgement of our territory was an essential human right. It would guarantee a decrease in poverty.

He demanded processes to recognize borders, to carry out inventory of environmental liabilities, to launch recovery processes. Next, development plans must be reviewed. That was why, as part of the revolutionary process in Venezuela, the indigenous peoples had advanced in active political participation. Another basic right was acknowledgment of full citizenship. That had been achieved in Venezuela. He called on the Forum to urge Governments to create an awareness of the rights of indigenous peoples. Also, the Forum must approve the declaration on the rights of indigenous peoples.

The speaker for the Indigenous Peoples of the Greater Caribbean recommended that there be a permanent forum on indigenous issues for several reasons. First, to strengthen cooperation, coordination and capacity-building among indigenous peoples to the greater Caribbean. Second, to facilitate a regional special consultative session to focus on the situation of Caribbean indigenous peoples. Third, to ensure the regional meeting and special consultative session is open to representatives of indigenous organizations from throughout the greater Caribbean region. And finally, to pay particular attention to ensuring access to include equal funding to representatives from the Island of Boriké (the Free Associated State of Puerto Rico) to ensure their participation at the regional and special consultative session.

The speaker for the Assembly of First Nations said she was pleased to address the third Goal of the United Nations Millennium Development Goals, because without progress towards gender equality none of the Goals would be achieved. Gender equality was implied through a range of international instruments. Gender equality was a recognized element of the United Nations draft declaration on the rights of indigenous peoples, including the protection of indigenous women's and children's well-being and security.

She said, historically, both women and men were valued for different roles and skills. Colonial and paternalistic policies over time altered that balance. Another concern was jurisdictional barriers that prevented indigenous women from having equal opportunities. Governments, scientists and environmentalists were beginning to value the indigenous peoples' worldview and knowledge. At today's critical juncture, the world must also embrace the opportunity to work together with indigenous peoples.

Forum member HASSAN ID BALKASSM, of Morocco, said the right of the people to participate in economic life, as well as economic decisions, was extremely important and needed to be protected. To monopolize resources was a denial of the rights of indigenous peoples. The right of indigenous peoples to participate in the establishment of values was also one of the rights that needed to be respected. Current policies that prevented the participation of indigenous peoples needed to be set aside. It was important to preserve and strengthen the role of the Special Rapporteur. It was also important to adopt the declaration as soon as possible. It was needed to guarantee the rights of indigenous peoples in the new Council.

WILTON LITTLECHILD, of Canada, said he wanted to refer to reports from the High Commissioner on Human Rights and to make a recommendation. Special attention should be given to the draft of the United Nations declaration on indigenous peoples, expert implementation of the Special Rapporteur's recommendation, and consideration of a new mechanism within the Human Rights Council.

LILIANE MUZANGI MBELLA, of the Congo, said the indigenous peoples could not envisage attaining the millennium objectives if their fundamental rights and freedoms were not respected. There should be a strong connection between the Special Rapporteur, the Human Rights Council and indigenous peoples.

PARSHURAM TAMANG, of Nepal, said the concern was to implement the reports and recommendations by the Special Rapporteur. There were many cases of human rights abuses presented. It was frustrating to hear of the many indigenous peoples who were facing serious human rights violations, and he cited the case in his own country. In the last 11 years of armed conflict, more than 13,000 had been killed, and 33 per cent were indigenous peoples. In the same years, 36,000 were abducted, more than 50,000 were displaced, and more than 100,000 disappeared. It was evidently clear that indigenous peoples faced human rights abuses and violence.

NINA PACARI VEGA, of Ecuador, said representatives should not forget to link human rights to the search for development. Adopting economic resources was crucial, so there was not a continuation of the violation of rights of indigenous peoples. One of the recommendations should appeal to implementing and having access to economic resources, so real development for indigenous peoples could be promoted. In view of the experience already gained in terms of experts, there should be a permanent ongoing commission with greater strength to have a permanent impact. How could

recommendations be made binding? Reform under way in the United Nations was an opportunity to make the new Council more dynamic, and to have an additional mandate so that it could have true impact.

Responding to the concerns raised by the Forum and participants, the Special Rapporteur, Mr. STAVENHAGEN, said he was grateful for the comments made by some of the State's present and members of the Permanent Forum. He referred to three issues he considered fundamental. First, the concern expressed vis-à-vis the question of follow-up, as well as implementation and application of the recommendations he had made in the course of the last four years. The problem of implementation of the recommendations was a very serious one.

The Office of the United Nations High Commissioner for Human Rights had launched a project to study how one could promote and assess the follow-up and implementation of recommendations, he continued. It involved conceptual, methodological, logistical, as well as practical and organization, aspects, which involved different actors of the world community, different governmental levels, and judicial power through the various public ministries and tribunals at all levels. But, that was only one aspect. Another aspect was the participation of indigenous peoples, organizations, civil societies and communities. The third aspect was that of United Nations' participation. Of course, there was also the question of international and bilateral cooperation of many countries, through non-governmental organizations, and so on, to help the neediest countries implement activities to promote human rights of indigenous peoples.

Frequently, he was asked what he was going to do to implement recommendations. He responded that he was not a policeman or judge, but a rapporteur of the Human Rights Commission. It was a job for everyone who took human rights seriously. He was pleased the Permanent Forum was adopting it as its own concern. He also hoped there would be an opportunity of linking forums, together with the new Human Rights Council, which was about to meet for the first time.

The second question, regarding the visits to countries, was a fundamental aspect of the work of the rapporteurship, he said. It was the pillar of the work of the rapporteur. The visits themselves had been very successful. Unfortunately, the resources of the United Nations, and in particular the human rights apparatus, were limited. It was not possible for him to attend to all the visits. There was so much documented information. A methodology needed to be determined to systemize the information before it became part of a report.

#### Discussion on Indigenous Children, Youth and Women, Data Collection, and Free, Prior and Informed Consent

The representative of Australia, speaking also on behalf of New Zealand and the United States, noted the recent efforts of the Permanent Forum to attempt to define and promote a principle of "right" of free, prior, informed consent in relation to indigenous peoples. The three countries considered that discussions about any such principle of "right" were far from complete. The international workshop on free, prior, informed consent sponsored by the Permanent Forum in 2005 highlighted that there were widely different views about the content and application of any such principle among States and indigenous peoples. It was, therefore, premature to refer to the conclusions of the workshop as reflecting "a common understanding of free, prior, informed consent".

The consent process may include the option of withholding consent, rather than "must". Some aspects of the recommendation were also vague in meaning or would be impossible to achieve in most situations. It was the firm position of Australia, New Zealand and the United States that there could be no absolute right of free, prior or informed consent that was applicable uniquely to indigenous peoples and that would apply regardless of circumstance. In fact, to extend such an overriding right would be potentially discriminatory.

It was an entirely different matter to assert, in the context of developing the draft declaration on the rights of indigenous peoples, that particular sub-groups of citizens had a right of veto over the actions of Governments and legislatures. That was not a position that a Government, democratically chosen to represent the interests of all its citizens, could accept. Australia, New Zealand and the United States supported efforts to increase indigenous peoples' participation in decisions that affected

them. But, neither indigenous nor non-indigenous peoples enjoyed an overarching for exclusive right of free, prior informed consent, regardless of circumstance.

On talk in the corridors that the three delegations did not want to see a declaration on the human rights of indigenous people adopted, Australia's representative said that nothing could be further from the truth. Anyone who had been in on the negotiations for the past few years had witnessed the desire of the three States to work towards the elaboration of a document that was agreeable and capable of implementation.

The current draft text had retained certain fundamental problems from previous attempts, as Australia, New Zealand and the United States had highlighted last week. The text also lacked broad support, and the delegation believed it was premature for the Human Rights Council to vote on it at this time. Further consultations -- a period of reflection -- would allow stakeholders to come up with a shared, genuine consensus on a text that was capable of being implemented.

After all, indigenous peoples deserved more than "empty rhetoric" provided by a declaration that could not be implemented. The declaration should enjoy the political and moral force that came with being achievable, and, in particular, receiving broad support. The present document could perhaps be adopted, but only in a recorded vote, accompanied by a host of statements by States distancing themselves from it. That would inflict upon indigenous people a text that would create an implementation gap of unprecedented dimensions. Or, following further consultations, it could become a declaration that would have real moral authority, brought by consensus.

Forum member MICHAEL DODSON, of Australia, responding to what he believed were the only three States calling for delay in the adoption of the draft declaration, said that he would be more than happy to support a "period of reflection" for ongoing consultations on the text, if he believed that there was an overwhelming feeling that such time needed to be allotted. "But I just don't see that", he said, adding that the general feeling among the participants in the Forum and beyond was that it was time to move ahead to action.

The speaker from the Pacific Caucus presented specific findings and recommendations relating to the issues concerning indigenous children and women. The first recommendation was that Hawaii should be re-inscribed onto the United Nations list of Non-Self-Governing Territories. Second, that the Permanent Forum call for the immediate adoption of the Draft Declaration on the Rights of Indigenous Peoples. Third, due to the extreme poverty suffered by the indigenous women of the Pacific, that the Permanent Forum request annual reports on the status of Pacific indigenous women from all relevant United Nations agencies.

She also recommended the strong need to scale up investments in youth, and that they should be seen as partners in achieving the Millennium Development Goals. A recommendation was also made that Governments at all levels were encouraged to develop and implement integrated youth policies, making linkages between the different priority areas for youth development. There was also a continued need to pay special attention to various disadvantaged groups and the need for improving the level of basic education, skill training and literacy among youth.

A representative of the African Caucus said past and present efforts resulted in the people's forum on indigenous issues and the United Nations declaration. It was noted that the United Nations Commission on Human Rights was to be replaced by the Human Rights Council. He requested that the issues continued to be of importance to the Council. He demanded that the working group be allowed to meet in July. He hoped the working group would be retained when the new Council took over from the Commission.

VICTORIA TAULI-CORPUZ, Chairperson of the Permanent Forum, said that she appreciated the observation that had been made by Australia on behalf the United States and New Zealand, but the response was that, in some countries, the principle of "free, prior and informed consent" of indigenous communities about plans and projects that effected them had already had been recognized. While it was an "emerging" right, she called on that delegation to consider the full range of views on the matter. Development had caused many problems for indigenous peoples and

safeguards needed to be in place to allow those peoples to participate in decision-making that affected the way they lived.

Also commenting on Australia's statement, Forum member WILTON LITTLECHILD recalled that he had chaired the Forum's consideration of the right to free, prior and informed consent, and one of the important results of that exercise had been the good work done to identify what constituted "free, prior and informed consent". The participants in those discussions believed that "free" in this context meant consent without coercion of outside pressure. The "informed" element meant the indigenous people should be allowed to hear arguments both for and against a particular initiative that would affect them. He added that, if a democratic Government was serious about the situation of its indigenous peoples, it should perhaps reconsider the treaties that had been reached with those communities.

\* \* \* \* \*

---

For information media • not an official record