

INTERNATIONAL STANDARDS FOR INDIGENOUS RIGHTS

STATEMENT BY THE CENTER FOR WORLD INDIGENOUS STUDIES BEFORE THE THIRD SESSION OF THE UNITED NATIONS WORKING GROUP ON INDIGENOUS POPULATIONS;

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PURPOSE:

To present to the United Nations Working Group on Indigenous Populations of the Commission on Human Rights Sub-Commission on Prevention of Discrimination and Protection of Minorities the analysis and recommendations of the Center for World Indigenous Studies concerning the application of the term "indigenous population" to certain peoples or groups, observations on developments since the previous session of the Working Group; and international standards for indigenous land rights.

DESCRIPTION OF THE CENTER

The Center for World Indigenous Studies is an independent, non-profit research and education organization founded by indigenous individuals in North America, Northern Europe, South Pacific and Africa. Controlled by indigenous people, the Center is dedicated to the advancement of indigenous peoples' knowledge through research, education, people exchanges and communications. CWIS works to provide thoughtful analyses, from the indigenous perspective on social, economic and political issues, trends and current events which affect indigenous nations and their neighbors.

ON THE APPLICATION OF THE TERM INDIGENOUS TO CERTAIN PEOPLES AND GROUPS

While it is no doubt a serious effort of the UN Working Group on Indigenous Populations to consider the question of defining the term "indigenous", and its application to certain peoples, the term has come into only relatively recent use among indigenous peoples. It should be noted by the Working Group that even as it attempts to grapple with the question, the usage of a common term like "indigenous" is still evolving among aboriginal peoples.

It might be further noted by the Working Group that the process indicated by paragraph 2 of Economic and Social Council Resolution 1982/34 of 7 May 1982 calls for consideration of the evolutionary character of standards and not the final statement of considerations at this time. We observe that since the subject of indigenous peoples is relatively new to the United Nations, and considering the need for a broad scope, deciding upon a permanent and final definition and application of the term "indigenous" at this early stage would unduly confine the Working Group's inquiries.

We suggest that the Working Group on Indigenous Populations set aside consideration of a permanent and final definition and application of "indigenous" until the views of indigenous peoples are more fully and widely heard on the substantive matters now before the Working Group. We suggest that a definition be delayed until the Working Group has considered the full range of evolving standards concerning the rights of indigenous peoples. To do otherwise would severely limit the scope of inquiries and, thus undermine the process originally envisioned by the United Nations Economic and Social Council.

REVIEW OF DEVELOPMENTS PERTAINING TO THE PROMOTION AND PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS OF INDIGENOUS POPULATIONS

The Center for World Indigenous Studies notes that since the last session of the Working Group there have been some developments which may have a positive influence on the promotion and protection of human rights, and fundamental freedoms of indigenous populations. But, there are ominous signs of serious deterioration as well.

It may be noted that many more states governments are increasingly aware of indigenous populations within their boundaries, and they have devoted more attention to the situation, human rights questions and fundamental freedoms of indigenous populations. This greater awareness and increased activity, owing in part to the Working Group itself, has contributed to an elevation of dialogue between many states on the subject, and a slightly improved dialogue between certain indigenous populations and certain state

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governments. The increased pace of dialogue between some states governments and between certain indigenous populations and states can only be considered a positive development.

It was noted to the Working Group at its last session on August 10, 1983 by the National Congress of American Indians, that the thirty-seven member-states of the Commission on Security and Cooperation in Europe had received a commitment from the United States of America that: ". . . Indian rights issues fall under Principle VII of the Helsinki Final Act, where rights of national minorities are addressed, and under Principle VIII which addresses equal rights and the self-determination of peoples."

The commitment by the United States of America to apply Principle VIII, in particular, to its relations with indigenous populations has begun to elevate the political dialogue where the rights and interests of indigenous populations may be considered as political, economic and social rights of distinct peoples. Such a development has great importance for the considerations of the Working Group. A member-state of the United Nations has, under the conditions of a multi-lateral instrument concerned with human rights, enhanced the present state of evolving international law by asserting that it will deal with indigenous populations as distinct peoples, and not as mere national minorities within the multi-national framework of a state.

This extraordinary development cannot go unnoticed by the Working Group, for it is apparent that a significant, new international standard as regards the political status of indigenous peoples is in process. The significance of this process, and the recognition of indigenous groups as peoples by states governments must enter into the Working Group's report to the Sub-Commission.

It is suggested to the Working Group that recognition of Indigenous populations as distinct peoples by states governments (as has occurred in the instance of United States of America commitments under the Helsinki Final Act) become a fundamental consideration in the evolution of standards concerning the rights of indigenous populations.

It may be noted by the Working Group that the International Bank for Reconstruction and Development (World Bank) has in its most recent Annual Report announced its intention to withhold loans to states which fail to consult indigenous peoples who will be directly affected by the developments flowing from such loans. We suggest that the Working Group inquire into the world Bank's "indigenous policy" further.

The Center for World Indigenous Studies calls the Working Group's attention to international developments which suggest serious deterioration in the promotion and protection of human rights and the fundamental freedoms of indigenous populations.

By the end of 1983 and the beginning of 1984, Indigenous populations had become involved as direct combatants, or as targeted non-combatants in no fewer than twenty wars or major violent conflicts of an ongoing nature around the world. Notable among these conflicts are those involving the Timorese (Indonesia), Kalinga and Bontoc (Philippines), Miskito, Sumo and Rama (Nicaragua), Pipil (El Salvador), Maya (Guatemala), Karen (Burma), Yanamamu (Brazil), and Naga (India).

These and many other violent conflicts involving indigenous peoples have at their root a fundamental conflict between development and land goals of a state and the economic, cultural and political goals of indigenous populations. The competing interest of many states and indigenous populations over political goals and the use of land and natural resources now seriously threaten the peace and well-being of many regions in the world. Indeed, many more lower-tension political confrontations between indigenous peoples and state governments now threaten to increase the number of violent conflicts involving indigenous peoples. The failure to find a peaceful means for resolving disputes between indigenous peoples and states governments threatens to increase the numbers and intensity of these conflicts. Indeed, the intervention of third and fourth party states in these conflicts threatens to engulf many more interests in what is often an isolated confrontation over land rights, natural resource use or political/cultural matters.

The Center for World Indigenous Studies calls upon the Working Group to take note of this rapidly deteriorating situation involving indigenous populations, and suggests that the Working Group bring this growing phenomenon to the attention of the Sub- Commission on the Prevention of Discrimination and Protection of Minorities.

ON INTERNATIONAL STANDARDS CONCERNING INDIGENOUS LAND RIGHTS

One of the fundamental rights which must be guaranteed to all human beings is their right to use and dispose of their natural wealth in accordance with their needs and their wants. While this principle is generally applied to peoples throughout the world, it is common that it is denied to indigenous populations. At the root of this denial is the common implicit assertion within municipal laws of states that indigenous populations are not fully human beings capable of assuming responsibility for the use and disposal of their own natural wealth. The expression of similar concepts in international law combines with domestic state laws to serve as a major obstacle to indigenous people exercising group land rights as full human beings.

Indigenous populations generally assert original rights to their lands and resources based on inherent rights as human beings, and based on the sacred trust conveyed to them by their creator. This fundamental right cannot be conferred by human institutions or the actions of other peoples.

As we note in the section above, denial of this basic human right to lands and natural resources is increasingly a cause for the eruption of political and violent confrontations between indigenous peoples and states. Such confrontations increasingly threaten the peace and stability of the world community. Accordingly, the Center for World Indigenous Studies suggests that the Working Group consider an urgent recommendation that it be recognized that:

Indigenous peoples are human beings who have the original and inherent right to enjoy for their own benefit lands and natural resources sufficient to their needs and wants without external interference. And, Indigenous peoples cannot be denied the right to use and dispose of their own natural wealth in accord with their need and wants - for their own benefit.

Recognition of this principle is essential to the survival and prosperity of indigenous peoples, and, indeed it is essential to the peaceful relations between indigenous peoples and their neighbors.