

**Les Malezer, Chairperson
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H.E. Haya Rashed Al Khalifa
President of the Sixty-First Session of the United Nations General Assembly
Office of the President of the General Assembly
United Nations, New York NY 10017

Your Excellency

I am writing to you regarding the *UN Declaration on the Rights of Indigenous Peoples*. This letter is sent on behalf of the Indigenous Peoples' Caucus, including the Regional Indigenous Peoples' Caucuses and through the extensive support received from indigenous peoples' organizations and communities from around the world.

As you are aware the Indigenous Peoples' Caucus represents, where consensus exists, the views of indigenous peoples' delegations that participate in United Nations forums on indigenous issues. Also, through the seven regional indigenous peoples' caucuses, we are able to claim even wider representation from indigenous peoples, organisations and communities who participate in indigenous forums and networks at regional levels.

Last year, the UN General Assembly, upon the request of the African Group of States, decided to defer consideration on the *UN Declaration on the Rights of Indigenous Peoples* to allow time for further consultations on the *Declaration*. The UNGA proclaimed that this consideration should be finalized before the end of its 61st session.

On Tuesday, 17 May 2007, the African Group presented to you a version of the *Declaration* that fundamentally alters the text adopted by the Human Rights Council. The proposal amends more than 30 provisions in the *Declaration*. Among other things, it suggests that it is up to states to define, without any regard to international law, what groups constitute indigenous peoples.

The text removes from the *Declaration* the right of indigenous peoples to self-determination. The proposal also renders the inherent, international rights of indigenous peoples contained in the *Declaration* to be “in accordance with the national laws” of each state, including indigenous peoples’ rights to lands, territories and natural resources (the theme of this year’s session of the UN Permanent Forum on Indigenous Issues).

The African Group proposal radically transforms the *Declaration on the Rights of Indigenous Peoples* into an instrument that is controlled and subject to the arbitrary discretion of each state. The African Group has not attempted to improve one single provision in the *Declaration*. The text does not aspire to affirm our most basic human rights. On the contrary, it violates even the most fundamental human rights and undermines their inherent nature.

In relation to human rights, Africa has an impressive system of regional laws and institutions. Yet the proposals contained in the revised *Declaration* do not conform to the rights of peoples contained in the *African Charter of Human and Peoples’ Rights*. Notably, in the *African Charter*, the rights of peoples are not limited by ‘national laws’. To establish discriminatory double standards in relation to indigenous peoples’ rights, including the elimination of the right of self-determination, would violate the peremptory norm that prohibits racial discrimination.

As one would have hoped should be self-evident to everyone, the very essence of international human rights is to establish limitations as to what national laws can stipulate. To suggest that indigenous peoples’ human rights should be subject to national legislation defeats the basic purpose of international human rights standard setting. In particular, the urgent need to raise national standards would be virtually nullified.

As indigenous peoples have repeatedly underlined, and all states that take indigenous rights seriously have recognized, two of the most fundamental rights in the *Declaration* are the right to self-determination and the right to lands, territories and natural resources. Yet the African Group proposal deletes or gravely undermines these rights, one by explicit elimination and one by rendering it subject to national legislation.

Finally, authorizing states to arbitrarily decide what groups within their borders constitute indigenous peoples could result in many indigenous peoples throughout the world being denied all of the rights in the *Declaration*. This approach runs directly counter to that set out in the Report of the Working Group of Experts on Indigenous Populations /Communities, which was adopted in 2003 by the African Commission. Again, the proposal introduces a discriminatory double standard; i.e. non-indigenous peoples are determined by criteria under international law, whereas indigenous peoples’ status as ‘peoples’ would be made subject to the good will of the state.

In conclusion, the African Group proposal not only is extreme and offensive to indigenous peoples, frankly, for the reasons just stated, it does not come across as serious. It is obvious that deliberations based on this proposal will never result in a *Declaration* acceptable to indigenous peoples and that can be adopted by the UN. Indeed, it is crystal clear that the proposal will not advance the consideration of the *Declaration*, as called for by the General Assembly.

Hence, it is self-evident that the alternative road forward, submitted on Thursday, 10 May 2007, by Mexico on behalf of the co-sponsor group, constitutes the only constructive way towards adoption of the *Declaration* during the UNGA's 61st session. We consequently reiterate our call for an adoption by the UNGA of the Indigenous *Declaration* as agreed by the Human Rights Council.

Even though we are sensitive to some of the concerns of the African Group, we do concur with the co-sponsor group that these concerns can be addressed through other means than amendments to the actual *Declaration* text. In particular, regional concerns should be resolved at regional levels in collaboration with indigenous peoples.

We thank you for your attention to our concerns and urge you to act to now conclude the consideration of the Declaration, as contained in the annex of the General Assembly's resolution, and based on the co-sponsor group's proposal.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Les Malezer', with a stylized flourish at the end.

Les Malezer
Chairperson
On behalf of the Indigenous Peoples' Caucus
And Regional Indigenous Peoples Caucuses