

25 July 2002

Grand Council of the Crees (Eyou Istchee)

**Statement on Standard-Setting Activities and the Promotion and Protection of
Indigenous Peoples' Human Rights**

1. The Grand Council of the Crees appreciates this opportunity to address the important issue of "Standard-setting activities", which is included in the agenda of this session of the Working Group.
2. In our view, this Working Group is a most appropriate forum for discussing standard-setting in the Indigenous context. Since its inception in 1982, this Working Group has opened the doors of the United Nations to Indigenous peoples so as to welcome and encourage our direct input. As a result, ~~Indigenous peoples worldwide currently have substantially increased access to the U.N. We wish to commend you for your precedent-setting contributions and continuing efforts to ensure democratic participation by Indigenous peoples in international matters.~~ Indigenous peoples worldwide currently have substantially increased access to the U.N. We wish to commend you for your precedent-setting contributions and continuing efforts to ensure democratic participation by Indigenous peoples in international matters.
3. The question of standard setting raises a number of key substantive and procedural matters. We will briefly highlight a few of them here.

Broad standard-setting mandate

4. First, it is important to underline that the standard-setting mandate of the Working Group on Indigenous Populations is forward-looking and aspirational. In 1982, the Economic and Social Council explicitly authorized the Sub-Commission to establish annually a working group to meet in order to:

Give special attention to the evolution of standards concerning the rights of indigenous peoples, taking account of both the similarities and the differences in the situations and aspirations of indigenous peoples throughout the world.

ECOSOC Res. 1982/34, 7 May 1982, quoted in *Report of the Working Group on Indigenous Populations on its eleventh session* (Chairperson/Rapporteur E.-I. Daes), U.N. Doc. E/CN.4/Sub.2/1993/29, 23 August 1993, p. 4, para. 1.

5. In other words, the Working Group's mandate is not restricted to standards and terminology that already exist under various international instruments. Further, in regard to the standard-setting work of this Working Group, the Commission on Human Rights has confirmed that:

International standards must be developed on the basis of the diverse realities of indigenous peoples in all parts of the world.

Report of the Working Group on Indigenous Populations of the Subcommission on Prevention of Discrimination and Protection of Minorities, U.N. Doc. E/CN.4/RES/1995/31, 3 March 1995, preamble.

6. Therefore, governments participating in the Working Group are not justified in seeking limitative changes to the *U.N. Declaration on the Rights of Indigenous Peoples* so as to ensure conformance with existing instruments. The overall text of the draft *Declaration* must effectively address the diverse and urgent human rights concerns of Indigenous peoples. It must reflect the right of Indigenous peoples to be different and not be assimilative in nature or intent.

Indivisible nature of human rights

7. Second, in terms of applying international criteria in the human rights context, all peoples - whether Indigenous or non-Indigenous - must be treated on an equal footing. This also means that the international community cannot determine that Indigenous peoples will have only a portion of "indivisible" human rights recognized regardless of future circumstances. As affirmed in the 1993 Vienna Declaration:

All human rights are universal, indivisible, interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the

same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and freedoms.

United Nations World Conference on Human Rights, *Vienna Declaration and Programme of Action*, adopted June 25, 1993, U.N. Doc. A/CONF.157/24 (Part I) at 20 (1993), (1993) 32 I.L.M. 1661, para. 5.

8. Yet some governments in the standard-setting process continue to seek to create discriminatory double standards. This is especially evident in regard to the right of Indigenous peoples to self-determination. We will not accept that the draft *Declaration* diminish in any way this inalienable human right, which is already affirmed for "all peoples" in the international human rights Covenants.

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

International Covenant on Civil and Political Rights, Art. 1, para. 1.

International Covenant on Economic, Social and Cultural Rights, Art. 1, para. 1.

Rights to self-determination and to development are interdependent

9. In considering the right to self-determination and the right to development, the indivisible, interdependent and interrelated nature of human rights are further illustrated. For Indigenous peoples, both these basic rights relate to development and both have essential economic, social, cultural, spiritual, political and environmental dimensions. With regard to both these rights, participating governments must not seek to undermine Indigenous peoples through the standard-setting process.

1. The right to development is an *inalienable human right* by virtue of which *every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development*, in which all human rights and fundamental freedoms can be fully realized.

2. *The human right to development also implies the full realisation of the right of peoples to self-determination, which includes, subject to relevant provisions of both International Covenants on Human Rights, the exercise of their inalienable right to full sovereignty over all their natural wealth and resources.* [Emphasis added]

Declaration on the Right to Development, adopted by the U.N. General Assembly, Dec. 4, 1986. U.N.G.A. Res. 41/128, 41 U.N.GAOR, Supp. (No. 53) U.N. Doc. A/41/925 (1986), Art. 1.

There is little sense in recognizing self-determination as a superior and inviolable principle if one does not recognize *at the same time* a 'right to development' for the peoples that have achieved self-determination. This right to development can only be an 'inherent' and 'built-in' right forming an inseparable part of the right to self-determination.

M. Bedjaoui, "The Right to Development" in M. Bedjaoui, ed., *International Law: Achievements and Prospects* (1991) 1178, at p. 1184.

The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations.

Rio Declaration on Environment and Development, U.N. Doc. A/Conf. 151/5/Rev. 1, June 13, 1992, 31 I.L.M. 874 (1992), Principle 3.

10. Development projects by state governments and other third parties have too often given rise to widespread and far-ranging abuses of Indigenous peoples' human rights. Therefore, it is critical that our right to development be fully affirmed in the draft *Declaration*. This is especially important in the contemporary context of globalization.

The experience of indigenous peoples and development clearly demonstrated that *human rights and development are inseparable*, for the abuse of the rights of indigenous peoples is principally a development issue. Forced development has deprived them of their human rights, in particular the *right to life and the right to their own means of subsistence, two of the most fundamental of all rights*. Indigenous peoples have been, in fact, victims of development policies which deprive them of their economic base - land and resources ... (para. 104, emphasis added)

Recognition of the right to development and human rights in the national legal system is not sufficient in itself. States must also ensure the means for the exercise and enjoyment of these rights on a basis of equal opportunity. (para. 146)

U.N. Commission on Human Rights, *Global Consultation on the Realization of the Right to Development as a Human Right: Report prepared by the Secretary-General pursuant to Commission on Human Rights resolution 1989/45*, U.N. Doc. E/CN.4/1990/9/ Rev. 1, 26 September 1990.

Purposes and Principles of U.N. must be respected

11. In light of the continuing attempts by States to invoke self-serving, double standards in the standard-setting process, we respectfully request this Working Group to remind participating governments that the U.N. and its Member States have a duty to respect the Purposes and Principles of the United Nations.

The Purposes of the United Nations are:

...

2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;

3. To achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion. (Art. 1)

The Organization and its Members, in pursuit of the Purposes stated in Article 1, shall act in accordance with the following Principles.

...

2. All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfill in good faith the obligations assumed by them in accordance with the present Charter. (Art. 2)

With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on

respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

...

c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion. (Art. 55)

Charter of the United Nations, Can. T.S. 1945 No. 76; [1976] Yrbk. U.N. 1043; 59 Stat. 1031, T.S. 993. Signed at San Francisco on June 26, 1945; entered into force on October 24, 1945.

12. The U.N. and its organs have no competence to undermine the human rights of Indigenous peoples. Government positions that would serve to do so must not receive any serious consideration, especially in this Working Group or other standard-setting forum.

Approval of draft *Declaration* and principle of Indigenous consent

13. In regard to the approval of the specific provisions and overall text of the draft *Declaration*, we as Indigenous peoples presently find ourselves in a perilous and inequitable position. Those Member States that have carried out – or continue to carry out – serious misdeeds and crimes against Indigenous peoples worldwide have the responsibility to determine what norms are suitable for approval by the United Nations.
14. As the historical and contemporary record makes clear, virtually all of the States – who have had dealings with Indigenous peoples and our territories, lands and resources – have engaged in acts of colonialism, land and resource dispossession, genocide, cultural genocide, or other grave violations of human rights. Therefore, it would be most unfair for the U.N. to allow these same States to determine the international standards that would apply in relation to Indigenous peoples.
15. In other situations involving gross violations of human rights or crimes against humanity, States that were complicit in these acts were not entrusted with establishing human rights norms for their victims.
16. The present situation of Indigenous peoples in the standard setting process is a unique one that requires exceptional and distinct consideration. Should procedural safeguards not be implemented, the status and rights of over 300 million Indigenous peoples may be adversely affected. This would defeat the central purpose of the draft *Declaration*.

17. As a minimum, Member States should only approve the draft Declaration and its specific provisions if representatives of Indigenous peoples do not oppose the proposed texts. Clearly, the principle of Indigenous consent must be fully respected. Furthermore, in no case should texts be approved if they are inconsistent with the Purposes and Principles of the United Nations.

18. In order to satisfactorily address this crucial procedural question, we would propose that the Working Group recommend full and timely study of this grave problem within the United Nations. Examination of this matter should take place solely in conjunction with the Indigenous peoples concerned.