

**COMMISSION ON HUMAN RIGHTS
Sub-Commission on the Promotion and
Protection of Human Rights
Working Group on Indigenous Populations
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Item 6 (b) of the provisional agenda

**JOINT STATEMENT ON THE FINAL PROGRAMME OF ACTION AND DRAFT
DECLARATION ACCEPTED IN DURBAN, SOUTH AFRICA IN SEPTEMBER 2002.**

Following the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance held in September 2002, a programme of action and a declaration was made. The Indigenous Caucus would like to draw the members of the Working Group on Indigenous Peoples to a number of issues and ongoing work of the Working Group.

- There are a number of recommendations relating to Indigenous Peoples. We will not itemize each recommendation but rather draw the attention of the members to monitoring and continued study of the constitutional, administrative, legislative, judicial and other measures to ensure that Indigenous Peoples rights and other measures of Indigenous Peoples rights are protected rather than the current policies of many states to force assimilation on Indigenous Peoples through incorporation of Indigenous Peoples into the state system rather than recognition of Indigenous Peoples as having rights to exist within their own territories using their own legislation and judicial systems as Indigenous Governments. In this regard, the Working Group should cooperate with the work of the Special Rapporteur Mr. Stavenhagen who is presently working on some of these issues. There is a critical need to monitor and report on Indigenous political prisoners and prisoners including women and children who are denied on a daily basis their basic human rights including their right to practise their traditional spiritual values.
- In regard to the specific paragraph 19 of the Programme of Action, we need to draw specific reference and attention. Indigenous Peoples have a lot of problems with internal state mechanisms related to rights of Indigenous Peoples. We draw attention to the particular problem of a state requiring Indigenous Peoples to extinguish their rights to lands and resources in order to reach an agreement with the state. Various colonizer states have called extinguishment by different names including certainty and a non-assertion of rights. The end product is the same: to require Indigenous Peoples to give up their fundamental rights to their lands and resources to find a resolution of long standing difficulties with the colonizer state. If racism is going to be eradicated, these kinds of state policies must conform to international legal norms by eliminating them from their domestic constitutions, policies and directives to bring themselves into conformity with international legal norms. The Working Group must continue to give full attention to the first part of its permanent mandate related to receiving information regarding recent developments within Indigenous territories. There should also be a study and a report by the Working Group on ways to eradicate the concepts of extinguishment, certainty and non-assertion clauses as being internationally null and void.
- The Working Group on Indigenous Peoples must study the way states are attempting to marginalize Indigenous Peoples into cultural components of the state as minorities rather than recognize that Indigenous Peoples lands and resources are being used by the colonizers and their agents: multinational corporations.
- The Working Group on Indigenous Peoples should undertake a review of the standards set out by the ILO with a view to the full recognition that Indigenous Peoples have a right to give their free prior and informed consent to any activities in their territories using their resources.

- The Working Group on Indigenous Peoples must study the attempts by various states to integrate Indigenous Peoples into the national economies and the discrimination against Indigenous Peoples when Indigenous Peoples are required to violate their own laws and teachings to be involved in those economies. Indigenous Peoples are often hired in the short-term so that corporations can gain access to Indigenous territories and resources. Once access is gained, Indigenous Peoples are pushed aside. Indigenous lands are destroyed and Indigenous Peoples are left on the side lines and blamed for their own unemployment rather than the racist system that does not value Indigenous Peoples and only values the territories and resources.
- The Working Group should be monitoring the work on the rights of Indigenous Women bearing in mind that the systematic discrimination against women has been doubled against Indigenous women. Non-indigenous women discriminate against Indigenous women in the name of promoting rights that is in fact devaluing and undermining the rights of Indigenous women.
- The Working Group on Indigenous Peoples has supported the study on Treaties made with Indigenous Peoples. The United Nations is going to have a seminar in December 2003 as a follow-up to the final report of the UN Treaty Study. It is critical that the report, its conclusions and recommendations of the seminar be tabled and discussed at the 2004 session of the Working Group as a separate agenda item.
- There is one final comment on the Declaration. At nearly every level of the state system, there is systematic racism. Unfortunately, this systematic racism has manifested itself with the inclusion of paragraph 24 of the Declaration from Durban, South Africa. Rather than making a declaration against racism, the document promotes racism against Indigenous Peoples. It seems to Indigenous Peoples that the right of self-determination can apply to "Peoples" but does not apply when Indigenous is added before "Peoples". Indigenous Peoples have been against this kind of language since the ILO included such language in their redrafting of Convention 107. The racism directed towards Indigenous Peoples is unfortunate since the conference was designed to eliminate racism. It is easier to understand why so many decades to eliminate racism continue to be failures. The Working Group and Sub-commission Experts must find ways to uphold their own findings on the issue. The Working Group members have been leaders in recognition of the rights of Indigenous Peoples and included language related to the right of self-determination in the Declaration on the Rights of Indigenous Peoples. Together, there must be a fight against such language in future documents.

Thank-you Mr. Chairman