



This year, the first of its five-year programme of work, the Working Group on Indigenous Populations has set itself two tasks: defining "indigenous populations" and investigating the question of land rights.

The International Commission of Jurists submits that after a general discussion on the problem of definition the Working Group may find it better to defer the drafting of a definition until the end of its programme of discussion on particular issues.

There are a number of reasons for this submission. Perhaps the most important is that the process of examining land rights, cultural rights and the like, will almost certainly aid in the task of definition.

In determining who has a right to property in land and to control over resources associated with it, the Working Group will inevitably need to consider what characteristics of indigenous people give rise to these rights. Furthermore it may prove that different characteristics give rise to different rights. The situation of indigenous people is not the same in every case, and if some rights attach to a wider group than others, this will only be established once the programme of examining particular rights is finished, not when it has just begun.

A second ground for deferring a definition is that advanced by Mr. José R. Martínez Cobo in his Study of the Problem of Discrimination against Indigenous Populations. In his conclusions (E/CN4/Sub2/1983/21/Add8) he wrote "that the question of a definition is one that must be left to the indigenous communities themselves." At the very least this implies a process of lengthy consultation, for the work of the Sub-Commission in this area has only just begun, and many groups have not yet become involved. They should not be denied the opportunity to participate in the task of definition.

Thirdly as the Special Rapporteur also pointed out, indigenous populations might be defined according to ancestry, culture, religion, tribe, community, cross-livelihood, language or group consciousness; but that each of these criteria is deficient. To apply any one extensively "would exclude a large proportion of other sectors of the population which would be classified as indigenous if different individual criteria were applied." In short, if insufficient care is taken, and relevant factors are overlooked, then some deserving groups may be omitted. What is more, if a flawed definition is adopted now, those groups may be denied their proper role in the deliberations of the Working Group on Indigenous Populations.

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In the ICJ's view it is better to defer settling upon a definition until it has received evidence from representatives of those who consider themselves to be indigenous people.

Finally the ICJ suggests that it may be found that a formal definition will not lead to greater certainty than is achieved by using the term "indigenous populations." This is one of those terms which convey with reasonable clarity the concept intended, but cannot be usefully broken down into component parts, or reduced to a succinct definition. The Special Rapporteur noted that no one criterion was adequate, and that accordingly in every one of the countries he studied multiple criteria were used. In the ICJ's view multiple criteria suitable for universal use would end up as a list of relevant factors, accompanied by the qualification that none were conclusive. The number and variety of indigenous populations in the world, and the differences in their circumstances, make such a result likely.

If this proves to be the case, the Working Group's time would be better spent in examining what substantive rights indigenous peoples should enjoy.