

# Permanent Forum on Indigenous Issues

## Theme of Indigenous Peoples Collective Rights to Their Lands, Territories and Natural Resources

Comment by Expert Member, Les Malezer  
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Thank you, Madam Chair.

Madam Chair, I begin by congratulating you on your election as Chairperson and am pleased to see that your leadership as Chairperson during last session has been appropriately respected.

I also explain that I was unable to take my place as the Expert Group Meeting earlier this year due to my poor physical health at that time.

I would therefore like to make a statement emphasising certain findings from that meeting as contained in the official report, and the importance of control over the resources by Indigenous Peoples in their lands and territories.

To begin with the Declaration on the Rights of Indigenous Peoples ('the Declaration') begins with important preambular statements regarding the standard for collective rights of Indigenous Peoples.

*PP 6 Concerned that indigenous peoples have suffered from historic injustices as a result of, inter alia, their colonization and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests,*

This paragraph reminds us that historical injustices, particularly the dispossession of lands, territories and resources, need to be addressed. But not only addressed through government-controlled procedures, but through impartial mechanisms.

Such process is clearly addressed in the Declaration in Articles 27, 37 and 40. These articles call for adjudication of disputation between the State and Indigenous Peoples, over the lands, territories and resources, through independent and impartial mechanism.

### *Article 27*

*States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.*

### *Article 37*

*1 Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or*

*their successors and to have States honour and respect such treaties, agreements and other constructive arrangements.*

2 *Nothing in this Declaration may be interpreted as diminishing or eliminating the rights of indigenous peoples contained in treaties, agreements and other constructive arrangements.*

*Article 40*

*Indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.*

In the Outcome Document of the World Conference of Indigenous Peoples the Member States resolved to commit to such impartial procedures and mechanisms, as can be seen in Paragraphs 19 and 20.

19. *We invite the Human Rights Council to consider examining the causes and consequences of violence against indigenous women and girls, in consultation with the Special Rapporteur on Violence Against Women, the Special Rapporteur on the Rights of Indigenous Peoples and other Special Procedures within their respective mandates. We also invite the Commission on the Status of Women to consider the issue of “the empowerment of indigenous women” at a future session.*

20. *We recognize commitments made by states, with respect to the United Nations Declaration on the Rights of Indigenous Peoples, to consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources.*

As a third point, Madam Chair, I refer to the expert study by Madam Erica Irene Daes, (E/CN.4/Sub.2/2004/30) entitled ‘Indigenous Peoples’ Permanent Sovereignty Over Natural Resources’

*The principle of permanent sovereignty over natural resources in modern law arose from the struggle of colonized peoples to achieve political and economic self-determination after the Second World War. The principle is this: Peoples and nations must have the authority to manage and control their natural resources and in doing so to enjoy the benefits of their development and conservation.*

(Para 6)

This expert study clarified that self-determination incorporates the right to permanent sovereignty over resources, not only the surface or natural resources but also the sub-surface resources. It remains a concern that the global instruments addressing environmental issues do not fully understand or respect the rights of Indigenous Peoples, as holders of the right of self-determination, have ownership of the resources, natural resources and genetic resources.

Finally, Madam Chair, I congratulate the participants of the Expert Group Meeting held earlier this year for their work and the subsequent excellent report. I note that their were a number of recommendations calling for further work by the Permanent Forum on Indigenous Issues.

Recommendations contained in Paras 53 and 54 call for greater awareness of the rights of Indigenous Peoples across States and the UN system. It is in the mandate of the Permanent Forum on Indigenous Issues to raise awareness of the rights of Indigenous Peoples within the UN system and Member States. Accordingly it is important that we give more attention to the right of ownership and control of resources and the associated sustainability and development.

Paras 58 to 61 identify more specific work to be undertaken by the Permanent Forum on Indigenous Issues. I hope that my colleagues will agree to continue our work under this theme and that we might find appropriate means to advance the rights and freedoms of Indigenous Peoples to development in their resources.

Thank you, Madam Chair.

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