

MADAM CHAIRMAN: MEMBERS OF THE WORKING GROUP AND REPRESENTATIVES OF INDIGENOUS PEOPLES THROUGHOUT THE WORLD:

AS A LAW PROFESSOR IN THE FIELD OF HUMAN RIGHTS, I THANK YOU FOR THE OPPORTUNITY TO ADDRESS YOU BRIEFLY CONCERNING RELIGIOUS FREEDOM AND INDIGENOUS PEOPLES.

PERMIT ME TO PREFACE MY REMARKS BY STATING THAT MY COMMENTS ARE THOSE OF AN INTERESTED SCHOLAR WHO WOULD LIKE TO OFFER SOME IDEAS THAT THE INDIGENOUS REPRESENTATIVES PRESENT MAY WANT TO CONSIDER IN PROPOSING THEIR RECOMMENDATIONS TO THE WORKING GROUP ON THE MATTER OF RELIGIOUS FREEDOM.

HAVING DEFENDED RELIGIOUS FREEDOM AS A LAWYER FOR OVER TEN YEARS, I HAVE DEVELOPED AN APPRECIATION FOR THE TECHNICALITIES OF LEGAL DRAFTING. FOR THAT REASON I HAVE TRIED MY HAND AT WRITING A DRAFT OF SIX ARTICLES CONCERNING RELIGIOUS FREEDOM AMONG INDIGENOUS PEOPLES WHICH I HAVE SUBMITTED TO THE WORKING GROUP.

COPIES HAVE BEEN DISTRIBUTED SOMEWHAT RANDOMLY TO INDIGENOUS REPRESENTATIVES. MORE COPIES ARE AVAILABLE ON THE BACK TABLE, I BELIEVE.

PLEASE DO NOT MISUNDERSTAND THIS DRAFT. THOSE OF US WHO TEACH LAW SOMETIMES SOUND AS THOUGH WE HAVE THE FINAL WORD ON EVERYTHING THAT COULD NOT BE FURTHER FROM THE TRUTH. THIS DRAFT IS A SUGGESTION. SOMETIMES IT IS EASIER TO THINK ABOUT SOMETHING AFTER SOMEONE HAS FIRST MADE A TRY TO GET IT DOWN ON PAPER. OBVIOUSLY I HOPE IT WILL BE OF BENEFIT, BUT I LEAVE IT TO YOU WHO KNOW BEST THE NEEDS OF THE INDIGENOUS PEOPLE TO DECIDE THAT FOR YOURSELVES.

I HAVE SUBMITTED A WRITTEN COMMENTARY TO THE WORKING GROUP THAT I WILL NOT ALLOW ME TO MAKE SIX GENERAL OBSERVATIONS. FIRST, MAY I SUGGEST REPEAT HERE.

THAT YOU CONSIDER INCLUDING IN YOUR FINAL VERSION OF THE PRINCIPLES OF INDIGENOUS RIGHTS CONCERNING RELIGION, PROVISIONS FOR PROTECTION OF INDIGENOUS RELIGIONS BOTH INSIDE INDIGENOUS TERRITORIES AND OUTSIDE THEM ARTICLES ONE AND TWO OF THE DRAFT ADDRESS THESE IDEAS.

SECOND, THAT YOU CONSIDER HOW THE FREEDOM OF CONSCIENCE AND BELIEF OF INDIGENOUS INDIVIDUALS SHOULD BE PROTECTED IN RELATION TO BOTH THE STATE AND THE INDIGENOUS COMMUNITY AS A WHOLE. ARTICLES 3, 4 and 6, SUBPARAGRAPH 12, OF THE DRAFT SUGGEST WAYS TO DO THIS

THIRD: THAT YOU CONSIDER HOW TO PREVENT CENSORSHIP AND TERRITORIAL BORDER RESTRICTIONS ON RELIGIOUS EXPRESSION. ARTICLE 5 PRESENTS ONE WAY THAT COULD BE DONE.

FOURTH: THAT YOU CONSIDER ENUMERATING IN DETAIL THE RIGHTS NEEDED FOR FULL INDIGENOUS RELIGIOUS EXPRESSION. ARTICLE 6 ATTEMPTS TO HELP IN THAT RESPECT. ON THIS POINT, NOTE THAT PARAGRAPH 4 OF THE PRELIMINARY PRINCIPLES EXPRESSED AFTER THE 1985 SESSION OF THE WORKING GROUP PROTECTS ONLY "TRADITIONS AND CEREMONIES." I WONDER WHETHER THAT LANGUAGE IS GOING TO BE AS BROAD AS YOU WANT TO PROTECT ALL OF YOUR RELIGIOUS PRACTICES, SOME OF WHICH MAY NOT CLEARLY BE "TRADITIONS" OR "CEREMONIES" BUT MAY BE VERY IMPORTANT. ARTICLE 6.1 SUGGESTS MORE INCLUSIVE LANGUAGE THAT YOU MAY WANT TO CONSIDER.

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ARTICLE 6.2 ALSO SUGGESTS LANGUAGE THAT WOULD PROTECT MORE PLACES OF RELIGIOUS SIGNIFICANCE THAN THE 1985 PRINCIPLES DO.

ARTICLES 6.3 THROUGH 6.10 ADD ADDITIONAL SPECIFIC FREEDOMS WHICH MAY BE REGARDED AS ESSENTIAL TO FULL RELIGIOUS EXPRESSION, INCLUDING PROPERTY RIGHTS, PERSONNEL, INSTITUTIONS, FINANCIAL SUPPORT, FAMILY RIGHTS, AND ACCOMMODATIONS OF INDIGENOUS RELIGION IN EMPLOYMENT.

FIFTH: MAY I PROPOSE THAT YOU INCLUDE STANDARDS FOR LIMITING THE AUTHORITY OF STATES TO INTERFERE WITH ANY OF THE RIGHTS GRANTED. ARTICLE 6.11, FOR EXAMPLE, WOULD SET A MUCH HIGHER STANDARD THAN IS USUALLY FOUND IN INTERNATIONAL HUMAN RIGHTS LAW. I BELIEVE INDIGENOUS RELIGIOUS RIGHTS UNIQUELY DESERVE SUCH HIGHER STANDARDS OF PROTECTION.

SIXTH AND FINALLY: A WORD ON THE THEORY BEHIND THESE PROPOSALS. INDIGENOUS RELIGIONS DO NOT RELY UPON THE FORCE OF LAW OR THE AUTHORITY OF THE STATE TO MAINTAIN THEIR RELIGIOUS TRADITIONS. INDIGENOUS PEOPLE PARTICIPATE IN THEIR COMMUNAL RELIGIOUS LIFE WILLINGLY AND VOLUNTARILY. INDIGENOUS RELIGIONS NEED WHAT ALL RELIGIONS NEED, FREEDOM FROM STATE INTERFERENCE SO THAT THEY CAN FLOURISH ACCORDING TO THE DEVOTION AND COMMITMENT OF THE PEOPLE.

HISTORY PROVES THAT GRANTING THE FORCE OF LAW TO ANY RELIGIOUS GROUP TO CONTROL THE RELIGIOUS PRACTICES OF INDIVIDUALS EVENTUALLY DESTROYS THE RELIGION IT WAS INTENDED TO PRESERVE, AND IT IMPOSES A TYRANNY OVER THE MINDS OF MEN AND WOMEN THAT IS CONTRARY TO THE LETTER AND THE SPIRIT OF HUMAN RIGHTS.

HERE ^{IN} GENEVA, AT THE ^{PROMENADE} 'DES BASTION', YOU WILL FIND A FAMOUS MONUMENT TO THE REFORMATION, HONORING RELIGIOUS LEADERS, ^{SUCH AS} JOHN CALVIN. CALVIN WAS A GREAT MAN IN MANY RESPECTS, BUT IN THE AREA OF RELIGIOUS FREEDOM HE MADE THE MISTAKE OF USING THE GOVERNMENT TO CONTROL THE RELIGIOUS PRACTICES OF THE PEOPLE. THE INTENT WAS TO PROTECT RELIGION, BUT THE RESULT WAS RELIGIOUS PERSECUTION AND BACKLASH AGAINST RELIGION.

LOOK AT HISTORY AND SEE WHETHER IT DOES NOT TEACH THAT RELIGION TRULY FLOURISHES ONLY WHEN IT EXISTS IN FREEDOM, ^{WITH EQUAL LEGAL PROTECTION FOR BOTH} GROUP EXPRESSION AND FOR INDIVIDUAL CONSCIENCE AND RELIGIOUS PRACTICE.

THE ONLY SURE PROTECTION FOR FREEDOM FOR THE MANY IS EQUAL FREEDOM FOR EACH ONE. ^{BY INDIGENOUS PEOPLES, HAVING SUFFERED RELIGIOUS}

MADAM CHAIRMAN: I APPRECIATE THE OPPORTUNITY TO MAKE THIS SUBMISSION AND TO PARTICIPATE IN THE HISTORIC DELIBERATIONS OF THIS WORKING GROUP. THANK YOU.

DISCRIMINATION,
NEW MODEL
FOR THE WORLD
TRUE RELIGIOUS
FREEDOM.

DRAFT ARTICLES OF INDIGENOUS RIGHTS TO RELIGIOUS FREEDOM

By David L. Llewellyn, Jr.*

Article 1. States shall recognize and protect by law the rights of indigenous communities within their national borders to maintain their traditional communal religious beliefs and practices. Neither the establishment of a state religion, nor the separation of religious institutions from the state, nor the freedom of any or all religions to promulgate their beliefs and practices within a state under law shall be prohibited by this article.

Article 2. Freedom of religious belief, expression and practice by indigenous persons when acting outside the jurisdiction of the governing authorities of their indigenous community shall be protected by the state in a manner identical to the protections afforded by the state for all other forms of religious belief, expression and practice.

Article 3. States and the governing authorities of indigenous communities shall recognize that the religious beliefs, expression and practices of individual members of an indigenous community are matters of personal conscience and must be respected accordingly. Indigenous communities that have distinctive communal religious beliefs or practices shall not discriminate against any member of the community for failure or refusal to adopt or maintain the religious beliefs or practices of the community, except that the community may restrict participation in its communal religious practices and teaching to persons who have adopted the religion of the community.

Article 4. The recognition of indigenous rights to freedom of religious belief, expression and practice to be exercised communally by indigenous people shall not detract from the personal and parental human rights to freedom of religious belief, expression and practice possessed by all persons under applicable international or municipal law.

Article 5. Freedom of religious expression and association among indigenous populations shall not be restricted by national borders or the boundaries of indigenous territories. Permission for people to cross, or to send information across, such borders or boundaries for religious purposes shall not be conditioned upon the basis of religious content.

Article 6. Indigenous people, collectively and individually, have the right to exercise their traditional communal religious beliefs and practices, including, but not limited to the following freedoms:

1. Freedom to associate and assemble with others for religious purposes, publicly and privately, and to manifest, teach, practice and observe indigenous religious traditions, ceremonies and practices.

2. Freedom to establish buildings and places devoted to religious uses and to travel to religious sites, whether inside or outside the indigenous territory or the state, and freedom to use, maintain and preserve such buildings, places and sites as required for religious observances. Where the state or private persons exclusively control religious sites or the only suitable places for religious observances, the state shall provide by law for reasonable access by indigenous people to such sites and places for religious observances and shall require that such sites and places be reasonably maintained and preserved for religious uses.

3. Freedom to produce or acquire and to use articles, equipment, materials and natural substances necessary or useful for religious practices, including dietary requirements. Where the state or private persons exclusively control the means of production or acquisition of such items, the state shall provide by law for reasonable access by indigenous people to the means of production or acquisition.

4. Freedom to train and select religious personnel to serve the religious needs of the people. The state shall permit travel inside and outside the country for religious training.

5. Freedom to write, publish and distribute publications and to communicate orally on matters of religion and belief with people and organizations within the indigenous community and others, nationally and internationally, including freedom to petition the state and international political entities concerning religious matters.

6. Freedom to establish and maintain educational, humanitarian and charitable institutions for the benefit of indigenous people and the support of their religion.

7. Freedom to solicit and receive contributions of money, property and donated services from members of the indigenous community and others for religious purposes, including educational, humanitarian and charitable uses.

8. Freedom to marry or divorce according to indigenous religious beliefs and practices and to raise and educate children according to the religious convictions of their parents. The state may provide by law additional requirements for the exercise of marital or parental rights not inconsistent with indigenous practices.

9. Freedom to commemorate the dead and to fulfill religious obligations toward the bodies of the dead in accordance with the religion and instructions of the deceased person.

10. Freedom to work without discrimination in employment. The state shall require by law that state and private employers shall reasonably accommodate the religious beliefs and practices of indigenous employees in work schedules and conditions of employment, including observance of days of rest and religious holidays.

11. The foregoing freedoms shall be subject only to such restrictions which are established by laws equally applicable to all persons within the state and essential to protect public health and safety. Where indigenous rights to religious belief, expression or practice are restricted by such laws, the state shall provide by law, wherever possible, reasonable exceptions from such restrictions to permit the exercise of these indigenous rights.

12. No indigenous person shall be coerced or compelled to believe or practice any religion, or any element thereof, against his will.

*David L. Llewellyn, Jr. is a Professor of Law at Simon Greenleaf School of Law, Anaheim, California, U.S.A.