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COMMISSION ON HUMAN RIGHTS
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REVIEW OF DEVELOPMENTS PERTAINING TO THE PROMOTION AND PROTECTION
OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS OF INDIGENOUS POPULATIONS,
INCLUDING ECONOMIC AND SOCIAL RELATIONS BETWEEN INDIGENOUS PEOPLES
AND STATES

Information received from Governments

Netherlands

The following text constitutes the summary, conclusions and recommendations
submitted by the Advisory Committee on Human Rights and Foreign Policy to the
Ministers for Foreign Affairs and Development Cooperation of the Netherlands.

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Summary, conclusions, and recommendations

1. On 18 June 1991, the Minister for Foreign Affairs and the Minister for Development Cooperation requested the Advisory Committee on Human Rights and Foreign Policy for a report on the specific rights of indigenous peoples and their individual members.
2. The Advisory Committee notes that indigenous peoples practically everywhere find themselves in the margins of society. They are confronted with decisions that are highly relevant to their interests without their having an equal voice in the decision-making process. As a result, an enormous wealth of culture is at risk of disappearing. At international level, too, the fortunes of indigenous peoples received scant attention until recently. Like other groups not having the status of sovereign States, indigenous peoples are still not full subjects of international law. In addition, their rights, and the rights of their individual members, are often violated.
3. Various aspects of the problems facing indigenous peoples are not directly related to human rights as embodied in universal conventions and declarations. However, as these problems demonstrate, human rights should not be regarded as inherently static concepts. Moreover, the aspects referred to are relevant to the achievement of self-determination. This advisory report therefore devotes attention to them. The report also deals with the problems of individual and collective rights and the potential for conflict between the two concepts. It devotes attention to existing material norms and the supervisory mechanisms that are relevant or potentially relevant to the protection of indigenous peoples. In addition, it covers the protection of the human environment in the broadest sense of the word.
4. The report also deals with the Draft Declaration on the rights of indigenous peoples, with possible measures and initiatives to promote their interests in 1993 (the International Year of the World's Indigenous People), and with long-term activities of importance to Dutch foreign policy, including the development cooperation policy.
5. The Advisory Committee favours Martinez Cobo's typology of indigenous peoples as a starting point in preparing, establishing, and implementing Dutch foreign policy. This typology reads: "Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them. They

form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems". This typology, which includes both subjective and objective criteria, is sufficiently general to do justice to the views and interests of various indigenous peoples. It also gives expression to the very close spiritual relationship that exists between indigenous peoples and their ancestral territories, including fishing grounds, which is a fundamental element in their cultures. This special relationship is generally seen as the main criterion.

6. Although the Advisory Committee recognises the importance of the distinction between indigenous peoples and minorities in general, it does not believe that this distinction should be dogmatically adhered to. Overriding priority should be attached to finding workable solutions to problems and safeguards against the threats identified in Chapter II. If these solutions and safeguards can be found in strategies that have been applied to the problems of minorities in general - and have therefore proved workable - there is every reason to apply these *mutatis mutandis* to the problems of indigenous peoples, too.

7. With regard to the protection of indigenous peoples and their individual members, it is always necessary to ascertain whether their problems can be adequately tackled or solved by invoking existing legislation or jurisprudence or by applying legal proceedings instituted by or on behalf of individuals, possibly in the form of a "group action", in analogy with the well known consumers-suits. Although there will be situations in which this approach is possibly not the most suitable, it has as a general principle considerable advantages since it allows recourse to a reasonably extensive existing systems of national and international legal protection and makes it possible to avoid the problems that arise if human rights are attributed to groups rather than individuals. However, the Advisory Committee emphasises that these procedures need to be strengthened on many points and that it would be wrong to rely too much on producing satisfactory results in the short term.

8. In accordance with their cultural traditions, many indigenous peoples emphasise the collective nature of their claims. The significance and status of collective rights are controversial, and there is disagreement as to the validity and legal definability of certain of these rights. In addition, collective human rights may conflict with individual human rights. The problems of collective rights vis-à-vis individual rights are not the main theme of this report, but they do merit further study. The Advisory Committee resolves to publish a separate report on this subject at some future date.

9. It is essential that the legal position of indigenous peoples in judicial proceedings be strengthened at national level. Guaranteed translation and interpreting facilities, for instance, would contribute to this, as would the application of indigenous law, in appropriate situations, instead of or in addition to existing rules and procedures. Furthermore, legal training aimed specifically at the members of indigenous peoples would broaden their access to the judiciary and the legal profession. The Netherlands Government should request UN agencies such as the Advisory Services Programme of the Centre for Human Rights to study these options and, where appropriate, make funds available for their implementation.

10. The premise underlying article 1 of the International Covenant on Civil and Political Rights (ICCPR) and of the International Covenant on Economic, Cultural and Social Rights (ICECSR) is that all peoples have a right to internal self-determination in order that they might preserve and develop their social, economic, and cultural identities. However, this right does not include the right to secede from existing sovereign States: indigenous peoples do not have a right to external self-determination. Current international law provides insufficient support for this. The right to internal self-determination implies however that indigenous peoples have a right to adequate representation within existing State bodies or a form of autonomy within existing States. It is first and foremost necessary that consultations be held between the indigenous peoples and the governments concerned. The UN should play a mediating and supervisory role in this process. In this respect, the Netherlands could play a contributory role. In addition to that, the Netherlands could take into account into its bilateral policy (for example in its development cooperation policy, see chapter VI) more clearly the right to self-determination of indigenous peoples.

11. The Convention on the Prevention and Punishment of the Crime of Genocide obliges States to prosecute those suspected of committing genocide within their territories, it does however not provide for an international monitoring mechanism. The Advisory Committee urges the Netherlands Government to do its utmost for the creation of an international mechanism to monitor compliance with the Genocide Convention, in particular for the creation of an international criminal court. The Advisory Committee also stresses the fact that discussions on genocide and similar large-scale violations of human rights far more attention is devoted to measures aimed at preventing or terminating such violations.

12. If the rights of indigenous peoples are to be adequately protected, intermediary structures will be necessary. In this connection, the Advisory Committee recommends that the Netherlands government, where appropriate, help to develop or to reinforce such representative and intermediary structures. It suggests that the Government set up, support, and fund educational programmes, pays for delegates to travel to meetings with similar organisations and symposia, and to participate in discussions with similar bodies and attend meetings and other activities organised by the UN or other international organisations. The Advisory Committee is also in favour of a certain international standardisation to determine the competence of representatives of indigenous peoples to represent that people.

13. With regard to economic rights, the emphasis centres is on the rights to occupy and use land, including rights to fishing grounds and the right to control natural resources. The Advisory Committee attaches great importance to the acknowledgement of the special relationship which exists between indigenous peoples and their land and water. She is aware of the complexities attendant on the examination of the often conflicting claims of indigenous peoples and of other groups or individuals. Nevertheless, account must always be taken of the specific nature of these rights, even if these are not recognised as such in the national legislation of the relevant country. This also applies, for instance, to the setting up and implementation of development projects. Indigenous peoples should be able to participate in the decision-making process in such a way that the impact of their views and entitlements is clearly felt. They must also be in the position to participate fully in implementation of projects.

14. Indigenous peoples are often the victims of large-scale, environmentally harmful programmes that sometimes even destroy the basis of their economic life. On the other hand, they sometimes find themselves the victims of environmentally protective measures aimed at limiting ecologically harmful economic activities. These measures sometimes go so far that indigenous peoples suffer disproportionately hard. In this respect, the Advisory Committee would like to note that dilemmas can arise in environmental protection, particularly in those cases in which indigenous peoples do not wish to adhere to a wholly traditional way of life. For a further discussion of this problem, the Committee refers to the report of the National Advisory Council for Development Cooperation.

15. The Advisory Committee has reservations about the arguments put forward by the Netherlands for not ratifying ILO Convention 169. The universality of human rights and the collective responsibility of all States to ensure that these are respected imply that the Netherlands is directly and in a general sense involved. By ratifying the Convention, the Netherlands could give a clear signal that it regards the problems of indigenous peoples to be of essential importance. The Advisory Committee also considers it essential that the principles embodied in Convention 169 be complied with as scrupulously as possible by the implementation of development projects funded by the Netherlands.

16. The right to preserve and develop their own culture is one which is of fundamental importance to indigenous peoples. Cultural rights include the right to education that is relevant to - or at least does not alienate to - their own culture, as well as the right to use and development of their own language. The infrastructure necessary for these purposes should be funded. Questions concerning the ownership and control of the cultural heritage - including the return of cultural objects - also merit attention. The Advisory Committee advocates a high priority for these problems at both multilateral and bilateral level.

17. The effective protection of indigenous peoples is obstructed by a lack of knowledge of their specific needs on the part of international forums, of governments, and of the indigenous peoples themselves. Improved access to international human rights procedures will make it easier to make visible and tackle many of the problems of indigenous peoples.

18. The reporting obligations embodied in international and regional human rights conventions are especially suitable for bringing the problems of indigenous peoples living within a state's borders to the attention of the relevant supervisory bodies. Since this now takes place only to a very limited extent, relevant questions should be incorporated in existing questionnaires. In addition, the Advisory Committee is in favour of draft reports made public in languages comprehensible to all population groups, and that these groups be given the option of commenting on draft reports before final versions are drawn up.

19. The Advisory Committee recommends that an optimal information exchange network be set up between the supervisory committees. It urges the Netherlands government to bring this idea to the attention of the various committees when their reports are being discussed at the UNGA.

20. Various committees monitoring the observance of international conventions have the competence to draft and publish recommendations, or "general comments". Under article 40, paragraph 4, of the ICCPR, for example, the Human Rights Committee has already published a large number of these "general comments". As yet these have not specifically addressed the position of indigenous peoples. The most suitable basis is provided by article 1 (especially the right to self-determination) and article 27 (protection of minorities). "General comments" on these articles could readily focus on the problems faced by indigenous peoples. Other such committees could also focus on the problems of indigenous peoples in their "general comments". The Advisory Committee is aware of the fact that the Netherlands government has only very limited means at its disposal with which to persuade convention committees to draft general recommendations or "general comments", since such committees are after all composed of independent members. One possible avenue might be for the Netherlands government to use the discussion of reports by convention committees in the UNGA to emphasise the desirability of general recommendations or "general comments" which explicitly address the problems of indigenous peoples, and to stress the importance of such a course of action.

21. Little use has hitherto been made of the States' complaints procedure. However, in considering the means at its disposal for influencing the human rights situation of indigenous peoples in other States, the Netherlands should not rule out the States' complaints procedure, possibly in collaboration with other like-minded States.

22. The question of whether indigenous peoples as such can make effective use of the individual right of petition as provided for by the First Optional Protocol to the ICCPR must be answered negative. For the time being, it seems that collective protection does not extend any further than the sum of all protection afforded to individuals. However, this protection may can be extended to individual rights which in certain circumstances are enjoyed collectively. Despite limitations, the use of this right by members of indigenous peoples remains an option. The same applies, *mutatis mutandis*, to other conventions containing the individual right of petition.

23. The system of the UN's thematic and country Rapporteurs in the field of human rights does take into account reporting of general information on violations of the rights of indigenous individuals and sometimes even of peoples. In the future, specific and systematic attention ought to be devoted to this problem. The Netherlands could help steer the discussions on these reports in this direction, and urge that the issue be explicitly mentioned in mandates wherever relevant.

24. The 1503 procedure, whereby petitions can be submitted by individuals, groups, and organisations (including indigenous peoples), may in the future serve as a useful supplement to other existing procedures, at least in cases where it applies and its confidential nature does not present an insuperable obstacle.

25. The ILO system provides for a number of possible options. The most commonly used petitioning procedure involves the Committee on Freedom of Association dealing with petitions concerning violations of the rights of working people to organise and bargain collectively (ILO Conventions 87 and 98). These petitions can also be directed against States that have not ratified these Conventions, which are after all concerned with human rights. This is an exception within the ILO system. Neither governments, nor national and international employers' and employees' organisations, need to be the most representative organisations in their countries. The procedure is often used, and proves to be extremely effective in cases involving the arrest of labour union members, their leaders and of leaders of employers' organisations. If representatives of indigenous peoples are members of labour unions, this procedure may also be important for them, because the organisation of interest groups is a significant cause of tension in many countries and often results in arrests.

26. A Voluntary Fund has been created in order to maximise participation by representatives of indigenous peoples in the work of the UN Working Group on Indigenous Populations. The Netherlands Government has made a substantial contribution to this Fund, and the Advisory Committee recommends that it continue to do so. The Committee also urges the Government to contribute to the UN Fund specifically set up to finance activities to be undertaken in the framework of the International Year for the World's Indigenous People.

27. The Advisory Committee noted the developments in respect to the Draft Declaration on the rights of indigenous peoples. The Committee considers it important that the Netherlands play an active role to ensure that the UNGA adopts this Declaration as soon as possible, provided that it meets with the approval of a significant majority of indigenous peoples. The Advisory Committee is also in favour of the UN Working Group on Indigenous Populations receiving a long-term mandate. In addition, the Committee considers it desirable that the UN proclaim another International Year - possibly in 2003 - and it recommends the Netherlands Government to work towards this end.

28. The Advisory Committee considers it very important that indigenous peoples be enabled to participate, from the identification stage onward, in negotiations concerning development

cooperation projects and programmes. In order to do so, the first requirement is active support to reinforce their organisational structures and funding to enable them to undertake initiatives of their own. The Netherlands should provide support, including funds, for such initiatives.

29. In line with the Latin American programmes, the Advisory Committee recommends that the Netherlands include inbuilt procedures in its bilateral policies for assessing the impact of these policies on indigenous peoples. In cases where indigenous peoples suffer unacceptable projects should be terminated, or not implemented. Insofar lack of awareness proves to be an obstacle in itself, the Advisory Committee recommends a specific information campaign be launched, targeted both at the Ministry of Foreign Affairs and at other ministries. In addition, the criteria for assessing bilateral aid projects should take into account of consequences which might ensue on the position of indigenous peoples living in recipient countries. Programmes should only be set up and implemented once the detailed knowledge of the indigenous peoples concerned has been collected. In this respect, the position of indigenous women merits particular attention. To this end, research should be conducted at an early date into education, health care, the burden of work, sexual abuse, the psychological consequences of deaths and "disappearances", and the views of indigenous women about the development of their communities.

30. Finally, the Advisory Committee recommends that at multilateral level the role of Specialised Agencies receive attention. In particular with a view to 1993, a number of programmes have been developed to benefit indigenous peoples, and implementation has begun on some of them. However, funds are limited, and unfortunately there is no cohesive policy. This is especially serious since the activities already undertaken in a number of policy areas may not be compatible with one another. The assessment criteria proposed for Dutch projects should also be applied to multilateral projects. The Netherlands should press for these criteria to become part of the standard procedure. Improvement is also called for in the coordination of the projects of these different organisations. Since the problem of coordination is also an issue at national level, the Dutch government should consider appointing a liaison officer for this purpose at the Ministry.