

## Editorial

In its first session the Human Rights Council adopted the UN Declaration on the Rights of Indigenous Peoples, with 30 voting in favour and 2 against (Canada – which had called for the vote – and Russia), with 12 abstentions. The vote took place after 21 years of discussion: 10 in the Working Group on Indigenous Peoples and the Sub-Commission on Prevention of Discrimination and Protection of Minorities; and 11 in the Working Group on the Draft Declaration (WGCD). The vote signalled a good beginning for the Human Rights Council.

The text they approved had been finalised by the Chairman, Luis Enrique Chavez, after the January 2006 session of the WGCD. Although it did not meet all the expectations of the indigenous delegations, it was considered by them to be the best possible text under the circumstances. Indigenous peoples' self discipline and coordination skills were very much in evidence, particularly on the part of those groups who envisioned the advantages that a stronger Declaration would have for their peoples. Self-discipline and coordination were not as much in evidence on the part of States.

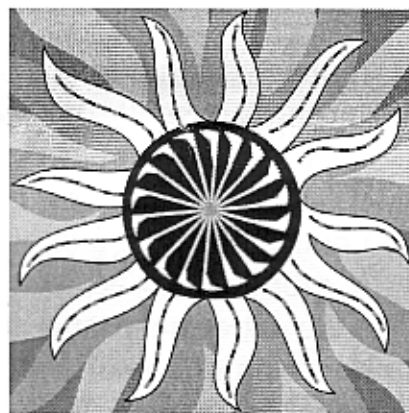
The battle is not completely over. It will be continued at the UN General Assembly (GA) from September until December. The Mexican Chair of the Human Rights Council, along with the Peruvian delegation, have signalled their intention to submit the resolution directly to the General Assembly for the adoption of the Declaration at its plenary session. However, certain States seem likely to want prior discussion of the text at the Third Committee of the GA in October. Such a discussion could lead eventually to additional changes, which would take place in the absence of indigenous representatives, as the ECOSOC status does not permit access at the level of the GA. This means that indigenous peoples will still have much to do behind the scenes to prevent a weakening of the text.

During the final months of 2006, indigenous peoples will also have the task to work on the review of the human rights mandates, mechanisms, functions and responsibilities that the Human Rights Council will undertake in September. In anticipation of this, the Indigenous Caucus met several times during the 24<sup>th</sup> session of the Working Group on Indigenous Peoples to refine a consensus statement addressed in particular to the Chair of the Human Rights Council. The text recommends the creation of a subsidiary Human Rights Council body on indigenous peoples, a body that would cover all the aspects of the Human Rights Council's mandate, including the development of standards and the review of developments of indigenous peoples' human rights. This body should be open to all indigenous peoples.

The process of adopting the Declaration is not yet finished, but the indigenous delegations are already making preparations for its implementation by developing application guidelines within the Human Rights Council. This is the only way that the Declaration can result in real changes to the daily lives of their communities. Once again their considerable efforts, undertaken with very limited resources, must be applauded.

## Table of contents

<b>Editorial</b>	<b>1</b>
<b>Human Rights Council, First session, June 2006</b>	<b>2</b>
Consideration of the WGCD Report	2
Vote on the Declaration on the Rights of IPs	7
IPs' Caucus Closing Statement	10
Human Rights Council Resolution 2006/2	10
<b>UN Declaration on the Rights of IPs</b>	<b>10</b>



### Contributors to this issue

Pierrette Birraux, Geneviève Herold

### Translation

Virginia Alimonda, Karen Smith

### Layout

Isabelle Grobet

The reproduction and dissemination of information contained in the *Update* is welcome provided sources are cited.

This issue is available in English, Spanish, French and Russian.

Original version: printed and Internet ([www.docip.org](http://www.docip.org)) English text.



# Human Rights Council

First session, Geneva, 19 – 30 June 2006

During its first session, on June 27<sup>th</sup> 2006, the newly established Human Rights Council considered the report of the 11<sup>th</sup> session of the WGCD, which had taken place in December 2005 and January 2006. A draft resolution was tabled by Peru and other 45 co-sponsors, proposing to adopt the draft Declaration prepared by the Chair after the last session of the WGCD, and to submit it for adoption by the General Assembly at its 2006 session. Canada requested that the Council “authorize further consultations based on the Chairperson Rapporteur’s text, reporting progress back to the next session of the Council, with the aim of developing specific proposals to achieve the broadest possible agreement and to provide for the adoption of a final draft Declaration [...] as soon as possible”. However, the Chair’s text was adopted as such and became, on June 29<sup>th</sup>, the UN Declaration on the Rights of IPs, by a vote of 30 in favour, with 2 against and 12 abstentions.

## Consideration of the Report of the Working Group on the Draft Declaration on the Rights of IPs<sup>1</sup>

Luis Enrique Chávez, Chairperson-Rapporteur of the Working Group on the Draft Declaration, comments Annex 1 of the report on the 11<sup>th</sup> session of the WGCD (E/CN.4/2006/79), which allows to understand how the discussion has evolved, the pending questions, and

possible solutions. The entire preambular section and most articles of the draft Declaration (DD) enjoy agreement. After the 11<sup>th</sup> session, the Chair presented a proposal for the entire DD, with suggestions for the 12 articles that do not enjoy agreement. This proposal, known as the Chair’s text, appears in the third column of Annex 1 of document E/CN.4/2006/79.<sup>2</sup>

Regarding the issue of self-determination: the original Article 3 remains; a new Article 3bis (Article 31 of the 1994 Sub-Commission text) clarifies the meaning that the Declaration grants to the right to self-determination, focusing on the internal and local affairs of IPs.<sup>3</sup> No explicit reference to territorial integrity is included, as indigenous peoples (IPs) wanting to secede could invoke Article 1 of both Human Rights Covenants. The real threat to the territorial integrity of States is the situation of ongoing postponement experienced by many IPs. For better clarity, Article 45 states that IPs cannot invoke the Declaration to carry out acts contrary to the UN Charter; it ensures the compatibility of the Declaration with international human rights law.

On free prior and informed consent, Article 20 does not establish a power of veto for IPs, but an obligation for States to consult in good faith with IPs to obtain their consent. Article 39 contains solutions for possible conflicts during implementation of the Declaration. The Chair’s text includes the right to redress, as IPs should not have a lower level of protection than anybody else.

For the section on lands, territories and resources, the Chair has chosen the proposals that received better support in the WGCD. In addition, the Chair has inferred from informal consultations that Article 8 (on self-identification) and Article 11 (on protection during armed conflicts) of the original 1994 Sub-Commission text are not essential in the Declaration. Consensus in the WGCD is not a realistic objective. The balance reached should be valued as the first step of a process to be consolidated (also MEXICO). The Council should not let slip this historical opportunity to adopt the Declaration on the Rights of IPs.

<sup>2</sup> See p. 10 of this Update.

<sup>3</sup> Whenever articles are referred to in this summary, the reference is the numbering of articles in the Chair’s text, which slightly differs from the definitive numbering in the adopted Declaration. See also our explanation on page 10, at the beginning of the adopted text of the Declaration.

<sup>1</sup> This summary is based on oral and written statements orally presented on the floor on the 27<sup>th</sup> and 29<sup>th</sup> of June 2006, as well as on the UN press releases.

Most of the speakers commended the Chair for his work (MEXICO, GRULAC, BRAZIL, CHINA, SOUTH AFRICA, EUROPEAN UNION, GUATEMALA, PHILIPPINES, CAMEROON, URUGUAY, NORDIC COUNTRIES, FRANCE, PERU, SPAIN, IRAN, DEMOCRATIC REPUBLIC OF CONGO, PANAMA). The participants to the WGCD were also commended (GRULAC, BRAZIL, GUATEMALA, SOUTH AFRICA, EU, FRANCE, NORDIC COUNTRIES).

The Chair's text is considered by most as striking a fair balance between IPs' and States' interests (MEXICO, BRAZIL, GUATEMALA, JAPAN, PERU, SPAIN, GERMANY, Latin American Indigenous Caucus, Russian Region Indigenous Caucus, North American Indigenous Caucus). It is the best possible outcome of the WGCD (MEXICO, EU, NORDIC COUNTRIES, Pacific Indigenous Caucus). It enjoys the support of the majority (MEXICO, CHINA, GUATEMALA, SPAIN, PERU, SWITZERLAND, MAURITIUS, Russian Region Indigenous Caucus).

For many speakers the Declaration will allow for a new relationship between IPs and States, (Luis Enrique Chávez, MEXICO, GRULAC, NORDIC COUNTRIES, PANAMA, PERU, Latin American Indigenous Caucus, ICC/SC, CAPAJ). Although not legally binding, the Declaration will help to enhance the rights of IPs (MEXICO, PERU, GERMANY, UNITED KINGDOM).

Some delegations called for a prolongation of the negotiations, to discuss the Chair's proposal and reach a wider agreement on the final Declaration (CANADA, RUSSIAN FEDERATION, PHILIPPINES, AUSTRALIA, NEW ZEALAND and the USA). The adoption of this text before the WGCD discuss it would set a negative precedent regarding the Human Rights Council's work (RUSSIAN FEDERATION, JAPAN, PHILIPPINES, AUSTRALIA, NEW ZEALAND and the USA).

However, further negotiations are not considered as being capable of bringing a major consensus, this would rather weaken the DD (MEXICO, GUATEMALA, NORDIC COUNTRIES, CUBA, SPAIN, PANAMA, PERU, North American Indigenous Caucus, ICC/SC). The AFRICAN GROUP, CAMEROON, PERU, BOLIVIA and SWITZERLAND called to an adoption of the Chair's text by consensus. MEXICO, the EU, JAPAN, MAURITIUS, the UNITED KINGDOM, AUSTRALIA, NEW ZEALAND and the USA regretted that a consensus could not be possible.

MEXICO, GRULAC, BRAZIL, URUGUAY, ECUADOR, and the Latin American Indigenous Caucus mention that this is the time for the Human Rights Council to send a positive signal on the protection of the rights of IPs. GRULAC, CHINA and the North American Indigenous Caucus recall the September 2005 commitment by the Heads of States and Governments to advance the promotion of the human rights of IPs at all levels and to adopt as soon as possible a Declaration on the Rights of IPs.

#### Africa

ALGERIA, on behalf of the AFRICAN GROUP, welcomes that the Chair has been able to finally come up with a text, which the African Group fully supports (also MEXICO, EU, URUGUAY, SPAIN, DEMOCRATIC REPUBLIC OF CONGO).

### Member States of the Human Rights Council

*The Member States of the Human Rights Council were elected by the General Assembly on May 9<sup>th</sup>, 2006. (In brackets is the term of membership for each elected Member.)*

#### African States (13 seats)

Algeria (2007), Cameroon (2009), Djibouti (2009), Gabon (2008), Ghana (2008), Mali (2008), Mauritius (2009), Morocco (2007), Nigeria (2009), Senegal (2009), South Africa (2007), Tunisia (2007), Zambia (2008).

#### Latin American & Caribbean States (8 seats)

Argentina (2007), Brazil (2008), Cuba (2009), Ecuador (2007), Guatemala (2008), Mexico (2009), Peru (2008), Uruguay (2009).

#### Asian States (13 seats)

Bahrain (2007), Bangladesh (2009), China (2009), India (2007), Indonesia (2007), Japan (2008), Jordan (2009), Malaysia (2009), Pakistan (2008), Philippines (2007), Republic of Korea (2008), Saudi Arabia (2009), Sri Lanka (2008).

#### Western Europe & Other States (7 seats)

Canada (2009), Finland (2007), France (2008), Germany (2009), Netherlands (2007), Switzerland (2009), United Kingdom (2008).

#### Eastern European States (6 seats)

Azerbaijan (2009), Czech Republic (2007), Poland (2007), Romania (2008), Russian Federation (2009), Ukraine (2008).

*Until the end of the Fourth session, to be held from March 12<sup>th</sup> to April 6<sup>th</sup> 2007, the Chair of the Human Rights Council is Mexico; the Vice-Chairs are the Czech Republic, Jordan, Morocco and Switzerland.*

SOUTH AFRICA reiterates the call by the Secretary-General for the Council to adopt this Declaration, in order to begin its work with tangible outcomes (also African Indigenous Caucus). South Africa reaffirms its support for the process and wishes to see its successful conclusion (also JAPAN).

CAMEROON has made progress in the protection, promotion and implementation of IPs' rights. Cameroon regrets the lack of consensus on the issues of lands, of natural resources and of collective rights, and calls upon the spirit of conciliation of all delegations to adopt the Declaration by consensus.

The DEMOCRATIC REPUBLIC OF CONGO (DRC) appeals to Member States to adopt the DD. For several decades, the situation of IPs has not been sufficiently addressed

by the international community. In the 21<sup>st</sup> century, there is still some form of discrimination against some parts of the population of the world. This is why the DRC has elaborated an innovative draft Act for the protection and promotion of the Pygmy peoples.

The **African Indigenous Caucus** hopes that the Council will, in its first session, adopt the Declaration on the Rights of IPs as a universal standard-setting, non-binding instrument which will demonstrate to the world a break from the discredited past. The African Caucus urges African countries not to be influenced by States that have voted against the Declaration on the Right to Development and the Durban Declaration on Racism. Several African countries, such as Morocco and Algeria, Burundi, and South Africa, have adopted important domestic instruments to promote and protect the rights of IPs. In addition, the African Commission on Human and Peoples Rights adopted in 2003 a resolution on the rights of IPs in Africa.

#### South and Central America

**BRAZIL**, on behalf of **GRULAC**, states that the DD recognises the historical legacy that IPs are suffering from (also **CHINA, UNITED KINGDOM**), and establishes measures for their survival and development, and to redress historic wrongs (also **URUGUAY**). IPs are particularly vulnerable, having been victims of discrimination for centuries (also **IRAN, PERU**); being free and equal in dignity and rights, they should not suffer from any discrimination (also **MEXICO**), which is linked to poverty and marginalisation. The common work against racism safeguards the dignity and just aspirations of all, and strengthens peaceful coexistence and democracy. This is why the GRULAC countries have worked actively in order to ensure that the Declaration will be useful for all peoples.

**BRAZIL** recalls the long and complex negotiation on the DD (also **GUATEMALA, ECUADOR, FRANCE, BOLIVIA, North American Indigenous Caucus**). The Chair's text, although not ideal (also **CHINA, MEXICO**), revitalises the core principle of non-discrimination in human rights, acknowledges diversity as richness and asserts the importance of IPs' past and present contributions to the development of states. The Declaration will contribute to democracy, good governance, stability and equity, and to combat injustices and promote harmony in the societies in which IPs live. IPs' rights and the political unity and territorial integrity of the sovereign States they inhabit are mutually reinforcing.

**MEXICO** underlines that amendments proposed by the few States and IPs expressing concerns during the last negotiations are included in the Chair's text. An important number of provisions have been agreed upon thanks to the flexibility of all (also **SPAIN**). Some years ago Mexico's Constitution granted autonomy and self-determination to IPs, thus bringing a better coordination and dialogue. Denying IPs their rights would mean

to repeat a sad history. The Declaration is about the right of being different in complete liberty.

As part of its 1995 domestic peace agreement, aiming at overcoming racism and exclusion towards IPs in the State's policies, **GUATEMALA** is committed to actively work for the adoption of the DD. In the WGCD, Guatemala has witnessed the enormous efforts by IPs and States interested in having a Declaration adopted by consensus that recognises the rights historically denied to IPs. States must correspond in good faith to the flexibility shown by IPs.

**URUGUAY** wishes to combat all forms of discrimination, including against the IPs.

**ECUADOR** acknowledges IPs as part of its historical roots and has worked hard, from the very beginning, in the WGCD.

**CUBA** has severe misgivings regarding the Chair's text: it has not been approved by the WGCD; provisions of great importance to IPs do not enjoy consensus. However, it is necessary to have a fresh start in the Council; the WGCD's failure to arrive at a final text had contributed to the discredit of the Commission on Human Rights. Cuba supports the adoption of the Chair's text and its submission to the General Assembly at its next session, given the increasing support of indigenous organisations to this text. In addition, consensus exists among the GRULAC members and Cuba attaches particular importance to common regional positions in the Council.

**PERU** underscores that the Chair's text is the reflection of wide consultations aiming at consensus on a very difficult matter, in order to have a Declaration on the rights of IPs adopted at this session of the Council. Protection of the victims from the State has been the overall objective. IPs' rights to their lands, territories and resources, as well as to preserve and strengthen their own political, economic, religious and legal institutions, should be recognised.

Together with the UN and OAS, **PANAMA** believes that IPs' rights are a fundamental pillar for the integral respect of human rights and the fight against discrimination, as well as a matter of legitimate preoccupation for the international community. More than 20 years of constructive dialogue in the WGCD represent a good basis for adoption of the Chair's text, in order to pay a historic debt to IPs.

**BOLIVIA** is proud to refer to the subject of IPs in the framework of the Human Rights Council; its Government, now in the hands of IPs, seeks to bring about changes democratically and with the participation of all citizens. The Declaration is a first and significant step in the right direction, particularly important for thousands of peoples and for many States. Its adoption by consensus would ensure effective recognition through respect for traditions and customs, territories and consultation mechanisms already recognised by ILO Convention 169 and the Special Rapporteurs on IPs.



CHILE's democratic governments have recognised the country's ethnic and cultural diversity, and have assumed important commitments towards IPs' rights, including the ratification of ILO Convention 169, increasing IPs' participation, strengthening the identity of IPs living in cities and ending the discrimination against them. Chile is committed to the adoption of the DD. The continued review of the draft may have allowed for a wider consensus and greater legitimacy to be reached. Without prejudice to its position regarding some provisions of the Declaration, in particular regarding self-determination, Chile supports the consideration of the DD now.

The **Latin American Indigenous Caucus** thanks all States that have called for the swift adoption of the DD. This document is coherent with the evolution of international law and results from the highest consensus between IPs and States. In the Council's hands lays the destiny of 350'000 indigenous persons around the world. The Declaration seeks to progressively eliminate the discrimination experienced by IPs and is consistent with the Millennium Development Goals, in particular those of eliminating hunger and poverty (also **Pacific Indigenous Caucus**).

The Chair's text recognises the right of IPs to self-determination, in accordance with both UN Human Rights Covenants. **CAPAJ** ratify their commitment to live in harmony with Mother Earth and humankind, something that will be possible with the Declaration being implemented by governments. This is the time to heal the Earth where we all live, and the Human Rights Council belongs to this time.

Amendments submitted by **IMTA** to the WGCD were ignored. **IMTA** now submit the draft decision A/HRC/1/NGO/1 to the Council. No progress towards general consensus has been made on the DD, due to the lack of political will from States. Western countries are directly responsible for the failure to have the Declaration adopted in the framework of the Decade. They have undermined the minimum standards contained in the original 1994 Sub-Commission text (also **ICSA**).

**ICSA** detail the reasons why they consider the Chair's text as unacceptable. It is necessary to take a breathing space so as to resume the debate on the DD in new conditions. The original DD is still the only one that preserves IPs' rights intact.

#### **Europe, Russia and the Circumpolar**

The **RUSSIAN FEDERATION** gives considerable importance to IPs' rights in its policies and has participated in the WGCD (also **JAPAN, INDIA**), to create a balanced document that would orient both States and IPs, and expand possibilities for their integrated development. Dialogue in the WGCD has been important. However, the Russian Federation objects to the interruption of discussions, and the submission of an unapproved, unacceptable text to the Council.

**AUSTRIA**, on behalf of the **EUROPEAN UNION (EU)**, recalls that the WGCD 11<sup>th</sup> session was to be the last one. Although all articles could not enjoy consensus then, the crucial elements of compromise became clearer and the required Chair's text would allow adoption of a strong Declaration. The negotiation in the WGCD was challenging, but particularly inclusive in the UN by involving IPs on an equal footing with States (also **PERU**).

The adoption of the Declaration on the Rights of IPs would contribute to implement a worldwide ethic for mankind's future, while keeping in mind his origins and links with nature. **FRANCE** considers that the Declaration complements the framework of UN norms for the promotion and protection of human rights (also **URUGUAY, DRC, MAURITIUS**), without threatening the existing individual rights and freedoms. Owing to France's founding principles, collective rights cannot prevail over individual rights. The right to self-determination and local consultations such as mentioned in Articles 3, 19, 20 and 30 are to be exercised in accordance with constitutional norms, as is Article 35 about international relationships. France reaffirms its attachment to the international human rights standards and democratic values and calls to all members to adopt the Declaration (also **MEXICO, ECUADOR, SPAIN, CHINA, PANAMA, GUATEMALA, Latin American Indigenous Caucus, African Indigenous Caucus, Asian Indigenous Caucus, Pacific Indigenous Caucus, ICC/SC, AI/ACPD/IFHR/FWCC/ICJ/ISHR/NCIV/RD**).

**FINLAND**, on behalf of the Nordic Countries **DENMARK, ICELAND, NORWAY, SWEDEN** and **ESTONIA**, refers to the first International Decade of the World's IPs major goals: the Permanent Forum for Indigenous Issues (PF) was established, and the DD is now finalised (also **UNITED KINGDOM**). In its 5<sup>th</sup> session the PF recommended the adoption without amendment of the Chair's text; the Nordic countries, the Nordic Saami Parliaments and the Greenland Home Rule Government support this view (also **North American Indigenous Caucus, Russian Region Indigenous Caucus**). The negotiations on the DD were not easy; no party can claim that the result is perfect (also **EU**). A wide range of problems was solved in the WGCD, which raised new awareness. The DD is an important tool in enhancing the promotion and protection of IPs' rights (also **SOUTH AFRICA, UNITED KINGDOM**), and in underscoring the principle of their full and effective participation in decision-making processes. The Council must live up to the commitment with IPs, and IPs shall be able to participate whenever issues regarding them will be discussed in the Council (also **North American Indigenous Caucus**).

The **Russian Region Indigenous Caucus** recalls the difficult negotiations during the WGCD and the price of compromise formulas. The Russian Region Caucus applauds the States that are sponsoring the draft resolution for the adoption of the DD, but is disappointed that Russia is not among them, despite repeated state-



ments of support by its diplomats during the last years. The Russian Federation should abstain from voting on this resolution.

Despite proposals put forward at the WGCD by ICC and SC to accommodate State concerns, and which are contained in the Chair's text, the USA, Australia and New Zealand remain entrenched in their alarmist interpretation of the text, trying to undermine this fundamental human rights document (also **Latin American Indigenous Caucus, Russian Region Indigenous Caucus**). Human rights are relative and not absolute in nature. IPs and States must remain vigilant against such an aggressive politisation of the Declaration, at the Council and at the General Assembly. Canada's action should be reminded during the Council's initial peer review (also **Asian Indigenous Caucus**).

### North America

Since the mid 1980's CANADA has been working to develop an international instrument to promote the human rights of every indigenous person and the collective rights of IPs. On many articles of the DD agreement could only be reached recently. On some key issues the Chair's text is not precise enough; further improvements are both possible and necessary.

The **North American Indigenous Caucus** recalls the introductory statements by the High Commissioner for Human Rights and the Secretary-General, urging the new Council members to work for the advancement of human rights. However, a Member State and an observer State from North America have failed to honour these calls with their positions on the DD. It is ironic and sad that, while pointing their fingers at other States with accusations of human rights violations, those States continue to violate, extinguish and deny the rights of IPs at home. Some IPs continue to prefer a text which would be stronger than the Chair's text, and a great many IPs see this text as an acceptable compromise that upholds the necessary requirements of basic rights such as Treaty rights, self-determination, land rights, and free prior and informed consent.

ILRC/CPN, supported by NN, recall that the IPs came to the Commission in 1977 to win the recognition of their rights in international law (also ICSA). That goal has not yet been achieved. States have a continuing obligation to seek consensus on a strong and principled Declaration and to give universal recognition to IPs' rights in international law. Submitting the DD to a vote at this time would be a defeatist act, with practically no benefit for IPs (also BANGLADESH). The Chair's text is flawed and uncompleted.

IPNC have exited the deliberations on the DD but they will not stand in the way of promoting the strongest possible recognition and protection for the rights of IPs.

### Asia and the Pacific

AUSTRALIA, NEW ZEALAND and the USA state that the Chair's text is risking conflicting interpretations, whereas such a Declaration should be clear, capable of implementation (also CANADA), consistent with international law, non-discriminatory and able to stand the test of time. The provisions on self-determination could be interpreted as conferring a unilateral right of self-determination upon a specific subset of the national population. Article 20 appears to confer to a sub-national group a power of veto over domestic laws (also CANADA). The provisions on lands and territories ignore third parties' rights. The human rights of all individuals seem to be secondary; this is in contradiction with the intent of the WGCD. Many Member States of the Council did not take an active part to the negotiations on the DD, while many of their indigenous minorities were actively arguing against language aiming at safeguarding the political and territorial integrity of States.

As a unique segment of CHINA society, IPs deserve protection of their human rights, fundamental freedoms, and customs; the international community must answer their call (also ECUADOR, DRC, MAURITIUS, IRAN). After 11 years, IPs are still awaiting a Declaration on their rights. China is ready to support the adoption of the present text, or the continuation of the debates.

The Council should ensure that the Declaration enjoys the support of the maximum number of States, including of those where a significant number of IPs reside. INDIA suggests reconciling differing viewpoints so as to enjoy an even wider consensus for the adoption of the Chair's text.

BANGLADESH says the Chair's text has not been discussed collectively (also CANADA, AUSTRALIA, NEW ZEALAND and the USA). The DD should wait until the Council is ready to address it (also PHILIPPINES); other issues deserve its greater attention, such as the right to development.

The PHILIPPINES wishes the early adoption of a Declaration.

The **Pacific Indigenous Caucus** makes clear that the Chair's text is a collective outcome of the WGCD. Being an indigenous region, the Pacific Region is not directly represented in human rights matters at the UN. In the new Council, the representative for the Pacific Region seems to be Canada, which is called to support the immediate adoption of the Declaration by consensus. **Maori** of Aotearoa require discussing the text, however they do not support the position of New Zealand. The few States expressing intransigent positions have been found to be discriminatory against IPs. There is no reason to believe they will at some point change their viewpoints to support a consensus on any reasonable, non-discriminatory standard for IPs (also **Asian Indigenous Caucus**). The Pacific Caucus considers the overdue adoption of the DD as a priority action for the UN and the

Second Decade (also **Asian Indigenous Caucus**); it is necessary to adequately address the abuses of IPs' human rights. The Pacific Caucus provides a list of UN documents that support the adoption of the DD.

Most of the provisions in the Chair's text were reached by consensus. This text is not perfect but does capture the basic aspirations and rights that IPs in Asia would like their Governments to promote. The **Asian Indigenous Caucus** calls on all Asian States to adopt the Declaration, as a token of the sincerity of their pledge for human rights; they should not use their absence from the negotiations as an excuse to call for more time to consider the Chair's text. The adoption of the Declaration will be recorded in history and by IPs' future generations. There is still a long way to go to reach a situation where IPs' rights are respected, but the adoption of the Declaration is the first step.

### Middle East

**IRAN** underlines that the international community has long acknowledged that the distinct cultures and languages of IPs deserve protection. Some countries are still not prepared to accept that IPs are entitled to all human rights, including the right to own the land in the countries in which they live. The DD represents a positive development for the basic rights and fundamental freedoms in general, and of IPs in particular.

**AI/ACPD/IFHR/FWCC/ICJ/ISHR/NCIV/RD**, supported by other 27 NGOs, say that in every region of the world, IPs are suffering gross violations of their fundamental human rights as the consequence of systematic discrimination, historic injustices and ongoing marginalisation. The Council is responsible for promoting universal respect for the protection of all human rights and fundamental freedoms. One of the most urgently needed and long overdue human rights standards is ready for adoption. The Chair's text is the culmination of exhaustive deliberations among States and IPs. Given the strong support it enjoys, there is no justification for further delay.

**ISHR** underscore that while Canada is proposing to the Council a period of consultation and a report back in a few months, the Canadian Minister for Indian Affairs is known to have commented (also **ICC/SC**) that the Declaration "is very radical" and that it should be "sent back to the drawing board" for two more years. Voting for the Canadian amendment will therefore mean voting against the Declaration.

In his closing comments, **Luis Enrique Chávez** underscores that his proposal enjoys no consensus but a wide support. Regarding further discussion, there are several alternatives but no clear consensus. The WGCD was unique in the UN system, given its participants and

the *sui generis* mechanism established to cover the subject. The solutions appropriate for the WGCD cannot be used as a precedent for other UN working groups with more traditional participation. It seems difficult for the Council to reach an agreement on any possible continuation or postponement of the issue. A decision is needed in order to pursue a new relationship between IPs and States.

**MEXICO** recalls that the participants asked for a text from the Chair, this does not constitute a precedent. This Declaration is for IPs; they shall have access to their natural resources, and States will have to make that possible.

**PERU** insists that the Chair's text does not include anything that was not discussed by the WGCD (also **MEXICO, Luis Enrique Chávez**). The text does not attack anyone, and does not take any unfavourable position (also **MEXICO**).

### Vote on the Declaration on the Rights of IPs

The Declaration, as contained in the draft resolution presented by Peru with 45 co-sponsors (see below, p. 10), was adopted by a vote of 30 in favour, with 2 against and 12 abstentions, as follows:

*In favour:* Azerbaijan, Brazil, Cameroon, China, Cuba, Czech Republic, Ecuador, Finland, France, Germany, Guatemala, India, Indonesia, Japan, Malaysia, Mauritius, Mexico, Netherlands, Pakistan, Peru, Poland, Republic of Korea, Romania, Saudi Arabia, South Africa, Sri Lanka, Switzerland, United Kingdom, Uruguay, Zambia.

*Against:* Canada, Russian Federation.

*Abstentions:* Algeria, Argentina, Bahrain, Bangladesh, Ghana, Jordan, Morocco, Nigeria, Philippines, Senegal, Tunisia, Ukraine.

*Absent:* Djibouti, Gabon, Mali.

### Statements delivered before the vote

**PERU** presents the draft resolution and underlines that the Declaration recognises for the first time in the UN history that IPs are a vulnerable group entitled to specific rights (also **MEXICO**). At the same time, it contains safeguards to address the legitimate preoccupations of States about territorial integrity, self-determination, lands, territories and resources (also **MEXICO, ECUADOR**). The Declaration is part of the instruments that progressively generate international customary law.

**GUATEMALA** welcomes the adoption of the UN Declaration on the Rights of IPs by the Council at its

first session (also **MAURITIUS, BRAZIL, GERMANY**). Enough time has been allowed to discuss positions.

The Chair's text is a compromise one that meets with agreement of most States' and IPs' delegations. **SWITZERLAND** calls for its adoption by consensus, but in case a vote is required, Switzerland will vote in favour of this text.

The circle is finally closed; stepping back is not possible any more. **MEXICO** has long been waiting for this moment, to support the adoption of the DD, which attends a historic and legitimate request. Collective political will can achieve a great deal, as has been seen in the WGCD, where the spirit of cooperation and dialogue has prevailed.

An adoption by consensus of the DD as an effective and authoritative international document would constitute a major step forward. The **RUSSIAN FEDERATION** is against the proposed text, but not against a continuation of a discussion of the issue, and will work for international cooperation in the protection of IPs' rights.

**CANADA's** request for more time has not received the necessary support, even though several States and a few indigenous representatives noted difficulties with the lack of discussion of proposed language on several key issues (also **RUSSIAN FEDERATION**). Provisions of the Chair's text on lands, territories and resources could support claims on lands that were surrendered by treaties. Provisions on self-government lack clarity. Canada has a long and proud tradition of supporting indigenous issues and actively advocating indigenous rights at home and internationally. However, Canada will vote against the resolution, and underlines that this Declaration has no effect in Canada and does not represent international customary law.

Referring to the definition in ILO Convention 169, **INDIA** considers its entire population as indigenous, whereas the right to self-determination is understood to apply only to peoples under foreign domination. The right to self-determination set out in the Declaration will be exercised by IPs in terms of their right to autonomy or self-government.

The Human Rights Council, as a new body, has to address such important issues as this DD; therefore **INDONESIA** supports the adoption of the Declaration, to reflect its position to protect and support the rights of IPs worldwide. Indonesia is a multicultural nation that does not discriminate against its population on any grounds.

**BANGLADESH** acknowledges that all groups are entitled to the same rights as the mainstream of society (also **GERMANY** mentioning IPs). The UN Charter and both Human Rights Covenants affirm the fundamental importance of some issues addressed in the DD. A clear procedure should be established, in order to unanimously adopt the Declaration in an upcoming Council session.

Given the importance of decisions that make international instruments, **CHINA** regrets that this instrument has to be adopted by voting, and hopes that in the future the Council members will conduct their work in a constructive spirit of cooperation.

The **PHILIPPINES'** Government is fully committed to promoting the rights of its IPs. It empathises with IPs and their desire that the Human Rights Council takes action on the DD at this first session. However, the latest text of the DD deserves some more time for study (also **BANGLADESH, MOROCCO, UKRAINE**), in order to give to national agencies concerned with its implementation the opportunity to discuss the language of certain provisions and their legal and policy implications.

#### Statements delivered after the vote

**BRAZIL** has no doubt that States and IPs will always invoke the Declaration in good faith. This is a reaffirmation of the commitment of the international community to ensure the enjoyment by IPs of all human rights and fundamental freedoms and to respect the value of their indigenous cultures and identity.

**ARGENTINA** regrets the lack of time to deal with particularly important issues of the Declaration, such as the compatibility of self-determination with territorial integrity, political unity and the organisational structure of each State (Article 3bis); and the necessary mention in Article 45 of the UN Charter and other General Assembly Resolutions. Argentina hopes that it will be able to vote in favour in the General Assembly, especially as this is one of the most important and legitimate topics to be dealt with by the international community.

If the Declaration had been adopted unanimously, **ALGERIA** would have joined the consensus (also **MOROCCO**). It abstained because of provisions of the Declaration regarding IPs' collective rights and their political status in relation to the State, which conflict with Algeria's Constitution that stipulates that political parties cannot not be based on race, gender, or ethnicity.

**MOROCCO** will continue to guarantee all rights equally to all Moroccans, in accordance with its Constitution, territorial integrity and political unity.

**MAURITIUS** is concerned that some non-indigenous groups misuse Article 3 of the Declaration, or that the right to self-determination be assimilated to a right to secession. Furthermore, in absence of a definition some groups could self-designate themselves as indigenous. Mauritius leaves appropriate interpretation of these concepts in the hands of right-minded and objective people.

**UKRAINE** has been striving to elaborate in the WGCD an instrument that would provide the proper balance between the rights of IPs and those of sovereign States. The document just adopted by the Council contains important protections for the rights of IPs, but also fundamental flaws. It does not contain a definition of





"indigenous peoples" (also **INDIA**), has unacceptable provisions on lands and resources, and purports to create a new understanding of the right of self-determination inconsistent with modern international law. Article 3 fails to fulfil the need to preserve the territorial and political integrity of sovereign States. The Declaration is not a legally binding instrument but sets political norms inconsistent with international law.

**GERMANY** underlines that the respect and application of existing binding international human rights law remain essential. The primary importance of individual human rights protection is asserted in the Declaration, clearly distinguishing between individual human rights in international law and the collective enjoyment of certain rights at national level. Germany's own national minorities and ethnic groups, which enjoy protection of their human rights and fundamental freedoms, do not fall under the scope of the Declaration (also **UNITED KINGDOM**).

Feeling that its concerns have been addressed in negotiations, the **UNITED KINGDOM** is able to support the adoption of the Declaration. It fully supports the provisions that recognise the human rights and fundamental freedoms of indigenous individuals on an equal basis to all other individuals, but does not accept the concept of collective human rights in international law, given that human rights are based on equality and universality. The UK strongly endorses PP18 bis of the Declaration<sup>4</sup> and reads all the other provisions in the light of this preambular clause. Similarly, it reads Article 45 as meaning that the exercise of the rights in the Declaration shall respect human rights. The UK understands the right of self-determination as set out in Article 3 as specific to IPs and as one which is to be exercised within the territory of a State and which is not designed to impact in any way on the territorial integrity of States (also **GERMANY**). PP15<sup>5</sup> does not imply automatically that IPs qualify as "peoples" for the purpose of Article 1 of both Human Rights Covenants. Regarding Article 16, the UK notes that its museums are keen to promote understanding of the cultural achievements of IPs. The UK understands Articles 12 and 13 as only referring to relevant property, ceremonial objects or human remains for which a sufficient connection with the relevant IPs can be established, and which are in the possession of the State; redress may in some cases be subject to third parties' rights and other public interests. In addition, participation as set out in Articles 12 and 13 only regards the particular IPs with whom the relevant property, objects or remains are connected.

**JAPAN** provides following understanding for its vote. The right to self-determination set out in the Declaration cannot be invoked to impair the political unity, territorial integrity or sovereignty of a State (also

**INDONESIA**). Japan does not recognise collective rights in international law; thus indigenous individuals are the bearers of the rights contained in the Declaration. The rights relating to land and territories are stipulated in domestic law and are to be balanced with third parties' rights.

**JORDAN** clarifies that it did not participate to the vote (also **BAHRAIN**).

## Abbreviations

ACPD:	Action Canada for Population and Development
AI:	Amnesty International
CAPAJ:	Comisión Jurídica para el Autodesarrollo de los Pueblos Originarios Andinos
CPN:	Citizens Potawatomi Nation
FWCC:	Friends World Committee for Consultation
ICC:	Inuit Circumpolar Conference
ICJ:	International Commission of Jurists
ICSA:	Indian Council of South America
IFHR:	International Federation for Human Rights
ILRC:	Indian Law Resource Centre
IMTA:	Indian Movement "Tupaj Amaru"
IPNC:	Indigenous Peoples and Nations Coalition
ISHR:	International Service for Human Rights
NCIV:	Netherlands Centre for Indigenous Peoples
NN:	Navajo Nation
RD:	Rights and Democracy
SC:	Saami Council

## Forthcoming sessions of the Human Rights Council in 2006-2007

**Second session:** 18 September – 6 October 2006

**Third session:** 27 November – 8 December 2006

**Fourth session:** 12 March – 6 April 2007

Contact:

Office of High Commissioner on Human Rights

Ms. Laura Dolci-Kanaan, NGO Liaison Officer

United Nations, 1211 Geneva 10, Switzerland

Phone: +41 22 917 96 56 Fax: +41 22 917 90 04

E-mail: [ldolci-kanaan@ohchr.org](mailto:ldolci-kanaan@ohchr.org)

Web: <http://www.ohchr.org/english/bodies/hrcouncil/>

<sup>4</sup> See page 11, paragraph 8, 2<sup>nd</sup> column.

<sup>5</sup> See page 11, paragraph 3, 2<sup>nd</sup> column.



## Indigenous Peoples' Caucus Closing Statement

*Following the adoption of the Declaration on the Rights of Indigenous Peoples by the Human Rights Council, on the 29<sup>th</sup> of June, 2006, the Indigenous Caucus took the floor to present the following statement.*

On behalf of the Indigenous Caucus, on this momentous occasion, we would like to express our heartfelt thoughts on the adoption of the Universal Declaration on the Rights of Indigenous Peoples.

The League of Nations did not act on the demands of the diplomatic envoys of the Maori and the Iroquois Confederacy, so the roots of the present Declaration go back to 1974 and the voluminous Cobo report.

In 1977, the pivotal gathering of IPs here at the United Nations prompted the world community to turn their attention to IPs in the Americas.

In this context, the important recommendation to establish the Working Group on Indigenous Populations was made.

The significant work of the five independent experts of the WGIP, two of whom are with us today, Erica Irene Daes and Miguel Alfonso Martinez, reflect that our repeated demands for recognition of our distinct status and rights would be addressed.

We persisted in our efforts and remained vigilant against some of the most formidable state forces in the world.

We relied upon our ability to engage in substantive debate, with positions that remain consistent with international law.

One of the most important outcomes has been that throughout all of our expressions, sometimes in our own languages, we have succeeded in educating the international community about the status, rights and lives of IPs in every corner of the world.

We will continue to do so in the Permanent Forum. The true legacy of the Declaration will be the way in which we, the IPs of the world, in partnership with states, breathe life into these words.

The real test will be how this will affect the lives of our people on a daily basis.

While these are distinct and fundamental individual and collective human rights, it is their implementation at the community level, which will have an impact and give our children hope for a future where their lives and identity will be respected globally.

It would be unfair from us to name States that have played a leading role in reaching this point.

They know who they are and we know who they are.

They have worked with us to ensure the realization of this important human rights instrument.

We will not forget them and we will ask our people to honour them.

We trust each of you will stand with us at the General Assembly as well.

Finally, we must express our thanks to Chairperson-Rapporteur Chavez for staunch efforts to reach a conclusion with this text. His patience to ensure that States and IPs could contribute effectively and equitably to the final outcome deserves our praise.

We express our wish as IPs for harmony in accordance with the natural world and hope that our multiple futures as IPs and States are brought together to embrace the positive contribution that we make to humankind.

### Human Rights Council Resolution 2006/2 (highlights) Working group of the Commission on Human Rights to elaborate a draft declaration

*The Human Rights Council,*

1. *Adopts* the UN Declaration on the Rights of Indigenous Peoples as proposed by the Chairperson-Rapporteur of the working group of the Commission on Human Rights to elaborate a draft declaration in accordance with paragraph 5 of the General Assembly resolution 49/214 of 23 December 1994 in annex I to the report of the working group on its 11<sup>th</sup> session (E/CN.4/2006/79);
2. *Recommends* to the General Assembly that it adopt the following draft resolution:

*The General Assembly,*

*Taking note* of Human Rights Council resolution 2006/2 of 29 June 2006, in which the Council adopted the text of the UN Declaration on the Rights of Indigenous Peoples,

1. *Expresses its appreciation* to the Council for the adoption of the UN Declaration on the Rights of Indigenous Peoples;
2. *Adopts* the Declaration as contained in the annex to Council resolution 2006/2 of 29 June 2006.

### Annex: UN DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

*(Editor's note: Hereafter is the complete text of the Declaration, as adopted by the Human Rights Council on June 29<sup>th</sup> 2006. The numbering in brackets is the numbering in the Chair's text, which our summary of the debates refers to.)*

*Affirming* that indigenous peoples are equal to all other peoples, while recognizing the right of all peoples to be different, to consider themselves different, and to be respected as such,

*Affirming* also that all peoples contribute to the diversity and richness of civilizations and cultures, which constitute the common heritage of humankind,



*Affirming further* that all doctrines, policies and practices based on or advocating superiority of peoples or individuals on the basis of national origin, racial, religious, ethnic or cultural differences are racist, scientifically false, legally invalid, morally condemnable and socially unjust,

*Reaffirming* also that indigenous peoples, in the exercise of their rights, should be free from discrimination of any kind,

*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,

*Recognizing* the urgent need to respect and promote the inherent rights of indigenous peoples which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies, especially their rights to their lands, territories and resources,

*Further recognizing* the urgent need to respect and promote the rights of indigenous peoples affirmed in treaties, agreements and other constructive arrangements with States,

*Welcoming* the fact that indigenous peoples are organizing themselves for political, economic, social and cultural enhancement and in order to bring an end to all forms of discrimination and oppression wherever they occur,

*Convinced* that control by indigenous peoples over developments affecting them and their lands, territories and resources will enable them to maintain and strengthen their institutions, cultures and traditions, and to promote their development in accordance with their aspirations and needs,

*Recognizing also* that respect for indigenous knowledge, cultures and traditional practices contributes to sustainable and equitable development and proper management of the environment,

*Emphasizing* the contribution of the demilitarization of the lands and territories of indigenous peoples to peace, economic and social progress and development, understanding and friendly relations among nations and peoples of the world,

*Recognizing in particular* the right of indigenous families and communities to retain shared responsibility for the upbringing, training, education and well-being of their children, consistent with the rights of the child,

*Recognizing also* that indigenous peoples have the right freely to determine their relationships with States in a spirit of coexistence, mutual benefit and full respect,

*Considering* that the rights affirmed in treaties, agreements and constructive arrangements between States and indigenous peoples are, in some situations, matters of international concern, interest, responsibility and character,

*Also considering* that treaties, agreements and other constructive arrangements, and the relationship they represent, are the basis for a strengthened partnership between indigenous peoples and States,

*Acknowledging* that the Charter of the United Nations, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights affirm the fundamental importance of the right of self-determination of all peoples, by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development,

*Bearing in mind* that nothing in this Declaration may be used to deny any peoples their right of self-determination, exercised in conformity with international law,

*Convinced* that the recognition of the rights of indigenous peoples in this Declaration will enhance harmonious and cooperative relations between the State and indigenous peoples, based on principles of justice, democracy, respect for human rights, non-discrimination and good faith,

*Encouraging* States to comply with and effectively implement all their obligations as they apply to indigenous peoples under international instruments, in particular those related to human rights, in consultation and cooperation with the peoples concerned,

*Emphasizing* that the United Nations has an important and continuing role to play in promoting and protecting the rights of indigenous peoples,

*Believing* that this Declaration is a further important step forward for the recognition, promotion and protection of the rights and freedoms of indigenous peoples and in the development of relevant activities of the United Nations system in this field,

*Recognizing and reaffirming* that indigenous individuals are entitled without discrimination to all human rights recognized in international law, and that indigenous peoples possess collective rights which are indispensable for their existence, well-being and integral development as peoples,

*Solemnly proclaims* the following United Nations Declaration on the Rights of Indigenous Peoples as a standard of achievement to be pursued in a spirit of partnership and mutual respect,

#### *Article 1 [Article 1]*

Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law.

#### *Article 2 [Article 2]*

Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the

exercise of their rights, in particular that based on their indigenous origin or identity.

*Article 3 [Article 3]*

Indigenous peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

*Article 4 [Article 3 bis (former Article 31)]*

Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

*Article 5 [Article 4]*

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their rights to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

*Article 6 [Article 5]*

Every indigenous individual has the right to a nationality.

*Article 7 [Article 6]*

1. Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person.
2. Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.

*Article 8 [Article 7]*

1. Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.
2. States shall provide effective mechanisms for prevention of, and redress for:
  - (a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;
  - (b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;
  - (c) Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights;
  - (d) Any form of forced assimilation or integration by other cultures or ways of life imposed on them by legislative, administrative or other measures;
  - (e) Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them.

*Article 9 [Article 9]*

Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No discrimination of any kind may arise from the exercise of such a right.

*Article 10 [Article 10]*

Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

*Article 11 [Article 12]*

1. Indigenous peoples have the right to practice and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.
2. States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.

*Article 12 [Article 13]*

1. Indigenous peoples have the right to manifest, practice, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.
2. States shall seek to enable the access and/or repatriation of ceremonial objects and human remains in their possession through fair, transparent and effective mechanisms developed in conjunction with indigenous peoples concerned.

*Article 13 [Article 14]*

1. Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons.
2. States shall take effective measures to ensure this right is protected and also to ensure that indigenous peoples can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means.



*Article 14 [Article 15]*

1. Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.
2. Indigenous individuals, particularly children, have the right to all levels and forms of education of the State without discrimination.
3. States shall, in conjunction with indigenous peoples, take effective measures, in order for indigenous individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language.

*Article 15 [Article 16]*

1. Indigenous peoples have the right to the dignity and diversity of their cultures, traditions, histories and aspirations which shall be appropriately reflected in education and public information.
2. States shall take effective measures, in consultation and cooperation with the indigenous peoples concerned, to combat prejudice and eliminate discrimination and to promote tolerance, understanding and good relations among indigenous peoples and all other segments of society.

*Article 16 [Article 17]*

1. Indigenous peoples have the right to establish their own media in their own languages and to have access to all forms of non-indigenous media without discrimination.
2. States shall take effective measures to ensure that State-owned media duly reflect indigenous cultural diversity. States, without prejudice to ensuring full freedom of expression, should encourage privately-owned media to adequately reflect indigenous cultural diversity.

*Article 17 [Article 18]*

1. Indigenous individuals and peoples have the right to enjoy fully all rights established under applicable international and domestic labour law.
2. States shall in consultation and cooperation with indigenous peoples take specific measures to protect indigenous children from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development, taking into account their special vulnerability and the importance of education for their empowerment.
3. Indigenous individuals have the right not to be subjected to any discriminatory conditions of labour and, inter alia, employment or salary.

*Article 18 [Article 19]*

Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

*Article 19 [Article 20]*

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

*Article 20 [Article 21]*

1. Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.
2. Indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress.

*Article 21 [Article 22]*

1. Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security.
2. States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities.

*Article 22 [Article 22 bis]*

1. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities in the implementation of this Declaration.
2. States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.

*Article 23 [Article 23]*

Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and

social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.

*Article 24 [Article 24]*

1. Indigenous peoples have the right to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, animals and minerals. Indigenous individuals also have the right to access, without any discrimination, to all social and health services.
2. Indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health. States shall take the necessary steps with a view to achieving progressively the full realization of this right.

*Article 25 [Article 25]*

Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.

*Article 26 [Article 26]*

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.
2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.
3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

*Article 27 [Article 26 bis]*

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 28 [Article 27]*

1. Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, of a just, fair and equitable compensation, for the lands, territories and resources which

they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.

2. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.

*Article 29 [Article 28]*

1. Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.
2. States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.
3. States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented.

*Article 30 [Article 28 bis]*

1. Military activities shall not take place in the lands or territories of indigenous peoples, unless justified by a significant threat to relevant public interest or otherwise freely agreed with or requested by the indigenous peoples concerned.
2. States shall undertake effective consultations with the indigenous peoples concerned, through appropriate procedures and in particular through their representative institutions, prior to using their lands or territories for military activities.

*Article 31 [Article 29]*

1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.
2. In conjunction with indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.



*Article 32 [Article 30]*

1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.
2. States shall 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, particularly in connection with the development, utilization or exploitation of their mineral, water or other resources.
3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

*Article 33 [Article 32]*

1. Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of indigenous individuals to obtain citizenship of the States in which they live.
2. Indigenous peoples have the right to determine the structures and to select the membership of their institutions in accordance with their own procedures.

*Article 34 [Article 33]*

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

*Article 35 [Article 34]*

Indigenous peoples have the right to determine the responsibilities of individuals to their communities.

*Article 36 [Article 35]*

1. Indigenous peoples, in particular those divided by international borders, have the right to maintain and develop contacts, relations and cooperation, including activities for spiritual, cultural, political, economic and social purposes, with their own members as well as other peoples across borders.
2. States, in consultation and cooperation with indigenous peoples, shall take effective measures to facilitate the exercise and ensure the implementation of this right.

*Article 37 [Article 36]*

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 to diminish or eliminate the rights of Indigenous Peoples contained in Treaties, Agreements and Constructive Arrangements.

*Article 38 [Article 37]*

States in consultation and cooperation with indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration.

*Article 39 [Article 38]*

Indigenous peoples have the right to have access to financial and technical assistance from States and through international cooperation, for the enjoyment of the rights contained in this Declaration.

*Article 40 [Article 39]*

Indigenous peoples have the right to have 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.

*Article 41 [Article 40]*

The organs and specialized agencies of the United Nations system and other intergovernmental organizations shall contribute to the full realization of the provisions of this Declaration through the mobilization, inter alia, of financial cooperation and technical assistance. Ways and means of ensuring participation of indigenous peoples on issues affecting them shall be established.

### World Intellectual Property Organisation

The 10<sup>th</sup> session of the Intergovernmental Committee on Traditional Knowledge, Genetic Resources and Traditional Cultural Expression/ Folklore will take place in Geneva, Switzerland, from November 30<sup>th</sup> to December 8<sup>th</sup>, 2006.

Contact:

World Intellectual Property Organisation (WIPO)  
PO Box 18, CH-1211 Geneva 20, Switzerland  
Traditional Knowledge Division  
Fax + 41 22 338 8120  
E-mail: grtkf@wipo.int  
Web: <http://www.wipo.int/tk/en/igc/>

**Article 42 [Article 41]**

The United Nations, its bodies, including the Permanent Forum on Indigenous Issues, and specialized agencies, including at the country level, and States, shall promote respect for and full application of the provisions of this Declaration and follow up the effectiveness of this Declaration.

**Article 43 [Article 42]**

The rights recognized herein constitute the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world.

**Article 44 [Article 43]**

All the rights and freedoms recognized herein are equally guaranteed to male and female indigenous individuals.

**Article 45 [Article 44]**

Nothing in this Declaration may be construed as diminishing or extinguishing the rights indigenous peoples have now or may acquire in the future.

**Article 46 [Article 45]**

1. Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations.
2. In the exercise of the rights enunciated in the present Declaration, human rights and fundamental freedoms of all shall be respected. The exercise of the rights set forth in this Declaration shall be subject only to such limitations as are determined by law, in accordance with international human rights obligations. Any such limitations shall be non-discriminatory and strictly necessary solely for the purpose of securing due recognition and respect for the rights and freedoms of others and for meeting the just and most compelling requirements of a democratic society.
3. The provisions set forth in this Declaration shall be interpreted in accordance with the principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance and good faith.

If you have comments and suggestions about this Update, please do not hesitate to share them with us:

- by e-mail at: [docip@docip.org](mailto:docip@docip.org) (Subject: Update)
- by fax at: + 41 22 740 34 54
- by mail at: doCip, 14 avenue Tremblay, CH-1209 Genève

Thanks!

### INFORM US OF YOUR CHANGE OF ADDRESS

Please inform us each time you change your e-mail/postal address, or phone/fax number so that we may keep our address book up to date. Send an email to [docip@docip.org](mailto:docip@docip.org), subject: Change of Address. Many thanks !

## Please note

Update is and will remain free for all indigenous organizations. Rates for non-indigenous organizations or individuals help us defray part of our costs, and cover three to four issues per year:

- individuals: SF 25
- small NGOs: SF 30
- large NGOs and institutions: SF 40

We recommend that you pay these amounts by Post-Cash or International Money Order from your local post office. Our giro account is: CCP 12-11429-8.

Bank transfers charge high commissions; nevertheless payment may be made to: Banque Cantonale de Genève. Account No. E 775.87.12

With the support of: Swiss Agency for Development and Cooperation  
City of Geneva

This document has been produced with the financial assistance of the European Union. The contents of this document are the sole responsibility of doCip and can under no circumstances be regarded as reflecting the position of the European Union.

