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The Permanent Forum and the Declaration on the Rights of Indigenous Peoples

The 6th session of the United Nations Permanent Forum on Indigenous Issues,¹ which commenced on 14 May, is the setting for renewed efforts to encourage the General Assembly to adopt the Declaration on the Rights of Indigenous Peoples (the Declaration).

The central theme of the Permanent Forum – lands, territories, and natural resources – is one of the main points of controversy concerning adoption of the Declaration, inextricably linking Forum discussions to the future of the instrument. During the first week of the conference, the Declaration consistently featured as a topic of concern in the ongoing dialogue between representatives from governments, UN agencies, indigenous communities, and civil society. Participating governments who support the Declaration, primarily Latin American and European States, often included appeals for its prompt adoption in their statements, and indigenous representatives repeatedly emphasized the importance of Article 26, which guarantees the right of indigenous peoples to the lands, territories, and resources they have traditionally occupied and used.²

States opposed to the current text of the Declaration are the Group of African States, with the support of the CANZUS group, comprised of Canada, Australia, New Zealand, and the United States.³ Several of these States, such as Kenya, Australia, Canada, and New Zealand, submitted statements to the Forum but generally avoided making explicit references to the Declaration or to their positions regarding its adoption. Pressed by Forum delegate Hassam el Balkassm about their respective attitudes towards the Declaration, Australia and Canada responded that they remained concerned about aspects of the text, but did not elaborate further.⁴

Controversy over Article 26 is rooted in the fear of some States that it undermines their right to access natural resources located in the territories of indigenous peoples.⁵ Ownership and development of these resources is a particularly polemical issue because the majority of the world's remaining natural resources can be found in these territories.⁶ Article 3 of the Declaration, asserting indigenous peoples' right to self-determination, constitutes the other major point of disagreement. The Group of African States has publicly expressed concerns that this right is tantamount to granting indigenous groups the right to unilateral self-determination,

¹ Created in 2000, the Permanent Forum is an advisory body to the UN Economic and Social Council (ECOSOC) and is composed of 16 independent experts, eight nominated by governments and eight by indigenous peoples. It addresses indigenous issues in the areas of economic and social development, environment, health, human rights, culture, and education. According to its mandate, the Permanent Forum provides expert advice to ECOSOC and to UN programs, funds, and agencies; raises awareness about indigenous issues; and promotes the integration and coordination of activities relating to indigenous issues within the UN system.

² For transcripts of statements by participating governments and indigenous organizations, please visit <http://www.docip.org/Permanent%20Forum/pf07/Statements07.html>.

³ Please see <http://www.ipsnews.net/news.asp?idnews=35638> and http://www.ipacc.org.za/eng/news_details.asp?NID=12.

⁴ Please see <http://www.docip.org/Permanent%20Forum/pf07/Statements07.html>.

⁵ Please see <http://www.voanews.com/english/2007-05-04-voa82.cfm>.

⁶ Please visit <http://www.un.org/apps/news/story.asp?NewsID=22531&Cr=indigenous&Cr1>.

and even secession.⁷ They have maintained this position despite repeated assurances by indigenous and human rights organizations that this right must be understood within the context of existing international law, which grants indigenous peoples the right to govern their economic, social, and cultural affairs, but not the right to unilateral self-determination or secession.⁸

On May 17, 2007, the African group of States submitted to the President of the General Assembly an altered version of the text of the Declaration (please see Annex 1), which dramatically undermines the human rights of Indigenous peoples as it transforms the Declaration into an instrument which is subject to the arbitrary discretion of each State.

During the Forum's afternoon session on the following day, Les Malezer, Chairperson of the Indigenous Peoples' Global Caucus at the UN, submitted a statement on behalf of the Caucus, which categorically rejected the African Group's attempt to revise the Declaration. Malezer described the proposed changes, which allow States to define what groups constitute indigenous peoples, removes the right to self-determination, and renders more than ten rights subject to national legislation, including the right to own and develop lands, territories, and natural resources, as "discriminatory and racist." He further added that such a text would violate and undermine, rather than affirm, basic human rights.

Malezer concluded his statement by advancing support for an alternative process contained in a resolution (please see Annex 2) that submitted to the General Assembly on 10 May by Mexico on behalf of the Co-sponsors Group.⁹ The Co-sponsors Group, which opposes changes to the original version of the Declaration as agreed upon by the Human Rights Council, included text in the resolution describing the Declaration as an instrument "in accordance with States' international human rights obligations." Such wording attempts to explain the Declaration as an instrument that does not create new rights, but serves to clarify pre-existing international human rights standards as they apply to indigenous peoples.

The Indigenous Peoples Global Caucus has also indicated to the President of the General Assembly their strong desire for a timeline for the process for adoption of the Declaration (please see Annex 3).

Background Information

It is estimated that indigenous peoples account for more than 370 million people in over 70 countries worldwide. Indigenous peoples often have social, cultural, economic and political structures, which are far removed from the dominant cultures. Indigenous peoples have unique cultures and ways of viewing and relating to the world, including to property and the environment. Despite their distinctive cultural and social characteristics, many indigenous peoples face the same discrimination and share common problems related to the protection of their human rights.

In 1982 the Working Group on Indigenous Populations (the Working Group) was established by a decision of the United Nations Economic and Social Council (ECOSOC) to address some of these issues. From 1985 until 1993, the Working Group negotiated the text of a Declaration with the annual participation of some 100 indigenous organisations. In 1995, the Commission on Human Rights established another working group¹⁰ to

⁷ For a copy of the Group of African States' "aide memoire," which outlines their concerns with the Declaration, please visit <http://www.ipacc.org.za/uploads/docs/Africanaidememoire.pdf>. For a discussion of the "aide memoire" by the Indigenous Peoples of Africa Co-ordinating Committee, please visit www.unep.org/indigenous/pdfs/IPACCCDeclarationStatement2006EFS.pdf.

⁸ Please visit <http://www.iwgia.org/graphics/Synkron-Library/Documents/Noticeboard/News/International/Humanrightsresponse.htm>.

⁹ This group includes Albania, Andorra, Argentina, Armenia, Austria, Belgium, Bolivia, Bosnia and Herzegovina, Brazil, Bulgaria, Chile, Costa Rica, Cuba, Croatia, Cyprus, Czech Republic, Denmark, Dominica, Dominican Republic, Ecuador, El Salvador, Estonia, Fiji, Finland, France, Germany, Greece, Guatemala, Haiti, Honduras, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Mexico, Moldova, Monaco, Montenegro, Nauru, Netherlands, Nicaragua, Norway, Palau, Panama, Papua New Guinea, Paraguay, Peru, Poland, Portugal, Romania, San Marino, Serbia, Slovak Republic, Slovenia, Solomon Islands, Spain, Sweden, Switzerland, Macedonia, Timor-Lest, United Kingdom and Uruguay.

¹⁰ Working Group on the draft declaration on the rights of indigenous peoples. For more information see <http://www.ohchr.org/english/issues/indigenous/groups/groups-02.htm>.

review the draft adopted by the Working Group and the human rights experts of the Sub-Commission on the Promotion and Protection of Human Rights (then called Sub-Commission on Prevention of Discrimination and Protection of Minorities).

At its May 2006 session, the Permanent Forum expressed support for the Declaration, recommending that the General Assembly adopt it by the end of its 61st session.¹¹ The Human Rights Council adopted the Declaration on 29 June 2006 and submitted the instrument to the General Assembly for approval, where it has encountered considerable opposition from States concerned with several of its key provisions. On 27 November 2006, the General Assembly's Third Committee voted to support a no-action motion introduced by Namibia, on behalf of the Group of African States, to postpone action on the Declaration until the end of the current session in September 2007 "to allow time for further consultations."¹² Indigenous and human rights groups expressed dismay at the decision, fearing that the delay would open the Declaration to revision or lead to a permanent moratorium on its adoption.¹³

Conclusions and Future Steps

During the Permanent Forum, the General Assembly President formally received both the African Group's amendments and the Mexican/Co-sponsors Group's resolution. The next step, following consultations with States and other interested actors, will be for the President to recommend a plan to move the process forward. It is widely expected that her resolution of the issue will include the setting of a timeline for adoption of the Declaration, and it is hoped that she can also carve out a solution that is agreeable to all the parties but which does not undermine the rights articulated in the Declaration. Human rights groups are particularly concerned, given the current discord between States regarding the Declaration, that it will not be adopted by consensus in the General Assembly. It is crucial that the vast majority of States support the adoption of the Declaration, which was already approved by the Human Rights Council, the pre-eminent human rights body in the UN.

Indigenous peoples continue to highlight the Declaration as a central issue during the second and final week of the Permanent Forum, focusing efforts on lobbying governments, particularly those in the Group of African States, to adopt the Declaration as it currently stands. The Group has maintained its unified position in support of amendments to the Declaration. The Forum itself is likely to include in its list of recommendations the adoption of the Declaration before the conclusion of the 61st session to the General Assembly, as it did last year.

¹¹Please visit <http://www.un.org/News/Press/docs/2006/hr4898.doc.htm>.

¹² To see the amendments A/C.3/61/L.18/R.1 proposed by Namibia to the draft resolution on the Declaration on the Rights of Indigenous Peoples L.57/Rev.1/28, please visit <http://www.ohchr.org/english/issues/indigenous/docs/wgdd2006/57-rev1.doc>.

¹³ Please see <http://www.iwgia.org/graphics/Synkron-Library/Documents/Noticeboard/News/International/06-11-28%20INDIGENOUS%20PEOPLES%20CAUCUS%20STATEMENT.doc>; <http://www.unobserver.com/layout5.php?id=2883&blz=1>; <http://www.iwgia.org/graphics/Synkron-Library/Documents/Noticeboard/News/International/NGOStatementonDeclarationNov302006.htm>; <http://www.iwgia.org/graphics/Synkron-Library/Documents/Noticeboard/News/International/06-11-28%20First%20Nations%20Leadership%20Councilstatement.doc>; and <http://www.iwgia.org/graphics/SynkronLibrary/Documents/Noticeboard/News/International/ICC%20SC%20joint%20stmt%2011%2028%2006.doc>.

NEW YORK MONITOR STAFF

Michelle Evans, Representative to the UN
Kobi-Rénee Leins, Human Rights Officer

Contributors

Scarlet Kim, Intern

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