

Permanent Forum on Indigenous Issues

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Agenda Item 4: Human rights: (a) Implementation of the United Nations Declaration on the Rights of Indigenous Peoples

Joint Statement of Grand Council of the Crees (Eeyou Istchee), Assembly of First Nations, Canadian Friends Service Committee (Quakers), Amnesty International, International Indian Treaty Council, Africa Indigenous Peoples Climate Change Network, Union of British Columbia Indian Chiefs (UBCIC), Chiefs of Ontario, Treaty Four First Nations, Mainyoto Pastoralists Integrated Development Organization, Haudenosaunee of Kanehsatake, First Peoples Human Rights Coalition

Undermining Indigenous Peoples' Rights and *UN Declaration*: Urgent Need for Procedural Reforms in International Organizations

As we approach the five-year anniversary of the adoption of the *UN Declaration on the Rights of Indigenous Peoples*, we join in its celebration. During the past five years, implementation of the *Declaration* has taken place in diverse ways.

This statement summarizes a larger Joint Submission (to be later emailed to the PFII), which focuses on the challenges Indigenous peoples face in ensuring implementation of the *Declaration* at the international level.

Within international bodies and processes, consensus-driven procedures are being exploited by States to the detriment of Indigenous peoples. The lowest-common-denominator among State positions often prevails. Such procedures are undermining the principles of justice, democracy, non-discrimination, respect for human rights and rule of law.

In his March 2012 report on strengthening the rule of law nationally and internationally, the UN Secretary-General affirms: "The rule of law is a core principle of governance that ensures justice and fairness, values that are essential to humanity."

This report emphasizes: "The United Nations defines the rule of law as a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and *which are consistent with international human rights norms and standards.*"

Under existing procedures of international organizations, Indigenous peoples have no effective means of safeguarding their human rights. When Indigenous representatives raise concerns that State positions are inconsistent with the *Charter of the United Nations* and international human rights law, such concerns are generally not addressed by the Parties.

The procedures within international organizations require redress. The extent to which States are prejudicing Indigenous peoples' human rights and disrespecting related State obligations is critical. Indigenous concerns relating to issues such as biodiversity, food security, climate change, development, free trade and intellectual property, are being addressed to the detriment of Indigenous peoples.

The rules of procedure in international organizations are generally out-dated. The UN Expert Mechanism on the Rights of Indigenous Peoples highlights in its *Final report of the study on indigenous peoples and the right to participate in decision-making*: “Reform of international and regional processes involving indigenous peoples should be a major priority and concern.” The Expert Mechanism has done important work in this regard.

Similarly, Special Rapporteur on the rights of indigenous peoples, James Anaya, has emphasized the need for reforms.

Indigenous peoples' rights in the *UN Declaration* were affirmed as "minimum standards for the survival, dignity and well-being of the indigenous peoples of the world." [Article 43]. The *Declaration* calls on all states, the United Nations, and its bodies and specialized agencies, to promote respect for these minimum standards and their "full application." [Article 42.]

It is unacceptable that procedural rules in international organizations, as well as participating States, should be anything less than clear and explicit in affirming the rule of law, consistent with international human rights standards including the *Declaration*.

In this context, it would be beneficial to examine the practices that governed the negotiations on the *UN Declaration*. An inclusive and democratic process of Indigenous participation was established within the United Nations. It still constitutes today an impressive precedent and best practice.

We recommend that the Permanent Forum on Indigenous Issues:

- i) Undertake on an urgent basis, an in-depth study of existing rules of procedure in diverse international organizations that have real or potential impacts of major consequence on Indigenous peoples' human rights and related interests. The study should identify serious inadequacies and impacts affecting Indigenous peoples, as well as propose effective remedies and possible compliance mechanisms, with a view to ensuring fair and balanced procedural rules; and
- ii) in the Indigenous context, urge States to fully respect and implement, in conjunction with Indigenous peoples, the rule of law at international and national levels consistent with international human rights standards. Without limiting the foregoing, this would necessarily include State obligations under the *Charter of the United Nations* and international human rights law, including the *UN Declaration on the Rights of Indigenous Peoples*.

We also recommend that the Permanent Forum on Indigenous Issues:

- i) Review the March 2012 Report of the UN Secretary-General entitled *Delivering justice: programme of action to strengthen the rule of law at the national and international levels*, with a view to proposing timely revisions to the Report and ensuring that the challenges facing Indigenous peoples are incorporated;
- ii) participate directly in the sixty-seventh session of the General Assembly at the high-level meeting on the topic “The rule of law at the national and international levels”; and

iii) include, at the 2013 annual meeting of the Permanent Forum, under the agenda item of "Human Rights: UN Declaration on the Rights of Indigenous Peoples", a discussion on the "Need for urgent reforms in the procedural rules of international organizations".