

Institute ในระดับที่เหมาะสม และในด้านที่แต่ละองค์กรสนใจ และได้เห็นชอบกับการ  
ที่องค์กรต่าง ๆ เหล่านี้จะร่วมมือกันต่อไปที่จะส่งเสริม และให้มีการปฏิบัติตามบท  
บัญญัติเหล่านี้อย่างมั่นคง และ

ได้ตัดสินใจรับรองข้อเสนอบางประการเกี่ยวกับการแก้ไขอนุสัญญาฉบับที่ 107 บางส่วนว่า  
ด้วยชนพื้นเมือง และประชากรที่เป็นเผ่า ชน ค.ศ. 1957 ซึ่งเป็นหัวข้อที่ 4 ของ  
ระเบียบวาระการประชุม และ

ได้กำหนดให้ข้อเสนอเหล่านี้อยู่ในรูปอนุสัญญาระหว่างประเทศแก้ไขอนุสัญญาว่าด้วยชนพื้น  
เมือง และประชากรที่เป็นเผ่า ชน ค.ศ. 1957

จึงได้รับรองอนุสัญญาต่อไปนี้ ซึ่งเรียกว่า อนุสัญญาว่าด้วยชนพื้นเมือง และประชากรที่เป็นเผ่าชน  
ค.ศ. 1989 เมื่อวันที่สี่สิบเจ็ด ของเดือนมิถุนายน ของปีหนึ่งพันเก้าร้อยแปดสิบเก้า

## ส่วนที่ 1 นโยบายทั่วไป

### มาตรา 1

1. อนุสัญญานี้ใช้กับ
  - (ก) ประชากรที่เป็นเผ่า ชนในประเทศเอกราช ซึ่งมีสถานภาพทางด้านเศรษฐกิจ สังคม วัฒนธรรม แตกต่างไปจากหน่วยอื่น ๆ ของชุมชนในประเทศ และสถานภาพของบุคคลเหล่านี้ได้ถูกบัญญัติไว้ทั้งหมด หรือบางส่วนด้วยขนบธรรมเนียม ประเพณี หรือกฎหมาย หรือข้อบังคับพิเศษ
  - (ข) ประชาชนในประเทศเอกราชซึ่งถูกมองว่าเป็นชนพื้นเมืองโดยถือเหตุจากสืบทอดมาจากประชากรซึ่งได้อาศัยอยู่ในประเทศมาก่อน หรืออยู่ในถิ่นบนภูมิศาสตร์ซึ่งประเทศเข้าครอบครองในคราวปราบได้ชัยชนะ หรือตกเป็นอาณานิคม หรือจากการจัดตั้งเป็นรัฐในปัจจุบัน และไม่ว่าจะมีสถานภาพทางกฎหมายอย่างไร แต่ยังมีสถาบันแบบนันทนาการเมือง ทางเศรษฐกิจ สังคมของตนทั้งหมด หรือเพียงบางส่วน
2. มีเอกลักษณ์ประจำตัวที่ถือได้ว่าเป็นชนพื้นเมืองหรือเผ่า ชนเป็นเกณฑ์พื้นฐานในการกำหนดกลุ่มซึ่งบทบัญญัติของอนุสัญญาที่นำไปใช้บังคับ
3. การใช้คำว่า “ประชาชน” ในอนุสัญญานี้ไม่ได้ใช้แสดงนัยเกี่ยวกับสิทธิซึ่งอาจติดกับคำนี้ภายใต้เงื่อนไขของกฎหมายระหว่างประเทศ

### มาตรา 2

1. รัฐบาลจะต้องมีความรับผิดชอบที่จะพัฒนากิจกรรมที่เป็นระบบ โดยให้ประชาชนที่เกี่ยวข้องได้เข้าไปมีส่วนร่วมด้วย และร่วมมือกันเพื่อปกป้องสิทธิของประชาชนเหล่านี้ และเพื่อประกันเกี่ยวกับบูรณภาพแห่งบุคคลเหล่านี้
2. กิจกรรมดังกล่าว จะต้องรวมมาตรการ

- (ก) รับรองว่าสมาชิกของประชาชนเหล่านี้ จะต้องได้รับผลประโยชน์ที่เกิดจากสิทธิและโอกาสที่เท่าเทียมกันตามที่กฎหมายและข้อบังคับที่ได้ให้แก่สมาชิกประชากรคนอื่น ๆ ในประเทศ
- (ข) ส่งเสริมความสำนึกด้านสิทธิทางสังคม เศรษฐกิจ และวัฒนธรรมของประชาชนเหล่านี้ยิ่งขึ้น โดยเคารพในเอกลักษณ์ทางสังคม และวัฒนธรรม ขนบธรรมเนียมและประเพณี ตลอดจนสถาบันของพวกเขา
- (ค) ช่วยเหลือสมาชิกของประชาชนที่เกี่ยวข้องเพื่อจัดช่องว่างทางเศรษฐกิจสังคม ซึ่งอาจมีอยู่ระหว่างชนพื้นเมืองกับสมาชิกอื่น ๆ ของชุมชนประเทศในลักษณะสอดคล้องกับความปรารถนาและวิถีชีวิตของเขา

#### มาตรา 3

1. ชนพื้นเมืองและเผ่า ชนจะต้องได้รับมาตรการด้านสิทธิมนุษยชนและเสรีภาพพื้นฐานอย่างเต็มที่โดยปราศจากการขัดขวางหรือการเลือกปฏิบัติ บทบัญญัติของอนุสัญญาจะต้องถูกนำมาใช้โดยปราศจากการเลือกปฏิบัติต่อชายและหญิง สมาชิกของประเทศเหล่านี้
2. จะต้องไม่มีการใช้รูปแบบการเกณฑ์แรงงาน หรือการบีบบังคับอันเป็นการละเมิดสิทธิมนุษยชน และเสรีภาพพื้นฐานของประชาชนที่เกี่ยวข้อง รวมทั้งสิทธิที่บรรจุอยู่ในอนุสัญญานี้ด้วย

#### มาตรา 4

1. จะต้องมีการตรามาตรการพิเศษที่เหมาะสม เพื่อคุ้มครองบุคคล สถาบัน ทรัพย์สิน แรงงาน วัฒนธรรม และสิ่งแวดล้อมของประชาชนที่เกี่ยวข้อง
2. มาตรการพิเศษดังกล่าวจะต้องไม่เป็นการขัดขวางต่อการแสดงความต้องการหรือความปรารถนาอย่างเสรีของประชาชนที่เกี่ยวข้อง
3. การได้รับสิทธิต่าง ๆ ในฐานะเป็นพลเมือง โดยปราศจากการเลือกปฏิบัติจะต้องไม่ถูกทำให้เสียหายไปด้วยวิธีการวางมาตรการพิเศษดังกล่าว

#### มาตรา 5

ในการนำบทบัญญัติของอนุสัญญานี้มาใช้

- (ก) จะต้องตระหนักและปกป้องในด้านสังคม วัฒนธรรม ศาสนา และค่านิยม และแนวปฏิบัติของประชาชนเหล่านี้ และจะต้องคำนึงถึงลักษณะของปัญหาซึ่งเผชิญหน้าพวกเขาทั้งในลักษณะเป็นกลุ่ม และเอกบุคคล
- (ข) ความเป็นอันหนึ่งอันเดียวในด้านค่านิยม แนวปฏิบัติ และสถาบันของประชาชนเหล่านี้จะต้องได้รับการยอมรับนับถือ
- (ค) จะต้องมีการวางนโยบายที่มุ่งบรรเทาความยุ่งยากต่าง ๆ ที่ประชาชนเหล่านี้ประสบในการเผชิญกับการดำเนินชีวิต และการทำงานแบบใหม่ โดยให้ประชาชนที่เผชิญกับปัญหานั้นได้เข้ามามีส่วนร่วม และร่วมมือด้วย

### มาตรา 6

1. ในการนำบทบัญญัติอนุสัญญานี้มาใช้ รัฐบาลจะต้อง
  - (ก) ปรึกษาประชาชนที่เกี่ยวข้อง โดยผ่านขั้นตอนดำเนินการที่เหมาะสม และโดยเฉพาะผ่านสถาบัน ตัวแทนของพวกเขา ในกรณีที่มีการพิจารณาเกี่ยวกับมาตรการด้านกฎหมาย หรือการบริหาร ซึ่งจะมีผลกระทบต่อพวกเขาโดยตรง
  - (ข) จัดให้มีวิธีการซึ่งประชาชนเหล่านี้สามารถเข้ามาร่วมด้วยได้อย่างน้อยก็ในลักษณะเช่นเดียวกับประชากรส่วนอื่น ๆ โดยสามารถเข้าร่วมในระดับตัดสินใจเกี่ยวกับสถาบันและการบริหาร ตลอดจนมีส่วนร่วมในองค์กรที่รับผิดชอบเกี่ยวกับนโยบายและแผนงานต่าง ๆ ที่เกี่ยวข้องกับพวกเขา
  - (ค) จัดให้มีวิธีการ เพื่อให้เขาได้มีการพัฒนาตัวเอง และความคิดริเริ่มอย่างเต็มที่ ทั้งนี้โดยจัดให้มีทรัพยากรที่จำเป็นสนับสนุนด้วยเพื่อให้บรรลุวัตถุประสงค์ดังกล่าว
2. ในการปฏิบัติตามอนุสัญญานี้ จะต้องจัดให้มีการปรึกษาหารือ และในรูปแบบที่เหมาะสมกับกาลเทศะ โดยมีวัตถุประสงค์เพื่อให้ข้อตกลงประสบผลสำเร็จ หรือยินยอมตามมาตรการที่เสนอ

### มาตรา 7

1. ประชาชนที่เกี่ยวข้องจะต้องมีสิทธิที่จะตัดสินใจเกี่ยวกับการจัดลำดับขั้นตอนการพัฒนาที่มีผลกระทบต่อชีวิตความเป็นอยู่ ความเชื่อ สถาบัน และความผาสุกในด้านจิตใจ ตลอดจนพื้นที่ที่พวกเขาใช้อยู่ และมีสิทธิที่จะควบคุมในด้านการพัฒนาเศรษฐกิจ สังคม และวัฒนธรรมเท่าที่จะทำได้ นอกจากนี้ พวกเขาจะต้องมีส่วนร่วมในการจัดทำ การดำเนินการ และการประเมินผลตามแผนและโครงการต่าง ๆ เพื่อการพัฒนาประเทศ และภูมิภาค ซึ่งอาจมีผลกระทบต่อพวกเขาโดยตรง
2. การปรับปรุงสภาพชีวิตและการทำงานตลอดจนระดับสุขภาพและระดับการศึกษาของประชาชนที่เกี่ยวข้อง โดยให้พวกเขาเข้าไปมีส่วนร่วมและให้ความร่วมมือจะต้องเป็นเรื่องลำดับแรกในแผนเพื่อการพัฒนาเศรษฐกิจส่วนรวมในพื้นที่ที่พวกเขาอาศัยอยู่ โครงการเฉพาะเพื่อการพัฒนาพื้นที่ที่เป็นปัญหาจะต้องถูกวางขึ้นเพื่อส่งเสริมการปรับปรุงพื้นที่ดังกล่าวให้ดีขึ้น
3. รัฐบาลจะต้องรับรองว่าจะทำการศึกษาร่วมมือกับประชาชนที่เกี่ยวข้อง เพื่อประเมินผลกระทบทางสังคม ทางจิตใจ วัฒนธรรม และสิ่งแวดล้อมต่อเขาเหล่านี้ในกิจกรรมการพัฒนาที่วางแผนไว้ ผลของการศึกษาเหล่านี้จะต้องถือเป็นเกณฑ์พื้นฐานสำหรับการดำเนินกิจกรรมเหล่านี้
4. รัฐบาลจะต้องกำหนดมาตรการ โดยร่วมมือกับประชาชนที่เกี่ยวข้อง เพื่อคุ้มครองและสงวนรักษาภาวะแวดล้อมในดินแดนที่คนเหล่านี้อาศัยอยู่

### มาตรา 8

1. ในการนำกฎหมายของประเทศและกฎระเบียบต่าง ๆ ใช้กับประชาชนที่เกี่ยวข้องจะต้องคำนึงถึง ขนบธรรมเนียมประเพณี หรือกฎหมายจารีตประเพณีของเขาด้วย
2. ประชาชนเหล่านี้จะต้องมีสิทธิที่จะสงวนรักษาไว้ซึ่งขนบธรรมเนียมประเพณีและสถาบันของตน ในที่ซึ่งสิ่งเหล่านี้สอดคล้องกับสิทธิพื้นฐานที่กฎหมายของประเทศกำหนด และสอดคล้องกับ

สิทธิมนุษยชนที่เป็นที่ยอมรับกันในนานาประเทศจะต้องมีการกำหนดขั้นตอน หากจำเป็นเพื่อแก้ปัญหาข้อขัดแย้งซึ่งอาจเกิดขึ้นจากการปฏิบัติตามหลักการนี้

3. การปฏิบัติตามวรรค 1 และวรรค 2 ของมาตรานี้ จะต้องไม่เป็นการจำกัดสมาชิกของประชาชนเหล่านี้จากการใช้สิทธิและหน้าที่ที่ให้แก่พลเมืองคนอื่น ๆ

#### มาตรา 9

1. ในขอบเขตของการปฏิบัติตามระบบกฎหมายของประเทศ และสิทธิมนุษยชนสากล วิธีการปฏิบัติในเรื่องการฝ่าฝืนที่ยืดถือนานมาเป็นประเพณี โดยประชาชนที่เกี่ยวข้อง จะต้องได้รับการเคารพด้วย

2. เจ้าหน้าที่ของรัฐและศาลจะต้องนำประเพณีของประชาชนเหล่านี้เกี่ยวกับเรื่องการลงโทษมาพิจารณาด้วย หากเกี่ยวข้องกับกรณีดังกล่าว

#### มาตรา 10

1. ในการกำหนดบทลงโทษโดยกฎหมายทั่วไป ใ้กับสมาชิกของประชาชนเหล่านี้ จะต้องคำนึงถึงสถานะทางเศรษฐกิจ สังคม และวัฒนธรรมของเขาด้วย

2. ใช้วิธีการลงโทษมากกว่ากักขังจำคุก

#### มาตรา 11

การขู่บังคับให้ประชาชนที่เกี่ยวข้องทำงานใด ๆ โดยเป็นการบังคับไม่ว่าจะให้ค่าตอบแทนหรือไม่ก็ตาม จะต้องถูกห้าม และลงโทษโดยกฎหมาย ยกเว้นกรณีที่กฎหมายจะกำหนดว่ากระทำได้กับพลเมืองทุกคน

#### มาตรา 12

ประชาชนที่เกี่ยวข้องจะต้องได้รับความคุ้มครองจากการกระทำผิดต่อสิทธิของเขา และสามารถจะใช้ขั้นตอนทางกฎหมาย ทั้งในลักษณะเอกบุคคัล หรือโดยผ่านองค์กรตัวแทน เพื่อการคุ้มครองอย่างมีประสิทธิภาพต่อสิทธิเหล่านี้ ควรมีการกำหนดมาตรการเพื่อรับรองว่าสมาชิกของประชาชนเหล่านี้สามารถเข้าใจและถูกทำให้เข้าใจในขั้นตอนทางกฎหมายเท่าที่จำเป็น โดยผ่านบทบัญญัติการตีความ หรือโดยวิธีการที่มีประสิทธิภาพอื่น ๆ

## ส่วนที่ 2 ที่ดิน

#### มาตรา 13

1. ในการนำบทบัญญัติส่วนนี้ของอนุสัญญาามาใช้ปฏิบัติ รัฐบาลจะต้องเคารพในความสำคัญด้านวัฒนธรรม และคุณค่าทางจิตใจของประชาชนที่เกี่ยวข้องในความสัมพันธ์กับที่ดินหรือดินแดน หรือทั้ง 2 อย่าง ซึ่งเขาคครอบครองอยู่ หรือใช้เพื่อการอย่างอื่น

2. การใช้คำว่า “ที่ดิน” ในมาตรา 15 และ 16 จะต้องรวมแนวคิดในเรื่องดินแดน ซึ่งครอบคลุมไปถึงสภาพแวดล้อมในที่ดินซึ่งประชาชนที่เกี่ยวข้องครอบครอง หรือใช้อยู่ด้วย

#### มาตรา 14

1. สิทธิการเป็นเจ้าของ และการครอบครองของประชาชนที่เกี่ยวข้องเหนือที่ดิน ซึ่งเขาครอบครองมาตามประเพณี จะต้องได้รับการยอมรับ นอกจากนี้จะต้องกำหนดมาตรการสำหรับกรณีที่เขาเห็นว่าสมควร เพื่อให้ความคุ้มครองต่อสิทธิของประชาชนที่เกี่ยวข้อง ที่จะใช้ประโยชน์ในพื้นที่ที่พวกเขาไม่ได้ครอบครอง แต่เป็นพื้นที่ซึ่งพวกเขาได้เข้าไปอาศัยทำกิน เพื่อการยังชีพ และประกอบกิจกรรมตามประเพณีมานาน ในเรื่องนี้จะต้องให้ความสนใจเป็นพิเศษต่อสถานการณ์ของประชาชนชาวอนาติค และผู้ทำการเพาะปลูกแบบย้ายที่ไปเรื่อย ๆ
2. รัฐบาลจะต้องกำหนดขั้นตอนเท่าที่จำเป็น เพื่อแยกแยะพื้นที่ซึ่งประชาชนที่เกี่ยวข้องได้ครอบครองมาแต่ดั้งเดิม และเพื่อเป็นการประกันให้ความคุ้มครองในสิทธิของพวกเขาในการเป็นเจ้าของ และการครอบครอง
3. ควรจะมีการกำหนดขั้นตอนที่เหมาะสมภายใต้ระบบกฎหมายของประเทศ เพื่อขจัดปัญหาการเรียกร้องที่ดินจากประชาชนที่เกี่ยวข้องนี้

#### มาตรา 15

1. สิทธิของประชาชนที่เกี่ยวข้องต่อทรัพยากรธรรมชาติที่อยู่ในที่ดินที่เขาครอบครองจะต้องได้รับความคุ้มครองเป็นพิเศษ สิทธิดังกล่าวนี้รวมถึงสิทธิของประชาชนเหล่านี้ที่จะเข้าร่วมในการใช้ ใน การบริหาร และพิทักษ์ทรัพยากรเหล่านี้
2. ในกรณีซึ่งรัฐสมาชิกกังวลความเป็นเจ้าของในทรัพยากรแร่ หรือทรัพยากรบนพื้นดิน หรือ สิทธิต่อทรัพยากรอื่น ๆ ที่อยู่ในดินแดนของเขา รัฐบาล จะต้องจัดให้มีหรือรักษาไว้ให้มีขั้นตอนซึ่งผ่านการปรึกษาหารือกับประชาชนเหล่านี้ โดยมุ่งหมายเพื่อกำหนดให้แน่ใจว่าระดับผลประโยชน์ใดจึงถือว่าเสียหาย ก่อนการจัดทำหรืออนุญาตโครงการต่าง ๆ เพื่อการสำรวจ หรือการใช้ทรัพยากรดังกล่าวที่อยู่ในที่ดินของพวกเขาอย่างผิด ๆ ประชาชนที่เกี่ยวข้องจะต้องสามารถมีส่วนในประโยชน์ทดแทนของกิจกรรมดังกล่าวได้ และจะต้องได้รับค่าทดแทนที่เป็นธรรมสำหรับความเสียหายใด ๆ ซึ่งเขาอาจได้รับ อันเนื่องมาจากผลของกิจกรรมดังกล่าว

#### มาตรา 16

1. เกี่ยวกับบรรดต่าง ๆ ตามมาตรานี้ ประชาชนที่เกี่ยวข้องจะต้องไม่ถูกโยกย้ายออกไปจากดินแดนที่ตนครอบครอง
2. ที่ใดที่เห็นว่า ควรมีการจัดสรรที่ดินใหม่ให้แก่ประชาชนที่เกี่ยวข้องเหล่านี้ โดยถือว่าเป็นมาตรการยกเว้น การจัดสรรที่ดินใหม่ดังกล่าวจะกระทำได้อีกต่อเมื่อบุคคลเหล่านี้ได้ให้ความยินยอม หากที่ใดไม่ได้มีการยินยอม การจัดสรรที่ดินดังกล่าวจะเกิดขึ้นได้ด้วยวิธีการที่เหมาะสมเท่านั้น อาจ

โดยทางกฎหมาย ข้อบังคับของประเทศ รวมถึงการสอบถามประชามติ ซึ่งให้โอกาสการแสดงออกของประชาชนที่เกี่ยวข้องได้อย่างมีประสิทธิภาพ

3. เมื่อใดที่กระทำได้ ประชาชนเหล่านี้ย่อมมีสิทธิที่จะกลับไปยังที่อยู่มาแต่เดิมได้ ทันทิที่พื้นที่ที่มีการจัดสรรใหม่นั้นเล็กรไป

4. หากการกลับไปสู่พื้นที่ดั้งเดิมกระทำไม่ได้ อาจกำหนดไว้โดยข้อตกลงหรือในกรณีไม่มีข้อตกลงดังกล่าว อาจผ่านขั้นตอนเหมาะสมอื่น ๆ ประชาชนเหล่านี้จะต้องได้รับการกำหนดให้ได้รับที่ดินที่มีคุณภาพ และมีสถานภาพทางกฎหมายอย่างน้อยเท่ากับที่ดินที่เขาเคยครอบครองมาก่อน เหมาะต่อความต้องการในปัจจุบันและการพัฒนาในอนาคต หากประชาชนที่เกี่ยวข้องแสดงความต้องการได้รับการทดแทนเป็นจำนวนเงินหรือสิ่งของ เขาจะต้องได้รับการทดแทน ภายใต้อัตราที่หักประกันที่เหมาะสม

5. บุคคลที่ได้รับการจัดสรรที่อยู่ใหม่ จะต้องได้รับการทดแทนสำหรับความสูญเสีย หรือความเสียหายอย่างเต็มที่

#### มาตรา 17

1. ขั้นตอนเกี่ยวกับการถ่ายทอดสิทธิที่ประชาชน เผ่าเป็นผู้จัดขึ้นในที่ดินในชุมชนของประชาชนเหล่านี้จะต้องได้รับการเคารพ

2. ประชาชนที่เกี่ยวข้องจะต้องได้รับการปรึกษาหารือ เมื่อใดก็ตามที่มีการพิจารณาถึงความสามารถของพวกเขาที่จะโอนที่ดินของเขา หรือมิฉะนั้นถ่ายทอดสิทธิของเขาให้ออกไปนอกชุมชนของทางพวกเขาเอง

3. บุคคลที่มีได้เป็นส่วนหนึ่งของประชาชนเหล่านี้จะต้องถูกห้ามจากการแสวงหาประโยชน์จากประเพณีของบุคคลเหล่านี้ หรือแสวงหาประโยชน์จากความไม่เข้าใจในกฎหมายในส่วนที่เกี่ยวข้องกับสมาชิกของประชาชนเหล่านี้ในเรื่องการเป็นเจ้าของ การครอบครอง หรือการใช้ที่ดินที่เป็นส่วนหนึ่งของคนเหล่านี้

#### มาตรา 18

จะต้องมีการกำหนดบทลงโทษ โดยทางกฎหมายสำหรับการบุกรุกที่ดิน หรือใช้ที่ดิน โดยประชาชนที่เกี่ยวข้องอย่างผิดกฎหมาย และรัฐบาลจะต้องวางมาตรการเพื่อป้องกันการบุกรุกดังกล่าว

#### มาตรา 19

โครงการเกี่ยวกับไร่นา และที่ดินแห่งชาติ จะต้องใช้ปฏิบัติต่อประชาชนที่เกี่ยวข้องโดยเท่าเทียมกับโครงการที่ใช้กับประชากรในสาขาอื่น ๆ ในเรื่อง

- (ก) บทบัญญัติเกี่ยวกับที่ดินที่มากพอสำหรับประชาชนเหล่านี้ เมื่อบุคคลเหล่านี้ไม่มีที่ดินที่จำเป็นสำหรับการยังชีพเท่าที่จำเป็น หรือเพื่อรองรับการเพิ่มขึ้นของจำนวนสมาชิก
- (ข) บทบัญญัติเกี่ยวกับวิธีการส่งเสริมการพัฒนาที่ดิน ที่พวกเขาเป็นเจ้าของครอบครองอยู่แล้ว

### ส่วนที่ 3 การรับคนเข้าทำงาน และเงื่อนไขการจ้างงาน

#### มาตรา 20

1. ภายใต้ข้อบัญญัติกฎหมายและข้อบังคับของประเทศ และโดยความร่วมมือของประชาชน รัฐบาลจะต้องตรามาตรการพิเศษขึ้นเพื่อรับรองความคุ้มครองอย่างมีประสิทธิภาพเกี่ยวกับการรับคนเข้าทำงาน และเงื่อนไขการจ้างงานของคนงานที่เป็นส่วนหนึ่งของบุคคลเหล่านี้ ในข้อบ่งชี้ว่าคนงานนั้นไม่ได้รับความคุ้มครองอย่างมีประสิทธิภาพจากกฎหมายที่ใช้กับคนงานโดยทั่วไป

2. รัฐบาลจะต้องทำทุกสิ่งเพื่อป้องกันการเลือกปฏิบัติระหว่างคนงานที่เป็นส่วนหนึ่งของประชาชนที่เกี่ยวข้องกับคนงานอื่น ๆ โดยเฉพาะในเรื่อง

- (ก) การได้รับการจ้างงาน รวมถึงการจ้างงานฝีมือ ตลอดจนมาตรการเพื่อส่งเสริม และความก้าวหน้า
- (ข) ได้รับความตอบแทนเท่าเทียมกันสำหรับงานที่มีค่าเท่ากัน
- (ค) ได้รับความช่วยเหลือทั้งด้านสังคม และการรักษาพยาบาล ความปลอดภัยและสุขภาพในทางอาชีพ ประโยชน์ทดแทนด้านความมั่นคงทางสังคม และประโยชน์ทดแทนเกี่ยวกับงานอาชีพต่าง ๆ ตลอดจนเคหะสถาน
- (ง) สิทธิในการสมาคม และเสรีภาพเกี่ยวกับการประกอบกิจกรรมของสหภาพแรงงานที่ชอบด้วยกฎหมาย และสิทธิที่จะเข้าร่วมการเจรจาต่อรองร่วมกับนายจ้างหรือองค์กรนายจ้าง

3. มาตรการที่ตราขึ้น จะรวมถึงมาตรการเพื่อรับรอง

- (ก) ว่าคนงานที่เป็นส่วนหนึ่งของประชาชนที่เกี่ยวข้อง อันรวมถึงคนงานตามฤดูกาล คนงานที่ไม่มีงานประจำ (casual work) ตลอดจนคนงานอพยพในทางเกษตรกรรม และการจ้างงานอื่น ๆ ตลอดจนพวกซึ่งรับจ้างจากผู้รับเหมาแรงงานจะต้องได้รับความคุ้มครองจากกฎหมายของประเทศ และแนวปฏิบัติซึ่งให้แก่คนงานคนอื่น ๆ ในสาขาเดียวกัน และรับรองว่าพวกเขาจะต้องได้รับการแจ้งถึงสิทธิของเขาตามกฎหมายแรงงาน และแจ้งถึงวิธีการแก้ไขที่เป็นประโยชน์กับเขา
- (ข) รับรองว่าคนงานที่เป็นส่วนหนึ่งของประชาชนเหล่านี้จะไม่ถูกปล่อยให้อยู่ในสถานที่ทำงานที่เป็นอันตรายต่อสุขภาพของเขา โดยเฉพาะการทำงานที่มีการใช้ยาฆ่าแมลงหรือสารพิษอื่น ๆ
- (ค) รับรองว่าคนงานซึ่งเป็นส่วนหนึ่งของประชาชนเหล่านี้ไม่ถูกปล่อยให้อยู่ในระบบการรับคนเข้าทำงานแบบบังคับ อันรวมถึงแรงงานผูกมัด และการตอบแทนหนี้สินด้วยการใช้แรงงานรูปแบบต่างๆ
- (ง) รับรองว่าคนงานซึ่งเป็นส่วนหนึ่งของประชาชนเหล่านี้ควรได้รับโอกาสที่เท่าเทียมกัน และได้รับการปฏิบัติที่เท่าเทียมในด้านการมีงานทำ ทั้งชายและหญิง และได้รับความคุ้มครองจากการเลือกปฏิบัติทางเพศ

4. จะต้องให้ความสนใจเป็นพิเศษต่อการจัดตั้งการบริการตรวจแรงงานที่พอเพียงในพื้นที่ซึ่งคนงานที่เป็นส่วนหนึ่งของประชาชนที่เกี่ยวข้องรับจ้างทำงานโดยได้รับค่าจ้าง ทั้งนี้เพื่อให้สอดคล้องกับพันธสัญญาสิทธิของอนุสัญญาส่วนนี้

#### ส่วนที่ 4 การฝึกอบรมวิชาชีพ หัตถกรรม และอุตสาหกรรมท้องถิ่น

##### มาตรา 21

ประชาชนที่เกี่ยวข้อง จะต้องมีสิทธิและโอกาสที่จะได้รับมาตรการการฝึกอบรมวิชาชีพเท่าเทียมกับพลเมืองคนอื่น ๆ

##### มาตรา 22

1. จะต้องกำหนดมาตรการขึ้นเพื่อส่งเสริมการมีส่วนร่วมโดยสมัครใจของสมาชิกของประชาชนที่เกี่ยวข้องในโครงการทั่ว ๆ ไป ของการฝึกอบรมวิชาชีพ
2. เมื่อใดก็ตามที่โครงการทั่ว ๆ ไปของการฝึกอบรมวิชาชีพไม่สามารถสนองความต้องการของประชาชนที่เกี่ยวข้อง รัฐบาลโดยการมีส่วนร่วมของประชาชนเหล่านี้ จะต้องรับรองว่าจะมีการกำหนดโครงการฝึกอบรมพิเศษ และจัดอำนวยความสะดวกต่าง ๆ ให้
3. โครงการฝึกอบรมพิเศษใดๆ จะต้องวางอยู่บนพื้นฐานของสภาวะทางเศรษฐกิจ สภาพสังคม และวัฒนธรรม ตลอดจนความต้องการที่สามารถนำมาใช้ได้ของประชาชนที่เกี่ยวข้อง การศึกษาใดๆ ที่กระทำให้ขึ้นตามโครงการพิเศษนี้ จะต้องได้รับการดำเนินการ โดยมีความร่วมมือของประชาชนเหล่านี้ร่วมด้วย ซึ่งอาจให้คำปรึกษาเกี่ยวกับการจัดองค์กร และการปฏิบัติโครงการดังกล่าว และหากที่ใดที่สามารถกระทำได้จะต้องค่อย ๆ กระทำการให้ประชาชนเหล่านี้มีความรับผิดชอบต่อองค์กร และการปฏิบัติงานของโครงการฝึกอบรมพิเศษดังกล่าว ทั้งนี้โดยความสมัครใจของพวกเขา

##### มาตรา 23

1. หัตถกรรม อุตสาหกรรมท้องถิ่น และชุมชน ตลอดจนการยังชีพอย่างประหยัด และกิจกรรมทางประเพณีของประชาชนที่เกี่ยวข้อง เช่น การล่าสัตว์ ตกปลา ตกสัตว์ จะต้องได้รับการระลึกถึงว่าเป็นองค์ประกอบสำคัญในการธำรงรักษาไว้ซึ่งวัฒนธรรม การพึ่งตนเอง และการพัฒนาตามแบบอย่างของพวกเขา รัฐบาลโดยการมีส่วนร่วมของประชาชนเหล่านี้จะต้องรับรองว่ากิจกรรมเหล่านี้จะได้รับการส่งเสริมและถูกทำให้มั่นคงยิ่งขึ้น
2. ตามความต้องการของประชาชนที่เกี่ยวข้อง ความช่วยเหลือด้านวิชาการและการเงินที่เหมาะสม จะต้องถูกจัดสรรให้เท่าที่กระทำได้ โดยคำนึงถึงเทคโนโลยีที่เคยยึดถือกันมา และลักษณะวัฒนธรรมของประชาชนเหล่านี้ ตลอดจนความสำคัญของการพัฒนาอย่างไม่ลดละ และเท่าเทียมกับส่วนอื่น ๆ



## ส่วนที่ 5 ความมั่นคงทางสังคม และสุขภาพ

### มาตรา 24

แผนความมั่นคงทางสังคม จะต้องค่อย ๆ ขยายให้ครอบคลุมประชาชนที่เกี่ยวข้อง และใช้โดยปราศจากการเลือกปฏิบัติต่อพวกเขา

### มาตรา 25

1. รัฐบาลจะต้องรับรองว่าจะมีการบริการด้านสุขภาพอย่างพอเพียงให้แก่ประชาชนที่เกี่ยวข้อง หรือจะต้องจัดหาทรัพยากรให้แก่พวกเขาเหล่านี้เพื่อให้พวกเขาสามารถกำหนด และให้บริการดังกล่าว ภายใต้ความรับผิดชอบและการควบคุมของพวกเขาเองได้ ทั้งนี้เพื่อให้พวกเขาได้มีมาตรฐานด้านสภาพร่างกายและจิตใจอยู่ในระดับสูงสุด

2. การบริการสุขภาพ เท่าที่ขอบเขตจะกระทำได้ จะต้องทำเพื่อชุมชนโดยการบริการเหล่านี้จะต้องได้รับการวางแผน และการบริหารโดยการร่วมมือกับประชาชนที่เกี่ยวข้อง และจะต้องคำนึงถึงสภาพเศรษฐกิจ ภูมิศาสตร์สังคม และวัฒนธรรมของเขา ตลอดจนการดูแลเลี้ยงดูตามประเพณี การบำบัดรักษาและการให้ยา

3. ระบบการดูแลสุขภาพจะต้องเน้นไปในด้านการฝึกอบรม และการจ้างคนงานท้องถิ่นที่มีความรู้ด้านสุขภาพชุมชน และมุ่งไปที่การดูแลสุขภาพขั้นต้นขณะที่อ้างไว้ซึ่งการเชื่อมโยงกับการบริการดูแลสุขภาพในระดับอื่น ๆ

4. บทบัญญัติของการบริการสุขภาพดังกล่าวจะต้องร่วมกันกับมาตรการทางสังคม เศรษฐกิจ และวัฒนธรรมอื่น ๆ ในประเทศ

## ส่วนที่ 6 การศึกษาและวิธีการสื่อสาร

### มาตรา 26

จะต้องกำหนดมาตรการเพื่อรับรองว่าสมาชิกของประชาชนที่เกี่ยวข้องมีโอกาสที่จะได้รับการศึกษาในทุกระดับอย่างน้อยโดยเท่าเทียมกับชุมชนที่เหลือในประเทศ

### มาตรา 27

1. โครงการการศึกษา และการบริหารสำหรับประชาชนที่เกี่ยวข้องจะต้องได้รับการพัฒนา และดำเนินการโดยความร่วมมือกับประชาชนเหล่านี้ เพื่อกล่าวถึงความต้องการพิเศษของพวกเขา และจะต้องรวบรวมประวัติศาสตร์ ความรู้ และเทคโนโลยี ค่านิยม ตลอดจนความปรารถนาด้านวัฒนธรรม เศรษฐกิจ สังคมของพวกเขาเข้าด้วยกัน

2. เจ้าหน้าที่ของรัฐจะต้องรับรองให้มีการฝึกอบรมสมาชิกของประชาชนเหล่านี้ รวมทั้งให้พวกเขาเข้าร่วมร่วมในการจัดทำ และดำเนินโครงการการศึกษา โดยมีจุดประสงค์เพื่อโยกย้ายความรับผิดชอบในการดำเนินโครงการเหล่านี้ไปให้ประชาชนเหล่านี้ดำเนินการเองในภายหน้า หากเหมาะสม

3. นอกจากนี้รัฐบาลจะต้องรับรองสิทธิของประชาชนเหล่านี้ในทางจัดตั้งสถาบันการศึกษา และสิ่งอำนวยความสะดวกของตนเองโดยกำหนดว่าสถาบันดังกล่าวจะต้องจัดตั้งโดยสนองมาตรฐานขั้นต่ำที่เจ้าหน้าที่ของรัฐบัญญัติไว้โดยปรึกษาหารือกับบุคคลเหล่านี้ ทั้งนี้จะต้องกำหนดทรัพยากรที่เหมาะสมสำหรับจุดประสงค์นี้ด้วย

#### มาตรา 28

1. บรรดาบุตรของประชาชนที่เกี่ยวข้อง หากที่ใดปฏิบัติได้จะต้องมีโอกาสเรียนอ่าน และเขียน ภาษาพื้นเมืองของตนเอง หรือภาษาที่ใช้กันโดยทั่วไปในกลุ่มที่เด็ก ๆ อยู่ หากไม่สามารถกระทำได้ เจ้าหน้าที่ของรัฐจะต้องพยายามทำการปรึกษาหารือกับประชาชนเหล่านี้เพื่อให้มีการตรามาตรการขึ้น โดยมีมุ่งหมายให้จุดประสงค์นี้ประสบความสำเร็จ
2. จะต้องกำหนดมาตรการที่พอเพียง เพื่อรับรองว่าประชาชนเหล่านี้มีโอกาสดังกล่าวจะได้รับความรู้ในภาษาของประเทศตนอย่างสมบูรณ์ หรือภาษาที่ใช้อย่างเป็นทางการของประเทศภาษาใดภาษาหนึ่งใน
3. จะต้องกำหนดมาตรการที่จะสงวนรักษา และส่งเสริมการพัฒนาและการฝึกภาษาพื้นเมืองในประชาชนที่เกี่ยวข้อง

#### มาตรา 29

การให้ความรู้ทั่ว ๆ ไปตลอดจนความชำนาญงาน ซึ่งจะช่วยบุตรของประชาชนที่เกี่ยวข้องนี้ให้สามารถมีส่วนร่วมได้อย่างเต็มที่แลโดยเท่าเทียมกันในชุมชนของเขาเอง ตลอดจนในชุมชนของประเทศก็ควรจะมีมุ่งการศึกษาไปยังประชาชนเหล่านี้ด้วย

#### มาตรา 30

1. รัฐบาลจะต้องตรามาตรการที่เหมาะสมกับประเพณี และวัฒนธรรมของประชาชนที่เกี่ยวข้อง เพื่อให้เขาเข้าถึงสิทธิและหน้าที่ของเขา โดยเฉพาะเกี่ยวกับแรงงาน โอกาสทางเศรษฐกิจ การศึกษา และเรื่องสุขภาพ สวัสดิการสังคม และสิทธิของเขาที่พึงได้จากอนุสัญญาฉบับนี้
2. ถ้าจำเป็นสิ่งนี้อาจจะกระทำได้โดยวิธีการแปลเป็นภาษาเขียนและโดยผ่านวิธีการสื่อสารในภาษาของประชาชนเหล่านี้

#### มาตรา 31

จะต้องกำหนดมาตรการทางการศึกษาขั้นในทุก ๆ ภาคของชุมชนในประเทศและโดยเฉพาะในบรรดาพวกซึ่งส่วนใหญ่ติดต่อกับประชาชนที่เกี่ยวข้องโดยตรง โดยมีจุดประสงค์เพื่อลดอคติที่พวกเขาเหล่านี้อาจมีอยู่เกี่ยวกับประชาชนเหล่านี้ ในที่สุดจะต้องมีความพยายามเพื่อรับรองว่าตำราเรียนทางประวัติศาสตร์ และปัจจัยทางการศึกษาอื่น ๆ จะต้องกำหนดในลักษณะเป็นธรรม ละเอียดลอบ และให้ความรู้ในด้านสังคม และวัฒนธรรมของประชาชนเหล่านี้ด้วย

มาตรา 32

รัฐบาลจะต้องวางมาตรการที่เหมาะสม รวมทั้งใช้วิธีการข้อตกลงระหว่างประเทศในการทำให้ การติดต่อ และการร่วมมือกันระหว่างชนพื้นเมือง และประชาชนที่เป็นเผ่าชนซึ่งอยู่คนละเขตกันเป็น ไปได้โดยง่าย อันรวมถึงการร่วมมือติดต่อกันในกิจกรรมทางเศรษฐกิจ สังคม วัฒนธรรม จิตใจ และ สิ่งแวดล้อม

ส่วนที่ 8 การบริการงาน

มาตรา 33

1. หน่วยงานของรัฐซึ่งรับผิดชอบในเรื่องที่ครอบคลุมอยู่ในอนุสัญญาจะต้องรับรองว่าหน่วย งาน หรือกลไกที่เหมาะสมที่มีอยู่จะเป็นผู้บริหารโครงการที่มีผลกระทบต่อประชาชนที่เกี่ยวข้อง และจะ ต้องรับรองว่าหน่วยงาน หรือกลไกนั้นมีวิธีการที่จำเป็นที่จะปฏิบัติหน้าที่ที่ได้รับมอบหมายได้อย่าง เหมาะสม

2. โครงการเหล่านี้จะต้องรวมถึง

- (ก) การวางแผน การประสานงาน การบริหาร และการประเมินผลเกี่ยวกับมาตรการต่าง ๆ ที่ กำหนดในอนุสัญญานี้ โดยร่วมมือกับประชาชนที่เกี่ยวข้อง
- (ข) การเสนอมาตรการทางกฎหมาย และมาตรการอื่น ๆ ต่อเจ้าหน้าที่ของรัฐ และการตรวจสอบ การปฏิบัติตามมาตรการที่กำหนดโดยร่วมมือกับประชาชนที่เกี่ยวข้อง

ส่วนที่ 9 บทบัญญัติทั่วไป

มาตรา 34

ลักษณะและขอบเขตของมาตรการที่กำหนดขึ้นเพื่อให้มีผลต่ออนุสัญญานี้ จะต้องถูก กำหนดในลักษณะยืดหยุ่น โดยคำนึงถึงลักษณะสภาพการณ์ของแต่ละประเทศ

มาตรา 35

การปฏิบัติตามบทบัญญัติของอนุสัญญานี้จะต้องไม่มีผลกระทบในงานเป็นปฏิปักษ์ต่อ สิทธิและผลประโยชน์ของประชาชนที่เกี่ยวข้องตามอนุสัญญาและข้อแนะนำอื่น รวมกลไกระหว่าง ประเทศ ตามสนธิสัญญาหรือตามกฎหมายภายในประเทศ คำพิพากษาของศาล ขนบธรรมเนียมหรือ ข้อตกลงต่าง ๆ

ส่วนที่ 10 บทส่งท้าย

มาตรา 36

อนุสัญญานี้แก้ไขอนุสัญญาว่าด้วยชนพื้นเมือง และประชากรผู้เป็นเผ่า ชน พ.ศ. 2500 (ค.ศ. 1957)

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**The Convention ILO169 contains all the issues that protect the culture and religion of the Akha people. Western missions in Thailand are in direct violation of this convention.**

## **ILO 169**

### **C169 Indigenous and Tribal Peoples Convention, 1989**

Convention concerning Indigenous and Tribal Peoples in Independent Countries (Note: Date of coming into force: 05:09:1991.)

#### **Convention:C169**

Place:Geneva

Session of the Conference:76

Date of adoption:27:06:1989

Subject classification: Indigenous and Tribal Peoples

See the ratifications for this Convention

**Status: Up-to-date instrument This Convention was adopted after 1985 and is considered up to date.**

#### **The General Conference of the International Labour Organisation,**

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its 76th Session on 7 June 1989, and

Noting the international standards contained in the Indigenous and Tribal Populations Convention and Recommendation, 1957, and

Recalling the terms of the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, and the many international instruments on the prevention of discrimination, and

Considering that the developments which have taken place in international law since 1957, as well as developments in the situation of indigenous and tribal peoples in all regions of the world, have made it appropriate to adopt new international standards on the subject with a view to removing the assimilationist orientation of the earlier standards, and

Recognising the aspirations of these peoples to

exercise control over their own institutions, ways of life and economic development and to maintain and develop their identities, languages and religions, within the framework of the States in which they live, and

Noting that in many parts of the world these peoples are unable to enjoy their fundamental human rights to the same degree as the rest of the population of the States within which they live, and that their laws, values, customs and perspectives have often been eroded, and

Calling attention to the distinctive contributions of indigenous and tribal peoples to the cultural diversity and social and ecological harmony of humankind and to international co-operation and understanding, and

Noting that the following provisions have been framed with the co-operation of the United Nations, the Food and Agriculture Organisation of the United Nations, the United Nations Educational, Scientific and Cultural Organisation and the World Health Organisation, as well as of the Inter-American Indian Institute, at appropriate levels and in their respective fields, and that it is proposed to continue this co operation in promoting and securing the application of these provisions, and

Having decided upon the adoption of certain proposals with regard to the partial revision of the Indigenous and Tribal Populations Convention, 1957 (No. 107), which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention revising the Indigenous and Tribal Populations Convention, 1957; adopts the twenty-seventh day of June of the year one thousand nine hundred and eighty-nine, the following Convention, which may be cited as the Indigenous and Tribal Peoples Convention, 1989;

#### **Part I. General Policy**

##### **Article 1**

1. This Convention applies to:

(a) tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or par

tially by their own customs or traditions or by special laws or regulations;

(b) peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.

2. Self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply.

3. The use of the term peoples in this Convention shall not be construed as having any implications as regards the rights which may attach to the term under international law.

#### **Article 2**

1. Governments shall have the responsibility for developing, with the participation of the peoples concerned, co-ordinated and systematic action to protect the rights of these peoples and to guarantee respect for their integrity.

2. Such action shall include measures for:

(a) ensuring that members of these peoples benefit on an equal footing from the rights and opportunities which national laws and regulations grant to other members of the population;

(b) promoting the full realisation of the social, economic and cultural rights of these peoples with respect for their social and cultural identity, their customs and traditions and their institutions;

(c) assisting the members of the peoples concerned to eliminate socio-economic gaps that may exist between indigenous and other members of the national community, in a manner compatible with their aspirations and ways of life.

#### **Article 3**

1. Indigenous and tribal peoples shall enjoy the full measure of human rights and fundamental freedoms without hindrance or discrimination. The provisions

of the Convention shall be applied without discrimination to male and female members of these peoples.

2. No form of force or coercion shall be used in violation of the human rights and fundamental freedoms of the peoples concerned, including the rights contained in this Convention.

#### **Article 4**

1. Special measures shall be adopted as appropriate for safeguarding the persons, institutions, property, labour, cultures and environment of the peoples concerned.

2. Such special measures shall not be contrary to the freely-expressed wishes of the peoples concerned.

3. Enjoyment of the general rights of citizenship, without discrimination, shall not be prejudiced in any way by such special measures.

#### **Article 5**

In applying the provisions of this Convention:

(a) the social, cultural, religious and spiritual values and practices of these peoples shall be recognised and protected, and due account shall be taken of the nature of the problems which face them both as groups and as individuals;

(b) the integrity of the values, practices and institutions of these peoples shall be respected;

(c) policies aimed at mitigating the difficulties experienced by these peoples in facing new conditions of life and work shall be adopted, with the participation and co-operation of the peoples affected.

#### **Article 6**

1. In applying the provisions of this Convention, governments shall:

(a) consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly;

(b) establish means by which these peoples can freely participate, to at least the same extent as other

sectors of the population, at all levels of decision-making in elective institutions and administrative and other bodies responsible for policies and programmes which concern them;

(c) establish means for the full development of these peoples' own institutions and initiatives, and in appropriate cases provide the resources necessary for this purpose.

2. The consultations carried out in application of this Convention shall be undertaken, in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent to the proposed measures.

#### **Article 7**

1. The peoples concerned shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development. In addition, they shall participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly.

2. The improvement of the conditions of life and work and levels of health and education of the peoples concerned, with their participation and co-operation, shall be a matter of priority in plans for the overall economic development of areas they inhabit. Special projects for development of the areas in question shall also be so designed as to promote such improvement.

3. Governments shall ensure that, whenever appropriate, studies are carried out, in co-operation with the peoples concerned, to assess the social, spiritual, cultural and environmental impact on them of planned development activities. The results of these studies shall be considered as fundamental criteria for the implementation of these activities.

4. Governments shall take measures, in co-operation with the peoples concerned, to protect and preserve the environment of the territories they inhabit.

#### **Article 8**

1. In applying national laws and regulations to the

peoples concerned, due regard shall be had to their customs or customary laws.

2. These peoples shall have the right to retain their own customs and institutions, where these are not incompatible with fundamental rights defined by the national legal system and with internationally recognised human rights. Procedures shall be established, whenever necessary, to resolve conflicts which may arise in the application of this principle.

3. The application of paragraphs 1 and 2 of this Article shall not prevent members of these peoples from exercising the rights granted to all citizens and from assuming the corresponding duties.

#### **Article 9**

1. To the extent compatible with the national legal system and internationally recognised human rights, the methods customarily practised by the peoples concerned for dealing with offences committed by their members shall be respected.

2. The customs of these peoples in regard to penal matters shall be taken into consideration by the authorities and courts dealing with such cases.

#### **Article 10**

1. In imposing penalties laid down by general law on members of these peoples account shall be taken of their economic, social and cultural characteristics.

2. Preference shall be given to methods of punishment other than confinement in prison.

#### **Article 11**

The exaction from members of the peoples concerned of compulsory personal services in any form, whether paid or unpaid, shall be prohibited and punishable by law, except in cases prescribed by law for all citizens.

#### **Article 12**

The peoples concerned shall be safeguarded against the abuse of their rights and shall be able to take legal proceedings, either individually or through their representative bodies, for the effective protection of these rights. Measures shall be taken to ensure that members of these peoples can understand and be understood in legal proceedings, where necessary through the provision of interpretation or by other effective means.

## **Part II. Land**

### **Article 13**

1. In applying the provisions of this Part of the Convention governments shall respect the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories, or both as applicable, which they occupy or otherwise use, and in particular the collective aspects of this relationship.

2. The use of the term lands in Articles 15 and 16 shall include the concept of territories, which covers the total environment of the areas which the peoples concerned occupy or otherwise use.

### **Article 14**

1. The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognised. In addition, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities. Particular attention shall be paid to the situation of nomadic peoples and shifting cultivators in this respect.

2. Governments shall take steps as necessary to identify the lands which the peoples concerned traditionally occupy, and to guarantee effective protection of their rights of ownership and possession.

3. Adequate procedures shall be established within the national legal system to resolve land claims by the peoples concerned.

### **Article 15**

1. The rights of the peoples concerned to the natural resources pertaining to their lands shall be specially safeguarded. These rights include the right of these peoples to participate in the use, management and conservation of these resources.

2. In cases in which the State retains the ownership of mineral or sub-surface resources or rights to other resources pertaining to lands, governments shall establish or maintain procedures through which they shall consult these peoples, with a view to ascertaining whether and to what degree their interests would be prejudiced, before undertaking or permitting any programmes for the exploration or exploitation of such resources pertaining to their

lands. The peoples concerned shall wherever possible participate in the benefits of such activities, and shall receive fair compensation for any damages which they may sustain as a result of such activities.

### **Article 16**

1. Subject to the following paragraphs of this Article, the peoples concerned shall not be removed from the lands which they occupy.

2. Where the relocation of these peoples is considered necessary as an exceptional measure, such relocation shall take place only with their free and informed consent. Where their consent cannot be obtained, such relocation shall take place only following appropriate procedures established by national laws and regulations, including public inquiries where appropriate, which provide the opportunity for effective representation of the peoples concerned.

3. Whenever possible, these peoples shall have the right to return to their traditional lands, as soon as the grounds for relocation cease to exist.

4. When such return is not possible, as determined by agreement or, in the absence of such agreement, through appropriate procedures, these peoples shall be provided in all possible cases with lands of quality and legal status at least equal to that of the lands previously occupied by them, suitable to provide for their present needs and future development. Where the peoples concerned express a preference for compensation in money or in kind, they shall be so compensated under appropriate guarantees.

5. Persons thus relocated shall be fully compensated for any resulting loss or injury.

### **Article 17**

1. Procedures established by the peoples concerned for the transmission of land rights among members of these peoples shall be respected.

2. The peoples concerned shall be consulted whenever consideration is being given to their capacity to alienate their lands or otherwise transmit their rights outside their own community.

3. Persons not belonging to these peoples shall be prevented from taking advantage of their customs

or of lack of understanding of the laws on the part of their members to secure the ownership, possession or use of land belonging to them.

### **Article 18**

Adequate penalties shall be established by law for unauthorised intrusion upon, or use of, the lands of the peoples concerned, and governments shall take measures to prevent such offences.

### **Article 19**

National agrarian programmes shall secure to the peoples concerned treatment equivalent to that accorded to other sectors of the population with regard to:

- (a) the provision of more land for these peoples when they have not the area necessary for providing the essentials of a normal existence, or for any possible increase in their numbers;
- (b) the provision of the means required to promote the development of the lands which these peoples already possess.

## **Part III. Recruitment and Conditions of Employment**

### **Article 20**

1. Governments shall, within the framework of national laws and regulations, and in co-operation with the peoples concerned, adopt special measures to ensure the effective protection with regard to recruitment and conditions of employment of workers belonging to these peoples, to the extent that they are not effectively protected by laws applicable to workers in general.

2. Governments shall do everything possible to prevent any discrimination between workers belonging to the peoples concerned and other workers, in particular as regards:

- (a) admission to employment, including skilled employment, as well as measures for promotion and advancement;
- (b) equal remuneration for work of equal value;
- (c) medical and social assistance, occupational safety and health, all social security benefits and any other occupationally related benefits, and hous-

ing;

(d) the right of association and freedom for all lawful trade union activities, and the right to conclude collective agreements with employers or employers' organisations.

3. The measures taken shall include measures to ensure:

(a) that workers belonging to the peoples concerned, including seasonal, casual and migrant workers in agricultural and other employment, as well as those employed by labour contractors, enjoy the protection afforded by national law and practice to other such workers in the same sectors, and that they are fully informed of their rights under labour legislation and of the means of redress available to them;

(b) that workers belonging to these peoples are not subjected to working conditions hazardous to their health, in particular through exposure to pesticides or other toxic substances;

(c) that workers belonging to these peoples are not subjected to coercive recruitment systems, including bonded labour and other forms of debt servitude;

(d) that workers belonging to these peoples enjoy equal opportunities and equal treatment in employment for men and women, and protection from sexual harassment.

4. Particular attention shall be paid to the establishment of adequate labour inspection services in areas where workers belonging to the peoples concerned undertake wage employment, in order to ensure compliance with the provisions of this Part of this Convention.

## **Part IV. Vocational Training, Handicrafts and Rural Industries**

### **Article 21**

Members of the peoples concerned shall enjoy opportunities at least equal to those of other citizens in respect of vocational training measures.

### **Article 22**

1. Measures shall be taken to promote the voluntary participation of members of the peoples con-



cerned in vocational training programmes of general application.

2. Whenever existing programmes of vocational training of general application do not meet the special needs of the peoples concerned, governments shall, with the participation of these peoples, ensure the provision of special training programmes and facilities.

3. Any special training programmes shall be based on the economic environment, social and cultural conditions and practical needs of the peoples concerned. Any studies made in this connection shall be carried out in co-operation with these peoples, who shall be consulted on the organisation and operation of such programmes. Where feasible, these peoples shall progressively assume responsibility for the organisation and operation of such special training programmes, if they so decide.

### **Article 23**

1. Handicrafts, rural and community-based industries, and subsistence economy and traditional activities of the peoples concerned, such as hunting, fishing, trapping and gathering, shall be recognised as important factors in the maintenance of their cultures and in their economic self-reliance and development. Governments shall, with the participation of these people and whenever appropriate, ensure that these activities are strengthened and promoted.

2. Upon the request of the peoples concerned, appropriate technical and financial assistance shall be provided wherever possible, taking into account the traditional technologies and cultural characteristics of these peoples, as well as the importance of sustainable and equitable development.

## **Part V. Social Security and Health**

### **Article 24**

Social security schemes shall be extended progressively to cover the peoples concerned, and applied without discrimination against them.

### **Article 25**

1. Governments shall ensure that adequate health services are made available to the peoples concerned, or shall provide them with resources to al-

low them to design and deliver such services under their own responsibility and control, so that they may enjoy the highest attainable standard of physical and mental health.

2. Health services shall, to the extent possible, be community-based. These services shall be planned and administered in co-operation with the peoples concerned and take into account their economic, geographic, social and cultural conditions as well as their traditional preventive care, healing practices and medicines.

3. The health care system shall give preference to the training and employment of local community health workers, and focus on primary health care while maintaining strong links with other levels of health care services.

4. The provision of such health services shall be co-ordinated with other social, economic and cultural measures in the country.

## **Part VI. Education and Means of Communication**

### **Article 26**

Measures shall be taken to ensure that members of the peoples concerned have the opportunity to acquire education at all levels on at least an equal footing with the rest of the national community.

### **Article 27**

1. Education programmes and services for the peoples concerned shall be developed and implemented in co-operation with them to address their special needs, and shall incorporate their histories, their knowledge and technologies, their value systems and their further social, economic and cultural aspirations.

2. The competent authority shall ensure the training of members of these peoples and their involvement in the formulation and implementation of education programmes, with a view to the progressive transfer of responsibility for the conduct of these programmes to these peoples as appropriate.

3. In addition, governments shall recognise the right of these peoples to establish their own educational institutions and facilities, provided that such institutions meet minimum standards established by the

competent authority in consultation with these peoples. Appropriate resources shall be provided for this purpose.

#### **Article 28**

1. Children belonging to the peoples concerned shall, wherever practicable, be taught to read and write in their own indigenous language or in the language most commonly used by the group to which they belong. When this is not practicable, the competent authorities shall undertake consultations with these peoples with a view to the adoption of measures to achieve this objective.

2. Adequate measures shall be taken to ensure that these peoples have the opportunity to attain fluency in the national language or in one of the official languages of the country.

3. Measures shall be taken to preserve and promote the development and practice of the indigenous languages of the peoples concerned.

#### **Article 29**

The imparting of general knowledge and skills that will help children belonging to the peoples concerned to participate fully and on an equal footing in their own community and in the national community shall be an aim of education for these peoples.

#### **Article 30**

1. Governments shall adopt measures appropriate to the traditions and cultures of the peoples concerned, to make known to them their rights and duties, especially in regard to labour, economic opportunities, education and health matters, social welfare and their rights deriving from this Convention.

2. If necessary, this shall be done by means of written translations and through the use of mass communications in the languages of these peoples.

#### **Article 31**

Educational measures shall be taken among all sections of the national community, and particularly among those that are in most direct contact with the peoples concerned, with the object of eliminating prejudices that they may harbour in respect of these peoples. To this end, efforts shall be made to ensure that history textbooks and other educational materials provide a fair, accurate and informative

portrayal of the societies and cultures of these peoples.

### **Part VII. Contacts and Co-operation across Borders**

#### **Article 32**

Governments shall take appropriate measures, including by means of international agreements, to facilitate contacts and co-operation between indigenous and tribal peoples across borders, including activities in the economic, social, cultural, spiritual and environmental fields.

### **Part VIII. Administration**

#### **Article 33**

1. The governmental authority responsible for the matters covered in this Convention shall ensure that agencies or other appropriate mechanisms exist to administer the programmes affecting the peoples concerned, and shall ensure that they have the means necessary for the proper fulfilment of the functions assigned to them.

2. These programmes shall include:

(a) the planning, co-ordination, execution and evaluation, in co-operation with the peoples concerned, of the measures provided for in this Convention;

(b) the proposing of legislative and other measures to the competent authorities and supervision of the application of the measures taken, in co-operation with the peoples concerned.

### **Part IX. General Provisions**

#### **Article 34**

The nature and scope of the measures to be taken to give effect to this Convention shall be determined in a flexible manner, having regard to the conditions characteristic of each country.

#### **Article 35**

The application of the provisions of this Convention shall not adversely affect rights and benefits of the peoples concerned pursuant to other Conventions and Recommendations, international instruments, treaties, or national laws, awards, custom or agreements.

## **PART X. PROVISIONS**

#### **Article 36**

This Convention revises the Indigenous and Tribal Populations Convention, 1957.

#### **Article 37**

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

### **Article 38**

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.

2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.

3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

### **Article 39**

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

### **Article 40**

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications and denunciations communicated to him by the Members of the Organisation.

2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

### **Article 41**

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Na-

tions full particulars of all ratifications and acts of denunciation registered by him in accordance with the provisions of the preceding Articles.

### **Article 42**

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

### **Article 43**

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides-

(a) the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 39 above, if and when the new revising Convention shall have come into force;

(b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

### **Article 44**

The English and French versions of the text of this Convention are equally authoritative.

### **Cross references**

Conventions: C107 Indigenous and Tribal Populations Convention, 1957

Recommendations: R104 Indigenous and Tribal Populations Recommendation, 1957

**The DEA Funds  
Thailand's Genocidal  
Drug War Madness  
1000's in Prison  
Stop The War!**

# **Draft Declaration on the Rights of Indigenous Peoples**

## **COMMISSION ON HUMAN RIGHTS**

Sub-Commission on Prevention of Discrimination  
and Protection of Minorities Forty-fifth session  
Discrimination against indigenous peoples  
Report of the working group on indigenous popu-  
lations on its eleventh session  
Chairperson: Ms Erica-Irene A Daes

### **ANNEX I**

Draft declaration as agreed upon by the members  
of the working group at its eleventh session

Affirming that indigenous peoples are equal in dig-  
nity and rights to all other peoples, while recognizing  
the rights of all peoples to be different, to con-  
sider themselves different, and to be respected as  
such,

Affirming also that all peoples contribute to the  
diversity and richness of all civilizations and cul-  
tures, which constitute a common heritage of hu-  
mankind,

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

Reaffirming also that indigenous peoples, in the  
exercise of their rights, should be free from dis-  
crimination of any kind,

Concerned that indigenous peoples have been de-  
prived of their human rights and fundamental free-  
doms, resulting, inter alia, in their colonization and  
the dispossession of their lands, territories and re-  
sources, 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 pro-  
mote the rights and characteristics of indigenous  
peoples, especially their rights to their lands, terri-  
tories and resources, which derive from their po-  
litical, economic and social structures and from their  
cultures, spiritual traditions, histories and philoso-  
phies,

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

Convinced that control by indigenous peoples over  
developments affecting them and their lands, terri-  
tories and resources will enable them to maintain  
and strengthen their institutions, cultures and tra-  
ditions, and to promote their development in ac-  
cordance with their aspirations and needs,

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

Emphasizing the need for demilitarization of the  
lands and territories of indigenous peoples, which  
will contribute 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 respon-  
sibility for the upbringing, training, education and  
well-being of their children,

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 treaties, agreements and other ar-  
rangements between States and indigenous peoples  
are properly matters of international concern and  
responsibility,

Acknowledging that the Charter of 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 eco-  
nomic, social and cultural development,

Bearing in mind that nothing in this Declaration  
may be used to deny any peoples their right of self-  
determination,

Encouraging States to comply with and effectively implement all international instruments, in particular those relating to human rights, as they apply to indigenous peoples, in consultation and cooperation with the people 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,

Solemnly proclaims the following United Nations Declaration on the Rights of Indigenous Peoples:

## Part I

### Article 1.

Indigenous peoples have the right to the full and effective enjoyment of all of the human rights and fundamental freedoms which are recognized in the Charter of the United Nations and in the human rights law;

### Article 2.

Indigenous individuals and peoples are free and equal to all other individuals and peoples in dignity and rights, and have the right to be free from any kind of adverse discrimination, in particular that based on their indigenous origin or identity;

### Article 3.

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

### Article 5.

Every Indigenous person has the right to belong to a nationality;

## Part II

Article 6. No Genocide Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and to full guarantees against genocide or any other act of violence, including the removal of indigenous children from their families and communities under any pretext.

### Article 7.

Indigenous peoples have the collective and individual right not to be subject to ethnocide and cultural genocide, including the 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 identities;

(b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;

(c) Any form of population transfer which has the aim or effect of violating or undermining any of their rights;

(d) Any form of assimilation or integration by other cultures or ways of life imposed on them by legislative, administrative or other measures;

(e) Any form of propaganda directed against them;

### Article 8.

Indigenous peoples have the collective and individual right to maintain and develop their distinct identities and characteristics, including the right to identify themselves as indigenous and to be recognized as such;

### 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 disadvantage of any kind may arise from the exercise of such a right;

### Article 10.

Indigenous peoples shall not be forced from their lands or territories. No relocation shall take place without the free 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.

Indigenous peoples have the right to special protection and security in periods of armed conflict.

States shall observe international standards, in particular the Fourth Geneva Convention of 1949, for the protection of civilian populations in circumstances of emergency and armed conflict, and shall not:

(a) Recruit indigenous individuals against their will in the armed forces and, in particular, for use against other indigenous peoples;

(b) Recruit indigenous children into the armed forces under any circumstances;

(c) Force indigenous individuals to abandon their lands, territories or means of subsistence, or relocate them in special centers for military purposes;

(d) Force indigenous individuals to work for military purposes under any discriminatory conditions;

### Part III

#### Article 12.

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, artifacts, designs, ceremonies, technologies and visual and

performing arts and literature, as well as the right to restitution of cultural, intellectual, religious and spiritual property taken without their free and informed consent or in violation of their laws, traditions and customs;

#### Article 13.

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 use and control of ceremonial objects; and the right to repatriation of human remains.

States shall take effective measures, in conjunction with the indigenous peoples concerned, to ensure that indigenous sacred places, including burial sites, be preserved, respected and protected;

#### Article 14.

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.

States shall take effective measures, especially whenever any right of indigenous peoples may be affected, to ensure this right and to ensure that they can understand and be understood in political, legal and administrative proceedings where necessary through the provision of interpretation or by other appropriate means;

### Part IV

#### Article 15.

Indigenous children have the right to all levels and forms of education of the State. All indigenous peoples also have this right and 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.

Indigenous children living outside their communities have the right to be provided access to education in their own culture and language.

#### Article 16.

Indigenous peoples have the right to have the dignity and diversity of their cultures, traditions, histories and aspirations appropriately reflected in all forms of education and public information.

States shall take effective measures, in consultation with the indigenous peoples concerned, to eliminate all prejudice and discrimination and to promote tolerance, understanding and good relations among indigenous peoples and all segments of society;

#### Article 17.

Indigenous people have the right to establish their own languages. They also have the right to equal access to all forms of non-indigenous media.

States shall take effective measures to ensure that State-owned media duly reflect indigenous cultural diversity;

#### Article 18.

Indigenous peoples have the right to enjoy fully all rights established under international labour law and national labour legislation.

Indigenous individuals have the right not to be subjected to any discriminatory conditions of labour, inter alia, employment and salary;

#### Part V

##### Article 19.

Indigenous peoples have the right to participate fully, if they so choose, at all levels of decision-making in matters which may affect their rights, lives and destinies 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 20.

Indigenous peoples have the right to participate fully, if they so choose, through procedures determined by them, in devising legislative or administrative measures that may affect them.

States shall obtain the free and informed consent of the peoples concerned before adopting and implementing such measures;

##### Article 21.

Indigenous people have the right to maintain and develop their political, economic and social systems, 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. Indigenous peoples who have been deprived of their means of subsistence and development are entitled to just and fair compensation;

##### Article 22.

Indigenous people have the right to special measures for immediate effective and continuing improvement of their economic and social conditions, including in the areas of employment, vocational training and retraining, housing, sanitation, health and social security.

Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and disabled persons;

##### Article 23.

Indigenous people have the right to determine and

develop priorities and strategies for exercising their right to development. In particular, indigenous people have the right to determine and develop all 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.

They also have the right to access, without any discrimination, to all medical institutions, health services and medical care;

#### Part VI

##### Article 25.

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

##### Article 26.

Indigenous peoples have the right to own, develop, control and use the lands and territories, including to total environment of the lands, air, waters, coastal seas, sea-ice, flora and fauna and other resources which they have traditionally owned or otherwise occupied or used. This includes the right to the full recognition of their laws, traditions and customs, land-tenure systems and institutions for the development and management of resources, and the right to effective measures by States to prevent any interference with, alienation of or encroachment upon these rights;

##### Article 27.

Indigenous peoples have the right to the resititution of the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, occupied, used or damaged without their free and informed consent. Where this is not possible, they have the right to just and fair compensation. 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.

##### Article 28.

Indigenous peoples have the right to the conserva-

tion, restoration and protection of the total environment and production capacity of their lands, territories and resources, as well as to the assistance for this purpose from States and through international cooperation. Military activities shall not take place in the lands and territories of indigenous peoples, unless otherwise freely agreed upon by the peoples concerned.

States shall take effective measure to ensure, as needed, that programmes for monitoring, maintaining and restoring health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented;

#### Article 29.

Indigenous peoples are entitled to the recognition of the full ownership, control and protection of their cultural and intellectual property.

They have the right to special measures to control, develop and protect their sciences, technologies and cultural manifestations, including human and other genetic resources, seeds, medicines, knowledge of properties of fauna and flora, oral traditions, literatures, designs and visual and performing arts;

#### Article 30.

Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands, territories and other resources, including the right to require that States obtain their free and informed consent prior to the approval of any project affecting their lands, territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources. Pursuant to agreements with the indigenous peoples concerned, just and fair compensation shall be provided for any such activities and measures taken to mitigate adverse environmental, economic, social, cultural or spiritual impact;

### Part VII

#### Article 31.

Indigenous peoples, as a specific form of exercising their right to self determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, including culture, religion, education, information, media, health, housing, employment, social welfare, economic activities, land and resource management, environ-

ment and entry by non-members, as well as ways and means for financing these autonomous functions.

#### Article 32.

Indigenous peoples have the collective right to determine their own citizenship in accordance with their customs and traditions. Indigenous citizenship does not impair the right of indigenous individuals to obtain citizenship of the States in which they live.

Indigenous peoples have the right to determine the structures and to select the membership of their institutions in accordance with their own procedures.

#### Article 33.

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive juridical customs, traditions, procedures and practices, in accordance with internationally recognized human right standards.

#### Article 34.

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

#### Article 35.

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 other peoples across the borders.

States shall take effective measures to ensure the exercise and implementation of this right.

#### Article 36.

Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors, according to their original spirit and intent, and to have States honour and respect such treaties, agreements and other constructive arrangements. Conflicts and disputes which cannot otherwise be settled should be submitted to competent international bodies agreed to by all parties concerned;

### Part VIII



Article 37.

States shall take effective and appropriate measures, in consultation with the indigenous peoples concerned, to give full effect to the provisions of this Declaration. The rights recognized herein shall be adopted and included in national legislation in such a manner that indigenous peoples can avail themselves of such rights in practice.

Article 38.

Indigenous people have the right to have access to adequate financial and technical assistance, from States and through international cooperation, to pursue freely their political, economic, social, cultural and spiritual development and for the enjoyment of the rights and freedoms recognized in this Declaration.

Article 39.

Indigenous peoples have the right to have access to and prompt decision through mutually acceptable and fair procedures for the resolution of conflicts and disputes with the states, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall take into consideration the customs, traditions, rules and legal systems of the indigenous peoples concerned.

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.

Article 41.

The United Nations shall take the necessary steps to ensure the implementation of this Declaration including the creation of a body at the highest level with special competence in this field and with the direct participation of indigenous peoples. All United Nations bodies shall promote respect for and full application of the provisions of this Declaration.

Part IX

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 43.

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

Article 44.

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

Article 45.

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations.

Source: United Nations Economic and Social Council, Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, Discrimination Against Indigenous Peoples, Report of the Working Group on Indigenous Populations on its eleventh session. Chairperson-Rapporteur: Erica-Irene A. Daes. U.N. Doc. E/CN.4/Sub.2.1993/29/Annex I.23 August 1993

See also the plain version of the Draft Declaration Articles about the Draft Declaration  
From e-mail received at the Native Law Centre:  
Date: Wed, 22 Nov 2000

**Summary:**

It is difficult to sum up what happened on Day Two of the Working Group proceedings, which focused upon the process of attempting to “elaborate” a Declaration on the Rights of Indigenous Peoples, as mandated by the Commission on Human Rights. Of necessity, this report must attempt to describe the tone of the day.

The Indigenous delegations tried to communicate their dissatisfaction with how things have gone over the past several years. There were complaints about the states failing to relate their positions and to justify them.

The buzz over Canada’s and New Zealand’s “secret” positions was reflected in comments about a lack of “transparency, and candour, and discussions of “formal” and “informal” process. Most Indigenous delegates said that they wanted the states to tell their precise objections to the proposed draft and to back them up with specific objections that were directly linked to standards of international

law. Some delegates attempted to define “consensus,” because the Working Group is to operate with consensus when adopting specific articles.

The divide in the room was obvious. The state members, who sit in the front of the room, wore suits and expensive attire. The Indigenous representatives dressed more casually. The Indigenous representatives each attempted to tell the group that the states simply weren’t listening and that there was a real question of a process where the states would caucus separately to exchange their hidden agendas while leaving the Indigenous representatives in the dark.

The state representatives who spoke declared their support of the Declaration -in principle- while saying that there were problems with the Declaration draft. One declared divide was that the Indigenous representatives insisted upon adopting the Declaration draft word-for-word while there were “problems.” The Indigenous position was that the Declaration draft was the product of years of discussions among the “experts,” and that if there were any objections, they should be stated clearly and specifically, and they should be justified in terms of principles of international law.

Most of the state presentations were bafflegab; the UN-speak way of saying something important without saying anything at all. New Zealand said that it had a “firm commitment to getting a Declaration,” stating its “but...” in a cloud of smoke. Canada called upon the Indigenous Peoples to approach its proposals “with an open mind.” After one Indigenous delegate called Canada to task for injecting internal politics into the proceedings and not offering an international law basis for its position, Australia rose to say that there were problems with the Declaration, and when it offered new language, it would be supported by international law. Some states attempted to be helpful. Denmark proposed that the Indigenous representatives should be invited to listen on government consultations to “demystify” the process; that there should be formal and informal proceedings with an Indigenous co-chair; that there should be meetings by region to discuss the issues; and that perhaps it would be a good idea to have academics discuss the issues to find commonalities.

Switzerland and Cuba made pleas for the Working Group to listen to the Indigenous point of view.

The Indigenous representatives complained about the process and secret dealings among the states, insisting that objections must have a basis in international law; that there must be justifica-

tions for objections, a rationale, a statement of why specific proposals were inaccurate, and criteria for changes.

It was interesting to watch the U.S. delegation. When the states wanted to speak, they would tip their sign sideways to signal a desire to speak. At one point late in the morning, the United States sign was tipped up, and we waited to hear what the U.S. had to say. Early in the afternoon, two U.S. representatives intently debated a draft of notes, which were covered with correction marks and crossouts. One delegate had a little pile of hand-written, note card-like notes. Finally, the U.S. sign went down, and it did not speak.

The chair would respond to the Indigenous points now and then, noting in a schoolmaster-like tone that the Indigenous representatives were mistaken in their complaints about separate discussions of the state delegates or in the definition of what “consensus” happened to be.

In sum, there was a clear divide in the room, with the Indigenous representatives complaining of back room deals and bogus objections to the draft, while the states declared their support in general terms -with reservations- and the chair lectured the Indigenous delegations about how their objections were wrong or did not conform to UN procedure.

The United States delegation called a meeting after the session in the large lounge downstairs. The U.S. Indigenous delegates earnestly implored the U.S. to talk. They asked what the specific objections were and how they were grounded in fundamental principles of international law. They said that the U.S. could be an example and show leadership to promote human rights for Indigenous Peoples around the world. There was a general response by Michael Dennis to the effect that while there might not be objections to most provisions in the case of the Indigenous Peoples of the U.S., there were grave international implications. For example, if there was a statement that Indigenous Peoples had the right to self-determination, that might be used to justify an uprising in some remote part of the globe.

The meeting lasted about two hours. At the end, the U.S. told the Indigenous delegations that there would be a response about having meetings to discuss the specific issues, but that the logistic details would have to be worked out.

Today, there will be “general” discussions of self-determination and natural resource issues before the body goes on to articles 1, 2, 12, 13, 14, 44 and 45.

Opinion: "There is nothing new under the sun." The tone of proceedings is to the effect that the Indigenous representatives are unreasonable in insisting that the declaration draft be adopted as is. The complaints about process, back room talks among the states, and a lack of reasoned dissent were countered by the chair in terms of "that's not the way things are done at the UN;" "this chair always plays by the rules;" and "you simply do not understand." The gulf on a statement of the basic rights of indigenous peoples echoes the ancient Spanish debates over whether Indians are human, and whether the states will grudgingly acknowledge that Indigenous peoples have rights at all. Several of the states insisted that if there is to be an international declaration of indigenous rights, it must be limited by national law.

The United Nations wants a declaration before the close of the Decade of Indigenous Peoples, and several of the states want something on paper. The question is what the final product will be. Indigenous peoples went to the UN because of horrible conditions around the world, and there is still a hesitance to put anything on paper that has any meaning, because of course that would give some

support for indigenous demands that their land rights, political autonomy, or ability to have some leverage for their position would have UN sanction.

As I struggle to finish this to get ready for today's discussions of self-determination and natural resources, I wonder how the obvious divide will be closed. While one state delegate declared that "there is no hidden agenda," it is obvious that there is one. Australia, New Zealand, Canada and the United States are up to something, but we do not know what they are discussing. They are the "Ab-racadabra Boys," who make pitty-pat in secret tongues, talking down to us, "the rabble." The problem is that this is a deadly game, which has real meaning for Indigenous people who are being murdered and robbed. The states quibble, while the

Indigenous representatives attempt to reach out for dialogue, asking simply, "What is wrong with the draft that took so many years to write?"

James W. Zion

Navajo Working Group for Human Rights

The Navajo Working Group for Human Rights is a private NGO which is not affiliated with the Government of the Navajo Nation.



## The Right To Food

An Analysis of United States International Policy on Indigenous Peoples, the Human Right to Food and Food Security prepared by The International Indian Treaty Council November 15, 2002\*

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**An Analysis of United States International Policy on Indigenous Peoples, the Human Right to Food**

## and Food Security by the International Indian Treaty Council

*“Profit to non-Natives means money. Profit to Natives means a good life derived from the land and sea, that’s what we’re all about... The land we hold in trust is our wealth. It is the only wealth we could possibly pass on to our children. Good old Mother Earth with all her bounty and rich culture we have developed from her treasures is our wealth. Without our homelands, we become true paupers.”*

*Antoinette Helmer, Alaska Native*

*“...The Right to Food of Indigenous Peoples is a collective right based on our special spiritual relationship with Mother Earth, our lands and territories, environment, and natural resources that provide our traditional nutrition; underscoring that the means of subsistence of Indigenous Peoples nourishes our cultures, languages, social life, worldview, and especially our relationship with Mother Earth; emphasizing that the denial of the Right to Food for Indigenous Peoples not only denies us our physical survival, but also denies us our social organization, our cultures, traditions, languages, spirituality, sovereignty, and total identity; it is a denial of our collective indigenous existence...”*

*The Declaration of Atilan, from the 1st Indigenous Global Consultation on the Right to Food and Food Security, Panajachel, Guatemala, April 2002*

### **I. Introduction**

**This paper examines United States international policy as well as its international legal obligations with regard to Indigenous Peoples' food security and human right to food.\***

**For Indigenous Peoples throughout the U.S and the world, the issues of food security and the right to food are directly tied to issues of land, natural resources and the environment as well as to traditional cultural relationships and practices. Increasingly, Indigenous Peoples throughout the world, including the United States, are becoming wage earners tied to a money economy. Many now live in an urban environment. But life on the land based upon the practices of hunting, fishing, farming and gathering of traditional subsistence foods has always been**

**the basis of Indigenous identity, culture, language and the religious practice. The use of traditional foods for cultural and ceremonial as well as health purposes, and return to reservations and rural communities for participation in subsistence activities at key times of the year, remain of core importance for many Native families who live in the cities.**

**The focus of this paper is on the rights of traditional Indigenous Peoples who still practice and wish to continue to practice their traditional means of subsistence, as well as those who are committed to strengthening and revitalization these practices as the basis of their individual and collective well being.**

## **II. Economics, World Views and the Right to Food**

Internationally, the United States has long held that that food is a matter of production and economic development, and not a question of human rights and fundamental freedoms. In fact, as a component of its international policy, the U.S. continues to question whether so-called “economic rights” such as the right to food are human rights at all. As a solution to the problems of poverty, hunger and food insecurity throughout the world, the United States has been aggressively steadfast in its promotion of the globalization of trade or “trade liberalization,” which promotes unrestricted trade between nations as something good for everyone. This theory contends that all countries become richer as they trade and allow the resulting prosperity to trickle down to their citizens.

As articulated by United States delegations at many international meetings, US policy is based upon the premise that the production of more food, through economic development in general and industrialized agriculture in particular, will increase both food supplies and wealth, enabling more people to have money to buy more food (as well as other consumer items).

**But there are profound contradictions between the dominant economic model based on promotion of economic globalization, unrestricted free trade and industrialized production and the vision of traditional Indigenous Peoples. The globalized market economy continues to prioritize the exploitation and movement of natural re-**

**sources, products and capital at the expense of environmental protection, and the human rights and self determination of the Peoples of the world.**

Mining, oil drilling, industrialized agriculture, clear cutting of forests and mega-project damming all result in loss of traditional subsistence food resources and habitats. Yet these are considered to be hallmarks of progress, advancing the economic – based vision of development. Peoples’ and communities’ ancestral spiritual relationship to their lands, waters and traditional subsistence food resources cannot be measured in terms of dollars. They are of no value according to the dominant economic model of industrial development; in fact they are often seen as standing in the way of true “ p r o g r e s s ” .

**This contradiction is far more than a fascinating divergence of world-views. In the process of international investment and development, dominant global economic institutions and US policies that support them continue to displace communities and to undercut Indigenous Peoples’ food security. They threaten to bring even more extreme poverty in many parts of the world.**

**One current example out of many around the world is Plan Puebla Panama. This mega-development plan is proposed by the United States, Mexico and Central American governments, and has already begun to threaten the food security and survival of the Indigenous Peoples living in its path.**

**Plan Puebla Panama covers the 9 southernmost Mexican states of Puebla, Veracruz, Oaxaca, Chiapas, Tabasco, Campeche, Yucatan and Quintana Roo, and includes the entire region of Mezo-America, from Mexico to Panama. Funded by the Inter American Development Bank, the International Monetary Fund and the World Bank, among other international financial institutions, it establishes the foundation for the Free Trade Area of the Americas (FTAA) incorporating all of the western hemisphere except Cuba.<sup>1</sup> In Mexico work has already begun in the development of corridors within the nine southernmost Mexican states (with large indigenous populations), creating an elaborate infra-**

structure of ports, highways, airport and railway systems, to connect the development of petroleum, energy, maquiladora (assembly plants) and agricultural industries. It also intends to create a bank of cheap labor for the maquiladoras, and to exploit the natural resources of the region, including minerals, timber, petroleum, biodiversity and water.

In June 2001, 171 organizations from 16 countries, including many Indigenous Nations and organizations from Mexico and Central America, met in San Cristobal de las Casas, Chiapas Mexico, at the First Week for Biological and Cultural Diversity. Calling for food sovereignty and the right of Indigenous Peoples “to produce our own food,” the group declared their rejection of Plan Puebla Panama, “with all of the implications in detriment of our peoples, the biodiversity, and the natural and cultural resources.”<sup>2</sup>

The Congreso Nacional Indígena (CNI), of Mexico, at their Eighth National Assembly, also condemned Plan Puebla Panama, the massive loss of Indigenous lands and the appropriation by trans-nationals of Indigenous natural resources and traditional knowledge.<sup>3</sup> The 86 Indigenous communities and organizations of the CNI, from 15 states of Mexico, composed of 30 Indigenous Nations,<sup>4</sup> also declared:

*“Finally, our own development model must be based upon the same roots of the existence of our peoples [and] promote the cultivation of corn and the ancestral culture that we have constructed in its cultivation.”<sup>5</sup>*

On March 13 of this year, an article in *Indian Country Today*<sup>6</sup> reported that there are already some 50 million acres of genetically engineered crops growing in the United States, including farmlands near Indian country in North Dakota, South Dakota, Minnesota, Nebraska, Arizona and New Mexico. The importance of the protection of traditional subsistence food resources threatened by industrial models of production, including the genetic modification of corn plants by the biotechnology industry, was affirmed by Clayton Brascoupe, Director of the Traditional Native American Farmers Association.

Commenting on the fact that drift pollution contaminates the crops of traditional Native farmers in these areas when the wind, and insects carry the pollen to their natural crops, Mr. Brascoupe, a member of the Mohawk Nation and Tesuque Pueblo, said:

*“When I first heard about the corruption of the genes of our Corn Mother, it frightened me because corn is at the heart of our survival as Indigenous peoples of North, South and Central America. Corn is our Mother. She nourishes us and takes care of us. Our Creator gave it to us as a gift and instructed us on how to care for the corn so that it will care for us. It is our first medicine, and our people and corn are one in the same. Our mother is being corrupted by scientists and corporations, and if we don’t stop it, she won’t have the ability to heal us any longer.”*

In 2001, under the North American Free Trade Agreement, the U.S. shipped 6 million tons of corn to Mexico. According to the same Indian Country Today article, a quarter of this corn was genetically engineered, further undermining the subsistence corn based economy of the traditional Indian peoples of Mexico, in a continuous, destructive cycle.

### **III. The Human Right to Food**

**The right to food, defined internationally as an economic right, has been the subject of much consideration and activity by the United Nations. The United Nations Universal Declaration on the Eradication of Hunger and Malnutrition calls the right to food an “inalienable right.”<sup>7</sup> The Universal Declaration on Human Rights and the International Covenant on Economic, Social and Cultural Rights both recognize the right to food and freedom from hunger.**

**Article 25 of the Universal Declaration on Human Rights (UDHR)<sup>8</sup> affirms the right to a standard of living adequate for the health and well being of the human person and his or her family, including food, clothing, housing and medical services. The International Covenant on Economic, Social and Cultural Rights also speaks**

of an adequate standard of living including adequate food in Article 11. This same article recognizes the fundamental right of every person to be free from hunger and calls for international cooperation in the improvement of the production, conservation and distribution of food.

In 1999, the treaty-monitoring body of the International Convention on Economic, Social and Cultural Rights issued General Comment No. 12.<sup>9</sup> This General Comment, meant to guide the States Parties in their implementation of the Covenant, affirms that the right to adequate food is indivisibly linked to the inherent dignity of the human person and is indispensable for the fulfillment of all other human rights, “inseparable from social justice” requiring the adoption of appropriate economic, environmental and social policies leading to the eradication of poverty.

The UN Commission on Human Rights adopted a resolution in the year 2000, in its renewal of the mandate for its Special Rapporteur (a U.N. expert responsible for reporting to the CHR on the implementation of specific rights) on the Right to Food. The resolution calls hunger an outrage and a violation of human dignity that requires urgent measures at the national, regional and international level to eliminate it.<sup>10</sup>

In his first report in 2001, the United Nations Special Rapporteur on the Right to Food cited a UN Food and Agriculture Organization (FAO) estimate that “826 million people today are chronically and seriously undernourished.”<sup>11</sup> Although data on Indigenous hunger and malnutrition is lacking, particularly in North America, studies show that Indigenous Peoples generally live under significantly worse socio-economic conditions, (including hunger and malnutrition) than the overall population, even in North America.<sup>12</sup>

A March, 2000 report by the South Dakota Advisory Committee to the US Commission on Civil Rights affirms this dire fact in terms of the situation of at least some Indigenous Peoples in the US. The report states that men in Bangladesh have a higher life expectancy than Native American men in South Dakota, USA, and that rates of death from a variety of causes was considerably higher for

Native Americans than for the general US population, including alcoholism (579%), tuberculosis (475%), and diabetes (231%).<sup>13</sup>

#### **IV. The Right to Development and Indigenous Peoples**

The Right to Development under International Law is an inalienable human right by virtue of which every human person and *all peoples* are entitled to participate in, contribute to, and enjoy. Article 1 of the Declaration on the Right to Development characterizes the Right to Development as a right “in which all human rights and fundamental freedoms can be fully realized.”<sup>14</sup> As defined, the Right to Development encompasses not only economic rights but social, cultural and political rights as inherent to the Right to Development. Thus the full realization of the political right of peoples to self determination, including the exercise of their inalienable right to full sovereignty over their natural wealth and resources are fundamental to the Right to Development.

The Declaration on the Right to Development, concerned that all human rights are indivisible and interdependent, declares that the promotion and respect for, and the enjoyment of certain human rights and fundamental freedoms cannot justify the denial of other human rights and fundamental freedoms.<sup>15</sup> Any process of development that violates human rights, even if it improves the enjoyment of some rights, is by its very nature unsustainable and not consistent with the Right to Development.

The impact on Indigenous Peoples of the continued violation of this principle was noted by the 1990 UN Global Consultation on the Right to Development, which stated that, “the most destructive and prevalent abuses of Indigenous Rights are the direct consequences of development strategies that fail to respect their fundamental right of self-determination.”

The first International Conference on Human Rights also found “that the enjoyment of economic and social rights is inherently linked with any meaningful enjoyment of civil and political rights and there is a profound interconnection between the realization of human rights and economic development.”<sup>16</sup> It has long been the position of Indig-

enous Peoples and their representatives internationally, that the Right to Development thus requires the recognition of the right of all peoples, including Indigenous Peoples, to determine for themselves the processes and forms of development necessarily appropriate to their cultures and circumstances, based on the principle of self-determination.

**As defined by the Commission on Human Right's Independent Expert (Special Rapporteur), the Right to Development is a right to a particular process by which "all human rights and fundamental freedoms can be fully realized."<sup>17</sup> Development itself is described by the Preamble to the Declaration on the Right to Development as, "a global process which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting there from."**

**In this process of development, as States comply with their obligations to create conditions for the enjoyment of all human rights, the steps the State or international actors take in the process of development should *actually improve conditions for the enjoyment of some human rights while not violating any other human rights.*<sup>18</sup>**

**The connection between the Right to Development and the Right to Food is fundamental for Indigenous Peoples. The Gwich'in of Canada and Alaska, for example, continue to maintain that their development and survival as a People is based on protection of the caribou rather than on oil development on their traditional lands. A statement issued in August 2002 by the Gwich'in Steering Committee, responding to renewed US government threats to open the caribou calving ground in the Alaska National Wildlife Refuge to oil exploration, stated: "*Our traditional culture and way of life which is interconnected with the Porcupine Caribou Herd to meet all our essential needs such as food, clothing, tools, spirituality and social structure, is at stake*".**

## **V. Land, Resources and the Right to Food**

***"How firm we stand and plant our feet upon our land determines the strength of our children's heartbeats."***

***Polly Koutchak, Unalakleet Village, Alaska***

**Indigenous Peoples have relied for millennia on their lands and natural resources for their means of subsistence and for their cultural, physical and spiritual survival. This profound spiritual and material relationship is reflected in traditional songs, stories, ceremonies, clan relationships and in the food gathering, processing and sharing practices which they have relied upon for millennia.**

**These fundamental relationships are also recognized in international human rights instruments,<sup>19</sup> the studies of experts,<sup>20</sup> and in many World Conference declarations,<sup>21</sup> all calling for the recognition, protection and enjoyment of Indigenous Peoples' right to their lands and the practice of their cultures, languages and religion.**

**Forced from their lands and into the cities through outright theft of land, loss of territory, and ruination of their environment, Indigenous Peoples are undergoing a trend of urbanization that is in full rigor. Although a limited form of self-determination is practiced by recognized Indian Tribes on reservations in the United States, the loss traditional territories, traditional use of subsistence resources and destruction of sacred sites located off the reservation continue unabated.**

**A recent Organization of American States Inter-American Commission on Human Rights recently addressed the United States' confiscation of Western Shoshone livestock, grazed on lands that were traditional treaty lands but now are considered "federal" lands. Finding that the United States was violating the human rights of the Western Shoshone Peoples, the OAS Inter-American Commission on Human Rights described the collective nature and the content of the right to property with regard to Indigenous Peoples, as well its interconnectedness with the relationship to land, the right of self-determination, the right to development and the right to food:**

**"Perhaps most fundamentally, the [Inter-American] Commission and other international authorities have recognized the collective aspect of Indigenous rights, in the sense of rights that are realized in part or in whole through their guarantee to groups**



or organizations of people. And this recognition has extended to acknowledgement of a particular connection between communities of indigenous peoples and the lands and resources that they have traditionally occupied and used, the preservation of which is fundamental to the effective realization of the human rights of indigenous peoples more generally and therefore warrants special measures of protection. The commission has observed, for example, that continued utilization of traditional collective systems for the control and use of territory are in many instances essential the individual and collective well-being, and indeed the survival of, indigenous peoples and that control over the land refers both to its capacity for providing the resources which sustain life, and to the geographic space necessary for the cultural and social reproduction of the group. The Inter-American Court of Human Rights has similarly recognized that for indigenous communities the relation with the land is not merely a question of possession and production but has a material and spiritual element that must be fully enjoyed to preserve their cultural legacy and pass it on to future generations.”<sup>22</sup>

Indigenous Peoples’ rights to aboriginal lands and their traditional use similarly has also been addressed by the UN Human Rights Committee, the Treaty Monitoring Body of the International Covenant on Civil and Political Rights (ICCPR). The Human Rights Committee has recognized the ownership inherent in that use, directly recognizing the traditional physical and spiritual relationship of Indigenous Peoples to their traditional lands and their importance to their means of subsistence and physical survival.<sup>23</sup>

The Human Rights Committee has addressed Article 27 of the ICCPR and Indigenous Peoples’ right to their traditional lands in the examination of periodic States’ reports on “measures they have adopted which give effect to the rights recognized” by the Covenant, pursuant to Article 40 of the Covenant. In examining Chile’s 1999 periodic report, for example, the Human Rights Committee found that the effect on the

Mapuche Peoples of hydroelectric and other development projects would affect their way of life so profoundly, that relocation and compensation were not appropriate to comply with Article 27:

“Therefore, when planning actions that affect Indigenous communities, the State party must pay primary attention to the sustainability of the indigenous culture and way of life and to the participation of members of indigenous communities in decisions that affect them.”<sup>24</sup>

In the case of free trade and globalized economies outside of the United States, it is important to note that the Human Rights Committee has also found that Article 1(3) “imposes specific obligations on States Parties, not only in relation to their own peoples, but *vis a vis* all peoples which have not been able to exercise or have been deprived of the possibility of exercising their right to self determination.”<sup>25</sup> Just as the United States cannot justifiably pick and choose which rights it will observe and which rights it will violate in the United States, neither can it pick and choose which Indigenous Peoples’ rights it will respect or not respect in other countries in its promotion of globalization,

## VI. The International Right of Self-Determination and Indigenous Peoples

The concept of self-determination is fundamental to the analysis of United States policy toward food security and the right to food. Although Indigenous Peoples in the United States normally speak of “Sovereignty” with regard to an Indigenous Nation or Tribe and their right to manage their own affairs, in the United States the word “sovereignty” has become a relative term when coupled in US statutes with words such as “domestic” and dependent”. Tribes as well as the US government usually take it to mean some form of internal autonomy or “self governance” rather than independence. And many Indian tribes question the extent to which even internal autonomy exists within the US.

On the international level the right of all Peoples to determine the full range of their affairs, territories and destinies is normally referred to as

the right of self-determination. The word “sovereignty” is used in a very few international documents. The notable exception of the United Nations Resolution, “Permanent Sovereignty over Natural Resources” defining permanent sovereignty over natural resources as a right of States, peoples and nations.<sup>26</sup> This Resolution, in its preamble, states that such sovereignty “is a basic constituent of the right of self-determination.”<sup>27</sup> A study recently begun the Sub-Commission on the Promotion and Protection of Human Rights has found that Indigenous Peoples have the right to permanent sovereignty over their natural resources.<sup>28</sup>

The Universal Bill of Human Rights, consisting of the Universal Declaration on Human Rights, along with the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESC) defines the right of Self Determination in article 1 in Common to the ICCPR and ICESC:

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

“2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principles of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

“3. The States Parties to the present Covenant, including those having responsibilities for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.”<sup>29</sup>

The United States ratified the International Covenant on Civil and Political Rights (ICCPR) in 1992. Its international legally binding obligation with regard to Indigenous Peoples is to rec-

ognize and to respect the right of Peoples to Self-Determination, including the right to control their own destiny and the right to survival as Peoples. With regard to the right to food and food security, Article 1 in Common is the legally binding obligation to recognize and promote the right of peoples to use and control their own resources and make their own decisions about their own economic and social development. Most directly relevant to the right to food and food security, it commits the United States to the principle that “[I]n no case may a people be deprived of its own means of subsistence.” (emphasis supplied).

The Supreme Court of the United States is the arbiter of the United States Constitution. It decides if the Constitution is complied with or not. Similarly, the Human Rights Committee, the Treaty Monitoring Body of the International Covenant on Civil and Political Rights is the body that determines if the States parties are complying with their obligations to the Covenant. The jurisprudence of the Human Rights Committee, its interpretation of the provisions of the Covenant is binding on all States Parties to the Covenant, including the United States.

Although initially reticent to apply the right of self determination under Article 1 of the Covenant to Indigenous Peoples,<sup>30</sup> the Human Rights Committee now recognizes that the right of self determination applies Indigenous Peoples. In examining the 1999 Canadian periodic report, the Human Rights Committee stated:

“With reference to the conclusions by the [Royal Commission on Aboriginal Peoples] that without a greater share of lands and resources institutions of aboriginal self-government will fail, the Committee emphasizes that the right to self determination requires, *inter alia*, that all peoples must be able to freely dispose of their natural wealth and resources and that they may not be deprived of their own means of subsistence (Article 1(2)). The Committee recommends that decisive and urgent action be taken towards the full implementation of the RCAP recommendations that the practice of extinguishing inherent aboriginal rights be abandoned as incompatible

with article 1 of the Covenant.”<sup>31</sup>

Since 1999, the Human Rights Committee has also applied the right of self determination to the Indigenous Peoples in Mexico,<sup>32</sup> the Saami Peoples in Norway,<sup>33</sup> and the Aboriginal Peoples in Australia.<sup>34</sup>

## VII. Indigenous Peoples as Peoples under International Law

Article 1 in Common to the ICCPR and ICESAC states that all peoples have the right of self determination. The use and application of the term “peoples” as applied to Indigenous Peoples, critical for their enjoyment of the right to food as well as all other human rights, has been at the center of international debates for many years. Although now recognized by United Nations Treaty Monitoring Bodies and experts as a right of Indigenous Peoples, the struggle by Indigenous Peoples for recognition as “Peoples” by the member States of the United Nations has been ongoing at the United Nations since the inception, in 1982, of the (sic) Working Group on Indigenous Populations.<sup>35</sup>

The primary focus of this debate in recent years has been the ongoing discussions at the “Intersessional Ad Hoc Open Ended Working Group for the Elaboration of the Draft Declaration for the Rights of Indigenous Peoples” established by the UN Commission on Human Rights in 1995. One of the most controversial articles in the Draft Declaration is Article 3, which restates the words of Article 1 in common of the two International Human Rights Covenants, and affirms the applicability of this right of all Peoples to Indigenous Peoples as follows: *“Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.”*

The United States unfortunately has been at the center of the opposition to the recognition of Indigenous Peoples as Peoples with the full range of rights designated for all Peoples by international Law at that body and many others. The United States as a matter of international policy has refused to recognize that Indigenous Peoples

are “Peoples” in order to avoid its legal obligation under international law. At the United Nations, the US has fought consistently against the use of the term “Peoples” to refer to Indigenous Peoples, recommending in its interventions that the term “populations”, “people”, and “persons belonging to Indigenous groups” be used instead.

In recent years the US has agreed to use the term Indigenous Peoples in United Nations documents, but has insisted on footnotes and caveats to the effect that the word would not have the same meaning with regard to the rights that “normally” attach to the word under international law.<sup>36</sup> During the last days of the Clinton Administration, in its consideration the use of the words “indigenous peoples” in the Declaration and Programme of Action of the World Conference Against Racism (WCAR), the Department of State issued a memorandum defining the US position on the word “peoples” stating that the US would not oppose the use of the words “indigenous peoples” in documents other than the WCAR Declaration, so long as this recognition “did not include a right of independence or permanent sovereignty over natural resources.”<sup>37</sup>

According to the U.S. State Department, the new Administration of President Bush has confirmed their commitment to continue the old policy of agreeing to use the term “Indigenous Peoples” only while severely qualifying its applicability under international law, rejecting the Clinton policy. At a meeting of a Special Session on the “proposed American Declaration on the Rights of Indigenous Peoples” in Washington DC on March 14th, 2002, the U.S. presented an oral intervention which was then distributed in written form. Addressing the issues of the Rights of Indigenous Peoples to Self-determination the US statement proposed the following language for Article 15 (1): “Indigenous Peoples have the right to internal self-determination. By virtue of that right they may negotiate their political status within the framework of the existing nation state ...”

This attempt to relegate them to what Indigenous Peoples view as a “second class” of Peoples, with limited rights under International law as compared with all other Peoples, is a dem-

onstration of blatant racism that has been vehemently opposed by Indigenous delegates at many international bodies. The delegates have insisted that any attempt to enforce an unequal application of International laws violates the fundamental principle of non-discrimination upon which international laws is supposed to be based.

An apparent breakthrough in this ongoing debate occurred very recently, on September 4, 2002, on the 11<sup>th</sup> hour of the last working day, the World Summit on Sustainable Development at Johannesburg, South Africa. With the United States delegation present, the WSSD adopted its Declaration by consensus of the States, reaffirming “the vital role of indigenous peoples in sustainable development” with no qualification on the word.<sup>38</sup>

If not an oversight by the United States delegation, this unqualified use of the term “indigenous peoples” appears to be a recent and radical change in United Nations policy and practice. But whether or not the Bush Administration continues not to oppose the “s” on “indigenous peoples” the fact of US opposition to the recognition of the right of self-determination of Indigenous Peoples without qualification is clear, given the more “liberal” Clinton State Department memo, which reduces Indigenous Peoples’ natural resources to fodder for resource extraction and economic globalization. The significance and impact, if any, of the WSSD very recent development remains to be seen.

#### VIII. The United States’ Position on the International Right to Food

The United States has not ratified the International Covenant on Economic, Social and Cultural Rights. In fact, the U.S. government’s consistent position is that the Right to Food, along with rights such as the Right to Health, are specifically “Economic Rights” that the United States does not recognize.

According to Lynn Sicade, Deputy Directory of Multi-lateral affairs in the US State Department’s Bureau of Democracy, Human Rights and Labor, the US continues to maintain

that that enforcement of a State’s obligation to the Right to Food as a human right applies strictly in “political” situations, such as when food is denied as a deliberate act of war or as a punishment for a group’s role in a political or civil conflict.

The US government does not agree that Right to Food is an enforceable human right in and of itself under international law. The US, in a position which distinguishes it from most other countries in the UN system, maintains that the responsibility (as distinct from the legal obligation) of States is to “provide conditions whereby the individual is able to meet his or her own economic needs, including obtaining adequate food, through his or her own initiative.”

The US government asserted precisely that position in 2001, during the last session of the UN Commission on Human Rights. At that time it was the only State out of 53 to vote against a Commission Resolution on the Right to Food, which was adopted by a vote of 52 to 1. US Ambassador George Moose, in statement delivered to the Commission on April 20<sup>th</sup> 2001, stated the reason for the US opposition to the resolution: “*It implies that citizens of a State have a human right to receive food directly from the government of the State and it also suggests a legal remedy at the national and international levels against a State for those individuals who believe that their presumed right has been denied.*” (emphasis supplied).

As evidenced in its “rejection” of the OAS Inter-American Commission on Human Rights decision regarding the Western Shoshone lands, its assertion that it is exempt from obligations to so-called “economic rights” affirmed by the rest of the international community, as well as its position regarding the rights and status of Indigenous Peoples, the United States demonstrates a consistent pattern of ongoing selectivity about which international human rights and processes it chooses to respect or recognize, which it does not, and which it chooses to redefine or qualify to fit its own vision of development.

#### IX. Impediments to the Enjoyment of the Right to Food

**The Universal Declaration on the Eradication of Hunger and Malnutrition (1974) recognizes that “the situation of the peoples affected by hunger and malnutrition arises from historical circumstances, especially social inequalities, including alien and colonial domination, foreign occupation, racial discrimination, apartheid and neo-colonialism in all its forms, which continue to be among the greatest obstacles to the full emancipation and progress of the developing countries and peoples involved.”**

**The Declaration on the Right to Development (1986) makes similar findings, “considering that the elimination of the massive and flagrant violations of the human rights of peoples and individuals affected by situations as those resulting from colonialism, neo-colonialism, apartheid, all forms of racial discrimination, foreign domination and occupation, aggression and threats against national sovereignty, national unity and territorial integrity and threats of war would contribute to the establishment of circumstances propitious to the development of a great part of mankind.”**

**The Declaration on the Right to Development recognizes that the creation and conditions favorable to the development of peoples and individuals is the primary responsibility of their States. Article 5 calls upon States to take “resolute steps to eliminate massive and flagrant violations of peoples and individuals suffering situations of apartheid, all forms of racism and racial discrimination, colonialism, foreign domination and occupation, aggression, foreign interference” and other wrongs also mentioned in the Declaration to eradicate hunger. Article 5 includes as a fundamental wrong against which the States should take resolute steps, the refusal to recognize the fundamental right of peoples to self-determination.**

The Commission on Human Rights Special Rapporteur on the Right to Food, Mr. Zeigler, identifies seven major economic obstacles that hinder or prevent the realization of the right to food:

1. Problems linked to developments in world trade, particularly the agricultural policies of developed countries, as sanctioned by the World Trade Organization (WTO),

which perpetuate malnutrition and hunger in the South;

2. External debt servicing and its impact on food security, including the structural adjustment programmes of the International Monetary Fund (IMF), which consistently aggravate undernourishment and malnutrition in debtor countries;
3. Developments in biotechnology, including genetically modified plants, ownership of international patents by agribusiness from the North, and worldwide protection of these patents, hampering access to food and the availability of food;
4. Wars and their destructive impact on food security;
5. Corruption;
6. Access to land and credit;
7. Discrimination against women and its impact on the realization of the right to food.<sup>39</sup>

In an effort to facilitate the input of Indigenous Peoples’ issues to the “World Food Summit: five years later” and related events (below), the UN Food and Agriculture Organization provided primary financial support for the first Global Indigenous Consultation on the Right to Food, requesting that the International Indian Treaty Council serve as coordinator of the Consultation. The Consultation took place on the shores of Lake Atitlán in Panajachel, Guatemala in April 2002, and resulted in a Declaration that proposes actions from local to international levels, as well as commitments among the Consultation participants and the communities, organizations, tribes and Nations they represented.

**The 125 Indigenous farmers, fishermen, herders, hunters and other traditional subsistence practitioners and technical experts from 28 countries — including the United States — who participated in the Consultation identified a number of obstacles to their food security and food sovereignty. The first obstacle the Declaration identified is: “The implementation and domination of globalization and free trade, which act without limits nor morality in the theft of our lands, territories, and other resources necessary for our Food Security and Food Sovereignty.” (emphasis supplied).**

## **X. Food Sovereignty, Health and Cultural Rights**

The 1996 World Food Summit Plan of Action states that “Food Security exists when all people at all times have physical and economic access to sufficient, safe and nutritious food to meet their **dietary needs and food preferences** for an active and healthy life” (emphasis added). As an internationally accepted definition of Food Security, it therefore implies that Indigenous Peoples should have access to nutritional and culturally appropriate foods as part of a traditional, subsistence diet. The ceremonial songs, dances, prayers, clan relationships and other activities related to use and preparation of culturally appropriate foods are fundamental to the enjoyment of Food Security in its full meaning for Indigenous Peoples.

The General Comment on the Right to Adequate Food (UN/ECOSOC 1999) states that, “the core content of the right to adequate food implies: The availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture; The accessibility of such foods in ways that are sustainable and that do not interfere with the enjoyment of other human rights.”

Throughout the years, an international movement for Food Sovereignty has gained momentum. Although a concept not yet recognized by the United Nations in a formal manner, farmers, fishing peoples, hunters and others from throughout the world have defined Food Sovereignty as the right of peoples to define their own policies and strategies for the sustainable production, distribution and consumption of food, with respect for their own cultures and own systems of management of natural resources and rural areas. Indigenous Peoples have been and are currently active in the movement for food sovereignty at local as well as international levels, maintaining that it is a prerequisite for Food Security.

**The issues of dietary needs, culturally based food preferences and issues of health, as components of the right of Indigenous Peoples to food sovereignty, are critical for Indigenous Peoples. Studies have shown that for many Indigenous Peoples, the loss of a traditional diet due to land loss, urbanization or environmental degrada-**

**tion, and the adoption of a diet high in refined fats and sugars, have only made worse their susceptibility to diabetes which is reported at rates up to 80% in some US tribes, as well as other diseases. Other studies have shown that a return to the traditional diet has improved health and well being. The US government’s role in influencing dietary choices for Indians in the US is demonstrated in the high-fat, surplus cheese given out to Indian families through the Commodities Program. This program, which is basically a governmental subsidy program for US farmers, meat and dairy producers, only contributes to disease among Indigenous Peoples.**

**Likewise, the US role in eliminating traditional means of subsistence such as buffalo, as a deliberate strategy of political and economic subjugation, continues to have widespread health effects on the effected Indian Nations. But tribes, traditional communities and organizations — notably the Intertribal Bison Cooperative, which is composed of more than 50 tribes in the US and Alaska — are making significant strides to restore the buffalo as a central component of a healthy, culturally appropriate diet for their Peoples.**

**Impacts of industrial pollution and government indifference to it also have a severe impact on the health and culturally based subsistence practices of Indigenous Peoples in direct violation of International Law.**

**For example, in July 2000 in the United States of America, the National Academy of Sciences released a study concluding that an estimated 60,000 babies born each year in the US face serious threats of learning disabilities and other forms of neurological damage due to mercury contamination resulting from coal-fired power plant emissions released into rivers and lakes. The primary cause is consumption of contaminated fish by pregnant women living in the Great lakes, Northeast and other regions of the country. The Academy concluded that there is “little or no margin of safety” for the consumption of mercury by women of childbearing age, presenting a forced choice for Indigenous fishing communities who have relied on fish as the basis of their subsistence diets since time immemorial.**

**It should be noted that in some human rights**

conventions, like the ICCPR, “individual” complaints alleging violations of rights under the covenant or convention can be filed with the Treaty Monitoring Body. But this process is normally not required of a State ratifying the Convention or Covenant. A separate optional convention, called a “protocol” or an affirmative declaration by the State Party is required before people or Peoples can file a complaint under most human rights instruments. But the interpretations of the Covenant made pursuant to these complaints are binding on all States Parties including the United States, even if they have not adopted the optional protocol. Under Protocol 1 to the ICCPR, allowing complaints, (not ratified by the United States) the Human Rights Committee has accepted complaints and addressed the issue of land and Indigenous Peoples, in relation to Article 27 of the ICCPR. Article 27 states:

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with other members of the group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.”

**General Comment 23 of the Human Rights Committee is meant to serve as guidance to the States in their compliance with Article 27:**

**“3.2 The enjoyment of the rights to which article 27 relates does not prejudice the sovereignty and territorial integrity of a State party. At the same time, one or other aspect of the rights of individuals protected under that article – for example, to enjoy a particular culture – may consist in a way of life which is closely associated with territory and use of its resources. This may be particularly true of members of indigenous communities... ;**

“7. With regard to the exercise of the cultural rights protected under article 27, the Committee observes that culture manifests itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of indigenous peoples. That right may include such traditional ac-

tivities as fishing or hunting, and the right to live in reserves protected by law. The enjoyment of those rights may require positive legal measures of protection and measures to ensure the effective participation of members of minority communities in decisions that affect them.”<sup>40</sup>

**In the case of the Lubicon Lake Band of Canada, the Provincial government of Alberta had granted leases to private corporations in the exploitation of oil, gas, timber and other natural resources, and the construction of a pulp mill. The resulting environmental degradation had a devastating effect on the health of the Lubicon Lake Band, and on their traditional subsistence practices and traditional culture and way of life. Six years after the filing of a complaint, the Committee found a violation of Article 27 of the ICCPR.<sup>41</sup>**

In reaching this conclusion the Committee recognized that the use of traditional lands in the practice of culture and interference with Indigenous traditional land uses by environmental degradation is not permitted under the ICCPR.<sup>42</sup>

The Convention on the Rights of the Child, article 24, also recognizes the right of children to the enjoyment of the highest standard of health and mandates that state parties “ shall pursue full implementation of this right;” States are required to “take appropriate measures to combat disease and malnutrition... “ through the provision of adequate nutritious foods and clean drinking water, taking into consideration the dangers and risks of environmental pollution.” The US is one of two countries in the world that has not yet ratified this Treaty, although the Clinton Administration did sign it in 1994. The only other “State” that has not ratified the Convention on the Rights of the Child is Somalia. Ratification is required before the Convention or Treaty is binding on the State.

### **XI. The UN Food and Agriculture Organization and The World Food Summit**

**According to its website<sup>43</sup>, the UN Food and Agriculture Organization (FAO) is the lead UN agency for agriculture, forestry, fisheries and rural development issues. It is made up of 180**

member states or governments, plus the European Community. It was founded in 1945 to raise levels of nutrition and standards of living, to improve agricultural productivity and to improve the condition of rural populations. FAO promotes the pursuit of “food security,” which was defined by world leaders who gathered at the World Food Summit in 1996.

**The World Food Summit and the Rome Declaration on World Food Security (1996)**<sup>44</sup> reaffirmed that democracy and the promotion and protection of human rights and fundamental freedoms including the right to development are essential for achieving sustainable food security for all. The Rome Declaration considers the elimination of poverty essential to improve food security.

**Declaring that food should not be used as an instrument for political and economic pressure, the States agreed in the Declaration that trade was a key element in achieving food security. They agreed to pursue food trade and overall trade policies that encourage producers and consumers to utilize available resources in an economically sound and sustainable manner “through a fair and market oriented world trade system.”**

**The World Food Summit Plan of Action details the commitments made by the States in the declaration, with a view of reducing the number of undernourished people in the world by one half, no later than the year 2015, with a midterm review to determine whether this goal is possible earlier, by the year 2010. It is clear, by FAO statistics that this goal is far from being met.**<sup>45</sup>

**The World Food Summit Plan of Action contains a series of seven generalized commitments, each with a set of bases for action and specific objectives and actions.**

**Upon first impression, there are many laudable commitments and goals within the World Food Summit Plan of Action. Commitments include the creation of enabling conditions to eradicate poverty and for durable peace, based upon the full participation of women and men. Under this commitment, Commitment One, Objective and Action 1.1, the States “recognize and support (sic) indigenous people and their communities in their pursuit of economic and social develop-**

**ment with full respect for their identity, traditions, forms of social organization and cultural values.”**

**At the World Food Summit, the States also committed to creating conditions within their States that enable the eradication of poverty, the economic and physical access by everyone to food, the sustainable development of food production capacities. They committed to combating pests, drought and desertification on a national level.**

**Other commitments include the eradication of poverty through, among other things, basic education and access to land, water and credit, and sustainable development projects in food, agriculture, fisheries, forestry and rural development, in order to maximize the incomes of the poor. Commitment Five details actions and goals that are offered in preparation for national emergencies in order to meet food requirements “in ways that encourage recovery, rehabilitation, development and capacity to satisfy future needs.”**

**But the Commitments of the World Food Summit Plan of Action rely a great deal on the implementation of a “fair and market oriented world trade system.” Commitment Four declares that “trade is a key element in achieving food security.” Objectives and Actions under this commitment are the development of internal marketing and transportation systems to facilitate links with international marketing and transportation systems. These are precisely the intended outcomes of Plan Puebla Panama and other mega-development schemes toward which Indigenous Peoples of Mexico and other Central American States have expressed profound objection and concern. The States rely on the World Trade Organization to “ensure that developing countries are equal partners working for effective solutions that improve their access to markets.” These so-called “solutions” have been identified by United Nations experts and Indigenous Peoples themselves as precisely the causes of the losses of Indigenous lands and increasing poverty, hunger and malnutrition and the growing numbers of poor and hungry throughout the world.**

**In major part, the World Food Summit Plan of Action relies on capital flows, the investment of**



dollars with a dollar return. It relies on international trade and the WTO and its members to provide this capital investment. But simply investing dollars in agriculture and measuring the return, also in dollars, has not created conditions for the enjoyment of the right to food. This reliance on international trade and capital flows, this reliance on the generation of dollars, has not improved the human right to food. It has in fact violated other human rights while also violating the right to food, as United Nations Studies and Experts,<sup>46</sup> as well as Indigenous Peoples and many other non-governmental and civil society organizations involved in this process continue to point out.

**The World Food Summit - five years later (WFS:fyl)** was held from June 10 – 13, 2002, as a follow-up to the 1996 Rome Summit.<sup>47</sup> The end product, the WFS:fyl Declaration entitled “International Alliance Against Hunger” does not improve on the 1996 Declaration, identifies no new targets or commitments and maintains the 1996 WFS promotion of free trade and biotechnology as solutions for food insecurity.

As mentioned previously, the United States regards food security as an economic and development issue and disregards its human rights aspects. At the WFS:fyl, the US was belligerent in its refusal to accept the recognition of the human right to food in the final declaration. But in the face of persistent pressure from a majority of governments, the US then took a different strategy: it agreed to the inclusion of the right to food, but also lodged a formal reservation to it, which allows the US to qualify its position with regard to the Declaration. This position reflects the United States’ aversion to any human rights based approach that might be an impediment, to any degree, to globalization.<sup>48</sup>

Yet as a result of Indigenous Peoples concentrated participation as a thematic group in the “Non Governmental Organization/Civil Society Forum for Food Sovereignty” that took place parallel to the WFS: fyl, FAO officials have accepted for consideration a list of action proposals that includes those contained in the Indigenous Peoples’ Declaration of Atitlán. In November, 2002 FAO’s Director General, Jaques Diouf, is scheduled to meet with Forum participants, including those in the Indigenous Peoples’ thematic group, to discuss a possible plan and timeframe for the implementation

of these proposals.

## XII. The Environment and Food Security

In 1972, the United Nations held the World Conference on the Human Environment in Stockholm, Sweden. The resultant Declaration of the United Nations Conference on the Human Environment was the first pronouncement by the international community on the world’s environment. Calling for an environment of a quality that permits a life of dignity and well being, the Conference established the United Nations Environmental Programme (UNEP), to serve a clearinghouse function for United Nations activity the field of the environment.

The Stockholm Declaration addressed the issue of the environment and development but left it up to the States to deal with the growing problem of environmental degradation as a result of development throughout the world. The Stockholm Declaration did recognize the connection between human right and the environment, but in its formulation of a right to the environment, it framed this right as an individual right even though the right to the environment, like the right of self determination, the right to development, and the right to peace, are all so-called “third generation” collective rights of Peoples.

**The World Conference on the Environment and Development (Rio)** was held twenty years later, in 1992, in Rio de Janeiro, Brazil. Popularly known as “Rio,” this conference led to an explosion of international activity, including international conventions, with regard to the environment. These include the Convention Climate Change, the Convention on Biodiversity and the Convention on the Elimination of Persistent Organic Pollutants, none of which have been ratified as yet by the United States.

**The Rio Conference did nothing to establish the environment as a human right. Mother Earth herself has no rights that are recognized by International Law. Instead, Rio focused on international trade, calling for a “supportive and open economic systems” that “lead to economic growth and sustainable development.”<sup>49</sup> Its solution to poverty is more “sustainable development” and the “equitable sharing” of its benefits, with no definitions or parameters provided**

for these key terms. This rhetoric has replaced time-bound commitments to action, and is constantly repeated by the United States at international fora. Meanwhile, globalization and imposed industrial development continues to lay waste to the world and to the lands and territories of Indigenous Peoples.

**Principle 22 of the Rio Declaration recognizes that:**

“Indigenous Peoples and their communities... have a vital role in environmental management and development because of their knowledge and traditional practices. States should recognize and duly support their identity, culture and interests and enable their effective participation in the achievement of their sustainable development.”

**But Principle 12 calls for “supportive and open international economic systems” that lead to economic growth and sustainable development, and trade measures that are not “disguised restrictions on international trade.”**

The quandary for Indigenous Peoples posed by Rio is two-fold. Although it recognized the importance of Indigenous Peoples’ role in the preservation of Mother Earth, Rio also called for greater trade globalization; and, while calling for (but not defining) “sustainable development,” it explicitly promotes growth and more development. Many Indigenous Peoples’ representatives regard Rio’s use of the undefined term “sustainable development” as an oxymoron, a self-canceling phrase, which is used to promote globalization and forms of destructive resource extraction such as mining.

Agenda 21, the major product of Rio, is a detailed plan of action that attempts to somehow reconcile these diametrically opposed positions. Section 3 of Agenda 21 calls for strengthening the roles of major groups in development, elements of civil society that would counter “unsustainable” development. Nine Major groups are identified, including women, children and youth, non-governmental organizations, local authorities, workers and trade unions, business and industry, the science and technological community, farmers, and Indigenous Peoples. But globalization has progressed without regard to

whatever influence these groups have been able to exert on the World Trade Organization or regional trade organizations like the North American Free Trade Agreement (NAFTA) or international agencies of economic cooperation, like the IMF.

The World Trade Organization and the International Monetary Fund seem to be impervious to the perspectives and opinions of these “major groups.” These international financial and trade institutions have substantially more influence. And the United States, as a major contributor to the International Monetary Fund and a major host and beneficiary of trans-national corporations, is the major influence on both.

Indigenous Peoples have their own Chapter 26 in Agenda 21, which calls for a “full partnership” with Indigenous Peoples in the accomplishment of the goals of Agenda 21. Chapter 26.3 calls upon the States to “strengthen and facilitate” Indigenous Peoples’ participation in their own development and in external development activities that may affect them. But only “[I]n accordance with national legislation,” should Indigenous Peoples be accorded greater self-control over subsistence practices. The Gwich’in and other Indigenous Peoples’ rights to their major means of subsistence can be and are profoundly affected in negative ways by such national legislation.

Chapter 26 only recognizes Indigenous Peoples’ rights already established under International Labor Organization Convention No. 169. It goes no further than calling upon the States to seek and incorporate the views of Indigenous Peoples and their organizations in the implementation and design, adoption and strengthening of policies to protect Indigenous Peoples intellectual and cultural property.<sup>50</sup>

Other chapters of Agenda 21 also refer to Indigenous Peoples, primarily in the areas of traditional knowledge, in the case of fisheries and the incorporation of this knowledge into domestic marine ecosystems management plans.<sup>51</sup> Chapter 11, Combating Deforestation, also calls for Indigenous “participation” in state activities pertaining to forests.<sup>52</sup> Indigenous Peoples’ ability to sustain themselves, to provide for their major means of subsistence and to continue the

**millennial practices in providing for their own means of subsistence in keeping with their own world view, are profoundly tied to all of these themes addressed by Agenda 21.**

**To be sure, Agenda 21 was a step in the right direction, as it did recognize the importance of Indigenous Peoples in the preservation of the environment.<sup>53</sup> The Statement on Principles on Forests,<sup>54</sup> also agreed at Rio, calls upon the States to “recognize and duly support the identity, cultures and rights of (sic) indigenous people, their communities and other communities and forest dwellers.<sup>55</sup> But Agenda 21 also subsumed the international human rights of Indigenous Peoples to national actions and national legislation. Indeed, it created the right of States, and through the States, multinational corporations, to exploit Indigenous traditional knowledge, albeit with the “participation” of Indigenous Peoples.<sup>56</sup> The inherent contradiction of recognizing international Indigenous “rights” on one hand but allowing States to determine their content on the other, can very well be seen as one step forward and two steps back.<sup>57</sup>**

Part of the explosion of international activity after Rio included the establishment of several United Nations organs to attempt the reconciliation of the contradictory messages of the Rio Declaration and Agenda 21. The Commission on Sustainable Development was meant to oversee the activities of Agenda 21, and to study the problem of “sustainable growth.” It was given a broad agenda, including forests and traditional knowledge. The ad-hoc Inter-governmental panel on forests, later the Intergovernmental Forum on Forests, and now the permanent UN Forum on Forests, was established to work on new “international arrangements” including an international Convention on Forests that has yet to happen.

While Agenda 21 called for the preservation of forests and their expansion, forest area losses for the past 20 years exceed the size of India, over 16 million hectares per year.<sup>58</sup> Worldwatch Institute cites illegal logging (2/3 of wood harvested in Indonesia is harvested illegally, 80% of logging in Brazil is illegal), and the over consumption of forest products by the north (77% of the world’s commercial timber harvests are consumed by 22% of the world’s people, in Japan, Europe, North America, and now China) as leading causes of forest loss.<sup>59</sup>

All the verbiage, international meetings, and pronouncements at Rio and since, although recognizing Indigenous Peoples’ traditional knowledge and its importance to conservation of the world’s natural resources, have not stemmed the deforestation of the world nor the loss of land, ecosystems and natural resources, including the major means of subsistence of forest dwellers and other Indigenous Peoples. It has all gone to the generation of dollars and international trade, both “legal” and “illegal,” and not to establishing food security for Indigenous Peoples of the forests or anyone else.

Yet it has been through the participation of Indigenous Peoples at the CSD, beginning primarily in 1999 with their concentrated work alongside non-Indigenous members of the Sustainable Agriculture and Food Systems Caucus, that the FAO has begun serious consideration of Indigenous Peoples’ positions with regard to food security and cultural continuity.

**The World Summit on Sustainable Development (Rio +10)** was held in Johannesburg, Republic of South Africa, in August-September of 2002. It was called by the United Nations to assess the progress made since Rio on sustainable development and the world’s environment, and to set new goals and priorities based upon that assessment. In reality, globalization and un-sustainable development received a boost at the WSSD, primarily from the efforts of the United States, which, among other questionable actions, insisted on language in the declaration on “sustainable mining.” In its assessment of the lamentable state of the world’s environment, the WSSD did not address the negative impacts of the globalization of trade on the environment or on truly sustainable community-based development. It set no specific goals or deadlines on any theme relevant to the alarming deterioration of our Mother Earth.

### **XIII. UN Conventions on the Environment and Their Relationship to the Right to Food**

**The Framework Convention on Climate Change** was a major theme and accomplishment of Rio. As a framework convention, it is an agreement to agree based upon the principles and guidelines established by the convention. 170 Nations agreed at Rio to reduce voluntarily their emissions of greenhouse gasses to 1990 levels. The Kyoto Protocol on Climate Change was to secure firm commitments from

State Parties to the Convention on specific greenhouse gas reductions and deadlines. The United States is a signatory but has not ratified either the Convention or the Protocol. The Bush administration recently withdrew the United States commitment made under the Kyoto protocol.

As long recognized by traditional Indigenous Peoples, all things are inter-related. With regard to climate change, the massive loss of forests, particularly old growth, that serve as a filter to carbon in the atmosphere, has contributed to a global increase in greenhouse gasses in the atmosphere. Increased industrial production, particularly in the industrialized North, and China and a few other developing nations, is an obvious cause. Carbon emissions increased globally by 9% between 1992 and 2001.<sup>60</sup>

Climate change affects Indigenous Peoples and their means of subsistence profoundly. As Peoples dependent on the natural world for subsistence, the effects on the food chain and the cycles of floods and drought caused by climate change, the melting of the Arctic icecaps, desertification, changes in agricultural and migration cycles, and the decrease in fish, birds, seal and bear, Indigenous Peoples are experiencing greater food insecurity, malnutrition and hunger. The WSSD decried climate change but, in keeping with the United States position, recommended no fixed goals or deadlines for carbon emission reduction.<sup>61</sup>

**The 2001 Stockholm Convention on Persistent Organic Pollutants (POPs)** was, like the Convention on Climate Change, a showcase convention at Rio. After several years of negotiations, in December, 2000 in Johannesburg, South Africa, the language for a Treaty on POPs was finally approved. The Treaty supports elimination rather than reduction (as was proposed by the US), as well as the precautionary rather than “acceptable risk” approach. This language was strongly advocated by Indigenous representatives and NGOs participating in the negotiating sessions.

At present, the convention prohibits the production and use of 12 chemicals, 9 pesticides, PCBs (polychlorinated biphenyls) and industrial by-products, dioxins and furans. But there is little information on the other 80,000 chemicals on the market today and their effects on the environment, human health, and Indigenous Peoples’ health and subsistence.<sup>62</sup>

Less is known of the “cocktail effect” of the combination of these chemicals once released into the environment, on life in all of its forms.

The growth of industrialized agriculture in the production of food for export, relying in many cases on deforestation, and in most cases on high doses of pesticides, is also affecting the bio-diversity of our plant and our ability to sustain ourselves, particularly in developing countries and on Indigenous lands.

The United States has not ratified this convention, although it took great pains to influence its results as it was being negotiated. Only 11 States have ratified this treaty, and it needs 50 ratifications before it enters into force (becomes legally binding.) Representatives of the US Department of State have indicated that the US will sign the Treaty only if no additional chemicals are added for elimination in the future.

Again, Indigenous Peoples are profoundly affected. POPs proliferate in the atmosphere, carried by water and wind currents from their industrial origins to the colder regions of the world, where they bio-accumulate in living beings. Bio-accumulation is exacerbated in human beings from food in the animals Indigenous Peoples eat, in particular in Northern climates where POPs tend to accumulate due to wind and water currents. For example, the Inuit living on Barring Island, Canada, carry seven times more PCBs in their body than people living in lower latitudes.<sup>63</sup> Illustrating the potential and alarming impacts on future generations, POPs also pass through the placenta to the unborn child, causing birth defects and learning disabilities. Residues of POPs, such as PCBs, DDT and dioxins also accumulate in blood, fat and mother’s breast milk.<sup>64</sup>

The Indigenous Peoples of the Great Lakes region of the United States and Canada are also being severely affected by POPs from industrial emissions and the dumping of industrial waste in much the same way, from eating contaminated fish and wildlife, drinking water, soil dermal contact from swimming and the consumption of mother’s breast milk. Indigenous women of the Great Lakes area carry PCBs in their bodies in gross amounts that are passed on to future generations.<sup>65</sup>

In 1997 a study was conducted on the Indigenous Yaqui Nation in Rio Yaqui Sonora, an area targeted

by the so-called “green revolution” and industrialized agriculture on the effects of the use of DDT on and around Yaqui traditional lands.<sup>66</sup> The study detected high levels of multiple pesticides in the in the cord blood of newborns and in mother’s milk. Yaqui children living in areas contaminated by the high use of pesticides were tested with severe learning and developmental disabilities. Children living in areas of traditional Indigenous agriculture and little or no use of pesticides scored significantly higher in neurological and behavioral testing.<sup>67</sup>

The POPs Treaty also requires all Parties to “regulate with the aim of preventing the production and use” of new pesticides and industrial chemicals which have POPs properties (toxic, persistent, bioaccumulation, long range transport). Since the Treaty contains no mechanisms to insure industry responsibility, state parties will need to exercise maximum responsibly and vigilance to monitor compliance and full participation of industries, including multi-national corporations.

#### **XIV. Conventions on Biodiversity, Traditional Knowledge and Intellectual Property**

**The International Union for the Protection of New Varieties of Plants (UPOV)** is an organization composed of 52 States, primarily from the North, including the United States. Its purpose is to protect “new” varieties of plants (the propagating material, or seeds) through the granting of “intellectual property rights” or patents.<sup>68</sup> UPOV is based upon the International Convention for the Protection of New Varieties of Plants, the UPOV Convention, as revised, of 1961. The UPOV Convention has undergone several major revisions since its inception in 1961.<sup>69</sup>

Indigenous farmers have, for millennia, planted and harvested their traditional food, and in the process, over time, bred and developed new varieties of those traditional plants. Not restricted to food, Indigenous farmers also developed knowledge of plants for medicine and ceremony. The Maya, for example, the Corn People, have raised corn for thousands of years, and developed innovations and new plant varieties in the process. Using knowledge developed over many generations, the Hopi and Zuni in the Southwestern United States still breed and harvest different strains of red and purple corn. Theirs is knowledge of the millennia. Although originally meant to protect farmer’s rights

in 1961, the UPOV now only protects “breeders’ rights. Traditional Indigenous knowledge is not protected by the UPOV.

Like all intellectual property schemes, as promoted by the United States, the UPOV only protects individuals (and a corporation, under US law, is an “individual.”) It does not protect collective ownership and most Indigenous Knowledge is collective. The UPOV Convention protects breeders of *new* varieties of plants. A corporation can use Indigenous corn to develop a new variety of plant and sell it back to the Indigenous Peoples who developed and protected the original seed (and they do.). A Transnational can, under the 1991 Act to the UPOV Convention, prohibit the Indigenous farmer from saving surplus purchased seeds or seeds from his or her harvest for the next planting, and prohibit him or her from developing another variety from the purchased seed.<sup>70</sup> Indigenous seeds are considered the “Common Heritage of Mankind,” an international concept that defines traditional knowledge as unprotected and free for the taking. Yet Burpee or Monsanto seeds are private property to an extent even after they are sold.

The United States has also been promoting the United States patenting system as a model for the protection of “individual” intellectual property under the WTO TRIPS (Trade Related Aspects of Intellectual Property) agreement. Under the US based system of patents, scientists from trans-nationals can “inventory” an Indigenous Peoples’ community of their traditional knowledge of plants, and patent their findings. Indigenous Peoples’ traditional knowledge is sold back to them in a sack or in a bottle.

The food security of Indigenous Peoples is being severely affected by these practices. Guatemala, home of the People of the Corn, for example, is a net importer of corn. Traditional Indigenous lands were cleared of Indigenous Peoples in the 1980’s in what the Guatemalan Truth Commission, led by respected United Nations experts called a “genocide” of 200,000 Indigenous Peoples, to establish the large tracts of land necessary for industrialized agriculture, including non-food crops such as coffee and cotton, for export to the US and Europe. Not only have Indigenous Peoples in Guatemala lost their lands to industrialized agriculture, the diminishing numbers of small-scale traditional Indigenous farmers is resulting in the loss of traditional

knowledge and culture. Indigenous Peoples are being deprived of their means of subsistence and starvation is now a recognized problem in departments of Guatemala where Indigenous Peoples are the great majority of the population.

Industrialized agriculture, with its heavy use of pesticides and chemical fertilizers, is polluting Indigenous Peoples' environment. Trans-nationals (with the knowledge and consent of the governments involved) are marketing pesticides and fertilizers which are currently banned for use in the United States and Europe but are nevertheless approved for export to Guatemala, Mexico and other third world countries, further poisoning Indigenous farmers, their families, communities and Mother Earth itself.

**The Convention on Biological Diversity (CBD)**, the second of the showcase conventions adopted at the Rio Conference, has created some problems for the United States and its push to "rationalize" intellectual property schemes via the WTO. The CBD is another framework convention, laying out certain principles of agreement. This convention relies heavily on periodic meetings of the State Parties, called COPS or Conference of Parties, to further the objectives of the convention and national plans that incorporate principles established by the convention and the COPS. The United States is not a party to the CBD although it attends the meeting of the COPS and takes a great interest in influencing their results.

The aim of the Convention on Biological Diversity is the conservation and sustainable use of the world's biological resources.<sup>71</sup> Of major interest to Indigenous Peoples is the CBD's recognition of Indigenous People's contribution to the preservation of the world's biodiversity. Although perhaps apocryphal, it is often said that over 80% of the world's remaining biodiversity is found on Indigenous lands and territories. It is generally accepted that the dominant world has abused and used up its own.

The CBD's Article 8(j) is of particular interest to Indigenous Peoples:

(j) Subject to its national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles

relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices;

It must be kept in mind that the CBD is not meant to be entirely a convention for the conservation of the biosphere, but one devoted to the *use*, albeit "sustainable," of biological resources. It also intends to promote the wider application of traditional knowledge and practices. Substantially, it is an intellectual property convention.

Indigenous Peoples have made some headway at the Conferences of Parties in participation as well as policy. At its fourth meeting in 1998 in Bratislava, Slovakia, COPS IV established an open ended Intersessional working group on the implementation of Article 8j.<sup>72</sup> This working group, attended by Indigenous Peoples as well as States, is meant to provide advice and recommendations to the COPS on the implementation of article 8j. And although the CBD specifically recognizes the right of States (ironically calling it "sovereignty") to exploit biological resources,<sup>73</sup> it does offer the potential for some measure of protection of biodiversity and traditional knowledge.

For example, under its national plan pursuant to article 8j, the Philippines, by law, requires the free and informed consent of Indigenous Peoples before any prospecting, biological or mineral, on their lands. In the case of Indigenous Peoples, the law specifies that bio-prospecting and use shall be allowed "within the ancestral lands and domains of indigenous cultural communities only with the prior informed consent of such communities, obtained in accordance with the customary laws of the concerned community."<sup>74</sup>

Unfortunately, the United States is not a party to the convention. There is much potential in the work of the Convention on Biodiversity and the Conference of Parties for Indigenous Peoples. This convention is raising issues that question the United States mantra of "free trade."

In 1977, the Organization of African Unity (OAU), the regional organization of African States began

to develop model legislation to guide African States in compliance with Article 8j as well as the WTO TRIPS agreement, which requires States to develop intellectual property protections. Although the United States has been strongly promoting the United States and UPOV models of individual patents, the WTO TRIPS agreement presently only requires that States adopt measures to protect intellectual property through patents or their own “*sui generis*” systems.

The OAU model legislation includes the requirement of free, prior and informed consent of communities, benefit sharing, and the inalienable and collective rights of communities to control access to their biological resources and traditional knowledge; it also requires that local communities receive 50% of any benefits derived by the government, and allows communities to properly exercise their own intellectual property rights collectively. And, consistent with Indigenous Peoples’ international position on the matter, the model legislation also declared the patenting of life forms immoral and illegal, and that no profits could be made from it.<sup>75</sup>

The OAU invited the World Intellectual Property Organization and the UPOV to comment on this model legislation. Their comments, in technical language, rejected these provisions, particularly the inalienable and collective right of communities to control access to their biological resources and the prohibition on the patenting of life forms, promoted internationally by the United States and bio-technology trans-nationals.

**The Cartagena Protocol on Biosafety** was a result of the Convention on Biological Diversity’s recognition that genetically modified organisms (GMOs) are a danger to biodiversity.<sup>76</sup> Recently, for example, it was discovered that “terminator technology,” that of breeding varieties of plants that cannot reproduce, could spread to native species of the plant. Mexico imported United States corn seeds containing such technology. It was found that the terminator gene was cross-pollinating and infecting local native maize crops. Traditional Indigenous farmers’ right to use their own seed to grow their own traditional corn as they have done for millennia, is directly denied, as is their food security and right to food, not to mention their right of self determination and right to development.

The Conference of the Parties to the Convention

on Biological Diversity adopted a supplementary agreement to the Convention known as the Cartagena Protocol on Biosafety on 29 January 2000. The Protocol seeks to protect biological diversity from the potential risks posed by living modified organisms resulting from modern biotechnology. It establishes an advance informed agreement (AIA) procedure for ensuring that countries are provided with the information necessary to make informed decisions before agreeing to the import of such organisms into their territory. The Protocol contains reference to the precautionary principle and reaffirms the precaution language in Principle 15 of the Rio Declaration on Environment and Development. The Protocol also establishes a Biosafety Clearinghouse to facilitate the exchange of information on living modified organisms and to assist countries in the implementation of the Protocol.

The U.S. remains one of the very few countries in the world that recognizes patents on life forms. The U.S. patent office has wide-open doors to the biotechnology industry, allowing entire species of plants, transgenic animals, and over 500,000 whole or partial genes to be patented. Recently, the US was politically isolated and defeated with regard to biotechnology and trade at the WSSD. A US proposal to the WSSD Plan of Action would have given the WTO the power to override the Cartagena Protocol on Biosafety, thereby making it impossible for developing countries to reject GMO food and crop imports.<sup>77</sup>

**The Treaty on Plant Genetic Resources for Food and Agriculture** reflects the concern over the loss of biodiversity as a result of industrialized agriculture and the patenting of plants and seeds, by the Conference of Parties (COP) of the Convention on Biodiversity. The COP has supported the development of an international convention for the protection of plant genetic resources. The result is the Treaty on Plant Genetic Resources for Food and Agriculture.<sup>78</sup>

The objectives of this treaty are “the conservation and sustainable use of plant genetic resources for food and agriculture and a fair and equitable sharing of the benefits arising out of their use in harmony with the convention on biodiversity, for sustainable agriculture and food security”<sup>79</sup> This treaty links with the Convention on Biodiversity, its objectives and policies.

During the World Food Summit, five year later (WFS: fyl), the US was successful in weakening a section calling on governments to sign and ratify the Treaty on Plant Genetic Resources for Food and Agriculture. But by the end of the WFS: fyl, 56 countries and the European Union had signed on to the Treaty, and the Treaty had received 7 ratifications.

## **XV. Conclusion**

**In 1945, the International Monetary Fund, the World Bank, and the General Agreement on Tariffs and Trade (GATT, the forerunner of the World Trade Organization) were established as part of the Bretton Woods Institutions by the victors of World War II. Since then, and particularly after the end of the Cold War and the fall of the Soviet Union, the United States as an economic superpower has promoted the liberalization of trade as the solution for poverty and hunger. This “solution” has been applied without regard to human rights or the underlying causes of poverty and food insecurity faced by Indigenous Peoples in all countries, both “developed” and “developing”. It is now generally recognized that globalization has not appreciably improve the lives of the impoverished, nor has it fed the world’s hungry. Indigenous Peoples, the poorest of the world’s poor, have been and continue to be severely and negatively affected by it.**

Indigenous lands are essentially free for the taking by international development and lost as a major means of food security, subsistence and culture to Indigenous Peoples. If Indigenous Peoples are fortunate enough to keep their lands in spite of development, their environment is polluted and their major means of subsistence and food security undermined or compromised, more and more frequently beyond repair. **As a solution to Indigenous food insecurity, globalization seeks to reduce Indigenous Peoples to wage earners in order to survive, and in the process, Indigenous languages, cultures and religions fade.** The identity as Indigenous Peoples, so tied to the land, to the means of subsistence, and the spiritual relationship to the land, is forced merely into memory.

It is clear that under international law and jurisprudence, Indigenous Peoples are Peoples in every legal sense of the word. Under international laws to

which the US is legally obligated, they may not be deprived of their means of subsistence. They also have the right to their traditional lands and territories, and to an environment that allows their traditional cultures and land use, including the production (or hunting, fishing, gathering or herding) of food.

Even though the United States claims not to recognize economic, cultural and social rights a fundamental principle of International law is that all human rights are related. Violations of the rights under Articles 1 and 27 of the International Covenant on Civil and Political Rights, to which the United States is legally obligated, are violations of their economic and social Right to Food, to Development, and to the Environment, particularly for Indigenous Peoples. This legally binding obligation extends to all Indigenous Peoples all over the world.

United States policy must undergo a radical transformation if it is to uphold the full range of international human rights and fundamental freedoms recognized as applicable to all Peoples including Indigenous Peoples. The rights of Indigenous Peoples to Food Security and Food Sovereignty, included in international binding obligations of the US under international law, must be honored. The US government’s role in promoting International trade and development must be based upon a human rights approach to development. For Indigenous Peoples this means respect and observance of the rights of self-determination and the principles of true sustainability for the generations of the future.

The involvement and activism of tribal governments as well as American Indian, Alaska and Hawaii Native community-based organizations across the US can have a direct impact on informing and influencing US international policy which directly impacts their lands and territories, their cultures and survival as Peoples, as well as the preservation of their traditional means of subsistence, food sovereignty, Their Right to Food and Food Security.

Endnotes

<sup>80</sup> For a full description of Plan Puebla Panama, see the Global Exchange website, <http://www.globalexchange.org/campaigns/mexico/ppp.html>, visited 10/03/2002.



<sup>81</sup> Forum on Biological and Cultural Diversity, Declaration, June 17<sup>th</sup>, 2001, p. 3; found at Global Exchange website (see fn. 1).

<sup>82</sup> Declaración Final, 3er Congreso Nacional Indígena (Final Declaration, 3<sup>rd</sup> National Indigenous Congress), Mexico City, 20 November 2001, (translated by Alberto Saldamando); Congreso Nacional Indígena (CNI) website, <http://www.laneta.apc.org/CNI>, visited 10/03/2002 (“Today, the neoliberal politics imposed by the [President of Mexico] Fox government in agreement with the large world financial centers expressed in plans and programs such as the so-called Plan Puebla Panama, intend the massive privatization of our territories, the disarticulation of the communal property of our peoples, and the appropriation, by large world consortiums, of our natural wealth and our traditional knowledge.”)

<sup>83</sup> Final CNI Declaration, fn. 3, at page 6.

<sup>84</sup> Final CNI Declaration, fn. 3, at p. 11. This paragraph continues: “In the same way, we must oppose the introduction of genetically modified organisms that threaten the food security of our nation...”

<sup>85</sup> Posted 13 March 2002, on Indian Country Today website, <http://www.indiancountrytoday.com>, visited 2 April 2002.

<sup>86</sup> Report of the World Food Conference, UN Doc. E/CONF.65/20, UN Publication Sales No. 75.II.A.3, Declaration: “1. Every man, woman and child has the **inalienable right** to be free from hunger and malnutrition in order to develop fully and maintain their physical and mental faculties.” (emphasis added)

<sup>87</sup> Universal Declaration of Human Rights, Adopted and Proclaimed by General Assembly Resolution 217 A (III) of December, 1948. With a bit of patience, all United Nations Declarations, Human Rights Treaties, Covenants and Resolutions cited in this paper may be found on the Office of the High Commissioner for Human Rights website, <http://www.unhchr.ch>, by clicking “documents” on the home page.

<sup>88</sup> General comment 12, CERD Committee (found on the UNHCHR website, fn. 8, (“treaty based bodies.”) Every Human Rights Covenant or Conven-

tion has provisions within it establishing a “Treaty Monitoring Body” that oversees the implementation of the Convention or Covenant by the States Parties to the Convention. They issue periodic “General Comments,” establishing standards by which the States Parties are bound and guided in the implementation of specific provisions. These General Comments, along with decisions under its complaints procedures, and Concluding Observations, serve as the jurisprudence of the Treaty, Convention or Covenant, establishing the content of the convention rights.

<sup>89</sup> UN Commission on Human Rights, resolution 2000/10, 17 April 2000.

<sup>90</sup> Report by the Special Rapporteur on the right to food, Mr. Jean Ziegler, submitted in accordance with Commission on Human Rights resolution 2000/10, UN Doc. E/CN.4/2001/53, 7 February 2001, Summary.

<sup>91</sup> See, eg., Siri Damman, Nutritional vulnerability in the indigenous children of the Americas – a human rights issue, Institute for Nutrition Research, Faculty of Medicine, University of Oslo (Norway), 10 October, 2001. “In Canada and the USA, stunting [in children] is said not to be a problem, and data are not found. However, and that goes for all countries, data might exist which were not detected in the preparation for this study. In Canada, the First Nation IMR [infant mortality rate] is shown to be 2-3 times higher than the population as such. Inuit children have a ratio of 2.2, while others (Métis and Canadian Indians) are at 1.9. In the USA there are also clear inequalities in regard to IMR.” at p. 9

<sup>92</sup> Native Americans in South Dakota: An Erosion of Confidence in the Justice System, South Dakota Advisory Committee to the United States Commission on Civil Rights, US Commission on Civil Rights, Rocky Mountain Regional Office, Denver, Colorado, March 2000.

<sup>93</sup> United Nations Declaration on the Right to Development, Adopted by General Assembly Resolution 41/128 of 4 December 1986, Article 1, parts 1 and 2.

<sup>94</sup> Declaration on the Right to Development, *Article 9*:

1. All the aspects of the right to development set forth in the present Declaration are indivisible and

interdependent and each of them should be considered in the context of the whole.

2. Nothing in the present Declaration shall be construed as being contrary to the purposes and principles of the United Nations, or as implying that any State, group or person has a right to engage in any activity or to perform any act aimed at the violation of the rights set forth in the Universal Declaration of Human Rights and in the International Covenants on Human Rights.

<sup>95</sup> Resolution XVII, International Conference on Human Rights, Tehran, 22 April to 13 May 1968, in United Nations Action In the Field of Human Rights, Part IV. Existing Standards and their Promotion and Protection, D. The Right to Development, para. 2216; United Nations: New York, 1994.

<sup>96</sup> Fourth Report of the Independent Expert on the right to development, Mr. Arjun Sengupta, E/CN.4/2000/WG.18/2, 20 December 2001, Introduction, para. 2, citing, *inter alia* his prior reports: First report, E/CN.4/1999/WG.18.2; Second report, E/CN.4/2000/WG.18/CRP/1; and, Third report, E/CN.4/2001/WB.18.2. This rapporteur's reports, as well as others cited herein can also be accessed through the Office of the United Nations High Commissioner for Human Rights website, <http://unhchr.ch>, under "program."

<sup>97</sup> *Id.*, at para. 5.

<sup>98</sup> International Labor Organization Convention No. 169, Article 7 (development); article 13 (Part II, Land).

<sup>99</sup> Mrs. Erica-Irene Daes, Special Rapportuer on the Human Rights of Indigenous Peoples, Indigenous Peoples and their relationship to land, Preliminary working paper. E/CN.4/Sub.2/1997/179 (20 June 1997); Progress report, E/CN.4/Sub.2/1998/15 (22 July 1998); Second progress report, E/CN.4/Sub.2/1999/18 (3 June 1999); Final working paper, E/CN.4/Sub.2/2001/21 (2000).

<sup>100</sup> See, eg, First World Conference to Combat Racism and Racial Discrimination, Declaration, Article 21, Geneva, August 1978 (Sales No. E.79.XIV.2, chap. II); Second World Conference to Combat Racism and Racial Discrimination, Geneva, August 1983, Declaration, Preamble and Chapter II, Article 22 (Sales No. E.83.XIV.4); World Conference Against Racism, Racial Discrimination, Xenopho-

bia, and Related Intolerance, Durban South Africa, September, 2001, Declaration, para.43 (United Nations: New York, 2002).

<sup>101</sup> Inter-American Commission on Human Rights, Report No. 113/01, Case No. 11.140, Mary and Carrie Dann v. United States, para. 128, p.31, (dated October 15, 2001, released in August of 2002), para. 128; Available on Indian Legal Resource Center website: <http://www.indianlaw.org>. Of interest, the Inter-American Commission found that the Western Shoshone had been deprived of the right to equal treatment under the law contrary to Articles II, XVII and XXIII of the American Declaration because the process of the Land Claims Act and the Commission itself did not allow them to raise the issue of title. See, Dann v. US, at para VI., 148. This case has major implications for other US Tribes, particularly the Hope and Lakota, as they too have refused to accept money awarded by the Land Claims Commission. The United States, in testimony before the US Senate, declared its "rejection" of this IACHR decision.

<sup>102</sup> See, eg. Kitok v. Sweden, Report of the Human Rights Committee, 43 UN GOAR Supp. (No. 40) at 221, A/43/40 (1988); I. Lansman et. al v. Finland, CCPR/C/52/D/511/ (1992).

<sup>103</sup> Concluding Observations of the Human Rights Committee: Chile, UN Doc. CCPR/C/79/Add.104, (1999), para. 22.

<sup>104</sup> Human Rights Committee, The right of self determination of peoples (Art.1): CCPR General Recommendation 12, (1984), para. 6.

<sup>105</sup> General Assembly Resolution 1803 (XVII) of 14 December 1962, "Permanent sovereignty over natural resources; found on the United Nations Human Rights website, <http://www.unhchr.ch>, "documents."

<sup>106</sup> *Id.*, at para. 1 of the preamble.

<sup>107</sup> Working Paper by Erica-Irene Daes, former Chairperson-Rapporteur of the Working Group on Indigenous Populations, Indigenous Peoples' permanent sovereignty over natural resources, UN doc. E/CN.4/Sub.2/2002/23, 30 July 2002, para. 7.

<sup>108</sup> Article 1 in Common, International Covenant on Civil and Political Rights (ICCPR) and the In-

ternational Covenant on Economic, Social and Cultural Rights (ICESC), both *Adopted and opened for signature, ratification and accession by General Assembly Resolution 2200 A (XXI) of 16 December 1996*. Found in A Compilation of International Instruments, fn. 1, at p. 20 (ICCPR) and p. 8 (ICESC).

<sup>109</sup> See, *Ominayak v. Canada*, fn. 41 below, decided under Article 27 of the ICCPR at the time, and not under Article 1. A different approach would probably now be taken by the Human Rights Committee in addressing these issues, to include Article 1 as well as Article 27.

<sup>110</sup> Concluding Observations of the Human Rights Committee: Canada. 07/04/99, at para. 8. UN Doc. CCPR/C/79/Add.105, (1999). In 2002, the Committee on the Elimination of Racial Discrimination, pursuant to the Convention on the Elimination of all Forms of Racial Discrimination, also called for compliance with the RCAP recommendations. Concluding observation of the [CERD] committee, Canada, UN doc. CERD/C/61/CO/3, 23 August 2002.

<sup>111</sup> Concluding Observations of the Human Rights Committee: Mexico. UN Doc. CCPR/C/79/Add.109 (1999), at para 18.

<sup>112</sup> Concluding Observations of the Human Rights Committee: Norway. UN Doc. CCPR/C/Add.112 (1999), paras. 10 and 17.

<sup>113</sup> Concluding Observations of the Human Rights Committee: Australia. UN Doc. CCPR/CO/69/AUS (2000), para. 9.

<sup>114</sup> Not only Indigenous Peoples and their organizations and representatives at the United Nations, but UN experts themselves have called this failure of recognition a failure of logic and language, and racist: “These experiences have only confirmed to me that indigenous peoples in many countries continue to be the victims of racism and discrimination. Indeed, I believe that discrimination and racism are at the heart of the indigenous issue, whether this is expressed in the reluctance of many States to recognize the right of self-determination of indigenous peoples – a right recognized for all other peoples – or in the absurd denial of the use of the term “indigenous peoples”, contradicting all logic of language and pretending in doing so that the dif-

ferent indigenous peoples of the world do not have a language, history or culture unique to them, or in the insistence by the dominant world that indigenous peoples do not have their own long-established and dynamic systems of knowledge and law.” Working paper on discrimination against indigenous peoples submitted by Mrs. Erica-Irene Daes in accordance with Sub-Commission resolution 1999/20, E/CN.4/Sub.2/2001/2, 18 August 2001, para. 11,

<sup>115</sup> For more recent examples, see, eg., the name of the Permanent Forum for Indigenous Issues (instead of the Permanent Forum for Indigenous Peoples; World Conference Against Racism Declaration and Programme of Action, para. 24).

<sup>116</sup> Unclassified cable to the HUMAN RIGHTS COMMISSION COLLECTIVE, from SECSTATE WASHDC (STATE 10525), TAGS: PHUM, dated January 19, 2001.

<sup>117</sup> Final Draft, World Summit on Sustainable Development Declaration, September 3, 2002, para. 22 (bis).

<sup>118</sup> Report by the Special Rapporteur on the right to food, Mr. Jean Ziegler, submitted in accordance with commission on Human Rights Resolution 2001/10, UN Doc. E/CN.4/2001/53, 7 February



2001, at p. 3

<sup>119</sup> Human Rights Committee, General Comment 23, Article 27 (fiftieth session, 1994), cited in Daes, *op. cit.*, p. 47.

<sup>120</sup> Bernard Ominayak, Chief of the Lubicon Lake Band. v. Canada, Communication No. 167/1984, Report of the Human Rights Committee, A/45/40, Vol. II, Annex IXA, para. 32.2.

<sup>121</sup> In response, Canada recognized a 95 square mile territory for the Lubicon Lake Band, and recognized their subsurface mineral rights to approximately two-thirds of the territory, as well as programs, benefits and money. The Committee found this remedy acceptable.

<sup>122</sup> <http://www.fao.org>.

<sup>123</sup> <http://www.fao.org/docrep/003/w3613e/w3613e00.htm>, visited 11/09/02.

<sup>124</sup> See, FAO website, home page, fn. 43.

<sup>125</sup> See, Special Rapporteur on the Right to Food, third report to the Human Rights Commission, UN doc. E/CN.4/2002/58, 10 January 2002. See also, Report of the High Commissioner on Human Rights, submitted in accordance with Commission on Human Rights resolution 2001/32, Globalization and its impact on the full enjoyment of human rights, UN doc. E/CN.4/2002/54, 15 January 2002, para. 6.

<sup>126</sup> <http://www.fao.org/worldfoodsummit/english/index.html>, visited 11/09/02.

<sup>127</sup> During the WFS: fyl, the US also resisted inclusion of a voluntary Code of Conduct on the Right to Food which would have reminded the States of their human rights obligations under the International Covenant on Economic, Social and Cultural Rights and the right to food, and States' obligations to regulate private sector activities, consistent with Objective 7.4 of the 1996 World Food Summit Plan of Action. Canada (which often works hand-in-hand with the US on globalization and related issues) argued that the Right to Food is already a human right and doesn't need to be singled out. Similar and purely voluntary codes of conduct for transnational mining corporations and their obligation to observe human rights in their activities have also

been opposed by the United States, even though these codes would be of a voluntary nature, notwithstanding any legal obligations of States. For an excellent description of the US position at WFS: fyl, see, Peter Rosset, US Opposes Right to Food at World Summit, Food First web page, <http://www.foodfirst.org/media/opeds/2002/usopposes.html>, last visited 10/10/02.

<sup>128</sup> Rio Declaration, principle 12. Ironically, the following year, at the World Conference on Human Rights, in Vienna, the Vienna Declaration scarcely mentioned the environment.

<sup>129</sup> Agenda 21, Chapter 26, 26.4 and 26.5. See, ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries: Article 2 (participation of Indigenous Peoples in development); Article 4 (protection of Indigenous cultures and environment); and Article 6 (consultations leading toward, but *not* requiring, consent on measures which may affect them directly. Indeed, Agenda 21 falls short of Article 27 of ILO #169, recognizing that Indigenous Peoples "shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands that they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development. ILO Convention 169 is the only international convention on Indigenous Peoples and can be regarded as the "bottom" or basic document establishing recognition of the rights of Indigenous Peoples from which the development of international human rights standards concerning Indigenous Peoples should evolve. In no way should United Nations actions or documents reflect lesser human rights standards than those found in this basic convention.

<sup>130</sup> Agenda 21, Chapter 17, 17.17.

<sup>131</sup> Agenda 21, Chapter 11.1(b).

<sup>132</sup> Chapter 11 also calls for Indigenous Peoples' participation in capacity building programs to facilitate research and the implementation of measures to protect forest ecosystems and biodiversity. It calls for the creation of protected reserves and areas, including the traditional territories of Indigenous Peoples.

<sup>133</sup> Authoritative Statement of Principles for a Glo-

bal Consensus on the Management, Conservation and Sustainable Development of All Types of Forests. In addition to the Convention on Biodiversity and the Framework Convention on Climate Change, the States were also to agree on a Convention on Forests, but were unable to reach agreement. The Forest Principles were adopted instead. The Rio Declaration and Agenda 21, as well as the Forest Principles are not legally binding on any State.,

<sup>134</sup> Principle 5(a). Principle 2(d) calls for the promotion and opportunity for the participation of indigenous people and forest dwellers in the development, implementation and planning of *national* forest policy.

<sup>135</sup> Agenda 21, Chapter 11.13(b).

<sup>136</sup> For an excellent discussion of the gains and challenges forest dwelling Indigenous Peoples made at Rio and beyond, see, Tom Griffiths, Consolidating the Gains, Indigenous Peoples' Rights and Forest Policy Making at the United Nations, Forest Peoples Programme, Moreton-in-Marsh, UK, 2001.

<sup>137</sup> Janet N. Abramovitz, Too Much Talk, Too Little Action on Forests, Worldwatch Institute, World Summit Policy Brief #3, <http://www.worldwatch.org/worldsummit/briefs/20020416.html>, visited 9/10/02.

<sup>138</sup> *Id.*

<sup>139</sup> Gary Gardner, Growing Awareness, Sluggish Response, Policy Brief #1, Worldwatch Institute, fn. 30,

<sup>140</sup> The creation of carbon sinks, the planting of trees that would soak up the carbon in the atmosphere is a solution, proposed by the United States and other industrialized countries in furtherance of globalization and export agriculture. But this solution would replace forests with plantations, reducing the old growth that is the real carbon sink, replacing old growth forests with young "productive" trees that filter nothing. Plantations actually increase the loss of biodiversity and cause de-forestation. Another solution found in the Kyoto Protocols also supported by the United States, is that of tradable emissions, the selling of one country's quota of emissions on the New York Stock Exchange to another country that is exceeding its quota. Such a solution does nothing to reduce carbon emissions and is obviously no solution at all.

<sup>141</sup> Anne Platt McGinn, Reducing the Use of Toxic Chemicals Advances Health and Sustainable Development, Policy Brief #7, Worldwatch Institute, fn. 30.

<sup>142</sup> Transboundary Persistent Organic Pollutants (POPS), Human Rights and Indigenous Peoples, Indigenous Environmental Network, presentation to the Special Rapporteur on the illicit movement and dumping of toxic and dangerous products and waste, United Nations Commission on Human Rights, presented by Tom Goldtooth, National Director, IEN at a meeting with the Special Rapporteur, at the International Indian Treaty Council, San Francisco, California, USA, December 13, 2001.

<sup>143</sup> *Id.*, at p. 4.

<sup>144</sup> *Id.*

<sup>145</sup> Elizabeth A. Guillet and María Mercedes Meza, et. al., An Anthropological Approach to the Evaluation of Preschool Children Exposed to Pesticides in Mexico, Environmental Health Perspectives, Bureau of Applied Research in Anthropology, University of Arizona, Tucson Arizona, USA and the Dirección de Investigación y Estudios de Postgrado, Instituto de Tecnológico de Sonora, Obregon, Sonora, Mexico, <http://ehpnet1.niehs.nih.gov/members/1998/106p347-353guillette/guillette-full.html>, visited 11/06/01.

<sup>146</sup> *id.*

<sup>147</sup> International Union for the Protection of New Varieties of Plants, <http://www.upov.int/eng/dgtext.htm>, visited 09/11/02.

<sup>148</sup> Changes in the UPOV are accomplished through "Acts" under the 1961 Convention, i.e. the 1978 Act, and the 1991 Act. See, <http://www.upov.int/eng/convtns/index.htm>.

<sup>149</sup> See, <http://www.upov.int/eng/about/protect.htm#prelimin>, for the differences between the 1978 Act and the 1991 Act. The 1978 Act did not prohibit these uses.

<sup>150</sup> "The objectives of this Convention, to be pursued in accordance with its relevant provisions, are the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources, including by appropriate access to genetic resources and by appropriate transfer of relevant technologies, taking into account all rights over those resources and to technologies, and by appropriate funding." Article 1,

Convention on Biodiversity, found at <http://www.biodiv.org/convention>, visited 09/11/02.

<sup>151</sup> “Open-ended” means any State can come, and includes the participation of Indigenous Peoples, their organizations and representatives. “Intersessional” means that it meets between sessions of the COPS.

<sup>152</sup> CDB, Article 3, Principle.

<sup>153</sup> [Philippine] Executive Order No. 247 (18.5.95), 1995.

<sup>154</sup> “Model Legislation on the Protection of the Rights of Local Communities, Farmers and Breeders and for the Regulation of Access to Biological Resources.” See, Genetic Resources Action International (GRAIN) website, at <http://216.15.202.3/publications/oau-brief-en.cfm>, for a full description of this incident.

<sup>155</sup> Convention on Biodiversity, Article 19(3). For the Text of the Cartagena Protocol, see, the Convention on Biodiversity web page, <http://www.biodiv.org/biosafety/background.asp>, visited 09/11/02/.

<sup>156</sup> During the WFS:fyl, the US was successful in weakening a section of the draft WFS:fyl Declaration that called on governments to sign and ratify the Treaty on Plant Genetic Resources for Food and Agriculture. But by the end of the WFS: fyl, 56 countries and the European Union had signed on to the Treaty, and the Treaty had received 7 ratifications.

<sup>157</sup> For the text of the Treaty on Plant Genetic Resources for Food and Agriculture, as well as issues related to the conservation and use of plant genetic resources, see, the UK Agricultural Biodiversity Coalition web page, <http://www.ukabc.org>.

<sup>158</sup> *id.*, Treaty on Plant Genetic Resources, Article 1.

\* Given limitations on length, some issues important to Indigenous Peoples’ food security could not be covered. For example, the United States has been active in its support for the mining industry globally. See, eg., <http://www.moles.org>, Project Underground’s website, for description of the dev-

astation of Indigenous lands and territories by North American transnational mining companies, particularly gold mining, internationally as well as in the United States. This devastation continues unabated, affecting the means of subsistence of Indigenous Peoples, ruining their rivers and groundwater, making it impossible in many cases for Indigenous Peoples to provide for their traditional means of subsistence.

<sup>1</sup> For a full description of Plan Puebla Panama, see the Global Exchange website, <http://www.globalexchange.org/campaigns/mexico/ppp.html>, visited 10/03/2002.

<sup>2</sup> Forum on Biological and Cultural Diversity, Declaration, June 17<sup>th</sup>, 2001, p. 3; found at Global Exchange website (see fn. 1).

<sup>3</sup> Declaración Final, 3er Congreso Nacional Indígena (Final Declaration, 3<sup>rd</sup> National Indigenous Congress), Mexico City, 20 November 2001, (translated by Alberto Saldamando); Congreso Nacional Indígena (CNI) website, <http://www.laneta.apc.org/CNI>, visited 10/03/2002 (“Today, the neoliberal politics imposed by the [President of Mexico] Fox government in agreement with the large world financial centers expressed in plans and programs such as the so-called Plan Puebla Panama, intend the massive privatization of our territories, the disarticulation of the communal property of our peoples, and the appropriation, by large world consortiums, of our natural wealth and our traditional knowledge.”)

<sup>4</sup> Final CNI Declaration, fn. 3, at page 6.

<sup>5</sup> Final CNI Declaration, fn. 3, at p. 11. This paragraph continues: “In the same way, we must oppose the introduction of genetically modified organisms that threaten the food security of our nation...”

<sup>6</sup> Posted 13 March 2002, on Indian Country Today website, <http://www.indiancountrytoday.com>, visited 2 April 2002.

<sup>7</sup> Report of the World Food Conference, UN Doc. E/CONF.65/20, UN Publication Sales No. 75.II.A.3, Declaration: “1. Every man, woman and child has the **inalienable right** to be free from hunger and malnutrition in order to develop fully and maintain their physical and mental faculties.” (em-



phasis added)

<sup>8</sup> Universal Declaration of Human Rights, Adopted and Proclaimed by General Assembly Resolution 217 A (III) of December, 1948. With a bit of patience, all United Nations Declarations, Human Rights Treaties, Covenants and Resolutions cited in this paper may be found on the Office of the High Commissioner for Human Rights website, <http://www.unhchr.ch>, by clicking “documents” on the home page.

<sup>9</sup> General comment 12, CERD Committee (found on the UNHCHR website, fn. 8, (“treaty based bodies.”) Every Human Rights Covenant or Convention has provisions within it establishing a “Treaty Monitoring Body” that oversees the implementation of the Convention or Covenant by the States Parties to the Convention. They issue periodic “General Comments,” establishing standards by which the States Parties are bound and guided in the implementation of specific provisions. These General Comments, along with decisions under its complaints procedures, and Concluding Observations, serve as the jurisprudence of the Treaty, Convention or Covenant, establishing the content of the convention rights.

<sup>10</sup> UN Commission on Human Rights, resolution 2000/10, 17 April 2000.

<sup>11</sup> Report by the Special Rapporteur on the right to food, Mr. Jean Ziegler, submitted in accordance with Commission on Human Rights resolution 2000/10, UN Doc. E/CN.4/2001/53, 7 February 2001, Summary.

<sup>12</sup> See, eg., Siri Damman, Nutritional vulnerability in the indigenous children of the Americas – a human rights issue, Institute for Nutrition Research, Faculty of Medicine, University of Oslo (Norway), 10 October, 2001. “In Canada and the USA, stunting [in children] is said not to be a problem, and data are not found. However, and that goes for all countries, data might exist which were not detected in the preparation for this study. In Canada, the First Nation IMR [infant mortality rate] is shown to be 2-3 times higher than the population as such. Inuit children have a ratio of 2.2, while others (Métis and Canadian Indians) are at 1.9. In the USA there are also clear inequalities in regard to IMR.” at p. 9

<sup>13</sup> Native Americans in South Dakota: An Erosion

of Confidence in the Justice System, South Dakota Advisory Committee to the United States Commission on Civil Rights, US Commission on Civil Rights, Rocky Mountain Regional Office, Denver, Colorado, March 2000.

<sup>14</sup> United Nations Declaration on the Right to Development, Adopted by General Assembly Resolution 41/128 of 4 December 1986, Article 1, parts 1 and 2.

<sup>15</sup> Declaration on the Right to Development, *Article 9*:

1. All the aspects of the right to development set forth in the present Declaration are indivisible and interdependent and each of them should be considered in the context of the whole.

2. Nothing in the present Declaration shall be construed as being contrary to the purposes and principles of the United Nations, or as implying that any State, group or person has a right to engage in any activity or to perform any act aimed at the violation of the rights set forth in the Universal Declaration of Human Rights and in the International Covenants on Human Rights.

<sup>16</sup> Resolution XVII, International Conference on Human Rights, Tehran, 22 April to 13 May 1968, in United Nations Action In the Field of Human Rights, Part IV. Existing Standards and their Promotion and Protection, D. The Right to Development, para. 2216; United Nations: New York, 1994.

<sup>17</sup> Fourth Report of the Independent Expert on the right to development, Mr. Arjun Sengupta, E/CN.4/2000/WG.18/2, 20 December 2001, Introduction, para. 2, citing, *inter alia* his prior reports: First report, E/CN.4/1999/WG.18.2; Second report, E/CN.4/2000/WG.18/CRP/1; and, Third report, E/CN.4/2001/WB.18.2. This rapporteur’s reports, as well as others cited herein can also be accessed through the Office of the United Nations High Commissioner for Human Rights website, <http://unhchr.ch>, under “program.”

<sup>18</sup> *Id.*, at para. 5.

<sup>19</sup> International Labor Organization Convention No. 169, Article 7 (development); article 13 (Part II, Land).

<sup>20</sup> Mrs. Erica-Irene Daes, Special Rapporteur on the Human Rights of Indigenous Peoples, Indig-

enous Peoples and their relationship to land, Preliminary working paper, E/CN.4/Sub.2/1997/179 (20 June 1997); Progress report, E/CN.4/Sub.2/1998/15 (22 July 1998); Second progress report, E/CN.4/Sub.2/1999/18 (3 June 1999); Final working paper, E/CN.4/Sub.2/2001/21 (2000).

<sup>21</sup> See, eg, First World Conference to Combat Racism and Racial Discrimination, Declaration, Article 21, Geneva, August 1978 (Sales No. E.79.XIV.2, chap. II); Second World Conference to Combat Racism and Racial Discrimination, Geneva, August 1983, Declaration, Preamble and Chapter II, Article 22 (Sales No. E.83.XIV.4); World Conference Against Racism, Racial Discrimination, Xenophobia, and Related Intolerance, Durban South Africa, September, 2001, Declaration, para.43 (United Nations: New York, 2002).

<sup>22</sup> Inter-American Commission on Human Rights, Report No. 113/01, Case No. 11.140, Mary and Carrie Dann v. United States, para. 128, p.31, (dated October 15, 2001, released in August of 2002), para. 128; Available on Indian Legal Resource Center website: <http://www.indianlaw.org>. Of interest, the Inter-American Commission found that the Western Shoshone had been deprived of the right to equal treatment under the law contrary to Articles II, XVII and XXIII of the American Declaration because the process of the Land Claims Act and the Commission itself did not allow them to raise the issue of title. See, Dann v. US, at para VI., 148. This case has major implications for other US Tribes, particularly the Hope and Lakota, as they too have refused to accept money awarded by the Land Claims Commission. The United States, in testimony before the US Senate, declared its “rejection” of this IACHR decision.

<sup>23</sup> See, eg, Kitok v. Sweden, Report of the Human Rights Committee, 43 UN GOAR Supp. (No. 40) at 221, A/43/40 (1988); I. Lansman et. al v. Finland, CCPR/C/52/D/511/ (1992).

<sup>24</sup> Concluding Observations of the Human Rights Committee: Chile, UN Doc. CCPR/C/79/Add.104, (1999), para. 22.

<sup>25</sup> Human Rights Committee, The right of self determination of peoples (Art.1): CCPR General Recommendation 12, (1984), para. 6.

<sup>26</sup> General Assembly Resolution 1803 (XVII) of 248

14 December 1962, “Permanent sovereignty over natural resources; found on the United Nations Human Rights website, <http://www.unhchr.ch>, “documents.”

<sup>27</sup> Id, at para. 1 of the preamble.

<sup>28</sup> Working Paper by Erica-Irene Daes, former Chairperson-Rapporteur of the Working Group on Indigenous Populations, Indigenous Peoples’ permanent sovereignty over natural resources, UN doc. E/CN.4/Sub.2/2002/23, 30 July 2002, para. 7.

<sup>29</sup> Article 1 in Common, International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESC), both *Adopted and opened for signature, ratification and accession by General Assembly Resolution 2200 A (XXI) of 16 December 1996*. Found in A Compilation of International Instruments, fn. 1, at p. 20 (ICCPR) and p. 8 (ICESC).

<sup>30</sup> See, Ominayak v. Canada, fn. 41 below, decided under Article 27 of the ICCPR at the time, and not under Article 1. A different approach would probably now be taken by the Human Rights Committee in addressing these issues, to include Article 1 as well as Article 27.

<sup>31</sup> Concluding Observations of the Human Rights Committee: Canada. 07/04/99, at para. 8. UN Doc. CCPR/C/79/Add.105, (1999). In 2002, the Committee on the Elimination of Racial Discrimination, pursuant to the Convention on the Elimination of all Forms of Racial Discrimination, also called for compliance with the RCAP recommendations. Concluding observation of the [CERD] committee, Canada, UN doc. CERD/C/61/CO/3, 23 August 2002.

<sup>32</sup> Concluding Observations of the Human Rights Committee: Mexico. UN Doc. CCPR/C/79/Add.109 (1999), at para 18.

<sup>33</sup> Concluding Observations of the Human Rights Committee: Norway. UN Doc. CCPR/C/Add.112 (1999), paras. 10 and 17.

<sup>34</sup> Concluding Observations of the Human Rights Committee: Australia. UN Doc. CCPR/CO/69/AUS (2000), para. 9.



<sup>35</sup> Not only Indigenous Peoples and their organizations and representatives at the United Nations, but UN experts themselves have called this failure of recognition a failure of logic and language, and racist: “These experiences have only confirmed to me that indigenous peoples in many countries continue to be the victims of racism and discrimination. Indeed, I believe that discrimination and racism are at the heart of the indigenous issue, whether this is expressed in the reluctance of many States to recognize the right of self-determination of indigenous peoples – a right recognized for all other peoples – or in the absurd denial of the use of the term “indigenous peoples”, contradicting all logic of language and pretending in doing so that the different indigenous peoples of the world do not have a language, history or culture unique to them, or in the insistence by the dominant world that indigenous peoples do not have their own long-established and dynamic systems of knowledge and law.” Working paper on discrimination against indigenous peoples submitted by Mrs. Erica-Irene Daes in accordance with Sub-Commission resolution 1999/20, E/CN.4/Sub.2/2001/2, 18 August 2001, para. 11,

<sup>36</sup> For more recent examples, see, eg., the name of the Permanent Forum for Indigenous Issues (instead of the Permanent Forum for Indigenous Peoples; World Conference Against Racism Declaration and Programme of Action, para. 24).

<sup>37</sup> Unclassified cable to the HUMAN RIGHTS COMMISSION COLLECTIVE, from SECSTATE WASHDC (STATE 10525), TAGS: PHUM, dated January 19, 2001.

<sup>38</sup> Final Draft, World Summit on Sustainable Development Declaration, September 3, 2002, para. 22 (bis).

<sup>39</sup> Report by the Special Rapporteur on the right to food, Mr. Jean Ziegler, submitted in accordance with commission on Human Rights Resolution 2001/10, UN Doc. E/CN.4/2001/53, 7 February 2001, at p. 3

<sup>40</sup> Human Rights Committee, General Comment 23, Article 27 (fiftieth session, 1994), cited in Daes, *op. cit.*, p. 47.

<sup>41</sup> Bernard Ominayak, Chief of the Lubicon Lake Band. v. Canada, Communication No. 167/1984,

Report of the Human Rights Committee, A/45/40, Vol. II, Annex IXA, para. 32.2.

<sup>42</sup> In response, Canada recognized a 95 square mile territory for the Lubicon Lake Band, and recognized their subsurface mineral rights to approximately two-thirds of the territory, as well as programs, benefits and money. The Committee found this remedy acceptable.

<sup>43</sup> <http://www.fao.org>.

<sup>44</sup> <http://www.fao.org/docrep/003/w3613e/w3613e00.htm>, visited 11/09/02.

<sup>45</sup> See, FAO website, home page, fn. 43.

<sup>46</sup> See, Special Rapporteur on the Right to Food, third report to the Human Rights Commission, UN doc. E/CN.4/2002/58, 10 January 2002. See also, Report of the High Commissioner on Human Rights, submitted in accordance with Commission on Human Rights resolution 2001/32, Globalization and its impact on the full enjoyment of human rights, UN doc. E/CN.4/200254, 15 January 2002, para. 6.

<sup>47</sup> <http://www.fao.org/worldfoodsummit/english/index.html>, visited 11/09/02.

<sup>48</sup> During the WFS: fyl, the US also resisted inclusion of a voluntary Code of Conduct on the Right to Food which would have reminded the States of their human rights obligations under the International Covenant on Economic, Social and Cultural Rights and the right to food, and States’ obligations to regulate private sector activities, consistent with Objective 7.4 of the 1996 World Food Summit Plan of Action. Canada (which often works hand-in-hand with the US on globalization and related issues) argued that the Right to Food is already a human right and doesn’t need to be singled out. Similar and purely voluntary codes of conduct for transnational mining corporations and their obligation to observe human rights in their activities have also been opposed by the United States, even though these codes would be of a voluntary nature, notwithstanding any legal obligations of States. For an excellent description of the US position at WFS: fyl, see, Peter Rosset, US Opposes Right to Food at World Summit, Food First web page, <http://www.foodfirst.org/media/opeds/2002/usopposes.html>, last visited 10/10/02.

<sup>49</sup> Rio Declaration, principle 12. Ironically, the following year, at the World Conference on Human Rights, in Vienna, the Vienna Declaration scarcely mentioned the environment.

<sup>50</sup> Agenda 21, Chapter 26, 26.4 and 26.5. See, ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries: Article 2 (participation of Indigenous Peoples in development); Article 4 (protection of Indigenous cultures and environment); and Article 6 (consultations leading toward, but *not* requiring, consent on measures which may affect them directly. Indeed, Agenda 21 falls short of Article 27 of ILO #169, recognizing that Indigenous Peoples “shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands that they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development. ILO Convention 169 is the only international convention on Indigenous Peoples and can be regarded as the “bottom” or basic document establishing recognition of the rights of Indigenous Peoples from which the development of international human rights standards concerning Indigenous Peoples should evolve. In no way should United Nations actions or documents reflect lesser human rights standards than those found in this basic convention.

<sup>51</sup> Agenda 21, Chapter 17, 17.17.

<sup>52</sup> Agenda 21, Chapter 11.1(b).

<sup>53</sup> Chapter 11 also calls for Indigenous Peoples’ participation in capacity building programs to facilitate research and the implementation of measures to protect forest ecosystems and biodiversity. It calls for the creation of protected reserves and areas, including the traditional territories of Indigenous Peoples.

<sup>54</sup> Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of All Types of Forests. In addition to the Convention on Biodiversity and the Framework Convention on Climate Change, the States were also to agree on a Convention on Forests, but were unable to reach agreement. The Forest Principles were adopted instead. The Rio Declaration and Agenda 21, as well as the Forest Principles are not legally binding on any State..

<sup>55</sup> Principle 5(a). Principle 2(d) calls for the promotion and opportunity for the participation of indigenous people and forest dwellers in the development, implementation and planning of *national* forest policy.

<sup>56</sup> Agenda 21, Chapter 11.13(b).

<sup>57</sup> For an excellent discussion of the gains and challenges forest dwelling Indigenous Peoples made at Rio and beyond, see, Tom Griffiths, [Consolidating the Gains, Indigenous Peoples’ Rights and Forest Policy Making at the United Nations](#), Forest Peoples Programme, Moreton-in-Marsh, UK, 2001.

<sup>58</sup> Janet N. Abramovitz, [Too Much Talk, Too Little Action on Forests](#), Worldwatch Institute, World Summit Policy Brief #3, <http://www.worldwatch.org/worldsummit/briefs/20020416.html>, visited 9/10/02.

<sup>59</sup> Id.

<sup>60</sup> Gary Gardner, [Growing Awareness, Sluggish Response](#), Policy Brief #1, Worldwatch Institute, fn. 30,

61 The creation of carbon sinks, the planting of trees that would soak up the carbon in the atmosphere is a solution, proposed by the United States and other industrialized countries in furtherance of globalization and export agriculture. But this solution would replace forests with plantations, reducing the old growth that is the real carbon sink, replacing old growth forests with young “productive” trees that filter nothing. Plantations actually increase the loss of biodiversity and cause de-forestation. Another solution found in the Kyoto Protocols also supported by the United States, is that of tradable emissions, the selling of one country’s quota of emissions on the New York Stock Exchange to another country that is exceeding its quota. Such a solution does nothing to reduce carbon emissions and is obviously no solution at all.

<sup>62</sup> Anne Platt McGinn, [Reducing the Use of Toxic Chemicals Advances Health and Sustainable Development](#), Policy Brief #7, Worldwatch Institute, fn. 30.

<sup>63</sup> Transboundary Persistent Organic Pollutants (POPS), Human Rights and Indigenous Peoples, Indigenous Environmental Network, presentation to the Special Rapporteur on the illicit movement and dumping of toxic and dangerous products and waste, United Nations Commission on Human Rights, presented by Tom Goldtooth, National Director, IEN at a meeting with the Special Rapporteur, at the International Indian Treaty Council, San Francisco, California, USA, December 13, 2001.

<sup>64</sup> Id, at p. 4.

<sup>65</sup> Id.

<sup>66</sup> Elizabeth A. Guillettee and María Mercedes Meza, et. al., An Anthropological Approach to the Evaluation of Preschool Children Exposed to Pesticides in Mexico, Environmental Health Perspectives, Bureau of Applied Research in Anthropology, University of Arizona, Tucson Arizona, USA and the Dirección de Investigación y Estudios de Postgrado, Instituto de Tecnológico de Sonora, Obregon, Sonora, Mexico, <http://ehpnet1.niehs.nih.gov/members/1998/106p347-353guillette/guillette-full.html>, visited 11/06/01.

<sup>67</sup> id.

<sup>68</sup> International Union for the Protection of New Varieties of Plants, <http://www.upov.int/eng/dgtext.htm>, visited 09/11/02.

<sup>69</sup> Changes in the UPOV are accomplished through “Acts” under the 1961 Convention, i.e. the 1978 Act, and the 1991 Act. See, <http://www.upov.int/eng/convntns/index.htm>.

<sup>70</sup> See, <http://www.upov.int/eng/about/protect.htm#prelimin>, for the differences between the 1978 Act and the 1991 Act. The 1978 Act did not prohibit these uses.

<sup>71</sup> “The objectives of this Convention, to be pursued in accordance with its relevant provisions, are the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources, including by appropriate access to genetic resources and by appropriate transfer of relevant technologies, taking into account all rights over those resources and to technologies, and by appropriate funding.” Article 1, Convention on Biodiversity, found at <http://www.biodiv.org/convention>, visited 09/11/02.

<sup>72</sup> “Open-ended” means any State can come, and includes the participation of Indigenous Peoples, their organizations and representatives. “Intersessional” means that it meets between sessions of the COPS.

<sup>73</sup> CDB, Article 3, Principle.

<sup>74</sup> [Philippine] Executive Order No. 247 (18.5.95), 1995.

<sup>75</sup> “Model Legislation on the Protection of the Rights of Local Communities, Farmers and Breeders and for the Regulation of Access to Biological Resources.” See, Genetic Resources Action International (GRAIN)

website, at <http://216.15.202.3/publications/oaubrief-en.cfm>, for a full description of this incident.

<sup>76</sup> Convention on Biodiversity, Article 19(3). For the Text of the Cartagena Protocol, see, the Convention on Biodiversity web page, <http://www.biodiv.org/biosafety/background.asp>, visited 09/11/02/.

<sup>77</sup> During the WFS:fyl, the US was successful in weakening a section of the draft WFS:fyl Declaration that called on governments to sign and ratify the Treaty on Plant Genetic Resources for Food and Agriculture. But by the end of the WFS: fyl, 56 countries and the European Union had signed on to the Treaty, and the Treaty had received 7 ratifications.

<sup>78</sup> For the text of the Treaty on Plant Genetic Resources for Food and Agriculture, as well as issues related to the conservation and use of plant genetic resources, see, the UK Agricultural Biodiversity Coalition web page, <http://www.ukabc.org>.

<sup>79</sup> id., Treaty on Plant Genetic Resources, Article 1.



## **Rights For Everyone**

We include this Human Rights document in hopes that a few army, police and missionaries will take note of the fact that the violations they commit, are not violations of philosophy only or take on life, but the basic human rights of people, Akha, people just like them.

## **INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS**

U.N.T.S. No. 14668, vol 999

Web site: <http://www.tufts.edu/departments/fletcher/multi/texts/BH498.txt>  
(1976), p. 171

The States Parties to the present Covenant, Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world, Recognizing that these rights derive from the inherent dignity of the human person, Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights, Considering the obligation of States under the Charter of the United Nations to promote universal respect for and observance of, human rights and freedoms, Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant, Agree upon the following articles:

### **PART I**

#### **Article 1**

1. All 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.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law.

In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

### **PART II**

#### **Article 2**

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

#### **Article 3**

The States Parties to the present Covenant undertake to ensure the equal right of men and women

to the enjoyment of all civil and political rights set forth in the present Covenant.

#### Article 4

1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

2. No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision.

3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

#### Article 5

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.

2. There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

### PART III

#### Article 6

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

2. In countries which have not abolished the death penalty, sentence of death may be imposed

only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court

3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.

4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.

5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.

6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

#### Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

#### Article 8

1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.

2. No one shall be held in servitude.

3. (a) No one shall be required to perform forced or compulsory labour.

(b) Paragraph 3 (a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court.

(c) For the purpose of this paragraph the term "forced or compulsory labour" shall not include:

(i) Any work or service, not referred to in sub-paragraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;

(ii) Any service of a military character and, in countries where conscientious objection is

recognized, any national service required by law of conscientious objectors;

(iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;

(iv) Any work or service which forms part of normal civil obligations.

## Article 9

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

## Article 10

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

2. (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;

(b) Accused juvenile persons shall be separated from adults and brought as speedily as possible

for adjudication.

3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation.

Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

## Article 11

No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.

## Article 12

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.

3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.

4. No one shall be arbitrarily deprived of the right to enter his own country.

## Article 13

An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

## Article 14

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The Press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in

the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

(c) To be tried without undue delay;

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing;

to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

(e) To examine, or have examined the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(g) Not to be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly

discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

#### Article 15

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby.

2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed was criminal according to the general principles of law recognized by the community of nations.

#### Article 16

Everyone shall have the right to recognition everywhere as a person before the law.

#### Article 17

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

2. Everyone has the right to the protection of the law against such interference or attacks.

#### Article 18

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

#### Article 19

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

#### Article 20

1. Any propaganda for war shall be prohibited by law.

2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

#### Article 21

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.

#### Article 22

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

#### Article 23

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

2. The right of men and women of marriageable age to marry and to found a family shall be recognized.

3. No marriage shall be entered into without the free and full consent of the intending spouses.

4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

#### Article 24

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.

2. Every child shall be registered immediately



after birth and shall have a name.

3. Every child has the right to acquire a nationality.

#### Article 25

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;

(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

(c) To have access, on general terms of equality, to public service in his country.

#### Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

#### Article 27

In those States in which ethnic, religious or linguistic minorities exist persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

### PART IV

#### Article 28

1. There shall be established a Human Rights Committee (hereafter referred to in the present Covenant as the Committee). It shall consist of eighteen members and shall carry out the functions hereinafter provided.

2. The Committee shall be composed of nationals of the States Parties to the present Covenant who shall be persons of high moral character and

recognized competence in the field of human rights, consideration being given to the usefulness of the participation of some persons having legal experience.

3. The members of the Committee shall be elected and shall serve in their personal capacity.

#### Article 29

1. The members of the Committee shall be elected by secret ballot from a list of persons possessing the qualifications prescribed in article 28 and nominated for the purpose by the States Parties to the present Covenant.

2. Each State Party to the present Covenant may nominate not more than two persons. These persons shall be nationals of the nominating State.

3. A person shall be eligible for renomination.

#### Article 30

1. The initial election shall be held no later than six months after the date of the entry into force of the present Covenant.

2. At least four months before the date of each election to the Committee other than an election to fill a vacancy declared in accordance with article

34, the Secretary-General of the United Nations shall address a written invitation to the States Parties to the present Covenant to submit their nominations for membership of the Committee within three months.

3. The Secretary-General of the United Nations shall prepare a list in alphabetical order of all the persons thus nominated, with an indication of the States Parties which have nominated them, and shall submit it to the States Parties to the present Covenant no later than one month before the date of each election.

4. Elections of the members of the Committee shall be held at a meeting of the States Parties to the present Covenant convened by the Secretary-General of the United Nations at the Headquarters of the United Nations. At that meeting, for which two thirds of the States Parties to the present Covenant shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States

Parties present and voting.

#### Article 31

1. The Committee may not include more than one national of the same State.

2. In the election of the Committee, consideration shall be given to equitable geographical distribution of membership and to the representation of the different forms of civilization and of the principal legal systems.

#### Article 32

1. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these nine members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these nine members shall be chosen by lot by the Chairman of the meeting referred to in article 30, paragraph 4.

2. Elections at the expiry of office shall be held in accordance with the preceding articles of this part of the present Covenant.

#### Article 33

1. If, in the unanimous opinion of the other members, a member of the Committee has ceased to carry out his functions for any cause other than absence of a temporary character, the Chairman of the Committee shall notify the Secretary-General of the United Nations, who shall then declare the seat of that member to be vacant.

2. In the event of the death or the resignation of a member of the Committee, the Chairman shall immediately notify the Secretary-General of the United Nations, who shall declare the seat vacant from the date of death or the date on which the resignation takes effect.

#### Article 34

1. When a vacancy is declared in accordance with article 33 and if the term of office of the member to be replaced does not expire within six months of the declaration of the vacancy, the Secretary-General of the United Nations shall notify each of the States Parties to the present Covenant, which may within two months submit nominations in

accordance with article 29 for the purpose of filling the vacancy.

2. The Secretary-General of the United Nations shall prepare a list in alphabetical order of the persons thus nominated and shall submit it to the States Parties to the present Covenant. The election to fill the vacancy shall then take place in accordance with the relevant provisions of this part of the present Covenant.

3. A member of the Committee elected to fill a vacancy declared in accordance with Article 33 shall hold office for the remainder of the term of the member who vacated the seat on the Committee under the provisions of that article.

#### Article 35

The members of the Committee shall, with the approval of the General Assembly of the United Nations, receive emoluments from United Nations resources on such terms and conditions as the General Assembly may decide, having regard to the importance of the Committee's responsibilities.

#### Article 36

The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Covenant.

#### Article 37

1. The Secretary-General of the United Nations shall convene the initial meeting of the Committee at the Headquarters of the United Nations.

2. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.

3. The Committee shall normally meet at the Headquarters of the United Nations or at the United Nations Office at Geneva.

#### Article 38

Every member of the Committee shall, before taking up his duties, make a solemn declaration in open committee that he will perform his functions impartially and conscientiously.

#### Article 39

1. The Committee shall elect its officers for a term of two years. They may be re-elected.

2. The Committee shall establish its own rules

of procedure, but these rules shall provide, inter alia, that:

(a) Twelve members shall constitute a quorum;

(b) Decisions of the Committee shall be made by a majority vote of the members present.

#### Article 40

1. The States Parties to the present Covenant undertake to submit reports on the measures they have adopted which give effect to the rights] recognized herein and on the progress made in the enjoyment of those rights:

(a) Within one year of the entry into force of the present Covenant for the States Parties concerned;

(b) Thereafter whenever the Committee so requests.

2. All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit them to the Committee for consideration.

Reports shall indicate the factors and difficulties, if any, affecting the implementation of the present Covenant.

3. The Secretary-General of the United Nations may, after consultation with the Committee, transmit to the specialized agencies concerned copies of such parts of the reports as may fall within their field of competence.

4. The Committee shall study the reports submitted by the States Parties to the present Covenant. It shall transmit its reports, and such general comments as it may consider appropriate, to the States Parties. The Committee may also transmit to the Economic and Social Council these comments along with the copies of the reports it has received from States Parties to the present Covenant.

5. The States Parties to the present Covenant may submit to the Committee observations on any comments that may be made in accordance with paragraph 4 of this article.

#### Article 41

1. A State Party to the present Covenant may at any time declare under this article that it recognizes the competence of the Committee to receive and

consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Covenant. Communications under this article may be received and considered only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure:

(a) If a State Party to the present Covenant considers that another State Party is not giving effect to the provisions of the present Covenant, it may, by written communication, bring the matter to the attention of that State Party. Within three months after the receipt of the communication, the receiving State shall afford the State which sent the communication an explanation or any other statement in writing clarifying the matter, which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending, or available in the matter.

(b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State.

(c) The Committee shall deal with a matter referred to it only after it has ascertained that all available domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged.

(d) The Committee shall hold closed meetings when examining communications under this article.

(e) Subject to the provisions of sub-paragraph (c), the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of respect for human rights and fundamental freedoms as recognized in the present Covenant.

(f) In any matter referred to it, the Committee may call upon the States Parties concerned, referred to in sub-paragraph (b), to supply any relevant information.

(g) The States Parties concerned, referred to in sub-paragraph (b), shall have the right to be represented when the matter is being considered in the Committee and to make submissions orally and/or in writing.

(h) The Committee shall, within twelve months after the date of receipt of notice under sub-paragraph (b), submit a report:

(i) If a solution within the terms of sub-paragraph (e) is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;

(ii) If a solution within the terms of sub-paragraph (e) is not reached, the Committee shall confine its report to a brief statement of the facts; the written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report. In every matter, the report shall be communicated to the States Parties concerned.

2. The provisions of this article shall come into force when ten States Parties to the present Covenant have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by any State Party shall be received after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned had made a new declaration.

#### Article 42

1. (a) If a matter referred to the Committee in accordance with article 41 is not resolved to the satisfaction of the States Parties concerned, the Committee may, with the prior consent of the States Parties concerned, appoint an ad hoc Conciliation Commission (hereinafter referred to as the Commission). The good offices of the Commission shall be made available to the States Parties concerned with a view to an amicable solution of the matter on the basis of respect for the present Covenant;

(b) The Commission shall consist of five persons acceptable to the States Parties concerned. If the States Parties concerned fail to reach agreement within three months on all or part of the composition of the Commission the members of the Commission concerning whom no agreement has been reached shall be elected by secret ballot by a two-thirds majority vote of the Committee from among its members.

2. The members of the Commission shall serve in their personal capacity. They shall not be nationals of the States Parties concerned, or of a State not party to the present Covenant, or of a State Party which has not made a declaration under article 41.

3. The Commission shall elect its own Chairman and adopt its own rules of procedure.

4. The meetings of the Commission shall normally be held at the Headquarters of the United Nations or at the United Nations Office at Geneva. However, they may be held at such other convenient places as the Commission may determine in consultation with the Secretary-General of the United Nations and the States Parties concerned.

5. The secretariat provided in accordance with article 36 shall also service the commissions appointed under this article.

6. The information received and collated by the Committee shall be made available to the Commission and the Commission may call upon the States Parties concerned to supply any other relevant information.

7. When the Commission has fully considered the matter, but in any event not later than twelve months after having been seized of the matter, it shall submit to the Chairman of the Committee a report for communication to the States Parties concerned:

(a) If the Commission is unable to complete its consideration of the matter within twelve months, it shall confine its report to a brief statement of the status of its consideration of the matter;

(b) If an amicable solution to the matter on the basis of respect for human rights as recognized in the present Covenant is reached, the Commission shall confine its report to a brief statement of

the facts and of the solution reached;

(c) If a solution within the terms of sub-paragraph (b) is not reached, the Commission's report shall embody its findings on all questions of fact relevant to the issues between the States Parties concerned, and its views on the possibilities of an amicable solution of the matter. This report shall also contain the written submissions and a record of the oral submissions made by the States Parties concerned;

(d) If the Commission's report is submitted under sub-paragraph ©, the States Parties concerned shall, within three months of the receipt of the report, notify the Chairman of the Committee whether or not they accept the contents of the report of the Commission.

8. The provisions of this article are without prejudice to the responsibilities of the Committee under article 41.

9. The States Parties concerned shall share equally all the expenses of the members of the Commission in accordance with estimates to be provided by the Secretary-General of the United Nations .

10. The Secretary-General of the United Nations shall be empowered to pay the expenses of the members of the Commission, if necessary, before reimbursement by the States Parties concerned, in accordance with paragraph 9 of this article.

#### Article 43

The members of the Committee, and of the ad hoc conciliation commissions which may be appointed under article 42, shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

#### Article 44

The provisions for the implementation of the present Covenant shall apply without prejudice to the procedures prescribed in the field of human rights by or under the constituent instruments and the conventions of the United Nations and of the specialized agencies and shall not prevent the States Parties to the present Covenant from having recourse to other procedures for settling a dispute in

accordance with general or special international agreements in force between them.

#### Article 45

The Committee shall submit to the General Assembly of the United Nations, through the Economic and Social Council, an annual report on its activities.

### PART V

#### Article 46

Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Covenant.

#### Article 47

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

### PART VI

#### Article 48

1. The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a party to the present Covenant.

2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this article.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States which have signed this Covenant or acceded to it of the deposit of each instrument of ratification or accession.

#### Article 49

1. The present Covenant shall enter into force

three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.

2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

#### Article 50

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

#### Article 51

1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General of the United Nations shall thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Covenant in accordance with their respective constitutional processes.

3. When amendments come into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Covenant and any earlier amendment which they have accepted.

#### Article 52

Irrespective of the notifications made under article 48, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph 1 of the same article of the following particulars:

(a) Signatures, ratifications and accessions under article 48;

(b) The date of the entry into force of the present Covenant under article 49 and the date of the entry into force of any amendments under article 51.

#### Article 53

1. The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in article 48.

IN FAITH WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed the present Covenant, opened for signature at New York, on the nineteenth day of December, one thousand nine hundred and sixty-six.



## UNIVERSAL DECLARATION OF LINGUISTIC RIGHTS

### PRELIMINARIES

The institutions and non-governmental organizations, signatories to the present Universal Declaration of Linguistic Rights, meeting in Barcelona from 6 to 9 June 1996,

Having regard to the 1948 Universal Declaration of Human Rights which, in its preamble, expresses its faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women; and which, in its second article, establishes that everyone is entitled to all the rights and freedoms regardless of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status;

Having regard to the International Covenant on Civil and Political Rights of 16 December 1966 (Article 27), and the

International Covenant on Economic, Social and Cultural Rights of the same date which, in their preambles, state that human beings cannot be free unless conditions are created which enable them to enjoy both their civil and political rights and their economic, social and cultural rights;

Having regard to Resolution 47/135 of 18 December 1992 of the General Assembly of the United Nations Organization which adopted the Declaration on the Rights of Persons belonging to National, Ethnic, Religious and Linguistic Minorities;

Having regard to the declarations and conventions of the Council of Europe, such as the European Convention for the Protection of Human Rights and Fundamental Freedoms, of 4 November 1950 (Article 14); the Convention of the Council of Ministers of the Council of Europe, of 29 June 1992, approving the European Charter for Regional or Minority Languages; the Declaration on National Minorities made by the Summit Meeting of the Council of Europe on 9 October 1993; and the Framework Convention for the Protection of National Minorities of November 1994;

Having regard to the Santiago de Compostela Declaration of the International PEN Club and the Declaration of 15

December 1993 of the Translations and Linguistic Rights Committee of the International PEN Club concerning the proposal to hold a World Conference on Linguistic Rights;

Considering that, in the Recife, Brazil, Declara-

tion of 9 October 1987, the 12th Seminar of the International Association for the Development of Intercultural Communication recommended the United Nations Organization to take the necessary steps to approve and implement a Universal Declaration of Linguistic Rights;

Having regard to Convention 169 of the International Labour Organization of 26 June 1989 concerning Indigenous and Tribal Peoples in Independent Countries;

Having regard to the Universal Declaration of the Collective Rights of Peoples, Barcelona, May 1990, which declared that all peoples have the right to express and develop their culture, language and rules of organization and, to this end, to adopt political, educational, communications and governmental structures of their own, within different political frameworks;

Having regard to the Final Declaration adopted by the General Assembly of the International Federation of Modern Language Teachers in Pécs (Hungary) on 16 August 1991, which recommended that linguistic rights be considered as fundamental rights of the individual;

Having regard to the report of the Human Rights Commission of the United Nations Economic and Social Council, of 20 April 1994, concerning the draft Declaration on the Rights of Indigenous Peoples, which viewed individual rights in the light of collective rights;

Having regard to the draft Declaration of the Inter-American Human Rights Commission on the Rights of Indigenous Peoples, approved at session 1278 on 18 September 1995;

Considering that the majority of the world's endangered languages belong to non-sovereign peoples and that the main factors which prevent the development of these languages and accelerate the process of language substitution include the lack of self-government and the policy of states which impose their political and administrative structures and their language;

Considering that invasion, colonization, occupation and other instances of political, economic or social subordination often involve the direct imposition of a foreign language or, at the very least, distort perceptions of the value of languages and give rise to hierarchical linguistic attitudes which undermine the language loyalty of speakers; and considering that the languages of some peoples which have attained sovereignty are consequently immersed in a process of language substitution as

a result of a policy which favours the language of former colonial or imperial powers;

Considering that universalism must be based on a conception of linguistic and cultural diversity which prevails over trends towards homogenization and towards exclusionary isolation;

Considering that, in order to ensure peaceful coexistence between language communities, overall principles must be found so as to guarantee the promotion and respect of all languages and their social use in public and in private;

Considering that various factors of an extralinguistic nature (historical, political, territorial, demographic, economic, sociocultural and sociolinguistic factors and those related to collective attitudes) give rise to problems which lead to the extinction, marginalization and degeneration of numerous languages, and that linguistic rights must therefore be examined in an overall perspective, so as to apply appropriate solutions in each case;

In the belief that a Universal Declaration of Linguistic Rights is required in order to correct linguistic imbalances with a view to ensuring the respect and full development of all languages and establishing the principles for a just and equitable linguistic peace throughout the world as a key factor in the maintenance of harmonious social relations;

## HEREBY DECLARE THAT PREAMBLE

The situation of each language, in view of the foregoing considerations, is the result of the convergence and interaction of a wide range of factors of a political and legal, ideological and historical, demographic and territorial, economic and social, cultural, linguistic and sociolinguistic, interlinguistic and subjective nature.

At the present time, these factors are defined by:

. The age-old unifying tendency of the majority of states to reduce diversity and foster attitudes opposed to cultural plurality and linguistic pluralism.

. The trend towards a worldwide economy and consequently towards a worldwide market of information, communications and culture, which disrupts the spheres of interrelation and the forms of interaction that guarantee the internal cohesion of language communities.

. The economicist growth model put forward by transnational economic groups which seeks to identify deregulation with progress and competitive individualism with freedom and generates serious and

growing economic, social, cultural and linguistic inequality.

Language communities are currently threatened by a lack of self-government, a limited population or one that is partially or wholly dispersed, a fragile economy, an uncodified language, or a cultural model opposed to the dominant one, which make it impossible for many languages to survive and develop unless the following basic goals are taken into account:

. In a political perspective, the goal of conceiving a way of organizing linguistic diversity so as to permit the effective participation of language communities in this new growth model.

. In a cultural perspective, the goal of rendering the worldwide communications space compatible with the equitable participation of all peoples, language communities and individuals in the development process.

. In an economic perspective, the goal of fostering sustainable development based on the participation of all and on respect for the ecological balance of societies and for equitable relationships between all languages and cultures.

For all these reasons, this Declaration takes language communities and not states as its point of departure and is to be viewed in the context of the reinforcement of international institutions capable of guaranteeing sustainable and equitable development for the whole of humanity. For these reasons also it aims to encourage the creation of a political framework for linguistic diversity based upon respect, harmonious coexistence and mutual benefit.

## PRELIMINARY TITLE

### Concepts

#### Article 1

1. This Declaration considers as a language community any human society established historically in a particular territorial space, whether this space be recognized or not, which identifies itself as a people and has developed a common language as a natural means of communication and cultural cohesion among its members. The term language proper to a territory refers to the language of the community historically established in such a space.

2. This Declaration takes as its point of departure the principle that linguistic rights are individual and collective at one and the same time. In defining the full range of linguistic rights, it adopts as its referent the case of a historical language com-



munity within its own territorial space, this space being understood, not only as the geographical area where the community lives, but also as the social and functional space vital to the full development of the language. Only on this basis is it possible to define the rights of the language groups mentioned in point 5 of the present article, and those of individuals living outside the territory of their community, in terms of a gradation or continuum.

3. For the purpose of this Declaration, groups are also deemed to be in their own territory and to belong to a language community in the following circumstances:

i. when they are separated from the main body of their community by political or administrative boundaries;

ii. when they have been historically established in a small geographical area surrounded by members of other language communities; or

iii. when they are established in a geographical area which they share with the members of other language communities with similar historical antecedents.

4. This Declaration also considers nomad peoples within their areas of migration and peoples established in geographically dispersed locations as language communities in their own historical territory.

5. This Declaration considers as a language group any group of persons sharing the same language which is established in the territorial space of another language community but which does not possess historical antecedents equivalent to those of that community. Examples of such groups are immigrants, refugees, deported persons and members of diasporas.

#### Article 2

1. This Declaration considers that, whenever various language communities and groups share the same territory, the rights formulated in this Declaration must be exercised on a basis of mutual respect and in such a way that democracy may be guaranteed to the greatest possible extent.

2. In the quest for a satisfactory sociolinguistic balance, that is, in order to establish the appropriate articulation between the respective rights of such language communities and groups and the persons belonging to them, various factors, besides their respective historical antecedents in the territory and their democratically expressed will, must be taken into account. Such factors, which may call for compensatory treatment aimed at restoring a balance,

include the coercive nature of the migrations which have led to the coexistence of the different communities and groups, and their degree of political, socioeconomic and cultural vulnerability.

#### Article 3

1. This Declaration considers the following to be inalienable personal rights which may be exercised in any situation:

the right to be recognized as a member of a language community; the right to the use of one's own language both in private and in public; the right to the use of one's own name; the right to interrelate and associate with other members of one's language community of origin; the right to maintain and develop one's own culture; and all the other rights related to language which are recognized in the International Covenant on Civil and Political Rights of 16 December 1966 and the International Covenant on Economic, Social and Cultural Rights of the same date.

2. This Declaration considers that the collective rights of language groups may include the following, in addition to the rights attributed to the members of language groups in the foregoing paragraph, and in accordance with the conditions laid down in article 2.2:

the right for their own language and culture to be taught; the right of access to cultural services; the right to an equitable presence of their language and culture in the communications media; the right to receive attention in their own language from government bodies and in socioeconomic relations.

3. The aforementioned rights of persons and language groups must in no way hinder the interrelation of such persons or groups with the host language community or their integration into that community. Nor must they restrict the rights of the host community or its members to the full public use of the community's own language throughout its territorial space.

#### Article 4

1. This Declaration considers that persons who move to and settle in the territory of another language community have the right and the duty to maintain an attitude of integration towards this community. This term is understood to mean an additional socialization of such persons in such a way that they may preserve their original cultural char-

acteristics while sharing with the society in which they have settled sufficient references, values and forms of behaviour to enable them to function socially without greater difficulties than those experienced by members of the host community.

2. This Declaration considers, on the other hand, that assimilation, a term which is understood to mean acculturation in the host society, in such a way that the original cultural characteristics are replaced by the references, values and forms of behaviour of the host society, must on no account be forced or induced and can only be the result of an entirely free choice.

#### Article 5

This Declaration is based on the principle that the rights of all language communities are equal and independent of the legal or political status of their languages as official, regional or minority languages. Terms such as regional or minority languages are not used in this Declaration because, though in certain cases the recognition of regional or minority languages can facilitate the exercise of certain rights, these and other modifiers are frequently used to restrict the rights of language communities.

#### Article 6

This Declaration considers that a language cannot be considered proper to a territory merely on the grounds that it is the official language of the state or has been traditionally used within the territory for administrative purposes or for certain cultural activities.

### TITLE ONE

#### General Principles

#### Article 7

1. All languages are the expression of a collective identity and of a distinct way of perceiving and describing reality and must therefore be able to enjoy the conditions required for their development in all functions.

2. All languages are collectively constituted and are made available within a community for individual use as tools of cohesion, identification, communication and creative expression.

#### Article 8

1. All language communities have the right to organize and manage their own resources so as to

ensure the use of their language in all functions within society.

2. All language communities are entitled to have at their disposal whatever means are necessary to ensure the transmission and continuity of their language.

#### Article 9

All language communities have the right to codify, standardize, preserve, develop and promote their linguistic system, without induced or forced interference.

#### Article 10

1. All language communities have equal rights.

2. This Declaration considers discrimination against language communities to be inadmissible, whether it be based on their degree of political sovereignty, their situation defined in social, economic or other terms, the extent to which their languages have been codified, updated or modernized, or on any other criterion.

3. All necessary steps must be taken in order to implement this principle of equality and to render it effective.

#### Article 11

All language communities are entitled to have at their disposal whatever means of translation into and from other languages

are needed to guarantee the exercise of the rights contained in this Declaration.

#### Article 12

1. Everyone has the right to carry out all activities in the public sphere in his/her language, provided it is the language

proper to the territory where s/he resides.

2. Everyone has the right to use his/her language in the personal and family sphere.

#### Article 13

1. Everyone has the right to acquire knowledge of the language proper to the territory in which s/he lives.

2. Everyone has the right to be polyglot and to know and use the language most conducive to his/her personal development

or social mobility, without prejudice to the guarantees established in this Declaration for the public use of the language proper to the territory.

## Article 14

The provisions of this Declaration cannot be interpreted or used to the detriment of any norm or practice deriving from the internal or international status of a language which is more favourable to its use within the territory to which it is proper.

## SECOND TITLE

### Overall linguistic régime

#### Section I

#### Public administration and official bodies

### Article 15

1. All language communities are entitled to the official use of their language within their territory.

2. All language communities have the right for legal and administrative acts, public and private documents and records in public registers which are drawn up in the language of the territory to be valid and effective and no one can allege ignorance of this language.

### Article 16

All members of a language community have the right to interrelate with and receive attention from the public authorities in their own language. This right also applies to central, territorial, local and supraterritorial divisions which include the territory to which the language is proper.

### Article 17

1. All language communities are entitled to have at their disposal and to obtain in their own language all official documents pertaining to relations which affect the territory to which the language is proper, whether such documents be in printed, machine-readable or any other form.

2. Forms and standard administrative documents, whether in printed, machine-readable or any other form, must be made available and placed at the disposal of the public in all territorial languages by the public authorities through the services which cover the territories to which each language is proper.

### Article 18

1. All language communities have the right for laws and other legal provisions which concern them to be published in the language proper to the territory.

2. Public authorities who have more than one territorially historic language within their jurisdiction must publish all laws and other legal provisions of a general nature in each of these languages, whether or not their speakers understand other languages.

## Article 19

1. Representative Assemblies must have as their official language(s) the language(s) historically spoken in the territory they represent.

2. This right also applies to the languages of the communities established in geographically dispersed locations referred to in

Article 1, Paragraph 4.

### Article 20

1. Everyone has the right to use the language historically spoken in a territory, both orally and in writing, in the Courts of Justice located within that territory. The Courts of Justice must use the language proper to the territory in their internal actions and, if on account of the legal system in force within the state, the proceedings continue elsewhere, the use of the original language must be maintained.

2. Everyone has the right, in all cases, to be tried in a language which s/he understands and can speak and to obtain the services of an interpreter free of charge.

### Article 21

All language communities have the right for records in public registers to be drawn up in the language proper to the territory.

### Article 22

All language communities have the right for documents authenticated by notaries public or certified by other authorized public servants to be drawn up in the language proper to the territory where the notary or other authorized public servant performs his/her functions.

## Section II

### Education

### Article 23

1. Education must help to foster the capacity for linguistic and cultural self-expression of the language community of the territory where it is provided.

2. Education must help to maintain and develop the language spoken by the language community of the territory where it is provided.

3. Education must always be at the service of linguistic and cultural diversity and of harmonious relations between different language communities throughout the world.

4. Within the context of the foregoing principles, everyone has the right to learn any language.

### Article 24

All language communities have the right to de-

cide to what extent their language is to be present, as a vehicular language and as an object of study, at all levels of education within their territory: pre-school, primary, secondary, technical and vocational, university, and adult education.

#### Article 25

All language communities are entitled to have at their disposal all the human and material resources necessary to ensure that their language is present to the extent they desire at all levels of education within their territory: properly trained teachers, appropriate teaching methods, text books, finance, buildings and equipment, traditional and innovative technology.

#### Article 26

All language communities are entitled to an education which will enable their members to acquire a full command of their own language, including the different abilities relating to all the usual spheres of use, as well as the most extensive possible command of any other language they may wish to know.

#### Article 27

All language communities are entitled to an education which will enable their members to acquire knowledge of any languages related to their own cultural tradition, such as literary or sacred languages which were formerly habitual languages of the community.

#### Article 28

All language communities are entitled to an education which will enable their members to acquire a thorough knowledge of

their cultural heritage (history, geography, literature, and other manifestations of their own culture), as well as the most extensive possible knowledge of any other culture they may wish to know.

#### Article 29

1. Everyone is entitled to receive an education in the language proper to the territory where s/he resides.

2. This right does not exclude the right to acquire oral and written knowledge of any language which may be of use to him/her as an instrument of communication with other language communities.

#### Article 30

The language and culture of all language communities must be the subject of study and research at university level.

### Section III

#### Proper names

#### Article 31

All language communities have the right to pre-

serve and use their own system of proper names in all spheres and on all

occasions.

#### Article 32

1. All language communities have the right to use place names in the language proper to the territory, both orally and in writing, in the private, public and official spheres.

2. All language communities have the right to establish, preserve and revise autochthonous place names. Such place names cannot be arbitrarily abolished, distorted or adapted, nor can they be replaced if changes in the political situation, or changes of any other type, occur.

#### Article 33

All language communities have the right to refer to themselves by the name used in their own language. Any translation into other languages must avoid ambiguous or pejorative denominations.

#### Article 34

Everyone has the right to the use of his/her own name in his/her own language in all spheres, as well as the right, only when necessary, to the most accurate possible phonetic transcription of his/her name in another writing system.

### Section IV

#### Communications media and new technologies

#### Article 35

All language communities have the right to decide the extent to which their language is to be present in the communications media in their territory, whether local and traditional media, those with a wider scope, or those using more advanced technology, regardless of the method of dissemination or transmission employed.

#### Article 36

All language communities are entitled to have at their disposal all the human and material resources required in order to ensure the desired degree of presence of their language and the desired degree of cultural self-expression in the communications media in their territory: properly trained personnel, finance, buildings and equipment, traditional and innovative technology.

#### Article 37

All language communities have the right to receive, through the communications media, a thorough knowledge of their cultural heritage (history, geography, literature and other manifestations of their own culture), as well as the greatest possible amount of information about any other culture their members may wish to know.

## Article 38

The languages and cultures of all language communities must receive equitable and non-discriminatory treatment in the communications media throughout the world.

## Article 39

The communities described in Article 1, paragraphs 3 and 4, of this Declaration, and the groups mentioned in paragraph 5 of the same article, are entitled to an equitable representation of their language in the communications media of the territory where they are established or where they migrate. This right is to be exercised in harmony with the rights of the other language groups or communities in the territory.

## Article 40

In the field of information technology, all language communities are entitled to have at their disposal equipment adapted to their linguistic system and tools and products in their language, so as to derive full advantage from the potential offered by such technologies for self-expression, education, communication, publication, translation and information processing and the dissemination of culture in general.

## Section V

### Culture

## Article 41

1. All language communities have the right to use, maintain and foster their language in all forms of cultural expression.

2. All language communities must be able to exercise this right to the full without any community's space being subjected to hegemonic occupation by a foreign culture.

## Article 42

All language communities have the right to full development within their own cultural sphere.

## Article 43

All language communities are entitled to access to the works produced in their language.

## Article 44

All language communities are entitled to access to intercultural programmes, through the dissemination of adequate information, and to support for activities such as teaching the language to foreigners, translation, dubbing, post-synchronization and subtitling.

## Article 45

All language communities have the right for the language proper to the territory to occupy a pre-

eminent position in cultural events and services (libraries, videothèques, cinemas, theatres, museums, archives, folklore, cultural industries, and all other manifestations of cultural life).

## Article 46

All language communities have the right to preserve their linguistic and cultural heritage, including its material manifestations, such as collections of documents, works of art and architecture, historic buildings and inscriptions in their own language.

## Section VI

### The socioeconomic sphere

## Article 47

1. All language communities have the right to establish the use of their language in all socioeconomic activities within their territory.

2. All members of a language community are entitled to have at their disposal, in their own language, all the means necessary for the performance of their professional activities, such as documents and works of reference, instructions, forms, and computer equipment, tools and products.

3. The use of other languages in this sphere can only be required in so far as it is justified by the nature of the professional activity involved. In no case can a more recently arrived language relegate or supersede the use of the language proper to the territory.

## Article 48

1. Within the territory of his/her language community, everyone has the right to use his/her own language with full legal validity in economic transactions of all types, such as the sale and purchase of goods and services, banking, insurance, job contracts and others.

2. No clause in such private acts can exclude or restrict the use of the language proper to the territory.

3. Within the territory of his/her language community, everyone is entitled to have the documents required for the above-mentioned operations at his/her disposal in his/her own language. Such documents include forms, cheques, contracts, invoices, receipts, delivery notes, order forms, and others.

## Article 49

Within the territory of his/her language community, everyone has the right to use his/her own language in all types of socioeconomic organizations such as labour and union organizations, and employers', professional, trade and craft associations.

## Article 50

1. All language communities have the right for their language to occupy a pre-eminent place in advertising, signs, external signposting, and in the image of the country as a whole.

2. Within the territory of his/her language community, everyone has the right to receive full oral and written information in his/her own language on the products and services proposed by commercial establishments, such as instructions for use, labels, lists of ingredients, advertising, guarantees and others

3. All public indications affecting the safety of persons must be expressed at least in the language proper to the territory, in conditions which are not inferior to those of any other language.

#### Article 51

1. Everyone has the right to use the language proper to the territory in his/her relations with firms, commercial establishments and private bodies and to be served or receive a reply in the same language.

2. Everyone has the right, as a client, customer, consumer or user, to receive oral and written information in the language proper to the territory from establishments open to the public.

#### Article 52

Everyone has the right to carry out his/her professional activities in the language proper to the territory unless the functions inherent to the job require the use of other languages, as in the case of language teachers, translators or tourist guides.

### ADDITIONAL DISPOSITIONS

#### First

The public authorities must take all appropriate steps to implement the rights proclaimed in this Declaration within their respective areas of jurisdiction. More specifically, international funds must be set up to foster the exercise of Linguistic Rights in communities which are demonstrably lacking in resources. Thus the public authorities must provide the necessary support so that the languages of the various communities may be codified, transcribed, taught, and used in the administration.

#### Second

The public authorities must ensure that the official bodies, organizations and persons concerned are informed of the rights and correlative duties arising from this Declaration.

#### Third

The public authorities must establish, in the light of existing legislation, the sanctions to be applied in cases of violation of the linguistic rights laid down in this Declaration.

### FINAL DISPOSITIONS

#### First

This Declaration proposes the creation of a Council of Languages within the United Nations Organization. The General Assembly of the United Nations Organization is to be responsible for setting up this Council, defining its functions and appointing its members, and for creating a body in international law to protect language communities in the exercise of the rights recognized in this Declaration.

#### Second

This Declaration recommends and promotes the creation of a World Commission on Linguistic Rights, a non-official, consultative body made up of representatives of non-governmental organizations and other organizations working in the field of linguistic law.

Barcelona, June 1996

#### **Bio-cultural Diversity**

“According to Terralingua, maintaining, restoring, and perpetuating the diversity of life on earth means supporting and promoting diversity in nature and culture, or biocultural diversity. The diversity of life is made up of the variety of plant and animal species and ecosystems, human societies, cultural traditions, and languages that have developed on the planet. These diversities have been intimately related to one another over the history of human presence and activities on earth, and each has significantly contributed to shaping the others. They are mutually supportive, and when one diversity is threatened, all other are threatened too. The resolution of environment and human development problems requires an integrated biocultural approach, and the protection of environmental, cultural, linguistic, and other human rights is indispensable for the achievement of equity and justice for all.”

Luisa Maffi (Dr.), President

Terralingua: Partnerships for Linguistic and Biological Diversity

1630 Connecticut Avenue NW, Suite 300, Washington, DC 20009, U.S.A.

Phone: +1.202.5182060 (direct) / 5182040 (main)

Fax: +1.202.3874823

Home office phone/fax: +1.202.9866139

Email: maffi@terralingua.org

Internet: www.terralingua.org

## Late News

### US Ambassador Darryl Johnson gives Thailand \$7.4 million for more drug war

To add insult to injury, after three months of slaughter in the Thai killing fields of the drug war the United States heaped financial praise on Thailand's justice and police system for their excellent work and transparency by giving them another large grant for police and drug war battles against the poorest. In the north not one major drug baron has been arrested.

Yet you won't find one baht for education along the border village areas. Promises of aid from the government never materialize no matter how many years go by and why should they when the west backs such sinister behavior with millions.

Since 1974 the US government has give Thailand \$87 million for anti narcotics and law enforcement.

### Asaw Nimit of San Chai Mai beaten to death in Chiangrai prison

Asaw Nimit, the headman of San Chai Mai Akha village was beaten to death while serving a sentence in the Chiangrai prison. Akha witnesses say that he was beaten to death by a guard. Asaw had helped with Akha traditional texts for many years



Asaw Nimit

and had a deep understanding of the critical situation in which the Akha found themselves.

### Emmanuel Gospel Fellowship Huai Krai, Chiangrai attempts to destroy another traditional Akha village

After many years of trying, Emmanuel Gospel Fellowship, another CHINESE run mission from the US, has decided to build a huge mission compound right in a traditional village to try and force it to convert by daily oppressing the people with mission information.

We will continue extensive publicity of this story.

### Thai Government to take land of three Akha villages

Three years ago the Thai army tried to force the relocation of Hooch Mah Akha village. That decision was reversed due to protest.

Now the government has decided to take the land of three villages next door, approximately all of their farmable land, some 8,000 rai. The Akha of Hooch Yoh, Hooch Yoh Pah Soh and Hooch Yoh Chinese Akha village have all been told that this will be the last year they can farm their own food. After this they will just have to find whatever work they can.

### Mr. Woon- Benedikta Children's Home, plans huge new facility

Word has it that Mr. Woon of Mae Chan who runs Benedikta Children's Home and has been trying to split Hooch Mah Akha as mentioned above, now plans to obtain a huge sum of money for building an "obscenely large" children's home that will be used to take more Akha children from mountain villages. Mr. Woon already has many Akha children that he has obtained at this and that village. These children are so small that there is little chance they will remember anything of Akha culture or who they are when they grow up under these conditions let alone Akha language. (See the photo and article on Benedikta in the mission section)

**MISSIONARIES  
STEAL  
THE AKHA  
CHILDREN**

## Your Donation Will Help

Your Donation will help further the advocacy work of this project.

A monthly pledge and donation or a one time gift to help with a project will benefit many people in an Akha village.

I would like to donate:

\$10 \_\_\_\_\_ \$100 \_\_\_\_\_ One time \_\_\_\_\_  
\$20 \_\_\_\_\_ \$500 \_\_\_\_\_  
\$50 \_\_\_\_\_ \$1,000 \_\_\_\_\_ Monthly \_\_\_\_\_

Donate funds for the following items:

Vitamins \_\_\_\_\_ First Aid Medicine \_\_\_\_\_  
Blankets \_\_\_\_\_ A village School \_\_\_\_\_  
Fruit Trees \_\_\_\_\_ Akha Books \_\_\_\_\_  
A Well \_\_\_\_\_ A Fish Farm \_\_\_\_\_

### Donations:

Made by check or money order may be sent to:

**The Akha Heritage Foundation**

**PO BOX 6073**

**Salem OR 97304 USA**

Donate by PayPal to our akha@akha.org account.

You can also go to the donation link and donate on line from the web site [www.akha.org](http://www.akha.org).

### Other Ways You Can Help:

Make a trip to the villages with us.

We are in need of the following materials:

Surgical Tape

Cotton

Gauze Patches

Band aids

Multiple vitamins including Folic Acid

Pens, Pencils, erasers, lined paper writing books

Vegetable seeds of any variety

Blankets

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Matthew McDaniel advocates for the protection of the human rights of the Akha and other hill tribes in Thailand. Married to an Akha woman, he lives with their children in a remote Akha village intimately associated with the poverty and human rights crisis the Akha are faced with.

He is radically opposed to oppressive Thai government policies that destroy the Akha people at their most basic level of existence, their right to grow food, while at the same time trying to portray to the public and tourists that the government is the benevolent saviour of these “unfortunate” people.

He has a relentless commitment to expose the deceptive practices of US based missionaries, their assumption of control over Akha children, and their bold on going effort to completely eradicate Akha traditional culture with carefully placed lies. He has long maintained an effort to expose these lies and morally corrupt practices of taking donor money to enrich missions while refusing true aid to the very people the good hearted donors wish to help, the Akha. He defies the US missionary attempt to rewrite and control Akha history and identity.

He is also a staunch critic of the US “war on drugs” that has imprisoned thousands of Akha at the hands of the DEA. Meanwhile there has been no western funding of Akha education or agriculture in these same villages. Attempts to establish such funding were squashed by the US State Department. In sharp contrast US funding to the drug war and militarization of Thailand has been in the millions of dollars per year.

Matthew McDaniel is educated in both spoken and written Akha, sponsors Akha Literature 101 Projects (101 books in Akha language) and has worked with the Akha of Thailand and Burma since 1991. He is from Salem, Oregon, USA.