



Indigenous Issues

[The occasional briefing papers of the Asian Indigenous and Tribal Peoples Network (AITPN)]
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A UN DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES: Right and wrong sides of history

On 29 June 2006, the newly established United Nations Human Rights Council through its resolution 2006/2 adopted the Draft United Nations Declaration on the Rights of Indigenous Peoples and recommended to the General Assembly for proclamation of the same. At the end of 11th session of the Working Group on the Draft Declaration on the Rights of Indigenous Peoples (WGDD) held from 5-16 December 2005 and from 30 January to 3 February 2006, Chairman/Rapporteur of the Working Group, Luis-Enrique Chavez forwarded his proposal on the Draft Declaration to be "considered as final compromised text".

I. A Historic Declaration

The process of the adoption of the Draft Declaration has not been without controversies. Very few other standard setting processes evoked such controversies including the walkout by indigenous representatives from WGDD in 1996. The standard setting process of the Draft Declaration on the Rights of Indigenous was also unique - indigenous peoples representatives have been virtually given equal say in the adoption of the Declaration. The exclusion of the indigenous peoples from the United Nations processes and enduring affects of colonisation, which among others resulted into the extinction of many indigenous peoples, necessitated such a unique standard setting process.

Yet, those modern States which were built over the indigenous peoples' land and territories have been the most vociferous opponents of the Draft Declaration. It was, therefore, not surprising but saddening when the representative of Mauritius expressed the fear at the Human Rights Council that "some self-designated indigenous groups might threaten the sovereignty of a State by following a wrong interpretation of the declaration." The descendents of the settlers speak!

From 1996 to 2005, the WGDD did not adopt a single article. Indigenous peoples had their own share of blame. Many held on to the position that the

Draft adopted by the Sub-Commission should not be changed. In this context, the adoption of the Chairman's proposal by the Human Rights Council is nothing short of a miracle.

II. The best and new elements of the Declaration

From denial of entry to the League of Nations to the adoption of the Draft Declaration to exclusion from the "WE THE PEOPLES OF THE UNITED NATIONS" of the Charter of the United Nations, indigenous peoples had to consistently overcome exclusion. International human rights instruments failed to include indigenous peoples. Critical indigenous rights are not found in normative legal framework.

The Draft Declaration as adopted by the Human Rights Council contains many new elements specific to indigenous peoples. It recognises the rights of indigenous peoples, as a collective and as individuals (Article 1). It contains strong language on the right of self-determination (Article 3) which makes them equal to other peoples. Although ILO Convention No 169 has already done away with the assimilation provided under ILO Convention No. 107, the Draft Declaration reiterates the rights of indigenous peoples and individuals not to be subjected to forced assimilation or destruction of their culture (Article 8). For the first time, the concept of free, prior and informed consent, which is being urged as central element for undertaking developmental projects, finds a place in a UN Declaration (Article 10). The recognition of the right to traditional medicines and the right to maintain their health practices will enhance indigenous peoples rights under the intellectual property regime and the Convention on the Bio-logical Diversity (Article 24). Though Article 17 of the Universal Declaration on Human Rights recognised the right to property International Covenant on Economic, Social and Cultural Rights failed to make any reference to the most fundamental element for exercising the ESCR i.e. the right to land. The Draft Declaration recognises the land rights (Article 25) as well as the right to the lands, territories and resources (Article 26) of indigenous peoples. Though many national constitutions and courts recognise customary laws, international human rights law did not explicitly recognise these rights. The Draft Declaration gives customary laws of indigenous peoples a place under the sun of international human rights law (Article 34). Similarly, the Draft Declaration recognises the right to the recognition, observance and enforcement of Treaties, Agreements and Other Constructive Arrangements concluded with States or their successors and to have States honour and

respect such Treaties, Agreements and other Constructive Arrangements (Article 37).

III. Analysis of the voting

As the Mexican delegation stated, the adoption of the Declaration gives "*a clear signal to indigenous peoples throughout the world that Human Rights Council was working to promote and protect their human rights*". Many countries such as Guatemala, Switzerland, Mexico, Brazil etc were vocal to support the process of making history. Many remained silent. But a few put their own caveats if they have any meaning under international law while supporting the adoption of the Draft Declaration.

Canada and Russia: On the wrong side of history

Canada and Russia are the only two members of Human Rights Council which voted against the resolution 2006/2 for adoption of the Draft Declaration. The statement of the Canadian representatives for opposing the adoption of the Draft Declaration reflected typical Canadian position on standard setting on indigenous peoples rights for the last two decades - probate and reprobate at the same time. Canada's sympathetic private position often failed to translate into a public position on the floor. With none of its compatriots - the United States, Australia and New Zealand sitting in the Human Rights Council, Canada was expected to take such a negative stand. The election of the conservative government of Prime Minister Stephen Harper provided an excuse. But Canada was destined to be on the wrong side of the history irrespective of whether there is a conservative government in Ottawa or not. It has too long been a poodle of the US.

As for Russia, when was the last time that they were on the right side of rights?

Harking back at history: India

While explaining the vote in favour, the representative of India expressed concern that the text did not contain a definition of "indigenous". "The entire population of India was considered to be indigenous" - thundered the representative. "With regards to the right to self-determination, this was understood to apply only to peoples under foreign domination, and not to a nation of indigenous persons". India still suffers from Columbus syndrome on

the definition of indigenous peoples. Will India, a signatory to ILO Convention No 107, explain what does "indigenous" mean under the ILO Convention? Let us not explain other national laws.

Living on its Ivory Tower: Philippines

Philippines government lived long on its only laurel - the Indigenous Peoples Rights Act of 1997. However, the IPRA has fallen because of the lack of implementation. Philippines has always been a case of being only spectacular on paper. On the D-Day, it failed again - abstained from voting for putting the Declaration to vote! So much commitment!