

STATEMENT OF THE INDIGENOUS PEOPLES CAUCUS
TO THE UNITED NATIONS WORKING GROUP ON INDIGENOUS POPULATIONS,
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AGENDA ITEM 4: INDIGENOUS PEOPLES AND DEVELOPMENT

We, the indigenous peoples, walk to the future in the footsteps of our ancestors.

From the smallest to the largest living being, from the four directions, from the air, the land and the mountains, the creator placed us, the indigenous peoples upon the Mother Earth.

The footprints of our ancestors are permanently etched upon the land of our peoples.

We the indigenous peoples, maintain our inherent rights to self-determination. We have always had the right to decide our own forms of government, to use our own laws, to raise and educate our children, to our own cultural diversity without interference.

We continue to maintain our rights as peoples despite centuries of deprivation, assimilation and genocide.

We maintain our inalienable rights to our lands and territories, to our resources - above and below - and to our waters. We assert our ongoing responsibility to pass these on to future generations.

We cannot be removed from our lands. We, the Indigenous Peoples, are connected by the circle of life to our lands and environments.

We, the Indigenous Peoples, walk to the future in the footprints of our ancestors.

-Kari-Oca Declaration, Brazil, 1992

Echoing the words of the World Conference of Indigenous Peoples on Territory, Environment and Development at Brazil in 1992,

We, the Indigenous participants to the 19th Session of the UNWGIP state that for indigenous peoples, self-determination and sustainable development are two sides of the same coin.

Indeed, common Article 1 of the UN International Covenants on Civil and Political Rights, and on Social, Economic and Cultural Rights state:

Article 1.

1. All peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely determine 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 on mutual benefit, and international law. In no case may a people be deprived of their means of subsistence.

3. The State parties to this present Convention, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall provide for the realization of the right to self-determination, and shall respect that right in conformity with the provisions of the United Nations.

Article 1 does not create the right to self-determination. It confirms that this right exists, and that it is a right possessed by "peoples". By virtue of that right, certain freedoms flow, and it is these freedoms that make up the content of self-determination.

The second paragraph of Article 1 concerns the use and benefit from natural wealth and resources, and has particular pertinence for indigenous peoples. We have the right to benefit from the resources of the land as an expression of our right to self-determination. We may not be denied a means of subsistence, moreover, we may not be denied our own means of subsistence. We have the right to use our land and waters to live by our own means as we always have, and by whatever means we choose. Self-determination protects our right to subsist in the ways we indigenous peoples see fit.

The third paragraph of Article 1 not only calls upon States to respect the right to self-determination, but calls upon States to promote the realization of the right to self-determination.

This framework can serve as a departure point in the UNWGIP's deliberations under Agenda Item 4: Indigenous Peoples and their Right to Development, including indigenous peoples participation in development affecting them."

INDIGENOUS LANDS AND SELF-DETERMINATION

Indigenous Peoples lands and territories are inextricably linked to self-determination, to our survival, to development in harmony with Mother Earth, and to indigenous Peoples identity and dignity, including our collective lives.

The United Nations Expert Seminar on Practical Experiences Regarding Indigenous Land Rights and Claims meeting in Whitehorse, Canada recognised the distinctive relationship Indigenous peoples have with our lands, and with the air, waters, coastal sea, ice, flora, fauna and other resources. The importance of the links between self-determination and the right to land are vital for indigenous peoples development and cultural survival.

Development, to be meaningful for indigenous peoples, must be defined by indigenous peoples themselves in furtherance of self-development. It is based on the strengthening and renewal of the diversity of indigenous traditional knowledge, as applied to our problems today. Indigenous peoples favour a holistic approach for development, one which builds on our respective values, traditions and spirituality. Accordingly, such an approach includes some of the basic principles of indigenous peoples generally:

- respect for and preservation of land, natural resources and all elements of the natural environment;
- consensus in decision-making;
- mutual respect for peoples' values and ideology including sovereignty over land and environment under the natural law.

The development framework of modernization, has its roots in colonialism and has resulted in the impoverishment of indigenous peoples and the marginalization of our economies, governance systems, cultures and spirituality.

Indigenous Peoples have a long history of being victims of development projects throughout the world. Development depends on natural resources, and a large portion of the natural resources of the world is contained in the sovereign territories of Indigenous Peoples, and are the targets of development. The extraction of our natural resources results in a fundamental change in the natural environment, where we have culturally and physically adapted for thousands of years.

In Africa, the lands of hunters, gatherers and pastoralists were turned to wildlife and game parks to boost the tourist industry and to large-scale commercial farms which did not benefit indigenous peoples. On the contrary, it has led to depriving them access to natural resources such as pasture and water. This denial of access to natural resources subjects them to pauperization.

In South Africa, transnational pharmaceutical corporations are gathering indigenous plants for medicinal purposes, for example the Aloe Ferox which has been used by our ancestors as remedies. The Buchu plant is a well known cure for all ailments. In all these, indigenous peoples knowledge is taken without any benefit from its use and exploitation. Furthermore, the government is in the process of selling to developers, vacant lands rich in historical value, including transformation into car parks.

Many large dams in this century have been built on the lands of indigenous peoples and is a matter of grave concern to indigenous peoples in Asia. Fragile and precious ecosystems have been destroyed and entire communities have lost their lands and livelihoods to these structures. Governments dispossess indigenous peoples of their lands in the name of "public interest", yet none of the expected benefits and little compensation ever reach these displaced peoples. Many are compelled to migrate to urban slums or to territories of other indigenous peoples in order to survive. The creation of new territorial boundaries within states is used to spread conflicts and mistrust among indigenous peoples, in furtherance of State interests.

Uranium mining and nuclear testing have blighted the lands, lives and health of many indigenous peoples in the Nevada Desert, the former Soviet Union and the Pacific. Similar serious impacts, including forced displacement, are caused by military installations and on indigenous territories, such as low-level training flights over the lands of the Innu people.

GLOBALIZATION AND INDIGENOUS PEOPLES

Today, forced upon Indigenous Peoples and Nations is globalization, which is the integration of trade, finance and information that is creating a single economy. The globalization mechanism for this to happen in North America is the North American Free Trade Agreement (NAFTA). NAFTA is a radical experiment in rapid deregulation of trade and investment among the governments of the United States, Mexico and Canada. Effective since 1995, NAFTA has resulted in lowered wages, worsening health and working conditions in Mexico, and the decline in environmental and labour standards across borders. Under a new Agreement, the Free Trade Area of the Americas (FTAA) free trade will be expanded into all the countries of the Western Hemisphere except Cuba. The agreement will not only liberalize trade but will also give corporations unprecedented rights to pursue their trade interests.

These economic and trade agreements like NAFTA, FTAA, MERCOSUR in the southern cone of Latin America, and the Asia-Pacific Economic Cooperation (APEC) , in many instances lead to the denial of Indigenous Peoples' rights to ancestral territories and the violation of their rights to security of land tenure, including their spiritual perspectives on land and development; traditional knowledge; culture; and political and socio-economic systems.

The new paradigms of development are based increasingly on the advances of new technologies including information and communication technologies, as well as biotechnology, directly affecting the lives of indigenous peoples. This has implications for the intellectual property rights and traditional knowledge of indigenous peoples. In many cases, depriving them of their access to and enjoyment of their own resources and their right to self-determination and self-development. There exists specific declarations put forth by indigenous peoples themselves at numerous international and United Nations conferences during these past few decades to this effect. (Examples)

This contemporary focus on new technologies is driving commercial interest in indigenous and traditional knowledge and biogenetic resources. The loss of the sacred in modern life, challenges Indigenous Peoples to be fully conscious of the threats and opportunities posed by modern science and technology while continuously renewing our knowledge and spirituality and renovating our technologies to address contemporary social and ecological problems.

ON FREE AND PRIOR INFORMED CONSENT OF INDIGENOUS PEOPLES

In the context of self-determination of indigenous peoples, self-development and our free and prior informed consent to development projects and plans affecting us are fundamental principles in promoting our rights and welfare in the development process.

Learning from our experiences , it is increasingly urgent that the concept and application of the principle of free, prior and informed consent of traditional and tribal governments and the directly affected indigenous peoples is better understood and elaborated to guide the conduct of governments, corporations and development agencies. They must be directly accountable to local governance structures for the impacts of development projects.

Free and prior informed consent is explicitly recognised in the UN Declaration on the Rights of Indigenous Peoples, the Inter-American Declaration on the Rights of Indigenous Peoples and in national legislation, including the Indigenous Peoples Rights Act of the Philippines. Prior Informed Consent is also the international standard for any projects involving displacement or resettlement of indigenous peoples by ILO Convention 169, Inter-American Bank policy, and also a number of national laws.

The Philippine Indigenous Peoples Rights Act defines the process of free and prior informed consent by the following criteria:

- All members of the community affected consent to the decision;
- Consent is determined in accordance with customary law and practices;
- Freedom from external manipulation, interference or coercion;
- Full disclosure of the intent and scope of the activity;
- Decision is made in a language understandable to the community;
- Decision is made in a process understandable to the community.

There are countless examples of blatant abuses of these fundamental processes in the development projects funded by multilateral development banks and other development agencies. An examination of past projects of the World Bank has shown that neglecting to secure the legal changes necessary to safeguard indigenous rights means that activities and processes later in the project cycle are distorted by implementing agencies. Learning the lessons from past projects affecting indigenous peoples is a high priority for all development agencies to reverse their harmful impacts on indigenous communities.

The history of corporate "development" in indigenous lands has mostly been of expropriation, destruction and abuse; thus building a legacy of mistrust towards corporations. Acknowledgement of this history and acceptance of responsibility for past actions is a first step towards the recognition and respect for indigenous peoples rights by corporations and investors. Corporations are increasingly prepared to endorse voluntary codes of conduct which are too general to be monitored and lack sanctions. But these same companies have campaigned and worked tirelessly to weaken laws and liberalize regulations protecting indigenous rights and too often avoid their responsibility in actual projects. Regulations are needed to control the actions of companies, but these must be few in number, universal in application, verifiable, enforceable and backed by sanctions against violators in order to enjoy the confidence of affected indigenous peoples and communities. Endorsement of the UN Declaration on the Rights of Indigenous Peoples by corporations would be a positive step.

BEST PRACTICE

Looking to positive developments, Indigenous Peoples see the adoption by the UN General Assembly of the ECOSOC resolution on the establishment of a Permanent Forum on Indigenous Issues within the United Nations as providing an opportunity for Indigenous Peoples to work at another level in pursuit of their development. It should be noted that the Permanent Forum shall serve as an advisory body to ECOSOC with a mandate to discuss indigenous issues within the mandate of ECOSOC which include economic and social development.

Also, the report of the World Commission on Dams (WCD) – Dams and Development: A New Framework for Decision-Making published in November 2000, provides useful guidance for the implementation of water and energy development. Recognising the disproportionate impacts of large dams on indigenous peoples and local communities, the WCD recommends that public acceptance be promoted through negotiated agreements among all interested and affected parties including the free and prior informed consent of indigenous peoples to projects affecting them.

The Council of Ministers for International Development of the European Union have adopted a Resolution on Indigenous Peoples Within the Framework of the Development Cooperation of the Community and Member States acknowledging indigenous peoples' rights to self-development and recognizes their diverse concepts of development. The resolution also acknowledges the right of indigenous peoples to object to development projects on their lands.

RECOMMENDATIONS

1. That the UN Commission on Human Rights, ECOSOC and the General Assembly, adopt as a matter of urgency, the UN Declaration on the Rights of Indigenous Peoples as developed

by the UNWGIP and approved by the Sub-Commission on the Protection and Promotion of Human Rights, with a view to securing the basic rights to self-determination and sustainable development. of indigenous peoples.

2. International Treaties and Agreements confirm indigenous peoples rights to development. States are urged to respect and honour those Treaties and Agreements according to their original spirit and intent.
3. That the UNWGIP and its parent bodies, the Commission on Human Rights examine the impacts on indigenous peoples of the implementation of the policies, programmes and activities of the World Trade Organization (WTO) and the processes of economic globalization, such as the establishment of regional free trade agreements;
4. That the UNWGIP continue its standard-setting activities in relation to national and transnational corporations with a view to ensuring corporate accountability and securing indigenous peoples rights in the development process;
5. That the UNWGIP examine the experiences of indigenous peoples and communities with regards the policies, programmes, projects and practices of various development agencies including the European Commission, multilateral development banks, other bodies for international cooperation;
6. That the UNWGIP take note of the final report of the World Commission on Dams- Dams and Development: A New Framework for Decision Making for its forward-looking approach to addressing conflicts in relation to indigenous peoples affected by water and energy development.
7. Governments must ensure that there is active and meaningful participation of Indigenous Peoples in the decision-making processes affecting them. Governments must ensure that Indigenous Peoples are fully informed, are fully consulted and provide consent within the framework of deliberative democracy with regard to policies, programmes, plans and projects in Indigenous Peoples lands and territories.
8. Urge Governments to enact legislation recognizing Indigenous Peoples' lands and territories;
9. Urge governments to protect Indigenous Peoples' rights in legislation in the face of globalization and corporate transgression of these rights,
10. UNWGIP initiate representative regional level discussions through workshops among governments, corporate bodies including financial institutions, and indigenous peoples to bring about understanding on processes for decision-making and development.