



Peace Movement Aotearoa

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Act now: UN Declaration on the Rights of Indigenous Peoples

This action alert is focused on recent developments around the UN Declaration on the Rights of Indigenous Peoples. It is a critical time for the Declaration with some governments, NZ foremost among them, intent on amending the text to a point where it becomes essentially meaningless - if they have their way, rather being a means to recognise and protect indigenous peoples' rights, it will restrict and define them as substantially less than the rights of others.

Please take the time to act on this alert as soon as possible and let the government know that you do not support their shameful position. There are four sections below: some background information on the Declaration, a summary of recent developments, what you can do about this, and where you can get more information.

Background information on the Declaration¹

The Declaration on the Rights of Indigenous Peoples provides "minimum standards for the survival, dignity and well-being of the indigenous peoples of the world"². The rights included in it are those generally taken for granted in dominant societies - the right to survival, to political and cultural identity, and to control over resources - and it outlines positive procedures for resolving disputes between indigenous peoples and governments.

The Declaration began its slow journey through the UN system in 1985, when the Working Group on Indigenous Populations began drafting a declaration on the rights of indigenous peoples; with representatives of indigenous peoples' organisations and states involved in the drafting process. The draft was completed in 1993, and was adopted by the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities (now the Sub-Commission on the Promotion and Protection of Human Rights) in 1994³.

In 1995, the UN Commission on Human Rights established an open-ended inter-sessional Working Group on the Draft Declaration (WGDD) to consider the text submitted by the Sub-Commission; a decision that was endorsed by the UN Economic and Social Council later that year. The purpose of WGDD was to elaborate a draft declaration for consideration and adoption by the UN General Assembly (UNGA) within the International Decade of the World's Indigenous People, 1995 to 2004.

From 1995 until the 11th WGDD session in December 2005 / January 2006, the draft Declaration (the text adopted by the Sub-Commission) was negotiated through a consensus decision making process which included representatives of indigenous peoples' organisation and states. However, during that session, the process of negotiation and consensus ended when the Chairperson Luis-Enrique Chavez submitted a reworded document (known as the Chair's text⁴). The Chair's text was deficient in many crucial aspects when compared with the Sub-Commission text⁵; but following the WGDD session that

was the version presented by the Chairperson to the Commission on Human Rights, essentially the predecessor to the new high-level UN Human Rights Council.

On 29 June 2006, the Human Rights Council adopted the draft Declaration (Chair's text, which then became known as the UN Declaration on the Rights of Indigenous Peoples) by vote - 30 in favour, 2 against and 12 abstentions⁶ - and recommended that it be adopted by the UNGA 61st session which opened in September⁷.

There then followed a period of uncertainty due in part to 2006 being the first year of operation of the Human Rights Council, and also to the delaying tactics of some states (including NZ) who are opposed to the Declaration. Rather than go directly to the UNGA, as will happen with human rights standard setting documents from the Council in future, the Declaration went to the UNGA's Third Committee which gave those states further opportunity to lobby and otherwise work against it.

A resolution with Peru as the main sponsor was put forward to the Third Committee, calling for immediate adoption of the Declaration by the General Assembly⁸. Namibia then put forward an amendment, co-sponsored by a number of African countries, which would have the Assembly decide "to defer consideration and action on the United Nations Declaration on the Rights of Indigenous Peoples to allow time for further consultations thereon"⁹. Furthermore, the UNGA would also decide "to conclude consideration of the Declaration before the end of its sixty-first session" (which runs until the sixty-second session begins in September 2007). The amended resolution was adopted by the Third Committee on 28 November on a vote of 82 in favour to 67 against, with 25 abstentions¹⁰.

On 20 December, the UNGA voted on the Namibia et al resolution to defer action on the Declaration, and it was passed with 85 in favour, none against, and 89 abstentions¹¹. By way of contrast, in the same session, the UNGA adopted the Convention for the Protection of All Persons from Enforced Disappearance (the other standard setting instrument from the first session of the Human Rights Council); the Convention opened for signature on 6 February 2007.

From December, there was another period of uncertainty as the situation with the Declaration has been in many respects unique - certainly such relentless and unreasonable opposition over so many years by states such as NZ to a UN human rights standard setting document is not a common occurrence - and there was no clear process in place to indicate what would happen to it next.

At the 4th session of the Human Rights Council in March 2007, as no progress had been made by the UNGA, a number of state and indigenous peoples' representatives called for the immediate adoption of the Declaration¹². The UN Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People not only called for its adoption without delay, but also pointed out that the Declaration already represents a key reference for the Human Rights Council, the Office of the High Commissioner and United Nations agencies, as well as for international human rights bodies¹³.

Summary of recent developments

A letter from the Chairperson of the Indigenous Peoples Caucus, Les Malezer¹⁴, was sent in May to the UNGA President (prior to the opening of the 2007 UN Permanent Forum on Indigenous Issues) respectfully requesting that the Declaration be presented as soon as possible to the UNGA for adoption, and seeking a timeline as to how and when this would be done. The adoption of the Declaration was a focus of the opening session¹⁵ of the Permanent Forum on 14 May, and throughout¹⁶ the two week meeting.

Mexico and 67 co-sponsor UN member states¹⁷ submitted a letter to the UNGA President on 14 May expressing anxiety about the delay in adoption of the Declaration, and proposing the draft for a new UNGA resolution with wording that addresses the concerns that some states have expressed about the Declaration - it acknowledges that the situation of indigenous peoples varies from country to country, and that national circumstances may differ significantly between states. The Mexico and co-sponsors proposal is, as the covering letter states, "a practical and constructive solution."

On 17 May, some African states submitted amendments¹⁸ to the actual text of the Declaration to the UNGA President (what has become known as the African Group proposal) - the amendments in effect are a re-writing of the Declaration and they turn it into a total travesty of an international human rights document.

While two general references to the right of self-determination of all peoples remain in the preamble of their version of the Declaration, the references to indigenous peoples' right of self-determination are deleted from the operative paragraphs (the Articles). So for example, Article 3 which in the Declaration reads: "Indigenous 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" - wording from the shared Article 1¹⁹ of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights - has been changed to: "Indigenous peoples have the right to participate in the political affairs of the State and to pursue their economic, social and cultural development on an equal basis with others." If it weren't so shockingly discriminatory it would be laughable.

A new phrase "in accordance with national laws" has been inserted beside references to various rights of indigenous peoples, once in the preamble, and in nine Articles. Such wording is unheard of in international law - the whole point of having international human rights standard setting documents is to give states something to aspire to and progress towards - the Declaration is, as the Preamble says, "a standard of achievement to be pursued in a spirit of partnership and mutual respect". The articulation of human rights at the international level are not something that can, or should, be limited by the national laws of narrow minded coloniser states pursuing their self-interested agendas.

As but one example of some of the other extremely problematic text amendments, what started out in Article 28 of the draft Declaration as "Military activities shall not take place in the lands and territories of indigenous peoples, unless otherwise freely agreed upon by the peoples concerned", and was weakened by the addition of "unless justified by a significant threat to relevant public interest" in Article 30 of the Declaration, has been deleted entirely in the African Group proposal.

The next development was on 22 May when a letter went from the Chairperson of the Indigenous Peoples Caucus²⁰ to the UNGA President expressing profound concern about the African Group proposal and summarising it thus: "The African Group proposal radically transforms the Declaration on the Rights of Indigenous Peoples into an instrument that is controlled and subject to the arbitrary discretion of each state. The African Group has not attempted to improve one single provision in the Declaration. The text does not aspire to affirm our most basic human rights. On the contrary, it violates even the most fundamental human rights and undermines their inherent nature."

The letter also points out, among other things, that: "the proposals contained in the revised Declaration do not conform to the rights of peoples contained in the African Charter of Human and Peoples' Rights. Notably, in the African Charter, the rights of peoples are not limited by 'national laws'." It should also be noted that some African states already have constitutional and legal mechanisms to ensure the right of self-determination and the recognition of indigenous peoples²¹.

Also in May, according to information received sent by the Ministry of Foreign Affairs and Trade to one of our members, NZ, Canada, Australia, Russia, Suriname, Guyana and Colombia wrote to the UNGA President reaffirming their "commitment to participating constructively in a process that is open to all member States". We understand that rather than being constructive, that letter instead described the African Group proposal as helpful, and expressed the view that the Mexico and co-sponsors proposal is not acceptable. There is a marked contrast between the few states signed on to that letter when compared to the number and geographical spread of the states supporting the proposal from Mexico.

On 6 June, Haya Rashed Al Khalifa, UNGA President²², wrote to all UN member states informing them that she had appointed Hilario G. Davide, Jr. (Permanent Representative of the Philippines to the United Nations) to undertake, on her behalf, further consultations on the Declaration: "Ambassador Davide, Jr. will conduct open and inclusive consultations, in formats that he will deem appropriate, with a view to reflecting the views of all concerned parties in this process. I expect him to report back to me on the outcome of his consultations as soon as possible, but not later than mid-July 2007. In pursuing consideration of this important matter, I trust Member States will continue to be guided by the purposes and principles of the United Nations Charter and the Universal Declaration of Human Rights."

A hope we share - the purposes and principles of the UN are after all described in the Charter as being "based on respect for the principle of equal rights and self-determination of peoples" and "promoting and encouraging respect for human rights and for fundamental freedoms for all"²³; while the preamble of the Universal Declaration of Human Rights points out "disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind" and that "Member States have pledged themselves to achieve, in cooperation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms".

Among those barbarous acts which have outraged the conscience of 'mankind' have been the horrific consequences of the views held over centuries by coloniser states that indigenous peoples are somehow deserving of lesser human rights than others. While the adoption of the Declaration would not in itself necessarily result in an immediate change in the situation whereby "in most regions of the world indigenous people continue to face powerful obstacles hindering the full and effective enjoyment of their rights and to endure grave violations of their fundamental rights"²⁴ - in the same way that the adoption of the Universal Declaration of Human Rights has not in itself brought an end to human rights violations - it would at least "give the clearest indication yet that the international community is committing itself to the protection of the individual and collective rights of indigenous peoples."²⁵

As a recent open letter to the Canadian government urging them to support the Declaration put it: "The Declaration on the Rights of Indigenous Peoples presents an inspiring alternative vision of collaboration and reconciliation among Indigenous and non-Indigenous peoples working together to advance the rights of all. Implementation of this vision will not be easy. It will be an uphill struggle to undo centuries of prejudice and discrimination, around the world. But that, in fact, has been the goal of this whole long process since the drafting of the Declaration first began more than twenty years ago."²⁶

What you can do about this

* As the NZ government is one of those most opposed to the adoption of the Declaration²⁷, please take the time to write to the Prime Minister and Minister of Foreign Affairs (contact details below) and

write or phone your MP, particularly if s/he is a Labour party MP or from a party the government relies on for support. As well as your own points, some you could include are:

- the Declaration is an important step forward for human rights that is urgently needed to address widespread human rights violations against indigenous peoples around the world;

- the calls for renegotiation of the Declaration are unnecessary, unreasonable and unjust and will only further delay a long overdue human rights instrument which has already been under discussion for twenty two years, the Declaration must not be further tampered with. Make it clear that they must not support the African Group proposal or anything like it in their discussions with Ambassador Davide, Jr. or elsewhere;

- the government must demonstrate their often stated commitment to human rights by supporting the immediate adoption of the Declaration on the Rights of Indigenous Peoples.

Contact details for politicians: Helen Clark, Prime Minister, email pm@ministers.govt.nz or fax (04) 473 3579; Winston Peters, Minister of Foreign Affairs, email wpeters@ministers.govt.nz or fax (04) 471 2042; letters to any MP should be posted to Freepost Parliament, PO Box 18-888, Wellington. Contact details for other MPs are available online at <http://www.parliament.nz/en-NZ/HvYrSay/Contact/2/9/d/29d39021e8194f2bbc1f8a37ee885f6a.htm> or by phoning Parliament, tel (04) 471 9999.

It would be useful for you to send a copy of your communications about this to * Joan Mosley, Director of the United Nations, Human Rights and Commonwealth Division, Ministry of Foreign Affairs and Trade, Private Bag 18-901, Wellington, fax (04) 439 8511, or email Joan.Mosley@mfat.govt.nz * Caroline Beresford, Deputy Director, Human Rights Unit, Ministry of Foreign Affairs and Trade, post and fax as previous, or email Caroline.Beresford@mfat.govt.nz * Rosslyn Noonan, Chief Human Rights Commissioner, Human Rights Commission, PO Box 12-411, Thorndon, Wellington 6144, fax (04) 471 6759, or email Rosslynn@hrc.co.nz * Joris de Bres, Race Relations Commissioner, post and fax as previous, email JorisdB@hrc.co.nz You could also if you wish write separately to the Chief Human Rights and Race Relations Commissioners and urge them to do all they can to ensure the government moves from its hostile position on the Declaration.

It is very helpful for our work on this if you can send a copy of any letter, fax, or message you send, and of any replies you receive, to: Peace Movement Aotearoa, PO Box 9314, Wellington 6141; fax (04) 382 8173; or bcc to pma@xtra.co.nz

* If you have not already done so, you could add your, and your organisation's, name to the global petition of the Grand Council of the Crees and Amnesty International Canada on the Declaration of the Rights of Indigenous Peoples at http://www.amnesty.ca/ip_un_petition/UN_indigenous_rights_petition.php

Where you can get more information

In addition to the documents and resources referred to below, there are links to more articles, press reports, media releases, and statements about the Declaration at <http://www.converge.org.nz/pma/indig.htm>

**The online edition of this alert, with live links to all the references, is at
<http://www.converge.org.nz/pma/in150607.htm>**

References

- ¹ For more information on the early background to the Declaration, see 'Act now! for Indigenous Peoples' Rights' at <http://www.converge.org.nz/pma/in080306.htm>
- ² Declaration on the Rights of Indigenous Peoples, Article 43
- ³ Draft Declaration on the Rights of Indigenous Peoples, adopted by the Sub-Commission on Prevention of Discrimination and Protection of Minorities, Commission on Human Rights, 1994 - <http://www.converge.org.nz/pma/DRIPSubCom.pdf>
- ⁴ Draft Declaration on the Rights of Indigenous Peoples (Chair's text) - <http://www.converge.org.nz/pma/DRIPChTxt.pdf>
- ⁵ See for example the analysis of the Chair's text, prepared by Estebancio Castro Diaz and Tracey Whare at <http://www.converge.org.nz/pma/anct0606.pdf> and 'U.N. should adopt original declaration', Charmaine White Face, Spokesperson for Teton Sioux Nation Treaty Council (Tetuan Oyate) at <http://www.rapidcityjournal.com/articles/2006/12/16/news/opinion/opin03.prt>
- ⁶ In favour (30): Azerbaijan, Brazil, Cameroon, China, Cuba, Czech Republic, Ecuador, Finland, France, Germany, Guatemala, India, Indonesia, Japan, Malaysia, Mauritius, Mexico, Netherlands, Pakistan, Peru, Poland, Republic of Korea, Romania, Saudi Arabia, South Africa, Sri Lanka, Switzerland, United Kingdom of Great Britain and Northern Ireland, Uruguay, Zambia; Against (2): Canada, Russian Federation; Abstentions (12): Algeria, Argentina, Bahrain, Bangladesh, Ghana, Jordan, Morocco, Nigeria, Philippines, Senegal, Tunisia, Ukraine; Absent (3): Djibouti, Gabon, Mali. Summary of the discussion on the adoption of the Declaration - [http://www.unog.ch/unog/website/news_media.nsf/\(httpNewsByYear_en\)/BE82C77003776B9EC125719C005D5994?OpenDocument](http://www.unog.ch/unog/website/news_media.nsf/(httpNewsByYear_en)/BE82C77003776B9EC125719C005D5994?OpenDocument)
- ⁷ Text of the Human Rights Council resolution - <http://www.converge.org.nz/pma/hrc06-2.pdf>
- ⁸ Text of the resolution from Peru and co-sponsors - <http://www.converge.org.nz/pma/A-C3-61-L18-Rev1.pdf>
- ⁹ Text of the resolution from Namibia and co-sponsors - <http://www.converge.org.nz/pma/A-C3-61-L57-Rev1.pdf>
- ¹⁰ Summary of the discussion and the voting in the Third Committee - <http://www.un.org/News/Press/docs/2006/gashc3878.doc.htm>
- ¹¹ Summary of the discussion and the voting in the General Assembly - <http://www.un.org/News/Press/docs/2006/ga10563.doc.htm>
- ¹² See for example, the summary of the discussion on 22 March 2007 at [http://www.unog.ch/unog/website/news_media.nsf/\(httpNewsByYear_en\)/724B5E6417B64827C12572A6004D7F18?OpenDocument](http://www.unog.ch/unog/website/news_media.nsf/(httpNewsByYear_en)/724B5E6417B64827C12572A6004D7F18?OpenDocument)
- ¹³ See for example, Oral statement by Rodolfo Stavenhagen, Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, 20 March 2007, at <http://www.ohchr.org/english/issues/indigenous/docs/rapporteur/statement.doc> and Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen, 27 February 2007, at <http://daccessdds.un.org/doc/UNDOC/GEN/G07/110/99/PDF/G0711099.pdf?OpenElement>
- ¹⁴ Letter from the Chairperson, Indigenous Peoples Caucus, 11 May 2007 - http://www.ishr.ch/hrm/nymonitor/new_york_updates/letter_caucus_11_may.pdf
- ¹⁵ Summary of Opening Session - <http://www.un.org/News/Press/docs/2007/hr4917.doc.htm>

¹⁶ See for example, the summary of discussion on 15 May 2007 at <http://www.un.org/News/Press/docs/2007/hr4918.doc.htm> and of the Closing session at <http://www.un.org/News/Press/docs/2007/hr4926.doc.htm>

¹⁷ Letter from Mexico and co-sponsors (listed in the document), with draft resolution, 14 May 2007 - <http://www.converge.org.nz/pma/DRIPMexRes0507.pdf>

¹⁸ African Group proposal - <http://www.converge.org.nz/pma/AGDraft0507.pdf>

¹⁹ International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, 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.

²⁰ Letter from the Chairperson, Indigenous Peoples Caucus, 22 May 2007 - http://www.ishr.ch/hrm/nymonitor/new_york_updates/letter_caucus_22_may.pdf

²¹ See for example, 'Mexico attempts to satisfy Africa Group', Indigenous Peoples of Africa Co-ordinating Committee, 22 May 2007, at http://www.ipacc.org.za/eng/news_details.asp?NID=26 For a detailed analysis of the situation in Africa, see the African group of experts 'Response to the draft aide memoire of the African Group on the UN Declaration on the Rights of Indigenous Peoples', 21 March 2007, at <http://www.ipacc.org.za/uploads/docs/AideMemoireResponse.pdf>

²² Letter from Haya Rashed Al Khalifa, UNGA President, 6 June 2007 - <http://www.converge.org.nz/pma/DRIPJune07.pdf>

²³ Charter of the United Nations, Article 1.2 and 1.3

²⁴ 'Indigenous people face ongoing human rights abuses, UN expert says', UN News Service, 24 October 2005 - <http://www.un.org/apps/news/story.asp?NewsID=16336&Cr=indigenous&Cr1=>

²⁵ Leaflet No. 5: 'The draft United Nations Declaration on the Rights of Indigenous Peoples' - <http://www.unhchr.ch/html/racism/indileaflet5.doc>

²⁶ Open letter from Irene Khan, Secretary General, Amnesty International, 8 June 2007 - http://www.amnesty.ca/resource_centre/news/view.php?load=arcview&article=3965&c=Resource+Centre+News

²⁷ For information about the government's position, see the statements, alerts and letters in the 'NZ government's position on the Declaration' section at <http://www.converge.org.nz/pma/indig.htm#hrcnz06> For a summary of their position and counter arguments, see Claire Charter's presentation at a Human Rights Commission forum in August 2006 at <http://www.hrc.co.nz/hrc/worddocs/Wgtn%20-%20Claire%20presentation.ppt> and the draft letter from the Aotearoa Indigenous Rights Trust (which was sent to overseas embassies and to Pacific States, co-signed by other national indigenous and non-indigenous organisations) at http://www.airtrust.org.nz/embassies_letter.html Specifically on the right of self-determination, see 'A Response to the Self-Determination Proposal of Australia, New Zealand and the United States Explanatory Note', Aotearoa Indigenous Rights Trust, 15 December 2005 at <http://www.pcpd.org.nz/ddrip/responsetonzproposal.doc> For a concise dismissal of the arguments of the states opposed to the Declaration, see 'Reasons why the Declaration on the Rights of Indigenous Peoples should be adopted by the General Assembly', Les Malezer, Chairperson, Indigenous People's Caucus at <http://www.culturalsurvival.org/publications/csv/csv-article.cfm?id=111>