



Peace Movement Aotearoa

PO Box 9314, Wellington. Tel 04 382 8129, pma@xtra.co.nz, www.converge.org.nz/pma

March 2006

Act now! for Indigenous Peoples' Rights

This alert is about the NZ government's approach to the United Nations draft Declaration on the Rights of Indigenous Peoples, in particular their latest attempts to change the text of the Declaration so that it defines indigenous peoples' rights as substantially less than the rights of other peoples.

There are four sections below: background information on the draft Declaration; the NZ government's position on the draft Declaration; what you can do about this; and where you can get more information.

Although this alert was initially written for action before the UN draft Declaration meeting in January 2006, this is an ongoing campaign so please take the time to read it and do something about it whenever you can.

Background information on the draft Declaration

The draft Declaration provides minimum standards of protection for the rights and well-being of indigenous peoples around the world. 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.¹

It has nineteen preambular paragraphs and forty-five articles which are divided into nine sections. These cover a range of human rights and fundamental freedoms related to indigenous peoples including: the right of self-determination; ownership and use of traditional lands and natural resources; the honouring of treaties and agreements concluded with indigenous peoples; the right to preserve and develop their cultural characteristics and distinct identities; the right to participate in the political, economic and social life of the society in which they live; rights related to religion, language and education; and protection against genocide. The draft Declaration also includes procedures for resolving disputes between indigenous peoples and governments, such as mediation, negotiation, and international and regional human rights review and complaints mechanisms.²

It began its lengthy journey through the UN system in 1985, when the Working Group on Indigenous Populations began drafting a declaration on the rights of indigenous peoples. 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 1994.

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; that decision 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 within the International Decade of the World's Indigenous People, 1995 to 2004.

The failure to significantly advance towards the adoption of the Declaration - a major objective of the Decade - was, and remains, the responsibility of coloniser governments, including NZ, which refuse to acknowledge that indigenous peoples have the same rights as other peoples. The lack of success in achieving this and other goals of the Decade, led to a second International Decade of the World's Indigenous People being declared in 2004 - the Second Decade will run from 2005 to 2014. The Draft Programme of Action for the Second Decade states: "The finalization of negotiations on the draft Declaration on the Rights of Indigenous Peoples and its adoption early in the Decade should be a priority for the Second Decade. The draft shall not fall below existing international standards."

WGDD's mandate to finalise the draft Declaration on the Rights of Indigenous Peoples was renewed in 2005 for one year. The 11th WGDD session started in Geneva from 5 to 16 December 2005; it was a split session that continued from 30 January to 3 February 2006. It is not clear if WGDD will meet again because there will be major changes to the UN human rights system this year.

It is absolutely essential that the Declaration on the Rights of Indigenous Peoples, as per the Sub-Commission text or with amendments that strengthen its provisions, be adopted. It is discriminatory and unjust in the extreme to deny that indigenous peoples have the same rights as others, and there is clearly a need for specific recognition of their rights at the international level. In 2005, as in previous years, Rodolfo Stavenhagen, UN Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples pointed out: "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".³

While the adoption of the Declaration would not in itself necessarily result in an immediate change in this situation - 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."⁴

It is extraordinary that the refusal of some governments, including NZ, to commit themselves to this has resulted in the Declaration remaining in draft form after so many years. Rodolfo Stavenhagen has commented on this as follows:

" ... it is, of course, frustrating and surprising that you can say that while the discussions on the draft Declaration on the Rights of Indigenous Peoples have now been going on for over ten years, the Universal Declaration of Human Rights, the foundational document of the modern, post-war human rights system was approved in much less time back in 1946-47. So we rightly ask ourselves, well what does this mean? What's been happening? How come that a small group of highly motivated and committed people over fifty years ago were able to sit together in an apartment in Paris ... people from the Socialist camp, and from the Islamic world, and from Asia, and from Latin America and from North America and Europe, and they brought forth the Universal Declaration of Human Rights. And yet here we've been sitting for ten years, and we haven't been able to make this small addition to international human rights, which would be the Declaration on the Rights of Indigenous Peoples."⁵

The NZ government's position on the draft Declaration

The NZ government has never been supportive of a strong Declaration on the Rights of Indigenous Peoples. Their position is perhaps summarised most clearly in a speech by a government representative at the 60th Session of the UN General Assembly last year:

"The draft text that has been under debate for over ten years is unworkable and unacceptable for many States, including New Zealand. It must be amended if a Declaration can be implemented as a standard of achievement. Failure to recognise this will effectively mean no Declaration. Let us all be absolutely clear about that, Mr Chairman" ... "in elaborating the rights of one group of citizens, New Zealand cannot agree to a document that suggests there are two standards of citizenship or two classes of citizen."⁶

Similar 'one law for all' wording as in the NZ representative's statement about the draft Declaration at the UN Commission of Human Rights in 2004: "In articulating the rights of one group, we have to be careful not to discriminate against other members of society."⁷ This is a particularly misleading statement as the rights of particular groups are already articulated and protected in international law, and by the NZ government - the rights of children and of women for example - without discriminating against others. It also ignores that fact that the failure to articulate indigenous peoples' rights is fundamental and blatant discrimination against them. The underlying problem with the NZ government is not a genuine concern about articulating the rights of one group; it is rather that they are stuck in denial mode when it comes to indigenous peoples' rights.

This denial was again evident at the December WGDD session where the NZ government's malign presence was a source of considerable concern to the representatives of indigenous and other organisations who were there.⁸

During the session some progress was finally made towards advancing the draft Declaration, with provisional agreement on twenty-three of the preambular paragraphs and articles. In contrast to this positive development, the NZ government was pushing their latest proposal⁹ to weaken the text of the draft Declaration, together with an explanatory note¹⁰ justifying their position. A detailed analysis of the proposal, including areas of concern which there is insufficient space to raise in this alert, is available in the Report on the 11th WGDD by Claire Charters on behalf of the Aotearoa Indigenous Rights Trust.¹¹

In brief, the NZ proposal (put forward with Australia and the US), seeks to confine and restrict the meaning of the right of self-determination in Article 3 of the draft Declaration to "the right to autonomy and self-management in matters relating directly to their internal and local affairs".¹²

This is clearly an attempt by self-interested states to ensure the draft Declaration specifies indigenous peoples' rights in a way that are substantially inferior to those of other peoples.

It is not consistent with the inherent and inalienable right of self determination of all peoples as articulated in Articles 1: 1-3 of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), both of which the NZ government has signed and ratified:

"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."

The inconsistency between the position of the some governments, including NZ, on self-determination and how it is articulated in the ICCPR and ICESR was forthrightly expressed by the Akaitcho Dene representative, Sharon Venne, in 2004:

"It is clear that state governments do not and will not recognize that Indigenous Peoples are Peoples like all others in the world. The Covenants of the United Nations read: All Peoples have a right to self-determination. It does not read: All Peoples except Indigenous Peoples have a right to self-determination."¹³

Furthermore, as is clear from the wording of the Covenants, and of Article 1 of the UN Charter - "The Purposes of the United Nations are: 2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace" - the right of self-determination is a right of peoples, not a right of states.

Yet at the 11th WGDD session, as in previous sessions, it was evident that some governments have an unhealthy preoccupation with the rights of states to the detriment of indigenous peoples' rights, and are unwilling to move beyond this.

The NZ, Australia and US proposal referred to above, also seeks to insert specific wording about political unity and territorial integrity into the draft Declaration. In response, representatives of indigenous¹⁴ and non-indigenous¹⁵ organisations pointed out that the rights of nation states, including provisions about territorial integrity, are already recognised and protected in international law, but the rights of indigenous peoples are not.

They further pointed out that the focus on perceived threats to states, rather than on the grave and persistent threats to indigenous peoples, threatened to derail the draft Declaration; and that if specific references to territorial integrity were included, it was likely at best to:

" ... reinforce an unacceptable status quo, and at worst encourage even greater human rights violations against indigenous peoples. Furthermore, the proposal of New Zealand, Australia and the United States for article 45bis is particularly concerning as it would allow states to invoke the concepts of political unity and territorial integrity to justify the denial of **any and all** rights in the Declaration, no matter how fundamental to the welfare and survival of indigenous peoples."¹⁶

It seems logical to conclude that the extent to which some governments are obsessed with limiting the right of self-determination and emphasising territorial integrity, is directly related to the extent to which they are engaged in denying indigenous peoples' rights - any government with a good and respectful relationship with indigenous peoples within their national boundaries has nothing to fear with regard to self-determination.

The NZ government's position on the draft Declaration is inconsistent with their obligations under international law, in particular as a state party to the ICCPR and ICESCR. Article 1:3 of both Covenants requires them to promote the realization of the right of self-determination, not to oppose it and attempt to redefine it according to their narrow self-serving domestic political agenda. The draft Declaration is supposed to reflect a universal and international perspective, not the limited views of any particular coloniser state.

The NZ government's position is also a fundamental breach of the Treaty of Waitangi as it is a denial of the self-determination that Maori exercised for hundreds of years prior to the arrival of non-Maori, the continuance of which was guaranteed to them in the Treaty. Furthermore, the lack of discussion with Maori about the government's position on the Draft Declaration constitutes a further Treaty breach - as expressed, for example, by an Intervention from the Aotearoa Indigenous Rights Trust in 2004:

"Whilst the New Zealand government and others have tabled this paper and attempted to show themselves to be acting in good faith and being reasonable, I must express my concern regarding the following. I am aware of no consultation undertaken with Maori regarding this proposal. Formal written requests have been made to the New Zealand government to disclose any new developments since the last intersessional working group. No information regarding this proposal was disclosed. The New Zealand government is well aware of their obligation of consultation pursuant to the Treaty of Waitangi. That obligation has been seriously breached by the lack of consultation and dialogue with Maori regarding this proposal."¹⁷

It is a sad reflection of the NZ government's attitude towards Maori that they are apparently unable to support the full and effective enjoyment by indigenous peoples of their fundamental freedoms and human rights either here or overseas. If they cannot bring themselves to play a constructive role in WGDD, then at the very least they must stop obstructing progress towards a strong and effective UN Declaration on the Rights of Indigenous Peoples.

What you can do

a) Make your views known to the Prime Minister and Minister of Foreign Affairs, as well as your Member of Parliament if they are an MP in a party that is part of the current government; contact details are provided below.

As well as expressing your concerns about the information in the sections above (if you require more information see the section below), it would be useful if your letter could include these points:

- that the government withdraws support from the NZ, Australia and US proposal; and stops trying to weaken the text of the Declaration so that it defines indigenous peoples' rights as substantially less than the rights of other peoples;

- that pending full discussion with Maori about the draft Declaration and the government's position, there should be no further amendments to the text put forward by government representatives at WGDD or anywhere else; and
- that no NZ support should be given to amendments by any other government representatives, unless the amendments support the original Sub-Commission text or strengthen it in ways agreed by indigenous peoples' representatives to WGDD.

It is really helpful for our work on this if you can send a copy (bcc if by email) of your letter/s to Peace Movement Aotearoa, PO Box 9314, Wellington, fax (04) 382 8173, email <pma@xtra.co.nz> as well as a copy of any reply you receive.

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 - full contact details for MPs are available online at <http://www.clerk.parliament.govt.nz/YourMP/ListMPs/> or by phoning Parliament tel (04) 471 9999.

b) Sign the on-line petition 'Public Participation on NZ government position on the Draft Declaration on the Rights of Indigenous Peoples' at <http://www.thepetitionsite.com/takeaction/489895927> If you have any difficulty using that url, click on the petition link at <http://www.pcpd.org.nz/ddrip/> or <http://www.converge.org.nz/pma/indig.htm> If you do not have internet access and would like to add your name to the petition, please contact Peace Movement Aotearoa.

Where you can get more information

There are links to a range of documents, articles and statements on indigenous peoples' rights, including statements on the draft Declaration from 2005 and previous years, on the web page at <http://www.converge.org.nz/pma/indig.htm>

The draft United Nations Declaration on the Rights of Indigenous Peoples (Sub-Commission text) - [http://www.unhchr.ch/huridocda/huridoca.nsf/\(Symbol\)/E.CN.4.SUB.2.RES.1994.45.En?OpenDocument](http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/E.CN.4.SUB.2.RES.1994.45.En?OpenDocument)

Reports on the 11th WGDD session:

- Report on the Working Group on the UN Draft Declaration on the Rights of Indigenous Peoples Meeting 5-16th December 2005, 22 December 2005, <http://www.pcpd.org.nz/ddrip/report.html> **and** Report on the resumed session of the Working Group on the UN Draft Declaration on the Rights of Indigenous Peoples, 11 February 2006, <http://www.pcpd.org.nz/ddrip/cc-feb06report.doc> - both by Claire Charters on behalf of the Aotearoa Indigenous Rights Trust.

- Report of the American Indian Law Alliance and Owe Aku Report on the December 2005 Session of the Working Group on the Declaration on the Rights of Indigenous Peoples, includes narrative and table of paragraphs comparing the latest version of the text with the original Subcommission text - [http://www.ailanyc.org/Final Report for Session XI December 2005 IWG on the DD.pdf](http://www.ailanyc.org/Final%20Report%20for%20Session%20XI%20December%202005%20IWG%20on%20the%20DD.pdf)

The New Zealand, Australia and the United States Proposal on Self-determination, December 2005 - <http://www.pcpd.org.nz/ddrip/nzproposal.doc> and the NZ Explanatory Note, 13 December 2005 - <http://www.mfat.govt.nz/foreign/humanrights/indigenous/dripeov.html>

Comment on the NZ, Australia and US proposal is in the two reports above, and:

- A Response to the Self-Determination Proposal of Australia, New Zealand and the United States Explanatory Note, Aotearoa Indigenous Rights Trust, 15 December 2005 - <http://www.pcpd.org.nz/ddrip/responsetonzproposal.doc>

- Statement from Amnesty International, FIDH, IWGIA, KAIROS: Canadian Ecumenical Justice Initiatives, Rights and Democracy, and the Friends World Committee for Consultation (Quakers), 14 December 2005 - <http://www.converge.org.nz/pma/in141205a.htm>

The Report of the Chairperson-Rapporteur, Luis-Enrique Chávez, on the tenth session of the Working Group on the Draft Declaration has a table with the original Sub-Commission text, the Chairman's Summary of Proposals, and the Chairman's text Proposals - <http://daccessdds.un.org/doc/UNDOC/GEN/G05/157/58/PDF/G0515758.pdf?OpenElement>

Comment on the Chairman's summary (which was also circulated as a separate document) by indigenous organisations - http://www.treatycouncil.org/new_page_5521122121312223131.htm

There is an overview of various perspectives on the draft Declaration in the information provided by the Government of Mexico on the International workshop on the draft United Nations Declaration on the Rights of Indigenous Peoples, held in Patzcuaro, Michoacán, Mexico from 26 to 30 September 2005 - <http://www.ohchr.org/english/issues/indigenous/docs/wgdd2005/crp1.doc>

References

¹ Leaflet No. 5: 'The draft United Nations Declaration on the Rights of Indigenous Peoples', <http://www.unhchr.ch/html/racism/indileaflet5.doc>

² Leaflet No. 5: 'The draft United Nations Declaration on the Rights of Indigenous Peoples', <http://www.unhchr.ch/html/racism/indileaflet5.doc>

³ '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 =](http://www.un.org/apps/news/story.asp?NewsID=16336&Cr=indigenous&Cr1=)

⁴ Leaflet No. 5: 'The draft United Nations Declaration on the Rights of Indigenous Peoples', <http://www.unhchr.ch/html/racism/indileaflet5.doc>

⁵ 'Advancing the Human Rights of Indigenous Peoples: A Critical Challenge for the International Community', Voices from a Forum at the 61st Session of the United Nations Commission on Human Rights, 13 April 2005

⁶ Statement by Mr Andrew Begg, at the UN General Assembly 60th Session, Third Committee, Item 68: Indigenous Issues, 20 October 2005, <http://www.mfat.govt.nz/speech/pastspeeches/speeches2005/20oct05.html>

⁷ Statement by Tim Caughley, NZ representative, CHR 61: Item 15: Human Rights and Indigenous Issues, 11 April 2005, <http://www.mfat.govt.nz/speech/pastspeeches/speeches2005/11april05.html> He was speaking about the totally re-written draft Declaration submitted in 2004 by the governments of NZ, Finland, Iceland, Norway, Sweden and Switzerland, <http://www.mfat.govt.nz/foreign/humanrights/indigenous/draftdec.html>

⁸ See for example: 'International Indigenous Peoples' Rights Movement Alarmed by New Zealand's Policy on Indigenous Peoples' Self-Determination at the UN', 8 December 2005, <http://www.converge.org.nz/pma/in081205.htm> 'New Zealand Nukes Indigenous Peoples Right to Self-Determination', 14 December 2005, <http://www.converge.org.nz/pma/in141205.htm> and 'New Zealand Government considered 'hostile' toward Indigenous Peoples everywhere' / 'Amnesty International criticise New Zealand government proposal to the UN', 16 December 2005, <http://www.pcpd.org.nz/ddrip/pcpd161205.doc>

⁹ Proposals put forward by New Zealand, Australia and the United States on Self-determination, December 2005, <http://www.pcpd.org.nz/ddrip/nzproposal.doc>

¹⁰ Self-Determination Proposal of Australia, New Zealand and the United States: Explanatory Note, 13 December 2005, <http://www.mfat.govt.nz/foreign/humanrights/indigenous/dripeov.html>

¹¹ Report on the Working Group on the UN Draft Declaration on the Rights of Indigenous Peoples Meeting 5-16th December 2005, 22 December 2005, <http://www.pcpd.org.nz/ddrip/report.html> **and** Report on the resumed session of the Working Group on the UN Draft Declaration on the Rights of Indigenous Peoples, 11 February 2006, <http://www.pcpd.org.nz/ddrip/cc-feb06report.doc> - both by Claire Charters on behalf of the Aotearoa Indigenous Rights Trust.

¹² Proposals put forward by New Zealand, Australia and the United States on self-determination, December 2005, <http://www.pcpd.org.nz/ddrip/nzproposal.doc>

¹³ 'The Colonizer State Government Declaration on the Rights of Indigenous Peoples': Statement to the Sub-Commission on the Promotion and Protection of Human Rights Working Group on Indigenous Peoples, Sharon Venne, 26 July 2004, <http://www.converge.org.nz/pma/in260704.htm>

¹⁴ See for example: 'A Response to the Self-Determination Proposal of Australia, New Zealand and the United States Explanatory Note', Aotearoa Indigenous Rights Trust, 15 December 2005, <http://www.pcpd.org.nz/ddrip/responsetonzproposal.doc>

¹⁵ See for example: 'Statement from Amnesty International, FIDH, IWGIA, KAIROS: Canadian Ecumenical Justice Initiatives, Rights and Democracy, and the Friends World Committee for Consultation (Quakers)', 14 December 2005, <http://www.converge.org.nz/pma/in141205a.htm>

¹⁶ 'Statement from Amnesty International, FIDH, IWGIA, KAIROS: Canadian Ecumenical Justice Initiatives, Rights and Democracy, and the Friends World Committee for Consultation (Quakers)', 14 December 2005, <http://www.converge.org.nz/pma/in141205a.htm>

¹⁷ 'Aotearoa Indigenous Rights Trust Intervention in response to the NZ government's tabling of a new paper on the Draft Declaration on the Rights of Indigenous Peoples at the United Nations in Geneva', 13 September 2004, <http://www.converge.org.nz/pma/in130904.htm>