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IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTION 60/251 OF 15 MARCH 2006 ENTITLED “HUMAN RIGHTS COUNCIL”

Written statement* submitted by the Indian Movement Tupaj Amaru (MITA), a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[6 June 2006]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

**Comments and amendments to chairman's proposals relevant to the draft declaration
on the rights of indigenous peoples formulated by Indian Movement Tupaj Amaru
(MITA)**

INTRODUCTION

1.-At this crucial moment, more than any time in the past, the promotion and protection of rights of indigenous and aboriginal peoples are blocked by the intransigence of the western countries and be being subjected to selective and discriminatory treatment in the United Nations system.

2. After 11 years of sterile and unfruitful debates, denying all solutions of indigenous issues, the Working Group established under resolution 1995/32 of the Commission on Human Rights has failed in its sole purpose of concluding the draft Declaration on the Rights of Indigenous Peoples. No tangible progress has been made, nor has any substantive advance been made toward a consensus that would allow the adoption of the draft Declaration within the first International Decade of Indigenous Peoples.

3.- The eleventh session of the Working Group, transforming the elaboration of the draft Declaration into a politico-diplomatic imbroglio and putting it under political pressure, has exposed the colonial mentality, the egoism, the hypocrisy, the racism and double standards and incoherent policies of the rich western countries of the North and the dominant elites of the South.

4 .-By their incoherent policies and their arrogance, the governments of the United States of America, Australia, the United Kingdom, New Zealand, Norway, France and the European Union, including the Russian Federation carry the responsibility for the downfall and defeat of the Declaration.

5 .-In face of their intransigence and intentions to eliminate the collective rights recognized in the Declaration, to dilute the draft generally and to weaken the legal essence and the political force of its provisions, we emphasize the urgent need not only to uphold minimum standards but also, where possible, to improve, strengthen and harmonize the juridical substance and political, economic and social scope of its provisions.

6.-During the last eleventh session of Working Group, the States and Governments of the western countries have continued to try to impose on indigenous peoples an obsolete, abstract and diminished declaration and to force its adoption without the consent or agreement of indigenous peoples, in conformity with their economic, financial and geopolitical interests and new strategy of domination.

7 .-The colonial western powers have systematically refused to give attention to the most controversial notions and concepts of requiring just and equitable solutions, such as recognition of the rights of indigenous peoples to define themselves as peoples and subjects under international law, right to self-determination, the exercise of collective and ancestral ownership of land, permanent sovereignty over natural resources, legal protection of cultural and intellectual property, the demilitarization of indigenous lands and territories.

8.-In contrast to the unmoving world vision and paralysing stances taken by States, our Organization "Tupaj Amaru", conceiving international standards and norms as being in permanent mutation and evolution in time and space, has submitted constructive proposals and amendments to the draft declaration on rights of indigenous peoples at every session of the working Group with a view to adapting the minimums standards to suit the changes in economic and political conditions that have occurred over the past decade within the new world economic order.

9 .- We deplore that in his report, the President of the Working Group has totally ignored the substantive contributions made by indigenous representatives during the 11 years of work. For lack of respecting the principle of impartiality, objectivity and independence that characterized the long process of negotiating the draft declaration, the Chairperson-Reporter's proposals (E/C.4/2006/79), the report fails to reflect the views and positions of the vast majority of indigenous peoples; it ignores in particular the proposals made by the Indian Movement Tupaj Amaru".

10 .-Meanwhile, in formulating these amendments and introducing new provisions to the operative part relating to the right to self-determination, land rights, territories and natural resources and demilitarization contained in the draft Declaration, our organization, bearing in mind the need to enhance a legal and political vacuum and social reach of this important instrument, has paid special attention to the record of the substantive discussions with a view to taking up and condensing the proposals, comments and recommendations made by Governments and indigenous representatives from 1995 to 2005.

11.-The indigenous peoples draw the attention of the States and indigenous representatives to the process and nature of elaborating the draft Declaration, so that the provisions and rules set out in the final declaration, as an instrument of capital importance for the survival and development of indigenous peoples, will be consistent with current international standards, precise enough to give rise to rights and obligations acceptable to the international community, and are established upon material foundations that will ensure their application.

12 .-The States and indigenous peoples have identified many challenges in the elaboration process of an international instrument on human rights, which today requires serious study, deep reflection and urgent consultation with all indigenous peoples and their organizations in all countries, encouraging their effective participation in the ongoing process.

13 .- For lack of political will of States of North and South whose obligation it was to ensure an objective and transparent and open examination of the draft-declaration and its adoption by the United Nations General Assembly at the end of the first of international decade of the world's indigenous peoples, the President of the Working Group has failed in this mandate. The responsibility of this failure pertains to States and Governments.

14 .- **In conclusion**, we would like to draw the attention of the Honourable Human Rights Council to the fact, that the Working Group in its eleventh session did not adopt the "Revised Chairman's summary and proposal" – neither by general consensus nor a vote –, as required by the Rules and Procedures established concerning the adoption of international instruments by the General Assembly.

15 .- According to the report presented by the Chairperson-Rapporteur in the closing session of the Working Group, the governmental delegations and some indigenous representatives expressed their deep concern over the absence of an expected consensus on the crucial issues, such as self-determination, land and territories rights, sovereignty over the natural resources, the ancestral collective right, protection of the cultural and heritage, and demilitarisation of indigenous lands and territories.

16 .- By deleting a series of controversial articles from the draft text, the Chairperson-Rapporteur has diminished the political and juridical content of the Declaration. This is unacceptable to the indigenous peoples. Consequently, this raises the necessity of revising the entire proposal.

17.-After consultations with indigenous and aboriginal communities and their organizations in our countries, and in accordance with the draft resolution submitted by numerous indigenous organizations to the 61st Commission of Human Rights, and noting that the ongoing process has not been concluded, we kindly request the Human Rights Council to recommend the following draft decision to the General Assembly for adoption:

The Human Rights Council at its first session:

- a) Takes note of the report of the Working Group E/CN.4/2006/79 and puts on record the absence of significant progress toward the expected consensus on the adoption of the draft declaration within the first International Decade, nevertheless welcomes the continuation of constructive deliberations towards the adoption of a Declaration that has the broad support of indigenous peoples as well as States;
- b) Recommends that the General Assembly declare a pause in the present year to reflect on the process and apply a more effective methodology of work of the Working Group as is foreseen in case of lack of progress made within a standard-sitting body in order to allow necessary time for States, indigenous peoples and relevant UN existing mechanisms to evaluate the results, ensuring broad and effective input by indigenous peoples organizations;
- c) Decides to extend the mandate of the Working Group of the Commission on Human Rights, under authority of a newly elected president, for the purpose of elaborating as soon as possible and submitting in reasonable time (maximum 3 years), the final text of the declaration to the Human Rights Council for adoption by the General Assembly within the second International Decade of the World' Indigenous Peoples;
- d) Recommends that the General Assembly authorize the Working Group to resume its mandate to review the standard-setting process for ten or fifteen (10 -15) working days prior to the 2007 session of the Council and urges the Working Group to consider the renewal and update of its mandate with a view to improve the procedure and method of work, including the means of voting the adoption of the declaration on the indigenous rights;
- e) Urges all States and indigenous peoples involved in the process to manifest their will and commitment to carry out successfully the extended mandate of the Working Group and strongly recommends to take into account all constructive proposals from indigenous

peoples as well as NGO contributions to elaborating, as soon as possible, a final draft declaration for adoption by the General Assembly;

f) Requests the High Commissioner for Human Rights, in her capacity as Coordinator of the Decade, to provide financial resources and technical assistance to the full and effective participation of representatives of indigenous peoples in the process of elaborating of draft declaration, in accordance with the General Assembly's request to the Secretary General.

g) Encourages representatives of indigenous organizations of all countries that are not already registered to participate in the Working Group and contribute to its work and to urgently apply for accreditation in accordance with the procedures set out in the annex to the Commission on Human Rights resolution 1995/32;

h) Decides to maintain this question under the same agenda item of its second session.

Eleventh session from 5 to 16 December 2005 and from 30 January to 3 February 2006

OPERATIVE PART I

General principles

Article 1(Amended version)*

Indigenous peoples have the **collective and individual** right to the full and effective enjoyment of all human rights and fundamental freedoms recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law, **without any discrimination.**

All obstruction to the free exercise of these rights will be interpreted as an act contrary to the letter and spirit of all international instruments relevant to human rights.

Article 2 (Amended version)*

Indigenous peoples and **nations are born** free and equal to all other individuals and peoples in dignity and rights and have the rights to be free from any kind of discrimination. **They are endowed with reason and conscience to live in conditions of equal rights and obligations.**

No one shall be subjected to any discrimination based on their **indigenous identity, social origins, political opinions or any other condition.**

No one shall be forced to undertake work of any kind without his free consent and without fair remuneration.

The States condemn racial discrimination and they are committed to the implementation of a coherent policy aimed at combating and eliminating, by all appropriate means, racial discrimination in all its forms and promoting understanding and friendly relationships among all peoples.

RIGHT TO SELF DETERMINATION

Article 3 (amended version)*

In conformity with the universally recognized principles of international law and international norms and agreements, all indigenous peoples have the full right to self-determination.

By virtue of this inalienable and indivisible right inherent in all members of the human family, the indigenous peoples and nations shall freely decide on their way of life, freely determine their political status, freely pursue and establish their own economic, social and cultural development and freely dispose of their lands and natural resources in accordance with their usages, traditions and customary law.

Article 31 (amended version)*

In accordance with the principles universally recognized, the indigenous peoples, as a concrete and specific form of exercising their right to self-determination, have the

collective right to autonomy and self-government in matters relating to their internal and local affairs.

In particular they have right to effective participation in economic, political and administrative aspects of society, including culture, religion, education, information, media, health, housing, employment, social welfare, economic activities, land and resources management, environment and entry by non-members, as well as ways and means for financing these autonomous functions.

Article 31 bis (New provision)*

For the purposes of this article, local and administrative autonomy shall be understood as a transfer of the powers and prerogatives to peoples and aboriginal communities, (within the National State), to exercise the effective right, to manage and enjoy the benefits of their lands and natural resources; as the promotion of education and culture; as the protection of health; as the insurance of the right to food with a view to eradicate the extreme poverty, under their own rules and organs of self-government.

Local authorities emanating from the sovereignty of indigenous communities and peoples shall have the competence and authority to resolve disputes and controversies by peaceful means, to protect the environment and to raise local taxes to finance autonomous programmes.

Article 31 ter (New provision)

Any attempt aimed at diminishing the will of indigenous peoples to freely select the paths of their own sustainable development and assume their own destinies with dignity, shall be interpreted as an act designed to deprive a peoples of its means of subsistence and hence, consequently incompatible with the purposes and principles of the Charter of the United Nations.

The States recognize that the right to self-determination proclaimed in the Charter is not limited to internal and local affairs and agree to respect and guarantee the effective exercise of the right to self-determination, in conformity with the international instruments.

Article 5 (Amended version)

Every indigenous person has the right to acquire his own nationality immediately after birth in accordance with the national legislation of the State concerned. No one shall be arbitrarily deprived of his nationality on grounds of race, religion or social origins .

PART II

Life, Integrity and Security

Article 6(amended version)

Indigenous peoples have the collective and **individual** right to live in freedom, peace and security as **peoples of cultural diversity and with distinct forms of social organization**.

Under the protection of the Convention on the Prevention and Punishment of the Crime of Genocide 1948, they shall enjoy full guaranties against crimes of genocide committed with intent to destroy, in total or partially, a national, ethnical and social group.

Article 6bis

No-one shall be subjected to torture, punishments, or cruel, inhumane or degrading treatments or to any other act of violence, including the forcible removing of indigenous children from their families and communities under any pretext. In this order, they have individual rights to live, physical and mental integrity, liberty and security of person.

The States recognize the rights of indigenous peoples to live in peace and security and agree to adopt appropriate measures to ensure the full enjoyment of the highest attainable standard of health.

Article 7 (amended version)*

Indigenous peoples have the collective and individual right to **appropriate protection** against any **perpetration** of ethnocide and cultural genocide **committed in times of peace or in times of war**.

This protection, prevention and reparations shall apply to:

- (a) any action **or act** which has the aim or effect of depriving **indigenous peoples of their cultural values or ethnic identities, attempting their physical and mental integrity, denying them their right to enjoy, develop and transmit their cultural values to future generations;**
- (b) any act of genocide typified as a crime in the Convention on the Prevention and Punishment of the Crime of Genocide, perpetrated with the intention to destroy, in whole or in part, indigenous communities.
- (c) Any form of forced assimilation or integration by other cultures or ways of life, **foreign to the indigenous values and philosophies**, imposed on them by legislative, administrative or other measures **or under pressure, intimidation and including the use of force.**
- (d) any action which has the aim or effect of dispossessing **or depriving them of their lands and territories, through violent means, denying indigenous peoples the right to enjoy their natural and genetic resources, traditional knowledge used by them since immemorial time;**
- (e) Any form of **forced** population transfer which has the aim or effect of violating or undermining any of their rights **to the capacity of biological reproduction, in violation of the intrinsic right to life.**
- (f) Any forced practice of **evangelism or penetration of foreign religious sects into aboriginal lands** which has the aim or effect of **imposing and violating the spiritual, religious and philosophical vision of indigenous peoples.**
- (g) Any form of propaganda designed to promote racial or ethnic discrimination or to incite violence, hatred, or terrorist acts, which strikes against life, dignity, peace and security of indigenous peoples and nations.

States shall undertake and provide effective mechanisms for prevention, protection and reparations for these committed acts enumerated in the present article.

Article 8 (amended version)

Indigenous peoples have the collective and individual right to maintain and develop their distinct identities and characteristics, **in particular the intrinsic** right to identify themselves as **peoples and nations, without conditions or restrictions** and to be recognized as **subjects of law by the international community.**

Article 10 (amended version)

Indigenous peoples shall not be forcibly removed or **arbitrarily displaced** from their **original** lands and territories **nor be deprived of their resources and their means of sustenance.** No **arbitrary removal** or relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation with right to return.

States shall guarantee the return to their original lands and communities, after agreement on just and fair compensation to the resettled families.

Article 11 (amended version)

Indigenous peoples have the right to **appropriate** protection and security in times of armed conflict.

States shall observe **and respect** international standards, in particular the Fourth Geneva Convention of 1949, for the protection of civilian populations in circumstances of emergency and armed conflict.

In application of the present disposition, the States shall not.

- a) Recruit indigenous peoples against their will to serve in the armed forces **of belligerent countries for the purpose of using them in armed conflict** against other indigenous peoples;
- (b) **Allow at any time or under any circumstances the recruitment of indigenous children and teenagers** into the armed conflict, contrary to **the Convention on Rights of Child and norms of international law.**
- (c) Force indigenous people **and communities** to abandon their lands or territory, **neither deprive them of their means of** subsistence, nor relocate them in special **areas or** centres for military purposes;
- (d) Force **indigenous peoples** or individuals and groups to work for military purposes under any discriminatory and degrading conditions, **damaging to their health, in violation of international standards, such as humanitarian and labour law.**

PART III

Cultural and intellectual heritage

Article 12 (Amended version)

Indigenous peoples have the right and the **moral duty** to preserve, practise and revitalize their **cultural values**, traditions and customs **that constitute an integral part of the cultural and intellectual heritage of humanity**.

By virtue of the standards of intellectual property, indigenous peoples have the right to protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies, visual and performing arts, **artistic creation and sculpture, musical instruments, and ecological, scientific** knowledge, technological traditions, and literature, **all of which are of universal value from the historical, esthetic and anthropological point of view**.

Article 12 bis (new provision on Restitution)

Under the norms and jurisprudence laid down in international agreements, indigenous peoples have the right to the restitution and restoration of cultural, intellectual, religious and spiritual property **and heritage. This includes the remains of their ancestors taken from them** without their free and informed consent and, in violations of their customary laws and traditions.

Indigenous peoples reserve the right to a just compensation for the material and moral damages and injuries caused by national and international piracy.

Article 13 (Amended version)

In accordance with recognized human rights standards, indigenous peoples have the **collective and individual** right to manifest, practise, 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 preserve their** ceremonial objects; **in particular** the right to the repatriation of human remains **and other funerary articles**.

States shall take effective measures, **with the free consent of the peoples concerned** to ensure **the legal protection** of indigenous sacred places, including burial sites and cemeteries.

Article 14 (Amended version)

Indigenous peoples have the right to revitalize, use, develop and transmit to **present and** future generations their own histories, , philosophies, languages, oral traditions, writing systems and literatures, **and to preserve, designate and** retain their own names for **native** communities, places as well as to **pay tribute to the memory of their martyrs and respect mythological sites**.

States shall take effective measures, whenever any right of indigenous peoples may be threatened, to guarantee the **legal protection of their cultural and intellectual heritage and** ensure that they can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation.

Article 14 bis (New provision)

The legal protection of intellectual and cultural heritage against national and international piracy, shall apply to:

- (a) **Verbal creations such as popular stories and legends, popular poetry and riddles;**
- (b) **Musical creations such as songs and popular instrumental music;**
- (c) **Physical creations such as folk dances and plays and ritual performances;**
- (d) **Tangible creations such as drawings, paintings, sculptures, pottery, woodwork and jewellery;**
- (e) **Musical instruments and works of architecture.**

PART IV**Education and Information**Article 15 (Amended version)

All indigenous peoples have the collective and individual right to free, complete and diverse education all levels and forms of basic, secondary and higher education, in their own languages, including bilingual education.

Indigenous peoples also have the right to establish and control their own educational systems **and teaching** institutions providing education in their own languages, in a manner appropriate to their cultural method of teaching and learning. **They shall manage and administer the resources allocated to education.**

States recognize education as their highest function and agree to orient teaching in all its forms towards the full development of the human personality, and to the strengthening of respect for human right and friendship among all nations.

Article 15 bis (New provision)

Indigenous children living outside their communities shall have right to be provided access to free education in their own culture and language **in accordance with their cultural traditions and customary laws.**

States shall take effective measures to provide appropriate resources for these purposes.

Article 17 (Amended version)

Indigenous peoples have the right to establish their own media in their own languages. They also have the right of equal access to all forms of **existing** non-indigenous media, **including the access to Technologies of Information and Communications (TIC).** **Indigenous peoples have the right to set up radio and television networks in indigenous languages in order to instil in indigenous peoples a respect for their identity and promote the friendship and peace among different groups of society.**

States shall take appropriate steps to ensure that State-owned media duly reflect indigenous **multicultural diversity and guarantee the right to full freedom of expression**

Article 18 (Amended version)*

Indigenous peoples have the right to enjoy fully all rights established under international labour law and national labour legislation. They shall not be subjected to any discriminatory conditions of labour, employment and salary. **Indigenous workers have the right to equal salary for equal work.**

Under the International Convention adopted by the ILO, indigenous peoples have the full right to work, to freely choose their employment, to satisfactory health conditions, to medical attention and social security, without distinction or discrimination based on race or identity.

States shall, in accordance with their labour legislation, take effective measures with the aim of guaranteeing the effective exercise of labour rights enunciated in the present article. In particular the legal protection against the illicit and degrading exploitation of children, through child labour, that might have harmful consequences for their health, education, and physical and mental development.

PART V
Participation by indigenous peoples

Article 19 (Amended version)

In accordance with the Vienna Declaration adopted at the World Conference on Human Rights, indigenous peoples have the right to participate in all aspects of society, in particular at all levels of political legislative and administrative decision-making process, in matters that may affect their rights, lives or destinies, through representatives freely chosen by themselves in accordance with their own procedures and institutions of self-government.

Article 22 (Amended version)*

States shall take appropriate measures to ensure the right of indigenous peoples to immediate, effective and continuing improvement of their economic and social conditions, including in the areas of employment, vocational training and retraining, housing, sanitation, health, education and social security, especially the eradication of extreme poverty.

Without prejudice to the assistance of international cooperation, the public institutions of the States shall give priority attention to the vital needs of the aged, young people, women, children and persons with disabilities.

Article 23 (Amended version)

By virtue of the rules on self-government and self-management, indigenous peoples have the collective right to determine and develop priorities and strategies for the effective exercising of their right to sustainable development and the exploitation of natural resources according to their material and spiritual needs.

In particular, indigenous peoples have the right to determine and develop health, housing, education, environment and all other economic and social programmes affecting them and to administer such programmes through their own institutions.

Article 24 (Amended version)

Indigenous peoples have the right to their traditional medicines and health practices, including the right to legal protection of vital medicinal plants, animals and minerals with

medicinal properties widely used as ancestral remedies in traditional practice and care.

They also have an equal right to the enjoyment of the highest attainable standard of physical and mental health and access, without any discrimination, to all medical institutions, health services and medical care.

States shall take effective measures to protect the variety of living organisms and medicinal plants, used by indigenous peoples, against illicit land-grabbing.

PART VI LANDS, TERRITORIES AND NATURAL RESOURCES

Article 25 (amended version)*

Indigenous peoples have the right to maintain and strengthen their distinctive material and spiritual relationship **of respect and veneration** with their lands, territories, waters and coastal seas and other natural resources which they have traditionally owned, occupied or used and **considered since immemorial times as the source of all life and harmony between man and nature.**

In accordance with this customary right, the lands, territories and natural resources traditionally possessed, occupied and used by them shall be inalienable, indivisible and subject to neither prescription nor embargo. Indigenous people have the obligation to uphold their responsibilities to future generations in this regard.

Article 26 (amended version)*

All indigenous peoples have the ancestral and customary rights to collective ownership and possession of legal title to property over their traditionally occupied lands and the full right to the enjoyment of their natural and genetic resources and traditional knowledge.

By virtue of this article, indigenous peoples have the right to own, develop, control and use the lands and territories, **and they shall enjoy permanent sovereignty over their wealth and the renewable and non-renewable natural resources of their habitat,** including the total environment of the lands, coastal seas, sea-ice, air, water resources, flora and fauna, mineral and forestry reserves and other resources which they have traditionally owned or otherwise occupied and used **in conformity with their material and spiritual needs.**

Article 26bis

States shall establish and implement, with free consent of indigenous peoples concerned, a just, equitable and transparent mechanisms to recognize the full rights of indigenous laws, traditions and customs, land tenure systems and institutions for the development and management of resources, guaranteeing collective and individual ownership based on self-management of their own resources and ensure the protection against any illicit encroachment, alienation, invasion or usurpation of their land and natural resources.

Article 27 (amended version, **Restitution**)

Indigenous peoples have the right to the restitution of the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, occupied and damaged without their free and informed consent, **under the doctrine of *terra nullius*, or "conquered or discovered lands"**.

The right to just restitution, reparation, indemnification and rehabilitation shall extend to ecological damages and the destruction of biological diversity, including the damage and injury that might have been suffered by arable lands as a result of the use of contaminating products or inappropriate technologies.

Article 27bis (forms of compensation)

Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal **or better** in quality, size and legal status **than those formerly owned, or when this is not possible, of monetary compensations.**

States shall establish appropriate measures and procedures, under their national legal systems, with the aim of guaranteeing a just and fair indemnification or restitution of usurped lands with related assets and accessories of which have been plundered without their free consent.

Article 28 (Amended version)*

Indigenous peoples have the right to the conservation, restoration and protection of the total environment and the productive capacity of their lands, territories and resources, **in particular of their biological resources**, as well as to assistance for this purpose from States and through international cooperation.

States shall establish and implement assistance programs relating to such protection and development, without any discrimination.

Article 28 bis (New provision on demilitarization)

Except in cases where the indigenous peoples have freely consented, States agree to prohibit the use of lands, territories and natural resources, belonging to indigenous peoples, for military purposes, for the installation of armaments factories or for the storage of radioactive or toxic waste that might contaminate the environment and threaten the lives of the indigenous peoples.

Indigenous peoples reserve the right to initiate the legal proceedings aimed at protecting their lands and resources until they obtain the total and complete demilitarization of their territories.

States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands and territories of indigenous peoples

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

Article 29 (Amended version relevant to **cultural heritage**)

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

Without prejudice to the provisions of international instruments, they have the right to the conservation and protection of their biological resources, their scientific and ecological knowledge, their traditional technology, including human resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures and visual and performing arts.

They also have a right to equitable share in the derived benefits of the exploitation of their genetic resources, traditional knowledge and cultural expressions,

States shall take effective measures in order to guarantee the legal protection of the cultural and intellectual heritage of indigenous peoples.

Article 30 bis (New provision, **on the role of TNC**)

Unless freely agreed upon by the peoples concerned, the activities of transnational corporations relevant to the execution of macro-economic and agro-industrial projects, as well as the import of foreign capital for the exploration and exploitation of energy and genetic resources, mineral and forestry reserves in indigenous territories, should be in conformity with the rules and conditions which the indigenous peoples freely consider to be necessary or desirable to the authorisation, restriction, or prohibition of such activities.

States shall consult with the indigenous peoples and shall obtain their free consent before the authorisation of foreign investments and shall grant licences to the trans-national corporations for the exploitation of such resources, material basis to the survival of indigenous people.

Article 30 bis ter (New provision, **on conduct of TNC**)

Except those interested indigenous peoples that have freely consented, the States shall not permit the establishment of trans-national corporations and their foreign affiliates in indigenous territories and lands. The activities of such supra-national entities that, from their social headquarters, decide the investments, fusions and privatisations of lands and services, with the sole objective of exploiting and despoiling of their basic strategic resources, causing the contamination of the air and water, exacerbating extreme poverty, shall submit to the jurisdiction and rules or codes of conduct of the host countries.

Article 33 (Amended version)*

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 **universally** recognized human rights standards.

States shall take effective measures to guarantee the effective exercise of political, economic and cultural rights so that:

- (a) **Specific characteristics and customs as well as customary standards are duly reflected in the legal system and political institutions of the State;**
- (b) **Ancestral social organization and collective working practices are taken into consideration in the implementation of sustainable development programmes.**

Article 36 (Amended version)

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.

Nothing in this Declaration may be interpreted as to diminish or eliminate the rights of Indigenous Peoples contained in Treaties, Agreements and Constructive Arrangements.

States engage to respect such Treaties, Agreements and Other Constructive Arrangements. Disputes and controversies should be resolved pursuant to any process specified in the Treaties and by peaceful means, or otherwise this dispute shall be submitted by the parties to the competent international bodies, including the International Court of Justice.

PART VIII

Article 40 (amended version)

The United Nations system, their specialized agencies and other intergovernmental organizations, **in particular the Permanent Forum on Indigenous issues** 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 insuring effective participation of indigenous peoples on issues affecting them shall be established.

Article 44

Nothing in this Declaration may be construed as diminishing or extinguishing existing or future rights indigenous peoples may have or acquire **by virtue of new international instruments.**

Article 45 (amended version)

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

Article 45bis (based on Canadian proposal)

The enjoyment, promotion and protection of the rights of indigenous peoples set out in this Declaration are vital for *their* survival and development, for the eradication of extreme poverty and ensuring the inherent of *human* dignity, well-being, peace, development and security of *world's* indigenous peoples.

Note: *The proposals, amendments and introduction of new provisions to the draft Declaration are printed in bold.*

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