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**Promotion and protection of all human rights,
civil, political, economic, social and cultural rights,
including the right to development**

**Joint written statement* submitted by the Union of Arab
Jurists, a non-governmental organization in special
consultative status, the Indian Movement Tupaj Amaru, the
Indian Council of South America (CISA), and World Peace
Council (WPC), non-governmental organizations on the
roster**

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

[13 February 2010]

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

The instance on the rights of the indigenous peoples within of United Nations

I. Historical context

1. The establishment of a Working Group on Indigenous Populations within the framework of the United Nations originate without doubt in the first International NGO Conference on Discrimination against Indigenous Peoples in the Western Hemisphere, which was organized by the NGO Subcommittee on Racism, Racial Discrimination, Apartheid and decolonization in Geneva from 20 to 23 September 1977.
2. More than three decades separate us from that historic date, when, for the first time, the survivors of the colonialist-nations and indigenous peoples of Western Hemisphere - crossed the Atlantic Ocean and crossed the threshold of the United Nations in Geneva.
3. Meeting in three Commissions, the indigenous representatives presented their irrefutable testimonies of grave violations of their rights and fundamental freedoms - of the dispossession of their lands and territories, the plundering of their natural resources, the destruction of their forms of social organization and system of traditional values. Today they are victims of old and new forms of racism, practices of genocide and ethnocide.
4. The major merit of the international Conference consists of having raised before the international community the urgent need to establish a mechanism in the UN with the mandate of examine the violations of indigenous human rights, eliminating racism and racial discrimination against indigenous peoples, putting a term to the spoliation of their lands and natural resources, prohibiting the militarization of indigenous lands, eradicating the extreme poverty in which they exist, guaranteeing juridical protection of their traditional knowledge, establishing rules of behaviour for the transnational corporations that covet the wealth of indigenous peoples and recognizing their right to determine freely their way to live in peace and dignity.
5. In its Final Resolution, the 1977 International NGO Conference urged the UN Commission on Human Rights to adopt the NGO Conference the resolution with provisional character, proposed by the Subcommittee on the Prevention of the discrimination and protection of the Minorities with the purpose of establishing a working group for indigenous populations.
6. In my quality of one of the pioneers of that international event, I would like to state that the above-mentioned crucial problems that were raised have not be resolved because of lack of political will of the States. The rights and freedoms of Indigenous Peoples continue to be eroded. In the context of the present international financial crisis the indigenous peoples are more than ever victims of fierce attacks from powerful transnational corporations.

II. Establishment of a mechanism

7. During the five years that followed the international NGO Conference the secular clamour of the victims of racism and colonialism succeeded in finally penetrating the conscience of the international community:
8. In its Resolution 1982/34 of May 7, 1982, the UN Economic and Social Council “authorizes the *Sub-commission on Prevention of Discrimination and Protection of Minorities to establish annually a working group on indigenous populations which shall*

meet for up to five working days before the annual sessions of the Sub-Commission in order to review developments pertaining to the promotion and protection of the human rights and fundamental freedoms of indigenous populations” and “that the working group give special attention to the evolution of standards concerning the rights of indigenous populations”.

9. As to the question of whether the Working Group was established for indigenous Peoples and also at the same time for Minorities, what were the historical characteristics to differentiate the two? To answer this question, we refer to the study on Treaties, Agreements and other Constructive Arrangements between States and Indigenous Populations Peoples, tackled by the Special Rapporteur Prof. Miguel Alfonso Martínez. (See Doc/E/CN. 4/Sub.2/ 1995/27).

10. In Chapter II of his study, entitled some reflections on the minority/Indigenous people dichotomy, the Special Rapporteur quotes several authors, among them the Italian Investigator Francesco Capotorti who takes a position on this controversial question. According to Capotorti, *“a minority is a group which is numerically inferior to the rest of the population in a State, and in a non-dominant position, whose members possess ethnic, religious or linguistic characteristics which differ from those of the rest of the population and who, if only implicitly, maintain a sense of solidarity directed towards preserving their culture, traditions, religion or language”*. Quoted by the Special Rapporteur on page 11.

11. Without doubt, this definition of “Minorities” does not apply to indigenous peoples and aboriginal nations; they cannot be qualified in this way. By their historical nature, the Indians do not constitute minorities in the sense in which the United Nations defines them.

12. To understand the notion itself of *“people or indigenous nation”*, we must admit that, *“in colonial times – and even in post-colonial times, as in the case of Latin America – “indigenous” was the term used by foreign colonizers to set themselves apart from the native peoples and that this term continued to distinguish those peoples from the “criollos” who took over from the colonizers as the dominant power in post-colonial society”*. See Study, page 18.

13. In his study the Special Rapporteur refers to the reflections of the Ecuadorian Expert José R. Martínez Cobo who in his anthological work offers us a distinction and the boundaries between Indigenous Peoples and Minorities.

14. In his study, entitled *“The Problem of Discrimination against indigenous Populations”*, José Martínez Cobo states that *“indigenous peoples consider themselves to be the historical successors of the peoples and nations that existed on their territories before the coming of the invaders of these territories, who eventually prevailed over them and imposed on them colonial or other forms of subjugation, and whose historical successors now form the predominant sectors of society”*. Cited by Alfonso Martínez in his study, see p.16.

15. In another of his study, Martínez Cobo states as follows: *Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them”*. See Alfonso Martínez study, page 14.

16. These historical communities have the determination to preserve, to develop and to transmit to the future generations their ancestral territories and their ethnic identity, in accordance with their own cultural patterns, their social institutions and their legal systems.

17. From this it is clear that, in contrast to Minorities, the indigenous peoples have a historical continuity in time and space with the civilizations before the colonial invasion, that is to say, the Inca, Maya, Azteca, Aymara, etc.

18. However, Alfonso Martinez concludes, *“the end of traditional colonial power in Africa and Asia necessarily and radically changed the concept of what was meant by “indigenous” as a result of a new political context whose most visible symbol was the independence of the State. In this new context, the reins of political power (but not always of economic power) were taken over by ethnic and national social groups whose indigenous status was (and is) as unquestionable as that of other ethnic groups or nations which, although also living in the territory of the new State”*. P.19.

19. Saying in other words, the actual African States are governed by their indigenous inhabitants, as the proper Governments of Africa have affirmed during the process of the adoption of the Declaration on the rights of the indigenous peoples by the General Assembly of the United Nations in 2007. Nevertheless, against wind and tide, “certain Rapporteurs continue to contribute to the major confusions by likening indigenous peoples to certain ethnic groups of African countries”.

20. In the conclusions of his study on the dichotomy Minorities /indigenous peoples, the Special Rapporteur Alfonso Martinez emphasizes that, *“the majority of communities (according to the criteria of the study) which might be characterized as indigenous in Africa and Asia are precisely not those which have a treaty relationship with a State, within the meaning of the study; rather, many legal-political entities (on these two continents), which are parties to colonial-era treaties nowadays represent themselves as independent States”*. See page 21.

21. Contrary to the spirit and the mission for which the Working Group on Indigenous Populations has been created, the Permanent Forum on Indigenous Issues, as the new ‘ Mechanism Expert’, includes Board Members of the Voluntary Fund for Indigenous Populations, has slowly fallen under the control of the Minorities, to the detriment of the indigenous peoples.

22. The decision to eliminate the Working Group that would have celebrated its twenty fifth anniversary and mark the thirtieth (30) anniversary of the entry, for the first time in history, of indigenous leaders and indigenous representatives into the Palais de Nations in Geneva, might be interpreted as an attempt to close the human rights Temple for indigenous peoples and strengthen the rights of the minorities in Asia and Africa.
