



**Economic and Social
Council**

Distr.
GENERAL

E/CN.4/2003/NGO/120
12 March 2003

ENGLISH ONLY

COMMISSION ON HUMAN RIGHTS
Fifty-ninth session
Item 18 of the provisional agenda

EFFECTIVE FUNCTIONING OF HUMAN RIGHTS MECHANISMS

Joint written statement* submitted by American Indian Law Alliance and Inuit Circumpolar Conference, non-governmental organizations in special consultative status and Grand Council of the Crees, a non-governmental organization 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.

[3 February 2003]

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

In regard to agenda Item 18, we would like to address the critical problems that Indigenous peoples are facing in the current standard-setting process relating to our human rights. In particular, we are referring here to the intersessional Working Group (UNCHR Res. 1995/32, 3 March 1995) that is considering the draft U.N. Declaration on the Rights of Indigenous Peoples for possible adoption by the General Assembly.

In an earlier statement submitted jointly by the American Indian Law Alliance, Grand Council of the Crees (Eeyou Istchee), and Inuit Circumpolar Conference under agenda Items 5, 6 and 15, we described how many of the States participating in the Working Group are failing to fully respect the Purposes and Principles of the Charter of the United Nations in the standard-setting process. As a result, Indigenous peoples' fundamental status and human rights are being put in jeopardy. Discriminatory double standards are repeatedly being proposed in violation of international law. This is especially evident in regard to our status as "peoples" and our human right to self-determination.

In addition, a number of participating States are misstating international law, so as to justify the imposition of unwarranted restrictions. They are also ignoring critical interrelationships among human rights. Some States are still seeking to deny the very existence of Indigenous peoples' collective rights.

These illegitimate actions are laying the ground for further injustices in the future. Why are many of the participating States abusing the standard-setting process? Why are they ignoring their solemn obligations to promote and respect human rights, as required under the U.N. Charter?

As we describe below, many of the States participating in the UNCHR Working Group constitute the past or present perpetrators of some of the worst misdeeds and crimes against Indigenous peoples. While these States certainly need to be involved, they should not be dominating the current process. They must not be entrusted to determine the international standards that would be submitted to the General Assembly.

In our respectful view, it is unacceptable for the United Nations to support or continue a process where a large number of the participating States have committed atrocities and are in effect controlling what human rights norms are suitable for their victims. Such a biased procedure offends the most fundamental principles of justice, fairness, democracy, rule of law and respect for human rights.

Offender States must not determine standards for their victims

There are over 300 million Indigenous people in the various regions of the globe. Over the centuries, as distinct peoples and sovereign nations, we have engaged in relations with a vast number of States. As the historical record makes clear, virtually all of the States that have had dealings with Indigenous peoples and that have sought control over our territories, lands and resources have engaged in reprehensible and unconscionable acts. These acts include:

- devastating colonialism
- pervasive racial and other forms of discrimination
- widespread land and resource dispossession
- genocide and cultural genocide
- slavery
- persistent failure to honour treaty commitments.

The ongoing legacy of these actions against Indigenous peoples is the perpetuation of extreme and debilitating poverty. Rampant poverty severely impedes the enjoyment by Indigenous peoples of our basic human rights. It constitutes “*a violation of human dignity*” and “*renders democracy ... fragile*” (Human rights and extreme poverty, UNCHR Res. 2000/12, 17 April 2000.).

In regard to the new Rome Statute of the International Criminal Court, (U.N. Doc. A/Conf.183/9 (1998), adopted in Rome, 17 July 1998, Arts. 12, 17, 87, 126), States have accorded themselves immunity from prosecution, as a last resort by the ICC, for a wide range of criminal acts committed prior to their ratification of this Statute. Therefore, Indigenous peoples have no recourse or remedy under the Statute for past acts of genocide and crimes against humanity committed against them by States and others.

In view of the lack of effective remedies for Indigenous peoples, the current standard-setting process within the U.N. system assumes an even greater importance. This vital procedure must be carried out with the utmost integrity and sensitivity. It must not be undermined. Ongoing injustices would be seriously compounded if, despite our vigorous opposition, the positions of some of the offender governments on the draft Declaration were allowed to prevail.

Role of Indigenous peoples in the standard-setting process

In view of the extraordinary situation facing Indigenous peoples, it is imperative that the role of Indigenous peoples in the standard-setting process be significantly strengthened. This unique, unacceptable situation calls for special measures for redress.

In its resolution entitled International Decade of the World's Indigenous People (GA Res. 56/140, 19 December 2001), the U.N. General Assembly “underlines the importance of effective participation by indigenous representatives in the open-ended inter-sessional working group of the Commission on Human Rights”. The draft Declaration also affirms: “Indigenous peoples have the right to participate fully ... at all levels of decision-making in matters which may affect their rights, lives and destinies through representatives chosen by themselves” (Art. 19).

Yet the current role of Indigenous representatives in the Working Group can hardly be considered as “effective” or “full”. It is fundamental to any sense of democracy and justice that States, many of which are responsible for committing atrocities against Indigenous peoples worldwide, not dominate this particular standard-setting process. Nor should Indigenous peoples be prevented from participating in the present process, as a result of a difficult accreditation procedure that can take up to two years.

Over the past few decades, we have increasingly made extensive and unique contributions in a wide range of international forums. As international political actors, peoples and nations, we have a right and a responsibility to fulfill our role in strengthening the international human rights system, safeguarding the rights of our people, and contributing to peace, international cooperation, and the heritage of humankind. On May 24, 2002, on the occasion of the first session of the Permanent Forum on Indigenous Issues, Secretary-General Kofi Annan stated:

You [Indigenous peoples] have a home at the United Nations. You have rights, needs and aspirations that can and must be addressed by the world organization. And you have knowledge, vision, values, skills and many other attributes that can and must help us at the United Nations, and indeed all of humankind, to achieve our long-sought goals”

Indigenous peoples and our basic rights are the central subjects of the draft Declaration. We constitute the past and current victims of grave human rights violations by States and third parties. Therefore, we must now be assured a central role in elaborating human rights standards that are remedial, uplifting, and just.

Globally, a vast range of human rights abuses against Indigenous peoples continue to go unchecked. The draft Declaration, if adopted by the General Assembly, is intended, inter alia, to help address this ongoing tragedy.

In a spirit of cooperation, we continue to welcome a constructive dialogue with all State representatives in the intersessional Working Group. However, the overall standard-setting process must fully respect Indigenous peoples and our distinct role. We must be in a position to ensure that this is carried out in a manner that is fully consistent with the Purposes and Principles of the U.N. Charter and the key objectives of the standard-setting process.

Need for urgent action by UNCHR

Existing circumstances in the Working Group are creating a crisis in the standard-setting process. The measures that we propose below should well serve to reinforce respect for the U.N. Charter, democracy and human rights. Our enhanced role should strengthen multilateralism, in a fair and balanced manner that is fully consistent with principles of justice and international law.

In the United Nations Millennium Declaration (U.N. Doc. A/RES/55/2, 8 December 2000), Member States have avowed that they “will spare no effort to promote democracy and strengthen the rule of law, as well as respect for all internationally recognized human rights” (Art. 24). They have also declared that they “will spare no effort to make the United Nations a more effective instrument for pursuing ... the fight against injustice” (Art. 29).

In light of all of the above considerations, we respectfully urge that the following measures be taken by the U.N. Commission on Human Rights on an urgent basis:

- Explicitly affirm the distinct status and essential role of Indigenous peoples in the standard-setting process, so as to ensure that the numerous States that

have committed atrocities against Indigenous peoples are not dominating the process

- In particular, elaborate on the full and effective participation of Indigenous peoples and eliminate existing accreditation problems for Indigenous participants
- Seek increased funding for Indigenous peoples, so as to significantly enhance their active input in the process on an equitable regional basis
- Provide for an impartial, democratic, balanced and fair procedure within the intersessional Working Group that is fully respectful of the Purposes and Principles of the U.N. Charter and the vital objectives of the standard-setting process

Declare that any draft Declaration recommended by the Working Group for adoption by the United Nations General Assembly must have strong support among Indigenous peoples, as indicated by their representatives in the process.
