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EFFECTIVE FUNCTIONING OF HUMAN RIGHTS MECHANISMS

**Written statement* submitted by International Indian Treaty Council (IITC),
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.

[4 February 2005]

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

On January 17, 2005, Amnesty International issued a call to Members of this Commission to “demonstrate an unequivocal commitment to human rights”:¹

Amnesty International takes the opportunity of today's election of the officers of the Bureau of the 61st session of the Commission on Human Rights the Commission to urge governments to take careful account of the findings of the High Level Panel on Threats and Challenges about the Commission as they prepare for the upcoming session. Members of the Commission must act now to re-establish the credibility and professionalism of the Commission.

Amnesty International calls upon Members of the Commission to end their use of double standards in dealing with human rights violations, to demonstrate a real commitment to human rights, and to enhance the human rights expertise of their delegations to the Commission.

The International Indian Treaty Council echoes this call, particularly in regard to the Commission's Working Group on the United Nations Draft Declaration on the Rights of Indigenous Peoples. As demonstrated by the Chairman/Rapporteur's report to this Commission, the Working Group is addressing Indigenous Peoples human rights as if there were no frame of reference in existing human rights standards and jurisprudence.

The Statement by Finland, Iceland, New Zealand, Norway, Sweden and Switzerland at the beginning of the December 2004 Session, reflects their “difficulty” with the recognition of Indigenous Peoples' human rights:

Mr. Chairman, the Declaration must be a comfortable fit with the constitutional and policy frameworks of democratic states. It must be compatible with the responsibilities of democratically-elected parliaments and houses of representatives to set social policy and economic priorities and to draft legislation and pass laws. Nor can it leave open the potential to undermine constitutional arrangements, including those with indigenous peoples, the territorial integrity and the unity of states, or the sovereignty of their parliaments. It must recognize also, Mr. Chairman, the responsibility of governments to govern for the good of all their citizens.

This criteria for recognition of Indigenous Peoples' rights means in less diplomatic language, that Indigenous human rights must be recognized only if consistent with national legislation or constitutions, subject to the sovereignty of democratically elected parliaments. But it is democratically elected parliaments and houses of representatives that have consistently and with impunity violated Indigenous Peoples' human rights. It was the democratically-elected Congress of the United States, for example, that enacted the Indian Land Claims Act that “awarded” pennies per acre for some, but not all, Indigenous land claims, and did not allow Indigenous Peoples to litigate the issue of title to their property, but only how much, if anything, they would be “awarded” for their stolen lands. The Inter-American Commission on Human Rights condemned this fraudulent process as a violation of the rights of the Western Shoshone Indian Nation, a decision totally ignored by the democratically-elected government of the United States and its democratically elected Congress.² Obviously, this was not a “comfortable fit.”

The CERD Committee has also commented on the democratically-elected United States government's constitutional framework with regard to Indigenous Peoples:

“21. The Committee notes with concern that treaties signed by the government and Indian tribes, described as “domestic dependent nations” under national law, can be abrogated unilaterally by Congress and that the land they possess or use can be taken without compensation. It further expresses concern with regard to information on plans for the expansion of mining and nuclear waste storage on Western Shoshone ancestral land, for placing their land to auction for private sale and other actions affecting the rights of indigenous peoples.³”

This “uncomfortable fit” has been completely ignored by the United States.

The perception on the part of a few States that there is a level playing field where the State may suffer injury if the rights of Indigenous Peoples are recognized is also reflected in the most recent United States proposal for Article 36, on Treaties. They would have the State party submit the dispute to a competent international body if a treaty dispute were resolved nationally in the favor of Indigenous Peoples.⁴ Despite the US violation of the over 300 Treaties it signed with Indigenous Nations, it seems their primary concern is that they might suddenly become the victim if Indigenous Peoples rights were finally upheld!

Indigenous delegations to the Intersessional Working Group on the Draft Declaration for the Rights of Indigenous Peoples have consistently presented positions based entirely on international law and jurisprudence, demonstrating beyond any argument that the Sub-Commission Draft is legally sound and entirely consistent with existing human rights standards.⁵ The IITC, along with many others, have cited examples of the violations of existing standards and the need to specifically recognize these existing human rights standards in the Declaration as a matter of survival for Indigenous Peoples. The Sub-Commission itself is composed of human rights experts, elected by States, as is the Working Group on Indigenous Populations, where the draft was negotiated with State and Indigenous Peoples’ participation. The attempts by some states to diminish Indigenous Peoples human rights, as Amnesty International points out in a broader context, only undercuts the credibility of the United Nations and particularly, this Commission.

To assign bad faith to all States involved in these discussions would not accurately reflect the serious issues being addressed by the Working Group. There are some States that have repeated, over these 10 years, their support for the standards reflected in the Sub-Commission text.

And few States may have sincere difficulty with some concepts reflected in the Draft. During the last days of the November session of the Working Group, the whole European Community (it seems) turned out for a discussion of the recognition of collective rights as a cross-cutting issue. From Portugal and Spain to Finland, the whole of Europe is apparently concerned about the recognition of collective rights as human rights. Their contention seems to be that only individual rights are human rights, and that collective rights are not.⁶

A Declaration on the Human Rights of Indigenous Peoples must necessarily address the human rights of peoples and not individuals. It may be true that when the United Nations was first formed and declared the Universal Declaration on Human Rights, that it was dominated by States with a western view of the world and a cultural and political history valuing the primacy of the individual. But at the time of the founding of the UN, the rest of the world, primarily Africa and Asia, as well as parts of Central and South America as well as many Island States

were still colonies of many of these same founding States. Colonized Peoples' including Indigenous Peoples' world-views and values, their vision of the dignity of the human family was not considered at the time.

Over time, the process of de-colonization resulted in membership in the United Nations of many previously colonized Nations, supported by the United Nations Charter. But many Peoples within the national borders of many ex-colonies continue to be colonized and it is the need and desire of these Peoples to have their human rights recognized, collectively, as Peoples. The strongly held article of Western faith, the primacy of the individual has also been tempered and has evolved within United Nations human rights standards and jurisprudence. The International Labor Organization Convention No. 169 recognizes the collective rights of Indigenous Peoples. The Convention on Genocide, the Convention on the Elimination of all forms of Discrimination Against Women, the Convention on the Rights of the Child, all address the collective rights of groups, as does the CERD Convention. The 1978 UNESCO Declaration on Race and Prejudice and the UNESCO Declaration on Cultural Diversity have also contributed a collective rights perspective to UN standards. The two intentional Human Rights Covenants address rights of Peoples as a collective.

We note that both the Inter-American Court and the Inter-American Commission on Human Rights recognize Indigenous collective rights, under both the American Convention on Human Rights and the American Declaration on the Rights and Duties of Man.⁷ We also note that the African Commission on Human Rights is taking great steps to recognize the rights of African Indigenous Peoples, valuing the dignity and worth of traditional African cultures and world-views, weaving them into the rich fabric of Africa as a matter of human rights.⁸ Can the UN do no less for the world's Indigenous Peoples?

We urge States of good will to examine the cultural and political biases in their consideration of the text of the United Nations Draft Declaration for the rights of Indigenous Peoples as approved by the UN Subcommission Prevention of Discrimination and the Protection of Minorities. Human dignity requires the recognition of other world-views that must be reflected in United Nations standards if the United Nations is truly to reflect an international perspective and serve an international community. We echo the call of Amnesty International to member States of this Commission, "... to demonstrate a real commitment to human rights, and to enhance the human rights expertise of their delegations to the Commission.

For all our relations...

¹ News Release issued by the International Secretariat of Amnesty International, AI Index IOR 43/004/2005, 17 January 2005. Found at <http://amnesty-news.c.topica.com/maac46babdnZJbb0isgb/>, visited January 15, 2005.

² Inter-American Commission on Human Rights, Report 113/01, Mary and Carrie Dann v. United States, Case No. 11.140, October 15, 2001.

³ Concluding Observations of the Committee on the Elimination of Racial Discrimination, United States of America, CERD/C/59/Misc.17/Rev.3, August 2001.

⁴ See, pages 9 and 10, INDIGENOUS ISSUES, Draft report of the working group established in accordance with Commission on Human Rights resolution 1995/32, CPR 7, Chairperson-Rapporteur: Mr. Luis -Enrique Chávez (Peru) [preliminary report, unedited].

⁵ See, eg, The UN Draft Declaration on the Rights of Indigenous Peoples, Forest Peoples Programme, Briefings, May, 2003, <http://www.forestpeoples.org/briefings.htm>, visited February 1, 2005. This excellent brief on the international juridical foundation for Indigenous Peoples' collective rights, by Fergus McKay, was presented to the Foreign and Commonwealth Office of the United Kingdom, apparently to deaf ears.

⁶ But see, fn. 5, above.

⁷ See, *inter alia*, Yanomami, 13 *Case 7615 (Brazil)*, OEA/Ser.L/V/II.66, doc 10 rev 1 (1985), 33; 14 *Report on the Situation of Human Rights of a Segment of the Nicaraguan Population of Miskito Origin*, OEA/Ser.L/V/II.62, doc.26.(1984), at 81, para. 15; Mary and Carry Dann case, fn. 3 herein; cited in Forest Peoples' Briefing, fn. 5 herein.

⁸ See, e.g., Report of the African Commission's Working Group of Experts on indigenous populations/communities submitted in accordance with the "Resolution on the rights of indigenous populations/communities in Africa" adopted by the African Commission on Human and Peoples' rights at its 28th Ordinary Session (2004).
