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Right to Development as a Human Right

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Indigenous Peoples and International Development Policies

by Chief Ted Moses

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INDIGENOUS PEOPLES AND INTERNATIONAL DEVELOPMENT POLICIES
CHIEF TED MOSES

My interest in development policy is not academic. I am a victim of development. I would not be here right now making this statement at the United Nations except for the fact that Canada's largest hydro-electric project destroyed the river where my village is situated on James Bay in Northern Quebec. I became a chief because of that development project. I learned about development in a court of law, standing before a judge defending my parent's way of life; trying to explain a subsistence economy, telling a judge what it is like to hunt, fish and trap, how my people have survived through that means for thousands of years. I fought against development, sitting at the negotiating table, facing the lawyers of the largest power company in Canada. And finally, under duress, I signed a treaty permitting that development project to be built; and have spent my time, ever since, struggling to make governments respect that treaty. That is the perspective I bring to this global consultation.

I am not against development. But I would like you to know that indigenous peoples know development primarily as victims of development. Our history, particularly the history of indigenous peoples in the Western Hemisphere since Columbus, is characterized by the extermination of indigenous peoples as a direct result of development. Indigenous peoples are not simply another social group affected by development policy. We are imperiled, our very existence is threatened as a direct outcome of development.

Indigenous human rights, the right to life, the right to our own means of subsistence, have historically been denied to us because of development on our lands; forced development that ignored our needs, our economies, our very existence. That is the history of indigenous peoples in the Americas. But this is also contemporary history--it is still going on.

The United Nations has considerable difficulty confronting the human rights implications of development. Development is conveniently classified as an economic issue best handled by economic policy experts who take no responsibility for the apparently unrelated social issues of discrimination, racism, apartheid, and torture, which are handled by human rights experts who know little about development. For indigenous peoples, the abuse of our human rights lies principally and squarely as a development issue. Human rights and the right to development can not be separated--the relationship with development defines our essential condition as indigenous peoples. Indigenous peoples are the peoples who lost their lands, their livelihoods, their resources, to development.

You will understand then, if I say that development is an indigenous human rights issue; and that we do not want to see international development policy formulated without us. I do not think we could survive another 500 hundred years of unregulated development policy.

This is one half of the indigenous perspective--indigenous peoples as victims of development. We must also examine the right to development as it applies to indigenous peoples--strategies to make indigenous peoples beneficiaries of development. So far this has not happened. Indigenous peoples are routinely perceived as obstacles to development--peoples who must be removed to permit development to take place. Indigenous peoples are not consulted on development policy or development projects. Their lands and resources--their essential and basic capital, is exploited, expended, and exhausted by others. They do not benefit, in fact, they rarely even share any of the benefits with the developers.

As a consequence indigenous peoples are characterized as impoverished groups without a viable economic base--not so much victims of development, as victims of development policy which deprives them of the only and most essential economic base they actually possess, that is, their own lands and resources.

This then is the perspective I would like to start with. This is where development and human rights come together as a single issue. Let us examine some of the most fundamental concepts and principles underlying international development policy from an indigenous perspective.

1. DEVELOPMENT IS A SUBJECT OF VITAL AND FUNDAMENTAL INTEREST TO INDIGENOUS PEOPLES. THE MOST DESTRUCTIVE AND PREVALENT ABUSES OF INDIGENOUS HUMAN RIGHTS

ARE A DIRECT CONSEQUENCE OF DEVELOPMENT STRATEGIES THAT FAIL TO RESPECT THE FUNDAMENTAL RIGHT OF SELF-DETERMINATION.

The right of self-determination as it applies to peoples is clearly enunciated in the fundamental human rights instruments of the United Nations. The simple and tragic fact is that the right of self-determination of indigenous peoples has been almost universally disregarded. Let me be very clear: my concern here is not the right to independence or the declaration of separate sovereignty. The right of self-determination is a fundamental right from which important other rights derive; in particular the right of peoples to benefit from and dispose of their own resources, and the related right that a people not be deprived of their own means of subsistence.

These are the protections we as indigenous peoples most need; and indeed, historically and to the present day, these are the indigenous human rights that are most consistently violated.

I can state quite explicitly: if our right to self-determination had been respected, if our lands and resources had remained under our control and protection, the earth today would be a better place to live for all mankind. And the indigenous peoples of the world would not be the poverty stricken remnants of the so called "primitive" peoples--the terms that governments use to characterize us today.

The most fundamental right we need is self-determination. The failure to apply and respect this right to indigenous peoples is directly responsible for the conflict between development and our survival.

2. HUMAN RIGHTS ABUSE IS A DIRECT CONSEQUENCE OF DEVELOPMENT WHERE:

- A. THE INDIGENOUS LAND BASE IS REDUCED, EXPROPRIATED, OR COMPROMISED;
- B. NATURAL RESOURCES, WATERS, WILDLIFE, FORESTS, AND FOOD SUPPLIES ARE REDUCED, ELIMINATED, OR DEGRADED THROUGH COMMERCIAL EXPLOITATION OR INCOMPATIBLE LAND USE;
- C. ENVIRONMENTAL QUALITY IS DEGRADED OR COMPROMISED;
- D. INDIGENOUS PEOPLES ARE REMOVED FROM THEIR LANDS;
- E. INDIGENOUS PEOPLES ARE DISPLACED OR PRE-EMPTED FROM THE USE OF THEIR LANDS BY EXTERNAL POPULATIONS.

These are the primary causes or sources of violations of indigenous human rights. While experts typically associate human rights abuse with religious prejudice, persecution of

minorities, and political conflict; these are not, typically, the reasons behind abuse of indigenous human rights.

Indigenous peoples have in most cases lost their lands, or most of their lands. They have no place to live, and no place to call their own. They are quite distinct from the typical refugee who may have been forced to leave a homeland behind. The land they lost is their homeland, their only homeland. It is the source of all of their wealth, all of their capital.

The indigenous lands can not be replaced, and can not be set in any kind of equivalence with money. A few States claim to provide lands for indigenous peoples in the form of reservations or reserves. These are small indigenous ghettos comprising the poorest lands to which indigenous peoples have been relegated. The direct equivalent is the "homeland" system of the apartheid regime in South Africa.

Some States, publicize their willingness to enter in "land claims" negotiations with indigenous peoples. Such negotiations are a last resort, almost always associated with the intention of the State to implement development projects on indigenous lands. The pressure to develop becomes the impetus to reach a settlement with the indigenous peoples; but it also becomes a gun held to the heads of the indigenous peoples, with the threat that a development project will be built with or without indigenous consent.

The Project LaGrande (1975) that I referred to at the beginning of this statement is an example of this kind. This mega-project was started without our consent. In fact the Cree people were not even officially notified that a project was to be constructed. The Government of Quebec built the project and left it to us to defend our rights as best we could. We negotiated, but we negotiated under duress. We were forced to agree that we would not pursue our internationally protected right to require that future projects not have adverse social impacts. We were forced to agree that Canada and Quebec would not be required to respect international law. This concession in our treaty is proof that we negotiated under duress. Duress is a normal characteristic of negotiation between indigenous peoples and developers.

I want to note that the negotiation of our treaty, La Convention de la Baie James et du Nord Quebecoise, was probably more advantageous to us than most similar settlements between developers and indigenous peoples. We managed to save some of our land and some of our rights. But our case is informative. We do not enjoy benefits from the development project itself.

The corollary benefits that were to have provided a future economic base have not been forthcoming. Our land is gone and flooded; our rivers are poisoned with deadly methyl mercury; we can no longer eat the fish. The State has received the benefits of development with a promise in treaty to meet certain obligations to indigenous peoples. But we find it is very difficult to enforce such obligations against a State.

It is essential to recognize that environmental degradation is as destructive to indigenous peoples as the loss of the land itself. The Brundtland Report of the World Commission on the Environment called attention to the important role indigenous peoples have had in the preservation of the world environment.

3. THE ELIMINATION AND DEGRADATION OF THE INDIGENOUS LAND BASE HAS RENDERED INDIGENOUS PEOPLES THE POOREST OF THE POOR. INDIGENOUS ECONOMIES ARE PARTICULARLY DEPENDANT ON UTILIZATION OF THE LAND AND ITS RESOURCES.

4. INDIGENOUS PEOPLES HAVE SUFFERED SOCIAL AND CULTURAL DISINTEGRATION AS A DIRECT RESULT OF THE LOSS OF THEIR LANDS. THERE ARE STRONG SOCIAL, CULTURAL, SPIRITUAL AND RELIGIOUS AFFINITIES BETWEEN INDIGENOUS PEOPLES AND THEIR LAND. THIS REVERENCE HAS SERVED TO PROTECT THE LAND AND ITS RESOURCES FOR THOUSANDS OF YEARS.

Indigenous lands are as important as cultural and spiritual resources, as they are as economic resources. This a particular part of the tragedy of indigenous land loss. The loss of sacred sites, burial places, and ancestral lands has contributed directly to the disintegration of indigenous culture and society. The failure of Western cultures to understand this relationship prevents proper evaluation when conflicts arise between development and preservation of indigenous lands. Western value systems dominate social evaluations and jurisprudence to the detriment of indigenous peoples. Human rights violations inevitably result.

5. THE DESTRUCTION, DEGRADATION OR REMOVAL OF NATURAL RESOURCES, WATERS, WILDLIFE, FORESTS, AND FOOD SUPPLIES FROM INDIGENOUS LANDS COMPROMISES THE INDIGENOUS PEOPLES' RIGHT TO LIFE, AND RIGHT TO THEIR OWN MEANS OF SUBSISTENCE, TWO OF THE MOST FUNDAMENTAL OF ALL HUMAN RIGHTS.

6. THE DEGRADATION OF THE NATURAL ENVIRONMENT THREATENS INDIGENOUS SURVIVAL BY DESTROYING INDIGENOUS ECONOMIES AND THEIR MEANS OF SUBSISTENCE.

Indigenous opposition to development is often simply objection to the thoughtless destruction of the environment for short-term and temporary objectives. It is often too late when we discover that the indigenous peoples were correct in opposing a particular development. Indigenous peoples have always

recognized the complex and interdependent relationships that characterize life on earth. We live close enough to nature to recognize some relationships that scientists are just themselves beginning to discover. Indigenous opposition to development should be taken as a valid warning that a development may be more destructive than its proponents indicate. Let us state once again: we do not oppose development, however, we do oppose destructive and irreversible changes to our life support systems.

La Convention de la Baie James et du Nord Quebecois gave our people exclusive rights to continue to hunt, fish and trap, as part of the maintenance of our traditional economy. But, in fact, these rights have become illusory because hydro-electric development has led to serious levels of environmental contamination, and public authorities have now prohibited the consumption of fish and some wildlife since they now constitute a health hazard.

7. MODERN DEVELOPMENT STRATEGIES CONTINUE TO DISPLACE INDIGENOUS PEOPLES FROM THEIR LANDS AND RESOURCES, DESTROY INDIGENOUS ECONOMIES, AND ELIMINATE PRACTICAL MEANS FOR THE ESTABLISHMENT OF A VIABLE ECONOMIC BASE.

As I pointed out in the case of the Project LaGrande, our development strategies have not really changed to accommodate and respect the rights of indigenous peoples. Development strategies, even those strategies intended to benefit the most disadvantaged peoples, do not meet their own objectives. Development strategies are still based on evaluations and analysis made without recourse to the peoples who are most affected. Too often the result is the destruction of the only existing economic base, the further erosion of existing capital, and a widening of the gap between the poorest peoples and the real beneficiaries of development. Development is still being approached with the philosophy that "we know what is best for them". This criticism holds as much for indigenous peoples as it does for development in the Third World, where experts who know little or nothing about a people, their wealth and their traditions, impose their own idea of development, and cause great suffering and harm. Indigenous peoples must be involved in consultation, and projects must be subject to indigenous consent, essential components of self-determination.

8. DEVELOPMENT STRATEGIES CONTINUE TO REPRESENT INDIGENOUS PEOPLES AS OBSTACLES WHO MUST SOMEHOW BE REMOVED OR PLACATED BEFORE DEVELOPMENT IS POSSIBLE.

There is an all pervasive and widely held belief among experts and development authorities that indigenous peoples are not interested in development, and lack the sophistication to

appreciate and comprehend development issues. This is consistent with the view that indigenous peoples are "primitive", and have only primitive land and resource utilization needs. I sometimes wonder if this is a genuine misunderstanding, or if it is a strategy to exclude indigenous peoples from the benefits of modern development. Because in practice, the outcome of development projects is a request, backed by force, that the indigenous peoples relocate in order to allow development to proceed. Some compensation may be offered; but it is insignificant when compared to the revenues from development, or the capital value of the lands that we are forced to "surrender". The term "surrender" is applied by most States, including Canada, for the process of seizing indigenous lands for development.

9. THE BASIC CONCEPTS OF DEVELOPMENT MUST BE RE-EVALUATED:

- A. TO DETERMINE WHETHER THEY TRULY REPRESENT LONG-TERM DEVELOPMENT, OR WHETHER THEY ARE SHORT TERM EXPLOITATIVE ARRANGEMENTS WHICH ENRICH ONE SEGMENT OF SOCIETY AT THE EXPENSE OF ANOTHER;
- B. TO DETERMINE IF THEIR LONG-TERM EFFECTS ARE COMPATIBLE WITH THE CONCEPT OF ECOLOGICALLY SUSTAINABLE DEVELOPMENT;
- C. TO DETERMINE IF THEY REPRESENT MUTUALLY EXCLUSIVE AND IRREVERSIBLE DECISIONS THAT PRE-SUPPOSE KNOWLEDGE ABOUT FUTURE NEEDS AND LAND AND RESOURCE UTILIZATION THAT WE DO NOT YET POSSESS;
- D. TO DETERMINE WHAT VALUE JUDGEMENTS AND PRIORITIES THEY ASSUME, AND WHETHER SUCH JUDGEMENTS ARE COMPATIBLE WITH INDIGENOUS PEOPLES' RIGHT OF SELF-DETERMINATION AND RESPECT FOR FUNDAMENTAL HUMAN RIGHTS PRINCIPLES.

We utilize the word "development" to describe projects, such as the establishment of mines, hydro-electric installations, nuclear power stations, roads, forestry clear-cutting, pulp and paper mills, aluminum smelters, dams, wetlands drainage, fencing, predator extermination, forest clearing for crop lands, river straightening, levees and dykes, military installations, airports, petroleum and coal extraction, and urbanization. We must ask ourselves whether projects such as these truly and universally represent development. Is every dam a development? Is every drainage project a development? When we drain wetlands to create farm land, is that always truly development?

These are fundamental questions because there are always value judgements and decisions about costs and benefits that are implicit in any development decision. A decision to create farm lands at the expense of wetlands inevitably creates one group of beneficiaries at some cost to other interests. Attempts are often made to dismiss this question because conflicts are

inevitable, and development is necessary. The problem is that indigenous peoples are almost never the beneficiaries of development, and that indigenous values and indigenous economies are considered of secondary importance to the so called "greater needs of society". This is the argument commonly known as the "balance of convenience".

Inevitably the balance of convenience favours the perceived needs of the "common good" of urban society, corporate and trans-national organizations, military and national security interests, and government agencies. These are the priorities. Indigenous peoples' values and needs come way down on the list.

I think we also have to ask if the perceived needs for the common good are indeed in the best long-term interests of society. Farm lands cleared of forests years ago are no longer in production; but the forests are gone. Dammed rivers have destroyed fish production in such valuable species as salmon, whitefish and char. River straightening has resulted in massive downstream water contamination because the filter effect of wetlands has been lost.

In retrospect we would no longer consider this kind of activity to be development. There are two concepts involved: The development activity is not ecologically sustainable, and society is not advanced as a result of the activity. That is why I say that it is not really development at all. True, there were beneficiaries at the time, but this did not improve our lives, it did not elevate society or meet our long-term needs.

I think you will find that the indigenous concept of development, and this concept of society's long-term best interests coincide. This conclusion is supported by the Brundtland Report. Spending money and creating employment does not necessarily constitute development. We run the very serious risk that the things we do today in the name of development will in the future prevent real development from taking place. We are beginning to see evidence of this. The cost of undoing some of the existing damage, the legacy of old development, is quite high. I am saying simply that we have a common interest. I will go further: I believe that if States respect the indigenous peoples' right to self-determination, the effect and influence of respect for indigenous values will be beneficial to all mankind.

10. INDIGENOUS PEOPLES INVENTED AND PRACTISED THE CONCEPT OF LONG-TERM ECOLOGICALLY SUSTAINABLE DEVELOPMENT FOR THOUSANDS OF YEARS. THEY PASSED ON TO LATER GENERATIONS OF MANKIND LANDS AND RESOURCES IN THEIR PRISTINE STATE. THEIR

KNOWLEDGE AND PHILOSOPHY IS URGENTLY NEEDED NOW TO PREVENT MANKIND FROM DESTROYING THE ABILITY OF THE EARTH TO SUSTAIN LIFE.

11. THE INDIGENOUS PHILOSOPHY AND KNOWLEDGE OF ECOLOGICALLY SUSTAINABLE DEVELOPMENT CONTINUES TO BE APPLICABLE IN THE MODERN INDUSTRIALIZED WORLD. IT IS NOT THE RESULT OF "PRIMITIVE" LAND UTILIZATION, OR INABILITY TO EXPLOIT RESOURCES.

Some experts have stated that indigenous solutions can not be practically applied to solve contemporary problems. This is not true. It is easy to find examples of modern "primitive" peoples who have destroyed their environment, even though they do not supposedly possess the advanced industrial means to cause serious environmental damage. The indigenous environmental legacy represents a remarkable achievement that merits careful contemporary study. The means to cause damage to the earth has been available as long as man has inhabited the earth. The final conclusion can be only that the indigenous peoples are careful inhabitants, and are sensitive to the relationship between man and the source of all life.

12. THE SOCIAL AND ENVIRONMENTAL IMPACTS OF DEVELOPMENT MUST BE ASSESSED (OR AUDITED) ON THE BASIS OF INTERNATIONALLY APPROVED STANDARDS WHICH:

A. HAVE AS THEIR PRIORITY RESPECT FOR BASIC HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING THE RIGHT OF SELF-DETERMINATION;

B. REQUIRE THAT PEOPLES IMPACTED ARE BENEFICIARIES OF PROPOSED DEVELOPMENT;

C. TAKE INTO CONSIDERATION THE LONG-TERM AND NON-MONETARY EFFECTS OF PROPOSED DEVELOPMENT;

D. REQUIRE THAT FULL CONSIDERATION BE GIVEN TO ALTERNATIVE MEANS TO REALIZE THE SAME BENEFITS WITHOUT RECOURSE TO PROPOSED DEVELOPMENT;

E. REQUIRE THAT REASONABLE SOCIAL, ECONOMIC AND POLITICAL STANDING AND WEIGHT BE GIVEN TO MEETING INDIGENOUS ECONOMIC AND SOCIAL REQUISITES AS WELL AS CONVENTIONAL EVALUATION CRITERIA;

F. REQUIRE THAT A POSITIVE OR NEGATIVE RECOMMENDATION FOLLOWING A SOCIAL AND ENVIRONMENTAL IMPACT ASSESSMENT BE A DETERMINING FACTOR IN ANY DECISION TO PERMIT INTERNATIONAL FINANCING FOR PROPOSED DEVELOPMENT;

G. REQUIRE THAT A DEVELOPMENT BE CONSTRAINED FOLLOWING A NEGATIVE RECOMMENDATION.

It is mandatory that approval for development projects be contingent upon strict social and environmental assessment procedures. My recommendations relate to the concept, purpose,

and quality of any social and environmental impact assessment. A great deal is being said about environment and social impact, but very little has been changed as a result. Almost every jurisdiction is implementing laws to require impact audits for development. But the same factors which typically favour development over conservation, urban interests over rural, industrial over agrarian, and non-indigenous over indigenous; combine to neutralize and emasculate the impact assessment process.

In the case of the first massive hydro-electric project on Cree lands, the biggest in the world in 1975, there was no impact assessment at all. The balance of convenience argument was used to prevent any administrative scrutiny that could interfere with the construction of the project. A second major project is now being planned, this time there will be an assessment, but it will not affect whether or not the project is to be constructed. The procedure will specifically exclude social impacts, because the Crees were forced to sign an agreement that social impacts could not be advanced to oppose further development.

It is apparent that impact assessment has become an administrative process only. The assessment procedure serves only to demonstrate a legal jurisdiction's sensitivity to environmental and social concerns, but the projects proceed regardless. We become expert hypocrites.

These recommendations attempt to invest the assessment process with the authority to stop irresponsible development, and to require that the assessment process become part of international policy, a mechanism to provide the practical means to implement provisions in the United Nations Declaration on the Right to Development.

We need to set standards internationally for social and environmental audits of proposed development. I do not think there is any doubt that indigenous peoples have been victims of flagrant violations of their human rights associated with the right to development. The indigenous right to development has been denied. What are the available means to create equality of opportunity? I think the assessment process could provide the legal means to require developers to share the benefits with the peoples most affected.

The Declaration on the Right to Development states that the "enjoyment of certain human rights and fundamental freedoms cannot justify the denial of other human rights and freedoms". No State or jurisdiction will want restrictions on its right to develop. But what policy means are at our disposal

internationally to solve the problems that confront us and prevent developing countries and indigenous peoples from exercising their own right to development? We must insist internationally that social and environmental impact procedures be strictly formulated and strictly applied. Balance of convenience, national security, threatened energy shortages, and other similar pretexts should not be cause for exception.

I would like to point out that some of these same concerns reflecting the relationship between development and human rights were raised here last January (16-20 January 1989) at the United Nations Seminar on effects of racial discrimination on the social and economic relations between indigenous peoples and States. In closing I would like to briefly review certain relevant conclusions and recommendations from the Report of that seminar (E/CN.4/1989/22). The Seminar Report is now available as a United Nations publication in the special series for the World Campaign for Human Rights as HR/PUB/89/5.

"Racism and racial discrimination against indigenous peoples are practised through the rejection of indigenous economic, cultural, and social values, and the utilization of so called "modern" economic and social justifications for development, land expropriation, labour exploitation, and other practices which destroy indigenous economies and societies."

"The Seminar: recommends that States implement the principle that their relations with indigenous peoples be based upon free and informed consent, and co-operation, rather than merely consultation and participation and that this be respected as a right;

recommends that indigenous peoples should be entitled to long-term sustainable incomes by their communities without external interference;

demands that all States and relevant entities recognize and respect indigenous rights to lands and resources, and provide for just restitution and compensation for past infringements of such rights;

recognizes the fundamental relationship between respect for indigenous rights, and protection of the world's environment and recommends that this relationship be recognized explicitly in the work of the United Nations Environment Programme, in co-operation with indigenous peoples' organizations;

condemns the imposition of non-indigenous social, cultural and economic judgements and values upon indigenous peoples, and calls for the prohibition of assistance and support by United Nations agencies and other international, regional and national organizations for projects and development that threaten the human rights and fundamental freedoms of indigenous peoples, or adversely affect indigenous social, cultural, and economic rights;

urges full recognition of the indigenous right to development, and the requirement for full participation and consent of indigenous peoples in the selection, planning, implementation, and evaluation of development projects, consistent with the indigenous right to benefit from and control their own lands and resources;

recommends the incorporation of indigenous rights in the work of all States and international organizations involved with the development process, with the direct participation of indigenous peoples, and calls for closer co-operation among States and international organizations to utilize their resources more effectively to promote indigenous peoples' rights;

requests the Secretary-General to organize an international conference with the participation of competent United Nations organs and bodies of the United Nations system, Governments and indigenous peoples in order to develop concrete measures for the implementation of [the previous recommendation];

calls upon States and all international agencies to include indigenous rights and indigenous participation as a key component of development planning, in particular, national development plans and regional and global development strategies; and to emphasize their interrelationship with human resource development."

The parallels between the conclusions and recommendations of the Seminar, and the consistent views being voiced at this Global Consultation are persuasive reasons to work for the advancement of these recommendations as international policy.

I have one final point: for many indigenous peoples, our lands and our resources have been lost or destroyed. Human resources are all we have left; we have ourselves. Development is more than development projects; development is the advancement of peoples, the realization of peoples, the achievement of social, economic, cultural, and political rights. It is particularly

essential that we utilize our last remaining resource, our human resource correctly.

As indigenous peoples we offer our assistance and experience to other indigenous peoples and to developing countries who share our experience and condition. Our indigenous peoples' NGOs can be a resource and a vehicle to provide assistance to indigenous peoples' in developing countries and to the developing countries themselves. As a final recommendation I propose that this Global Consultation declare that Indigenous NGOs are the proper vehicle to extend development assistance, particularly to developing countries and indigenous peoples. This offers an excellent mechanism to extend our ideas and values where they are most needed. In the end we have only ourselves to offer. Thank you.