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ECONOMIC AND SOCIAL COUNCIL
COMMISSION ON HUMAN RIGHTS
Sub-Commission on Prevention of
Discrimination and Protection of Minorities
40th Session 21 June 1988

DISCRIMINATION AGAINST INDIGENOUS POPULATIONS

A working paper by Ms. Erica-Irene A. Daes containing a set of draft preambular paragraphs and principles for insertion into a universal declaration of indigenous rights

I. INTRODUCTION

At its fifth session, the Working Group on Indigenous Populations recommended to the Sub-Commission that the Chairman/Rapporteur of the Group at its fifth session be entrusted with the task of preparing a set of draft principles and preambular paragraphs for insertion into a future declaration on indigenous rights which could provide the basis for a more concise and concrete discussion on new standards at the Group's sixth session in 1988. Subsequently, the Sub-Commission by resolution 1987/16, the commission on Human Rights by resolution 1988/49 and Economic and Social Council by resolution 1988/36 have endorsed the request. Hence this working paper.

In preparing the text, a number of sources has been consulted. These include existing human rights instruments adopted by the United Nations and by other intergovernmental organizations, in particular those of the International Labour Organization and of the United Nations Educational, Scientific and Educational Organization, as well as drafting suggestions and comments submitted to the Group by both Governments and non-governmental organizations. In this regard, frequent reference was made to the "Analytical compilation of existing legal instruments and proposed draft standards relating to indigenous rights, prepared by the Secretariat in accordance with Sub-Commission resolution 1985/22". Recommendations made by Special Rapporteur Jos, R. Martınez Cobo in his *_Study on the Problem of Discrimination Against Indigenous Populations_* (E/CN.4/Sub.2/ 1986/7 and Add.1-4) have likewise been taken into account. The 14 draft principles in preliminary wording already adopted by the Working Group (E/CN.4/Sub.2/1987/22, annex II) are maintained with a few minor changes and additions and in a different order for reasons related to the longer listing of rights, internal consistency and appropriate chapter groupings.

Throughout the exercise, every attempt has been made to follow the guidelines contained in General Assembly resolution 41/120 of 4

December 1986, entitled "Setting international standards in the field of human rights".

II. UNIVERSAL DECLARATION ON INDIGENOUS RIGHTS: A SET OF DRAFT PREAMBULAR PARAGRAPHS AND PRINCIPLES

The General Assembly,

CONSIDERING indigenous peoples equal to all other human beings in dignity and rights in accordance with existing international standards, while recognizing the right of all individuals and groups to be different, to consider themselves different and to be regarded as such,

CONSIDERING that all peoples and human groups have contributed to the progress of civilizations and cultures which constitute the common heritage of humankind,

RECOGNIZING the need to promote and protect those rights and characteristics which stem from indigenous history, philosophy of life, traditions and social structures, especially as these are tied to the lands which the groups have traditionally occupied.

CONCERNED that many indigenous peoples have been unable to enjoy and assert their inalienable human rights and fundamental freedoms, frequently resulting in insufficient land and resources, poverty and deprivation, which in turn may lead to rebellion against all forms of oppression,

CONVINCED that all doctrines and practices of racial, ethnic or cultural superiority are legally wrong, morally condemnable and socially unjust,

REAFFIRMING that indigenous peoples in the exercise of their rights should be free from adverse distinction or discrimination of any kind,

ENDORSING calls for the consolidation and strengthening of indigenous societies and their cultures and traditions through ethnodevelopment and comprehensive participation in and consultation about all other relevant developmental efforts,

EMPHASIZING the need for special attention to the rights and skills of indigenous women and children,

BELIEVING that indigenous peoples should be free to manage their own affairs to the greatest possible extent, while enjoying equal rights with other citizens in the political, economic and social life of States,

CALLING ON States to comply with and effectively implement all international human rights instruments as they apply to indigenous

peoples,

ACKNOWLEDGING the need for minimum standards taking account of the diverse realities of indigenous peoples in all parts of the world,

SOLEMNLY PROCLAIMS the following rights of indigenous peoples and calls upon all States to take prompt and effective measures for their implementation,

PART I

1. The right to the full and effective enjoyment of all fundamental rights and freedoms, as well as the observance of the corresponding responsibilities, which are universally recognized in the Charter of the United Nations and in existing international human rights instruments.

2. The right to be free and equal to all other human beings in dignity and rights and to be free from adverse distinction or discrimination of any kind.

PART II

3. The collective right to exist and to be protected against genocide, as well as the individual rights to life, physical integrity, liberty and security of person.

4. The collective right to maintain and develop their ethnic and cultural characteristics and identity, including the right of peoples and individuals to call themselves by their proper names.

5. The collective right to protection against ethnocide. This protection shall include, in particular, prevention of any act which has the aim or effect of depriving them of their ethnic characteristics or identity, of any form of forced assimilation or integration, of imposition of foreign life styles and of any propaganda directed against them.

6. The right to preserve their cultural identity and traditions and to pursue their own cultural development. The rights to the manifestations of their cultures, including archeological sites, artifacts, designs, technology and works of art, lie with the indigenous peoples or their members.

7. The duty of States to grant -- within the resources available -- the necessary assistance for the maintenance of their identity and their development.

8. The right to manifest, teach, practice and observe their own religious traditions and ceremonies, and to maintain, protect and have access to sacred sites and burial grounds for these purposes.

9. The right to maintain and use their own languages, including for administrative, judicial and other relevant purposes.

10. The right to all forms of education, including in particular the right of children to have access to education in their own languages, and to establish, structure, conduct and control their own educational systems and institutions.

11. The right to promote intercultural information and education, recognizing the dignity and diversity of their cultures, and the duty of States to take the necessary measures, among other sections of the national community, with the object of eliminating prejudices and of fostering understanding and good relations.

PART III

12. The right of ownership and possession of the lands which they have traditionally occupied. The lands may only be taken away from them with their free and informed consent as witnessed by a treaty or agreement.

13. The right to recognition of their own land-tenure system for the protection and promotion of the use, enjoyment and occupancy of the lands.

14. The right to special measures to ensure their control over surface resources pertaining to the territories they have traditionally occupied, including flora and fauna, waters and sea ice.

15. The right to reclaim land and surface resources or where this is not possible, to seek just and fair compensation for the same, when the property has been taken away from them without consent, in particular if such deprivation has been based on theories such as those related to discovery, *terra nullius*, waste lands or idle lands. Compensation, if the parties agree, may take the form of land or resources of quality and legal status at least equal to that of the property previously owned by them.

16. The right to protection against any action or course of conduct which may result in the destruction, deterioration or pollution of their land, air, water, sea ice, wildlife or other resources without free and informed consent of the indigenous peoples affected. The right to just and fair compensation for any such action or course of conduct.

17. The duty of States to seek and obtain their consent, through appropriate mechanism, before undertaking or permitting any programmes for the exploration or exploitation of mineral and other subsoil resources pertaining to their traditional territories. Just and fair compensation should be provided for any such activities undertaken.

PART IV

18. The right to maintain within their areas of settlement their traditional economic structures and ways of life, to be secure in the enjoyment of their own traditional means of subsistence, and to engage freely in their traditional and other economic activities, including hunting, fresh and salt water fishing, herding, gathering, lumbering and cultivation, without adverse discrimination. In no case may an indigenous people be deprived of its means of subsistence. They have the right to just and fair compensation if they have been so deprived.

19. The right to special State measures for the immediate, effective and continuing improvement of their social and economic conditions, with their consent, that reflect their own priorities.

20. The right to determine, plan and implement all health, housing and other social and economic programmes affecting them, as far as possible through their own institutions.

PART V

21. The right to participate fully in the political, economic and social life of their State and to have their specific character duly reflected in the legal system and in political institutions, including proper regard to and recognition of indigenous laws and customs.

22. The right to participate fully at the State level, through representatives chosen by themselves, in decision-making about and implementation of all national and international matters which may affect their life and destiny.

23. The collective right to autonomy in matters relating to their own internal and local affairs, including education, information, culture, religion, health, housing, social welfare, traditional and other economic activities, land and resources administration and the environment, as well as internal taxation for financing these autonomous functions.

24. The right to decide upon the structures of their autonomous institutions, to select the membership of such institutions, and to determine the membership of the indigenous people concerned for these purposes.

25. The right to determine the responsibilities of individuals to their own community, consistent with universally recognized human rights and fundamental freedoms.

26. The right to traditional contacts and co-operate, including cultural and social exchanges and trade, with their own kith and kin across State boundaries in accordance with established laws and

practices.

27. The duty of States to honour treaties and other agreements concluded with indigenous peoples.

PART VI

28. The individual and collective right to access to and prompt decision by mutually acceptable and fair procedures for resolving conflicts or disputes between States and indigenous peoples, groups or individuals. These procedures should include, as appropriate, negotiations, mediation, national courts and international human rights review and complaints mechanisms.

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