



# Advancing the Human Rights of Indigenous Peoples

A CRITICAL CHALLENGE FOR THE  
INTERNATIONAL COMMUNITY

*Voices from a forum at the 61st Session of the  
United Nations Commission on Human Rights  
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**fidh**



NCIV



**Rights & Democracy**

International Centre for Human Rights  
and Democratic Development

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# INTRODUCTION

“Over the years, we have witnessed the immense obstacles certain persons and groups face in enjoying their human rights fully. Among the groups most at risk and in need of protection are indigenous peoples, who have suffered perennial prejudice and discrimination.” - statement by 28 Independent Experts of the U.N. Human Rights Commission, Human Rights Day, 10 December 2004

International human rights treaties recognize that all peoples have the right to maintain their unique cultures and traditions, exercise control over their own lives, and to use and benefit from the lands and resources of their territories. However, when it comes to Indigenous Peoples, states have persistently failed to recognize and uphold these rights. The devastating consequence has been the profound impoverishment and marginalization of Indigenous women, men and children around the world and the denial of such basic rights as rights to food, health, and education and livelihood.

Indigenous Peoples have long engaged with the international community in an attempt to right this wrong. Indigenous Peoples’ efforts to bring their experiences and perspectives to the United Nations and

to regional bodies has led to the emergence of an important body of international human rights norms in which universal human rights protections are applied to the specific circumstances of Indigenous Peoples. For example, U.N. treaty bodies have affirmed that state obligations under widely ratified human rights instruments include a duty to protect distinctive collective rights of Indigenous Peoples, including rights in respect to land, culture and self-determination.

A draft Declaration on the Rights of Indigenous Peoples, long under consideration by the Commission on Human Rights, seeks to elaborate, in a consistent and coherent manner, “minimum standards for the survival, dignity and well-being of the indigenous peoples of the world” (article 42). The draft Dec-

laration is wide-ranging, reflecting the complex interconnection and interdependency of the individual and collective rights of Indigenous persons and Peoples – and the many ways in which these rights are being violated. Some of the diverse critical themes in the draft Declaration include:

- The right of all Indigenous women, men and children to live in dignity and equality;
- The right of Indigenous Peoples to maintain and continue to develop their distinct cultural practices, knowledge systems and ways of living;
- The right of Indigenous children to be brought up and educated in their own language and culture;
- The right of Indigenous Peoples to be consulted on decisions and actions impacting on their rights and interests and to be protected against actions taken without their free, prior and informed consent;
- Rights related to access to, control and use of lands, territories and resources central to the identity, survival and well-being of Indigenous Peoples; and
- Recognition that the right of self-determination of all peoples found in the first article of both

the Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights applies equally to Indigenous Peoples.

The draft Declaration was developed over many years by a working group of the U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities (now called the U.N. Sub-Commission on the Protection and Promotion of Human Rights). States, independent experts and Indigenous Peoples all played an active role in the development of the draft text. The Sub-Commission unanimously approved the text of the draft Declaration in 1994, but the Human Rights Commission did not; instead it referred the Declaration to an open-ended intersessional working group for further elaboration.

Little progress was made toward adoption of the Declaration throughout the entire first International Decade of the World's Indigenous People (1994-2004). In fact, the Working Group was able to agree on the provisional adoption of only 2 of the 45 articles of the draft text. However, as the first Decade drew to a close, a new climate of improved dialogue between states and Indigenous Peoples began to emerge. When the Working Group met in 2004, there was indication of an emerging consensus among states

and Indigenous Peoples concerning provisional adoption of a much larger number of articles, including new and revised articles proposed by the Indigenous Caucus.

In April 2005, the 61<sup>st</sup> Session of the Commission on Human Rights agreed to continue this standard setting process. On this occasion, and with a Second International Decade of the World's Indigenous People just beginning, a group of international human rights organizations organized a forum at the Commission to promote discussion of the advances that have been made in the recognition of the human rights of Indigenous Peoples and the work that remains to be done.

The forum was organized by Amnesty International, the International Federation of Human Rights Leagues (FIDH), the Friends World Committee for Consultation (Quakers), Rights & Democracy and the Netherlands Centre for Indigenous Peoples. The speakers were the High Commissioner for Human Rights, Louise Arbour; the Special Rapporteur on the situation of the human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen; North American Indigenous representative to the U.N. Permanent Forum on Indigenous Issues, Wilton Littlechild; Dalee Sambo Dorough of the Inuit Cir-

cumpolar Conference and Mililani Trask of Na Koa Ikaika O Ka Lahui. The panel was moderated by Rachel Brett of the Quaker United Nations Office in Geneva.

Our organizations believe that adoption of a strong Declaration on the Rights of Indigenous Peoples is an urgent priority, not only to help prevent the terrible violations experienced by Indigenous Peoples worldwide, but also to strengthen the international human rights system by helping to eliminate discrimination in the application of universal human rights. States and civil society have a responsibility to ensure that the process of elaborating the Declaration moves ahead in a timely manner and that this process builds upon, and does not undermine, the international standards for the recognition of Indigenous Peoples' rights that have emerged as the result of Indigenous Peoples' efforts in the past decade. It is our hope that the forum has contributed to this dialogue.

# WILLIE LITTLECHILD

*Rapporteur of the U.N. Permanent Forum on Indigenous Issues*



WILTON LITTLECHILD WAS THE FIRST TREATY INDIAN ELECTED TO THE CANADIAN PARLIAMENT. MR. LITTLECHILD SERVED ON SEVERAL SENIOR COMMITTEES IN THE HOUSE OF COMMONS AND AS A PARLIAMENTARY DELEGATE TO THE UNITED NATIONS. HE WAS AWARDED THE ORDER OF CANADA IN 1999.

It is certainly an honour to join the very distinguished panel here to give a brief introductory remark on the Indigenous issues that we have been dealing with internationally for the past two and a half decades and even more. As the elders say, you should look back to know where you are today, so that you can see where you are going in the future. When I look back, actually a tremendous amount of success has been gained in the international arena. And you should all be complimented for that, including the very distinguished panel members and colleagues up front here.

For example, in the U.N. arena, there have been various workshops that have been held in various parts of the world. There have been very, very important high-level seminars that have been conducted on very, very important topics. For example, last year, there was a special seminar on education, and there was one on the administration of justice, and there was one on treaties, and the list goes on and on.

When you go back and compile the list, in fact it is a very impressive list, and again it is due to your hard work that we have been able to accomplish this. I know we deal with negative issues, but we should set a time to celebrate your success. All of you.

There have been appointments of Special Rapporteurs in various areas, including our own Indig-

enous issues Special Rapporteur, Dr. Stavenhagen. There's one in housing and education and torture and so on, which are all relevant to Indigenous Peoples. In the U.N., that's a very impressive list of accomplishments.

There's also the ILO, the International Labour Organization, where Indigenous delegations were able to convince the ILO to reflect on Convention 107 and amend it and update it with Indigenous input. At the Organization of American States, there is ongoing activity on their Declaration on the Rights of Indigenous Peoples.

I just want to say a word on the International Decade for the World's Indigenous Peoples. Mililani Trask, Dalee, and others – I see some in the audience in fact – were involved

in a meeting where we declared ourselves a Decade, before the U.N. It was in a way a pro-active action. And then the U.N. declared a Decade as well; Indigenous Peoples should be thanked also, because initially it was their idea to have a Decade.

And during that Decade, of course, we saw the establishment of the Permanent Forum, and it is with tremendous honour that I serve on that Forum, and to have been re-appointed for a second term. If you look at our short life in that Permanent Forum, we decided to focus on specific issues. You will note, of course, the first one we took was Indigenous children. And we are very happy to say that after having a special day set aside for Indigenous children by the Committee on the Rights of the Child, we are now waiting for an opinion that's being put forward by the Committee.

So children were a very important beginning. Then we focused on women, and as you know this year, we are going to be focusing on the Millennium Development Goals, and it's an effort to mainstream further Indigenous issues in the U.N. system.

So I think on reflection, we've actually come a very long way since 1977, when I recall we couldn't even get into this building. To look back now, to try and see where we need to go in the future, one of those areas is the Declaration on the Rights of Indig-

enous Peoples. So it is with tremendous honour that I have been asked – in fact I wanted to – take this time to introduce two very, very special colleagues.

In the past, we've had great participation by the previous High Commissioners on Human Rights. They participated in our Indigenous day, they came to our workshops, and our seminars and so on. I know Her Excellency, Madame Louise Arbour, has also already done that, picking up the mantle. And I want to take the liberty of having the floor right now to even declare her as a champion for the Declaration of Indigenous Rights, because she has said to us it's a very important item for her in her new capacity.

So it's a tremendous honour that I want to welcome her to the panel, and also to you friends of Indigenous issues. And also another friend, if I may take the liberty of calling him a friend, because he just recently had an official visit to Canada and I know of his own personal interest as well on Indigenous issues, is the Special Rapporteur on the human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen. And I want to thank all of you again by way of this opportunity to introduce our special members of the panel, indeed all of the members of the panel, and thank you for the time you've allowed me to share some thoughts with you.

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# LOUISE ARBOUR

*United Nations High Commissioner for Human Rights*



LOUISE ARBOUR, THE U.N. HIGH COMMISSIONER FOR HUMAN RIGHTS, SERVED AS THE CHIEF PROSECUTOR FOR THE INTERNATIONAL CRIMINAL TRIBUNALS FOR THE FORMER YUGOSLAVIA AND FOR RWANDA FROM 1996 TO 1999. SHE IS A FORMER JUSTICE OF THE SUPREME COURT OF CANADA.

Thank you very much for this introduction. Ladies and gentlemen, first let me thank the organizers of this session. I am delighted of course to see here on this panel people, many of whom I've met before and had an opportunity to engage even though briefly at this point on some of the issues you will be discussing.

Let me say at the outset that the report presented by the Secretary General to the Economic and Social Council last year pointed – as was mentioned by Mr. Littlechild – to real progress on the situation of the human rights of Indigenous Peoples. I think it's important that we recognize, looking behind us at the accomplishment, that today, Indigenous Peoples are legitimate subjects of international law with the right to exist as distinct peoples. This shift in international law is the result of the concerted efforts, over the last decade, of hundreds of Indigenous leaders, community representatives, government representatives, and the United Nations through its respective agencies and programmes.

Over the last few years, we have observed a considerable increase in activities of the United Nations system in relation to Indigenous Peoples, greater opportunities for participa-

tion by Indigenous Peoples' organizations in international and inter-governmental processes, as well as positive institutional developments, such as the establishment of the mandate of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people and the Permanent Forum on Indigenous Issues.

Still, Indigenous Peoples the world over continue to be among the most marginalized and dispossessed sectors of society, the victims of perennial prejudice and discrimination. Claims are often received on extra judicial executions, arbitrary detention, torture, forced evictions, and many forms of discrimination, in particular, in the system of administration of justice. In too many places, they lack access to basic social rights, such as the rights to health, food, culturally appropriate education, and adequate housing. Now, within Indigenous communities,

the plight of women is often exacerbated. They face multiple forms of discrimination, both as women and as members of Indigenous communities. Children also face particular impediments to the complete fulfillment of all their human rights.

Even if there is protective national and international legislation in place, in many places the rights of Indigenous Peoples are frequently denied in practice. For this reason, the commitment of the national and international NGO community is crucial, not only to raise awareness of human rights abuses, but also of the current standard setting exercise for the finalization of a Declaration on the Rights of Indigenous Peoples.

With the conclusion of the Decade, I consider it important to maintain the momentum generated in the United Nations system with regard to Indigenous issues. In the course of the last session of the working group on the draft Declaration, I think it's fair to say that we all had mixed feelings of hope and of frustration. I fully respect and understand the concerns expressed to me by more than a hundred organizations concerning the negotiations around the draft. However, I believe that we should not, as was suggested, take time off. On the contrary, we need to work together to find an agreement that opens the path that will lead to achieving a good declaration. In my view the risk of straying from that path is too great should we take a

break in the process. It may be very difficult to bring governments back to the negotiation table once they have left it, even temporarily.

The important efforts made over the last decade should not be lost. For this reason, I have proposed to the Commission to continue the work of the Working Group for a further two years on the basis of three weeks of sessions per year. But allocating time for discussions will not be enough to advance substantively in the negotiations.

It is important that we be able to measure progress. Therefore it would be appropriate to reconsider the current methods of work with a view to building greater confidence between the parties involved, and be more energetic in bringing together different positions. I think that everyone would benefit if the Working Group established a clear programme of work with target dates for the adoption of articles. In order to build confidence, we need to demonstrate that there is a willingness to achieve consensus.

International progress on Indigenous issues can be attributed to a large extent to the way Indigenous Peoples have presented their viewpoints as one coherent platform. Unity has been their strength. I think there is a real concern by all that the United Nations should produce a strong Declaration commensurate with the efforts and the commitments made by governmental and

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Indigenous representatives over many years. There is also some dissatisfaction by all Indigenous Peoples — that was made very clear to me in my first contact with these groups last July — about the process itself.

Having said that, I have been informed that the 2004 session offers a possible model for future progress by allowing much greater cooperation and joint facilitation by Indigenous and governmental delegations. I hope that the next session of the working group will strengthen this approach and give a sense of ownership to all the participants in the process.

Now, ladies and gentlemen, let me make some comments on the potential role of the Special Rapporteur in this area. Since his appointment in 2001, the Special Rapporteur has investigated a number of critical themes that are crucial to understanding the scope of some of the provisions that are included in the draft Declaration. His expertise and his long personal experience and commitment on Indigenous Peoples' rights can be very helpful in my view to advance the process.

The proposal by the Government of Mexico to hold a workshop on the Declaration with delegations and independent experts including the Special Rapporteur I think should be welcomed. Perhaps in the course of the next few days some thought can be given to the details of that

workshop and in particular the way in which independent expertise may be able to make its contribution to the ongoing process.

In 1994, at the request of the Sub-Commission, the Office of the High Commissioner prepared a technical review of the draft declaration. Should such support be seen to be helpful in the future, you can be assured of my commitment, and that of my colleagues, to provide all the assistance needed to help advance the adoption of the Declaration.

As we embark on the process of defining the goals for a Second International Decade of the World's Indigenous People, let's join forces and strive to have a strong Declaration that will serve as a basis for the promotion and protection of the human rights of Indigenous Peoples in the years to come.

Thank you very much.

# RODOLFO STAVENHAGEN

*U.N. Special Rapporteur on the situation of the human rights and fundamental freedoms of indigenous people*

Thank you very much. It's a pleasure being here, and I would like to thank the organizers for having given me the honour to participate in this panel today, which I think is extremely important. I would like to add my voice to the High Commissioner's voice and to Willie Littlechild's comments, that if we look backwards at the last ten years, the first Decade of Indigenous Peoples, I think that despite the shortcomings, and despite the failings that have been pointed out, and contrary to many of the doom sayers and naysayers, I would agree that there has been a lot of progress made and we should not underestimate this progress.

Not only are Indigenous Peoples, as the High Commissioner just pointed out, now increasingly considered as subjects of international law, which was not the case ten years ago or fifteen years ago, but they are also increasingly international actors in their own right, as their presence here at the Commission, their movements, their statements, their congresses, their documents, their contributions to the international debate prove. This is something which as Wilton Littlechild pointed out a few minutes ago, is possible with the active and steady, persistent participation of Indigenous Peoples and their organizations in the activities of the United Nations over the years, and also increasingly in the activities of regional organizations.

So this is progress in a way. We have not reached nirvana. We probably will not reach nirvana in our lifetime. At least not in my lifetime. We leave that to the next generation. But I do believe that we must recognize the solid consolidation of certain progress, which has been achieved in the international arena. And of which this panel is just one little example. And there are many, many more.

I was just mentioning this morning to somebody that I had the opportunity to attend the second meeting of the Working Group on Indigenous Populations over twenty years ago here in the Palais as an observer. I found out by chance that this was taking place; I had not followed what was happening in the



RODOLFO STAVENHAGEN IS A FORMER DEPUTY DIRECTOR-GENERAL OF UNESCO, PAST PRESIDENT OF THE DEVELOPMENT FUND OF THE INDIGENOUS PEOPLES OF LATIN AMERICA, AND A MEMBER OF THE NATIONAL HUMAN RIGHTS COMMISSION IN MEXICO. HE HAS WRITTEN EXTENSIVELY ON THE RIGHTS OF INDIGENOUS PEOPLES.

*Not only are Indigenous Peoples now increasingly considered as subjects of international law, which was not the case ten years ago or fifteen years ago, but they are also increasingly international actors in their own right*

U.N.. I was able to come, and maybe there were three or four Indigenous Peoples present at that meeting. And they were in general students at some European university who had heard about this, and were coming somehow to the United Nations for one of the first meetings of the Working Group. Well, the Working Group is now over twenty years old, and is an established institution in the area of human rights and at its sessions, as we all know, there are hundreds of representatives of Indigenous organizations and other human rights organizations. And over twenty years ago, maybe there were two or three observers from member states, looking in at this meeting and saying, "What is this all about, why is the United Nations at all engaged in dealing with issues of Indigenous Peoples?" And now of course all of the member states, or almost all of the member states are permanently represented as observers of the Working Group and its sequence.

So I think that we should not be led astray and say that the first Decade is a tremendous failure. It is not a tremendous success either. We know that. And there are documents that tell us that. But progress has been made.

And yet, when we look at the progress, we also have to look at what is still to be done. And as Special Rapporteur, the mandate of which, as you know of course, was created by

the Human Rights Commission after extensive lobbying by Indigenous organizations over the years, I would just like to share with you in a few words, what I see from that vantage point as being some of the major issues faced by Indigenous Peoples around the world, and which deserve increasing attention, and certainly more efficient attention by the international community.

Without giving them in order of importance, but simply as they occur to me, I think one of the first issues that we still face, meaning that Indigenous Peoples the world over face, is systemic discrimination. Some call it racism, you can call it prejudice, you can call it what you want, but it is systemic discrimination. I underline systemic, because discrimination may be an individual attitude between people: somebody discriminates against somebody else because that somebody else happens to be an Indigenous person. But when I underline systemic discrimination, I mean that societies are structured and built in such a way that Indigenous Peoples are shortchanged almost in every aspect of life. What does that mean? That means that the institutions that provide social services, it means that the institutions that are society's ways of resolving basic needs and necessities of all peoples are functioning in such a way that Indigenous Peoples don't get enough access to these institutions and don't get the outcomes that they have a

right to, according to international human rights standards, very often according to the national legislation in their countries, and certainly according to the basic human values of a decent life.

I have visited, as a Special Rapporteur, on official missions to six countries up to now. In these six countries, I have seen, whether these countries are at the high end of economic and social development, or whether they are at the low end of economic and social development, that Indigenous Peoples are victims of systemic discrimination. Whether it is in the field of education, whether it is in the field of housing, whether it is in the field of social services, whether it is in the field of occupation and employment, whether it is in the field of real income, we find society has a systematic way of discriminating against Indigenous Peoples, and particularly against Indigenous women and against Indigenous children.

This is a persistent path. And this is not only, I believe, a concern of and for Indigenous Peoples around the world, but it is a concern for everybody in the world who is interested and at all concerned with human rights of human beings everywhere. So that is one of the first issues that is still unresolved, and which I believe is a challenge, not only for the U.N. system, but for NGOs and the international human rights community.

This of course leads to the same thing but said in a different way: that is the persistence of inequity and inequality of which Indigenous Peoples are the victims. When you look at any kind of indicators of human development as, for example, the UNDP uses in its human development report, or human and social indicators that the World Bank or the regional banks sometimes, or national governments use, we always find, in terms of outcomes, Indigenous Peoples at the lower end of these ranks. When you disaggregate national data, you find that Indigenous Peoples again are at the lower end. And of course these things are related. Discrimination in the access to institutions leads to inequity in outcomes, and this is one of the major, if not the major, challenge facing Indigenous Peoples in terms of human rights in the next few decades.

This of course leads to some other issues. Something which in the language of human rights is called, perhaps euphemistically, correct me if I am wrong, the protection gap. That is, most countries have, generally, fairly good legislation in human rights. I mean, if we have achieved something in the last fifty years on the basis of the Universal Declaration of Human Rights, and the International Covenants on Human Rights, it's the worldwide recognition that human rights was the issue of the 20th Century, and is certainly the issue of the 21st Century.

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We find that, yet, there is persistent marginalization of certain groups of people in society who do not fully enjoy these human rights. We find that there are groups of people who are systematically excluded from full benefit and enjoyment of these human rights, and I insist once again that Indigenous Peoples are one of these groups.

In terms of Indigenous Peoples there is a protection gap in human rights, particularly regarding social, economic and cultural rights, but very often as well in the field of civil and political rights. What to do about this protection gap? How to address this protection gap? I think that this is one of the major challenges currently facing the international human rights community. We cannot really say that we are fully implementing human rights if we find groups of people that are systematically and persistently sidetracked, and who are systematically denied these human rights. And Indigenous Peoples are, of course, among these groups.

And this leads to yet another point, which is that this systemic discrimination, this inequality in outcomes, this protection gap that I have been talking about, to my mind at least, is the result of the denial of the identity and the recognition of Indigenous Peoples. Whether we say that this is the result and the sequel and the consequences of colonialism, whether we say this is because the

national state has a model of its own identity which often excludes minorities and Indigenous Peoples from the nation, or has a model of assimilation of people to a certain cultural way of life, which would deny the existence simultaneously of Indigenous Peoples, the fact is that so much of this protection gap, these inequities and these discriminations, take place because of the denial of recognition and identity of Indigenous Peoples within national borders, within the nation state.

This has to do with the great challenge ahead, which is one of the concerns of the Commission on Human Rights, and has been over the last twenty years, at least since the establishment of the Working Group on Indigenous Populations, which is the need for standards setting. That is where our concern about the draft Declaration comes in.

What does standards setting mean? It means not only reaffirming universal human rights, but also being able to develop international standards for the protection and the guarantee of human rights of discriminated-against groups of people, of peoples whose existence and whose identity has been denied by the nation-state or by modern legal systems, and very often by the international legal community as well.

That is why not only is Convention 169 of the ILO an important standard, as you know it is the only inter-

national treaty which actually speaks of the rights of Indigenous Peoples, but that is why the draft Declaration is so important. Because it would be an addition to the international standards of universal human rights by precisely addressing some of the issues that I have pointed out, which are at the basis of the discrimination and the exclusion of Indigenous Peoples in the world.

That is why I agree also with the High Commissioner, when she says this is not the moment to give up. Though the draft Declaration has not been approved, though we all know that there are all sorts of problems in getting the draft Declaration adopted by the Human Rights Commission, yet I think the struggle for its approval, the struggle for the adoption of the draft Declaration cannot and should not cease. It is one of the challenges of the second Decade of Indigenous Peoples.

When you look at what has happened in the U.N., it is, of course, frustrating and surprising that you can say that while the discussions on the draft Declaration on the Rights of Indigenous Peoples have now been going on for over ten years, the Universal Declaration of Human Rights, the foundational document of the modern, post-war human rights system, was approved in much less time back in 1946-47. So we rightly ask ourselves, well what does this mean? What's been happening? How come that a small group of

highly motivated and committed people over fifty years ago were able to sit together in an apartment in Paris, and I refer to the apartment of Mrs. Eleanor Roosevelt, who was then the chair of the Human Rights Commission. And she sat down with people from the Socialist camp, and from the Islamic World, and from Asia, and from Latin America and from North American and Europe, and they brought forth the Universal Declaration of Human Rights. And yet here we've been sitting for ten years, and we haven't been able to make this small addition to international human rights, which would be the Declaration on the Rights of Indigenous Peoples.

So, I agree that this is a challenge ahead, and I am very happy to be at this panel, where I can see and feel and sense the commitment of the international community, particularly the popular organizations and associations of civil society. The important thing is that you represent really the civil society, and that is the input that these organizations can make to the process that we are talking about. Thank you very much.

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# DALEE SAMBO DOROUGH

## *Inuit Circumpolar Conference*



A RESEARCHER IN INTERNATIONAL LAW, DALEE SAMBO DOROUGH (INUIT-ALASKA) HAS BEEN ACTIVE IN THE ADVANCEMENT OF INDIGENOUS HUMAN RIGHTS AT THE UNITED NATIONS AND OTHER INTERNATIONAL FORA SINCE 1982. SHE CURRENTLY SERVES AS THE ALASKA MEMBER OF THE INUIT CIRCUMPOLAR CONFERENCE ADVISORY COMMITTEE ON UNITED NATIONS ISSUES. SHE RECEIVED THE 1988 REEBOK HUMAN RIGHTS AWARD.

Thank you very much. I would like to thank the organizers of this panel who extended the invitation to me to share some views and comments about the work that's being done here at the United Nations. I understand that many of you are engaged with non-governmental organizations that seek to link arms with Indigenous Peoples in order to propel our work forward. Through my remarks I'd like to provide some information and encourage you in terms of ways in which you can do so. Such sharing and building of alliances between Indigenous Peoples and non-governmental organizations as support groups for our work is absolutely critical to us achieving our goal.

In very plain terms, the focus of our work is to arrive at a place where Indigenous Peoples can actually exercise and enjoy our individual and collective rights. It's that simple. There's nothing abstract or extreme about that simple goal.

I've remarked to some state representatives here in these halls that I truly would love to just be at home enjoying my rights, and not having to pound the halls of the United Nations to gain a little respect, to gain some recognition of my inherent rights as an Indigenous woman, or the collective rights that I share with my people.

Our rights are pre-existing and inherent. They are not given to us by anyone. Others did not create our rights. Some examples of our distinct status and rights include our

political right to self-determination, own methods for carrying on relations between one another, and our responsibilities to the collectivities, to our people, to our communities, to our nations.

Our right of self-determination exists not only within our communities, but also outside of our communities. Our right of self-determination includes the fact that I am here as an Indigenous person, making a representation to you of my conception of our world view. This is an expression of self-determination outside of my community.

I make this distinction because too often, states within these very rooms, have tried to separate and set up a false dichotomy between external and internal self-determination. Yet, in our minds, from our world view

and perspective, it is a single right to self-determination that has many dimensions and elements, political, but social, economic, cultural as well as spiritual.

Another example of our distinct status and rights is our right to lands, territories and resources. The profound relationship that Indigenous Peoples have fine-tuned over generations in terms of how we relate to our environment is distinct. You can go to any region in the world, and you will see that Indigenous Peoples have a profound relationship with their lands, territories and resources or their environment that is unlike any others anywhere in the world. The assertion of our rights to own, manage and control our lands, territories and resources as well as to determine the nature of our relationship to our environment, is what I mean by the enjoyment of our distinct status and rights.

The Declaration is essentially the codification of these rights. The work that we're all committed to is for the U.N. to include an Indigenous world view within the existing international human rights framework and to bring Indigenous Peoples within the family of nations by codifying our human rights through the standards setting work.

States have made solemn obligations, one of which is to promote the respect for human rights. Yet, in the context of Indigenous Peoples,

they are unable to uphold these solemn obligations. This is shocking. We have now heard High Commissioner Louise Arbour express her frustration with the fact that thus far we've been unable to adopt a Declaration on the Rights of Indigenous Peoples. Also Rodolfo Stavenhagen has emphasized this point. Well, I have to submit to you that it is state governments who have taken an extreme interpretation of the rights contained in the Declaration in order to promote their self-interests over the rights of Indigenous Peoples. That is the real reason for lack of progress in regard to the Declaration.

Whatever you can do to link arms with Indigenous Peoples to help us realize the Declaration and help us to arrive at a place and time when we can actually exercise and enjoy our rights without obstruction, I encourage you to do. Explore whatever ways your organizations can reach out to particular Indigenous communities, peoples and nations to assist them, to facilitate work within their communities, and to bring their messages and their voices to the international community. Think carefully about how you can do this, through innovative and creative means, and commit resources to do so. We would welcome it. And certainly there are many Indigenous Peoples here at these sessions that you can consult with in terms of how to actually prepare an agenda to advance this work. Thank you.

*The work that we're all committed to is for the U.N. to include an Indigenous world view within the existing international human rights framework and to bring Indigenous Peoples within the family of nations by codifying our human rights.*

# MILILANI TRASK

*Na Koa Ikaika O Ka Lahui*



MILILANI TRASK IS A NATIVE HAWAIIAN ATTORNEY WITH AN EXTENSIVE EXPERIENCE IN LAND AND RESOURCE ISSUES. SHE IS THE CONVENOR FOR A NATIVE HAWAIIAN NGO ENTITLED NA KOA IKAIKA O KA LAHUI THAT HAS WORKED IN THE INTERNATIONAL ARENA ON THE DRAFT DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES FOR MORE THAN 15 YEARS. IN 2001, MS. TRASK WAS NOMINATED AND APPOINTED AS THE PACIFIC REPRESENTATIVE TO THE PERMANENT FORUM ON INDIGENOUS ISSUES.

Aloha, everyone. I wanted to start off also by thanking those who are putting on this event because we need to look for every opportunity for open discussion not only on the Decade but also on the draft Declaration. So I am very happy to be here, with my colleagues, on such a distinguished panel.

I had thought that I would begin first by giving you some of my reflections on the past decade and the coming decade. Many of us who have laboured so long in the standards setting process felt that there was a tremendous failure because we did not achieve the primary goal of the first Decade: which was passing a strong Declaration on the Rights of Indigenous Peoples. Here we are ten years later, we only have agreement on two provisions out of 45 in the Declaration. Not a very good report card for all of us who participated in the process. But I did want to point out that we shouldn't lose track of the real issues, the real scope of issues that we must address through the Declaration.

There's a handful of us who are privileged enough to engage in this debate. We come every year to Geneva – air-conditioned buildings, nice computers, wear our suits. The vast majority of Indigenous Peoples really have no concern about the words on the paper. The vast major-

ity of Indigenous Peoples, hundreds of millions, live and die in poverty every day. Children are without food, without hope of education. Millions of Indigenous Peoples are still without the hope of receiving medical treatment. Millions are homeless – they have no shelter. Those are the people. Those are the faces of the Indigenous Peoples. And I don't think that it's appropriate for us to hide behind the U.N. system and pretend that we really are the voices of the Indigenous, we who are the privileged to come here.

If I took away your clothes, and the food off your table, if I pulled your children out of school and had them sleep in the rain, how concerned would you be about preambular paragraph 15 bis? My guess is not very concerned. We cannot forget the reality of our peoples, that commitment, that deprivation is what we have to keep ahead of us, to drive us, and to give us the incentive to stop the interminable debate, come to consensus, and bring this docu-

ment out to the world. That's an obligation that we all have.

When I consider that reality, I feel that there was some real progress made in the first Decade. Nobody wanted to be the focal point for health for the Permanent Forum on Indigenous Issues. So after several months, I was asked to take it on by the Chair and I agreed to do so. And I had a really good chance to look at the health needs of the Indigenous Peoples of the world. From the beginning of the United Nations system, the World Health Assembly did not have Indigenous Peoples on the radar screen, because they didn't have a policy on Indigenous Peoples. Thanks to Jacqui Sims, the World Health Organization focal point, and a lot of work by NGOs and states in the World Health Assembly who wanted to work with me as a focal point, we now have a policy on Indigenous Peoples in the World Health Organization. That is significant.

Many people aren't really looking at that policy. Many people are really not looking at what happened over at U.N. Habitat. While we were all tangled up in our academic arguments over here about self-determination, the U.N. Habitat quietly passed a policy on Indigenous Peoples. Their policy is that Indigenous Peoples have the right of self-determination, by which they will determine their political status, by virtue of which they will freely pursue

their social, cultural, and economic development. Housing is part of social development. Therefore, U.N. Habitat now endorses the right of self-determination for Indigenous Peoples as enunciated in International Covenants, and their policy requires that they will work in partnership with Indigenous Peoples to meet their housing needs. They really didn't need to have us come up with a standard. And while we were debating, in our suits, in our air-conditioned rooms in Geneva, they went right ahead. They looked at what they were supposed to do, passed the policy, and moved forward.

Great accomplishments for the First Decade. I'm uplifted by it.

We're going to look at the Second Decade now. The Permanent Forum is sending out the call to Indigenous Peoples, non-indigenous, and states. What kind of goals do we want in the Second Decade? Let's not be myopic and just say 'Pass the Declaration.' We need policies in every single U.N. agency. The Convention on the Rights of the Child specifically mentions Indigenous children. Why doesn't UNICEF have a policy for Indigenous children? Are we going to tell them that they need to get one in the Second Decade? I think we have to. We all heard what Indigenous women said last year when the focus was on women at the Permanent Forum. Well, I think it's time that UNIFEM adopt a policy on Indigenous women.

*The vast majority of Indigenous Peoples, hundreds of millions, live and die in poverty every day. Children are without food, without hope of education. Millions of Indigenous Peoples are still without the hope of receiving medical treatment.*

*We cannot forget the reality of our peoples, that commitment, that deprivation is what we have to keep ahead of us, to drive us, and to give us the incentive to stop the interminable debate, come to consensus, and bring this document out to the world.*

We need to work together to advance the cause of Indigenous Peoples. Yes the standard setting is critically important. But we're going to look real foolish if we say that the goal of the Second Decade is to adopt a Declaration, and we forget that our people are living and dying in poverty and desperation. We should no longer tolerate agencies in the United Nations that are not going to have policies on the world's five hundred million Indigenous Peoples. That is an outrage, and we need to push that point home. So that while we are up here in our business suits and our briefcases, talking about the standards, the world's five hundred million Indigenous Peoples can have a home for shelter, food and education for our children.

Let's not lose track of what the big picture is. I really want to encourage people to consider what Dalee has said. How are we going to come to consensus? We're not going to get there by being intractable. Consensus comes about because new and innovative approaches are taken.

And we're looking at a very good approach, which is right here in your materials. Self-determination: we know that that has been a major stumbling block. It's been clear for a long time that the Indigenous world does not want the provision of Article Three altered in any way. We now have a consensus document that is emerging. When the co-chairs of the self-determination working group,

myself and Wayne Lord of the Government of Canada, took a look at where we were going, we felt that the proposal that you are looking at in your materials is an emerging consensus. Wayne hasn't changed his mind and neither have I.

We need to look at ways to bring people together. The reason why we have an emerging consensus on self-determination is because we accept the fact that the Indigenous Peoples do not want amendments to Article Three, but we also accept the fact that there are other concerns. Are we going to be trampling upon individual rights? Are we going to somehow violate third-party rights? Well we can answer them by putting creative language in new preambular paragraphs that say that we are going to respect principles of justice, principles of democracy. This is a way to come to consensus. Where a fear or a concern is expressed, can we be creative enough to fashion language to address that, and place it in the appropriate place in the Declaration?

I think that we have an emerging consensus on self-determination, and I want to see it passed. I'm going to prevail upon the Chair to put the articles on self-determination up for preliminary adoption by the close of the next session. The reason why we only have agreement on two out of 45 provisions is because of the 's' in peoples, and the 's' stands for self-determination. We need to get this

passed. Once we get through this logjam, I think we're going to have a chance to make a lot more meaningful and rapid progress. That is my goal as the co-chair of the working party on self-determination.

I'll tell you one way we're not going to get to consensus. We're not going to get to consensus by people trying to slide things into the Chair's report such as what happened last year. It was another State initiative on self-determination. There was a lot of talk about it in the hallways. I was allowed to read it for ten minutes, and give it back to a group of unidentified states. It was good language. It might have helped us make progress. But there are some basic rules we're following. If you put forward an initiative, have the integrity to take authorship of it. Because when you build consensus, you have to bring parties together, and it's hard to bring parties together when you don't know who they are. Transparency means that all Indigenous and all states have a right to see it and discuss it. And that rule is not going to change. So if we're making progress, let's put it on paper, let's put our names to it, let's put international legal justification to it, and let's see if we can move it.

One of the things I am going to present to the Chair is my opinion that there is just too many working parties. You can't bring a group together to have consensus on significant provisions when you've got eight

different working parties. So I'm going to prevail upon the Chair to cut it down to two or three. And I would have one of them be self-determination. Possibly another might be the list that states and Indigenous put together of articles ready for provisional adoption.

I want to encourage everyone in the work that we're doing. I consider that we're closer to coming to consensus now than we have ever been. But if we arrive at the next working session, with our briefcases and our suits and our computers, and start digging in our heels, we're not going to go any place.

We can never forget that thousands of Indigenous Peoples have died in the last ten years, while we engaged in this privileged debate. The karma of that is upon our heads and that of our children. We need to demonstrate to our own peoples that the faith that they have in us is not misplaced.

So time to roll up your sleeves, and let's get this consensus moving. I really believe that we can crack out a document in two years. I'm committed to it.

Thank you.

*We need to look at ways to bring people together. Where a fear or a concern is expressed, can we be creative enough to fashion language to address that, and place it in the appropriate place in the Declaration?*

# CONCLUSION

In 2005, the Commission on Human Rights renewed the mandate of the U.N. Working Group on the Draft Declaration on the Rights of Indigenous Peoples. There are three weeks of meetings scheduled to take place in December 2005 and February 2006. It is essential that all states work with Indigenous representatives to secure a strong Declaration without double standards or other discrimination. Less than that would be a failure for the international human rights system as a whole.

It is crucial that all states:

- Recognize the urgent importance of adopting strong and effective international standards for the recognition, protection and promotion of the human rights of Indigenous Peoples, consistent with principles of justice, tolerance, equality and non-discrimination.
- Commit to advancing a Declaration on the Rights of Indigenous Peoples that is fully consistent with international law and its progressive development.
- Work constructively toward timely adoption of a strong and uplifting Declaration on the Rights of Indigenous Peoples that affirms their collective human rights.
- Promote new and dynamic methods of work within the Working Group, with particular regard for the full and effective participation of Indigenous Peoples' representatives.