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**Indigenous peoples and land rights:  
An overview**

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Land is our mother  
(Indigenous representative at UN human rights meeting)

## **Indigenous peoples and land rights: An overview <sup>1/</sup>**

Lars T. Soeftestad

### **1. Introduction**

The present paper aims at: (1) examining some of the connections between indigenous peoples and land rights and (2) providing a common framework within which to understand and analyze the case studies that follow. Several indigenous human rights are left out because they are somehow secondary to land rights. It should furthermore be noted that land rights is only one aspect of indigenous cultures, and this limited overview can not do justice to these often exceedingly complex cultures. The emphasis seems, however, justified since land in a very deep emotional and spiritual sense is viewed as synonymous with the very life of indigenous peoples.

The logic of the argument is built up around the following key terms: sustainable development, self-determination, human rights, land rights and finally organization and action. But first it is necessary to focus on who the indigenous peoples are and what their current situation is.

### **2. On the indigenous peoples**

It has proved extremely complicated to actually determine who the indigenous peoples are. This stems mostly from the fact that they are found on all continents and show all the multitudes of possibilities resulting from interactions between natural and social environments and unique cultures. Of special importance is the history of the contact situation with encroaching peoples.

The multitude of cultural experiences has over the years led to a series of efforts to grasp this reality. Some of the explanations put forward used terms like: aboriginal, fourth world, minority, native people and tribal minority. Over the last decade or so a certain consensus regarding the criteria to be used as basis for

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a definition has gradually emerged. These criteria can be grouped as objective and subjective criteria respectively. The three main objective criteria are (1) pre-existence, i.e. that the people in question is descendent of those inhabiting an area prior to the arrival of another people, (2) non-dominance and (3) cultural difference. The subjective criterion is degree of self-identification as an indigenous people.

The term "indigenous" slowly came to include the above criteria (cf., e.g., IWGIA 1987). The commonly called Cobo-report made an important and valuable step towards a synthesis of current thinking by focusing around the concept "indigenous populations", and proposes the following definition:

Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems. (Cobo 1986, vol V: 29)

The difficulties involved in making a definition covering all indigenous populations and acceptable to everybody is freely acknowledged in the Cobo-report. For this reason it is termed a "working definition", and it is currently used and accepted both within the United Nation (UN) and beyond. Hopefully it will eventually help construct a universally acceptable definition of indigenous populations.

Several criticisms have been raised recently against the use of the term "population" in this definition. The term is seen as implying a demographic and quantifiable notion. As an alternative the term "people" is put forward, and I will in this paper use the concept "indigenous people". All other peoples will be referred to as "non-indigenous peoples".

In discussing human rights and land rights in the context of indigenous peoples we are focusing on inter-ethnic relations of a type where indigenous peoples are in a minority position. However, indigenous peoples do not as a rule consider themselves minorities in the traditional meaning of the term. This is because they generally seek a wider range of rights and protection.

The indigenous peoples live throughout the world from the tundra of Siberia via the rainforests of the Amazon to the deserts of the Kalahari. Map no. 1 gives a general

overview over the seemingly bewildering heterogeneity of environmental and cultural adaptations shown by indigenous peoples. It also presents an effort at synthesizing the latest available figures and this add up to around 250 million indigenous peoples worldwide. Assessing the number of indigenous peoples is a difficult task because of the lack of a clear-cut and universally accepted definition together with mostly low-quality census material.

Map no. 1: Overview of location and numbers of indigenous peoples worldwide

(map of the world to be included)

*A. Location of the world's indigenous peoples*

1 West Africa (8)	12 Southeast Asia, archipelago (15)
2 East Africa, incl. Sudan and Ethiopia (6)	13 Australia, Aborigines (0,25)
3 Central Africa, Mbuti/Pygmies (0,2)	14 New Zealand, Maori (0,3)
4 Kalahari, San/Bushmen (0,06)	15 Melanesia (6,5)
5 Northern Scandinavia, Saami (0,06)	16 Polynesia and Micronesia (8,5)
6 Middle East and West Asia, incl. Kurds (10)	17 Circumpolar region, Inuit (0,1)
7 Arabian peninsula (5)	18 North America (1,5)
8 USSR (27)	19 Mexico and Central America (13)
9 South Asia (52)	20 South America, highland (17,5)
10 East Asia (67)	21 South America, lowland (1)
11 Southeast Asia, mainland (15)	

## *B. Location of case studies in this issue*

- (a) Saami (Sweden)
- (b) Indigenous peoples (Bangladesh)
- (c) Aborigines (Australia)
- (d) Kayapo (Brazil)

Sources: Adapted from Burger (1987), ICIHI (1987), IWGIA (1987, 1988a).

Notes: (1) The various sources disagree on the delimitation of the regions that are presented; (2) numbers in brackets indicate numbers of peoples in millions. Several of the figures are conservative estimates, and there is difference of opinion between the sources. The sources are especially inconsistent and confusing regarding the Middle Eastern and West Asian regions, and the figures given here are very uncertain.

### **3. The present situation of indigenous peoples**

Worldwide, indigenous peoples are integrated in a state. All of them bear witness to the results of a history of conquest, domination and colonization originating either in the West or more locally. The causes for this are usually connected with resource exploitation. The post-colonial period has unfortunately not led to a better situation for indigenous peoples. The situation has on the contrary worsened in many cases as a consequence of what has been referred to as "internal colonialism". There is a conflict of interest between states and indigenous peoples over the right to land and natural resources, and indigenous peoples are inevitable the losers.

But indigenous peoples not only have to deal with states. The other main actors are corporations, financial institutions and international organizations (ICIHI 1987). These four categories of actors often cooperate and make the social, cultural, economic and political effects of internal colonialism even more destructive, and this situation is very visible in the current development aid set-up (Burger 1987, ICIHI 1987).

Whether we focus on sugar plantations in Belize, cattle ranches in Brazil, logging operations in Papua New Guinea, oil-drilling in Siberia, hydroelectric power development in Norway or mining companies in United States they have one thing in common, namely resource extraction. This resource extraction is usually accompanied by environmental problems that decrease the productivity of renewable resources. Deforestation leads to ecosystem degradation if not outright destruction, while mining operations cause pollution and radioactivity to cite just two concrete examples. The consequences of this are that indigenous lands are rendered less and less useful and usable for their traditional occupants.

As a consequence of resource exploitation indigenous territories are opened up to outsiders. The authorities concerned are as a rule lax in controlling access, and as a result often large numbers of outsiders move in to

exploit the new opportunities opened up by new infrastructure. This comes in addition to the often large numbers of laborers that are brought in in connection with construction and work.

Table no. 1: Aspects of current relationships between indigenous and non-indigenous peoples

Main types of interaction		Specification of sub-types
Type A	Economic sphere: Resource extraction	1 Mines - minerals and energy, e.g., coal and uranium 2 Dams - energy, i.e., hydro-electric power 3 Dams - water for irrigation and consumption 4 Logging - timber 5 Cattle ranching - timber 6 Drilling - energy, i.e., oil and gas
Type B	Political sphere: Concrete intervention	1 Relocations 2 Militarization 3 Genocide and ethnocide 4 Colonization schemes, i.e., moving in outsiders 5 Infrastructure development, e.g., roads 6 Development efforts, e.g., food aid and integrated rural development projects 7 Ideological intervention, forced or indirect, often labeled assimilation or integration

Sources: Adapted from Bodley (1975), ICIHI (1987), IWGIA (1988a).

Over and beyond the negative impact on the environment, the contact situation between indigenous peoples and immigrants, whether short term or permanent, usually has a strong negative impact on the health situation and indeed on the whole social and cultural fabric of the indigenous culture. An overview over some aspects of the relationship between indigenous and non-indigenous peoples responsible for the present situation is presented in Table no. 1. Two or more of the various subtypes within the two main types outlined will in any one case be combined. The unique characteristics of this mix are responsible for the concrete negative effects that the indigenous peoples in question will experience. The concrete and often devastating results of outside interventions whatever their cause often stand in stark contrast to most states' professed policies toward indigenous peoples. These policies are usually

characterized by some degree of protection at least formally and nominally, followed by various forms of assimilation and integration as the final aim. In addition these policies usually go together with a notion of cultural superiority that often leads to cultural and racial discrimination.

With the increasing internationalization of the indigenous issue it has become possible to put together pictures of the indigenous world on a global scale (cf., e.g., IWGIA 1987, 1988a). In its 1987 annual report IWGIA presents two appalling facts: Each year at least 30.000 indigenous peoples die by violent means with more dying through neglect and starvation, while there at the same time are at least 5 million indigenous refugees in the world. The organization provides the following thematic summary of main events in 1987: (1) mass killings, (2) indigenous persons living under threat of death, (3) international colonization, (4) multinational corporations encroaching upon indigenous land, (5) land rights not being respected, (6) forced relocation and settlement, (7) increased militarization and (8) nuclear activity.

#### **4. Sustainable development**

The term "development" can mean different things. Recently some serious efforts have been made on a global scale to define it in a way that potentially bodes well for indigenous peoples. The key concept in the report by the World Commission on Environment and Development is "sustainable development" defined as "... development that meets the needs of the present without compromising the ability of future generations to meet their own needs" (Our Common Future 1987: 43). The Commission focuses on the relation between humans and the environment, and argues strongly against the current trends of resource utilization, degradation and destruction. The message is unequivocal: in order to avert disaster a global change is necessary. Indigenous peoples argue in the same way. They want to secure the sustainability and productivity of their land in order to ensure that their descendants may continue to live there and maintain their culture. By implication and in its worldwide aggregate form, this is an argument supported by as well as supporting the conclusions of the commonly called Brundtland-report.

Another interesting part in this picture is the UN Declaration of the Right to Development. Contrary to the Brundtland-report, the Declaration has no explicit reference to indigenous peoples. Nonetheless it is a very interesting document in the context of indigenous peoples for at least two reasons. Firstly, it connects the right to development with self-determination and sovereignty (see Appendix no. 2B). Secondly, group rights as opposed to individual rights are implied in the text. Because of

this it contains a kind of important implied potential that can be used by indigenous peoples in the future preparation of standards, e.g., the work on a universal declaration of indigenous rights. The basic problem with the Declaration seems to be that it tries, somewhat in vain maybe, to balance the distribution of rights between several entities and levels. While it comes out in favor of states, it acknowledges the special needs and rights of peoples within states to for example group rights.

Viewing the Brundtland-report and the Declaration together (cf. also Cobo 1986, vol IV: 30, ICIHI 1987), a common message emerges. This is that the right to development is intimately connected with the right to indigenous self-determination. Furthermore, the Preparatory Meeting to the UN Working Group on Indigenous Populations in 1987 held that sustainable development is a fundamental prerequisite for self-determination.<sup>2/</sup> The crucial aspect of self-determination in this context is access to resources, while sustainable development was understood as self-development continuing over time. The indigenous participants at this Preparatory Meeting submitted a statement on self-determination that emphasizes these connections (cf. Preparatory Meeting 1987, see also Appendix no. 2D). While sustainable resource development cannot and should not be made into a fixed definition of self-determination, it is a fundamental concept to which it is now necessary to turn.

## **5. Self-determination**

This is another difficult term to define. Beyond the commonplace that it somehow is connected with development and essentially is a political right, opinions disagree.

On one side we find the indigenous peoples themselves. They see self-determination as the basic human right. This means that they want acceptance for the simple fact that they themselves want to determine their way of life and development (see Appendix no. 2D for a comprehensive statement on this). Having said this, it is important to note that different indigenous peoples interpret this to mean anything from internal autonomy (e.g., some indigenous peoples of South America) to full sovereign independence (e.g., the Kanaks of New Caledonia).

On the other side is the state. While states may agree in principle about the need for some form and degree of self-determination, they are afraid of the consequences. They are concerned about drawing a sharp line between self-determination and self-government on the one side and autonomy and sovereignty on the other side for fear of tendencies to undermine the integrity of the state. Indigenous peoples' demands for self-determination are seen as challenging the absolute sovereignty of the state.



International non-indigenous support organizations naturally follow up the indigenous emphasis on a comprehensive view on self-determination. IWGIA is a case in point. In a statement to the International Labour Organisation (ILO) it argued that:

Self-determination is a bundle of rights which pervades social, cultural, economic and political aspects of indigenous life.... first and foremost orients the positions indigenous peoples... hold on land" (1987:88).

In other connections self-determination has been related to sustainable resource development, inalienability and sovereignty, and territorial and cultural integrity (IWGIA 1988a).

The Working Group is the arena where many of these ideas on self-determination are being aired, and its position on this issue is important. Daes, currently Chairperson of the Working Group, outlines five different meanings of the term "self-determination" applicable to entities on various levels (cf. Daes 1987). She singles out primarily two types of self-determination, applicable to indigenous peoples depending on circumstances. Firstly there is "internal self-determination", seen as

... the right of a state population to determine the form of government and to participate in the government, sometimes extended to include democratization or majority rule ... (1987:98).

Secondly there is what maybe can be called "internal autonomy", seen as

"... the right of a minority or an indigenous group or nation mainly within state boundaries to special rights related not only to protection and non-discrimination, but possibly to the right to cultural, educational, social and economic autonomy for the preservation of group identities" (1987:99).

Furthermore, Daes expressly states that in her opinion the term "self-determination" under no circumstances includes the right to secession. Türk, a member of the Working Group, likewise states that:

... autonomy is not an end in itself or a first step to political independence but rather an instrument necessary for [the indigenous peoples'] development ... (1987: 8-9). (cf. also Note no. 3.)

The concept "self-determination" shares with "development" a sense of potentiality and possibility as opposed to specific results. A sustained development is the result of a realization of self-determination as defined and controlled by indigenous peoples themselves. It follows that self-determination is closely related to

the recognition of the indigenous demand for inalienable territorial rights.

In its conclusions, the Cobo-report states that

"Self-determination, in its many forms, must be recognized as the basic precondition for the enjoyment by indigenous peoples of their fundamental rights and the determination of their own future" (1986, vol V: 42).

But in assessing the array of human rights concerning indigenous peoples, self-determination must inevitably be discussed together with a host of other rights that directly or indirectly pertain to indigenous peoples.

## **6. Land rights**

Land rights for indigenous peoples are an important human right. One issue pervades the debate on land rights, namely individual rights vs. group rights. While the existing international human rights instruments as a rule focus upon the individual, the customary rights of indigenous peoples is built up around groups or collectives. In the West this fundamental idea has by and large been viewed with skepticism, especially when combined with an emphasis on self-determination. For indigenous peoples group rights is especially important in the area of land and rights to land. Since the UN Charter with its emphasis on individuals and states, indigenous peoples have entered the arena and gradually created a new focus on the levels between individuals and states, i.e. groups and peoples, especially in connection with the issue of land.

The problem of group rights is basic to a discussion of several indigenous rights. One especially interesting and important case concerns the right to development. The right to development must be based on some form of self-determination. If the development of groups is given priority, the question arises as to which group rights are important.<sup>37</sup> Daes (1987) provides a list of basic rights of indigenous peoples, and it is now necessary to focus more closely on one of these rights, namely the right to land including natural resources. Group, communal or co-operative rights of property ownership and land tenure are fundamental aspects of indigenous peoples' relationship to land (cf. Cobo 1986). Rights to land are seen as economic and cultural rights, and are accordingly secondary to the political rights of which self-determination is the most important.

Contrary to conceptions of land in the West, for indigenous peoples "land" is something different and much wider, integrated with the whole culture. Likewise the concept "land rights" seems foreign to people in the West based as it is on traditional or customary law. It is now

time to turn to a closer examination of the two indigenous concepts of: (1) land and (2) land rights.

Reviewing the indigenous position on "land" is difficult, partly because it is many-faceted and stems from so many cultures as to be almost vague, and partly because the very word is non-indigenous and has a limited meaning. To begin with, "land" is much more than merely the area where one grows yams, hunts or gathers edible plants. Secondly, and following from this, "land" is imbued with all sorts of implied concrete and abstract meanings that make it into a centerpiece of the whole culture and societal fabric. At the same time as being the basis of their economic viability as an independent people, it in a very real sense contains their sense of identity and history. An indigenous representative puts it the following way:

The Earth is the foundation of Indigenous Peoples. It is the seat of spirituality, the fountain from which our cultures and languages flourish. The Earth is our historian, the keeper of events and the bones of our forefathers. Earth provides us food, medicine, shelter and clothing. It is the source of our independence; it is our Mother. We do not dominate Her: we must harmonize with Her. (Burger 1987:14)

A key concept here is religion. Land is the origin and seat of spirituality; it is the connection to the past as well as with the future. Certain ancestral lands are especially sacred and must remain undisturbed. The spiritual attachment of indigenous peoples to their land is deep and of over-riding importance. As a basis for their entire physical and spiritual environment, land is synonymous with their very existence as peoples (cf. Burger 1987:13-16, Cobo 1986, vol IV: 28-32). At this point it will be of interest to contrast some important aspects of land among indigenous and non-indigenous peoples (see Table no. 2).

Concerning the use of land or land tenure, the anthropological literature describes a large variation. The indigenous conception of the various uses of land is not static however. A clear expression of this is the recent suggestion by an indigenous organization to substitute "land" with "earth" (WCIP 1987). This facilitates a wider definition of which environmental resources we actually are dealing with, and two aspects of this require special mentioning. Traditionally there was an emphasis on land-based resources while we now are witnessing an increasing interest in water as a resource. Secondly there is the new and very important area of "sub-surface resources". The existence of this latter category as distinct in indigenous conceptions of man-environment relations is uncertain. Nonetheless, I venture to draw the following two tentative conclusions. Firstly, views on this may depend upon whether the area features an ecology that favors vegetation that

penetrates the soil to any degree. This should imply that in the tropics where there are very high trees that penetrate the soil only to a relatively small extent, we would be less likely to find traditional notions of sub-surface aspects of the land. Secondly subsistence practices have to be taken into account. Hunting-gathering peoples for example utilize primarily what grows on the land, while cultivators primarily make a living of what grows in the land.

Table no. 2: Some contrasting aspects of land among indigenous and non-indigenous peoples

Indigenous peoples	Non-indigenous peoples
1 Ownership is vested in the kin group or community, or figuratively in the chief	1 Land is individually owned
2 It is inconceivable that anyone could have the right to permanently alienate land from the group	2 Land can be sold and bought, i.e., it has value in monetary terms. This value is not intrinsic to land itself, but fluctuates according to external factors
3 Access to and use of land is controlled by a complex network of kinship relations and is guaranteed to everybody	3 Ownership to land implies ownership to anything that grows on the land, the land itself as well as any sub-surface resources
4 Land allocation is flexible and well regulated in order to ensure an equitable balance between land, resources and population. The idea of unoccupied or waste land is irrelevant	4 Land is a factor of production, and it is used for whatever is considered most profitable at the moment
5 The land itself often holds important symbolic and emotional meanings as the repository of ancestral remains, clan origin point and other sacred features important in mythology	5 Land has no other values that connects it to other aspects of culture, e.g., political/social organization or religion

Sources: Adapted from Bodley (1975), Cobo (1986), WCIP (1987).

Note: The category "non-indigenous" here mostly refers to the West.

Generally speaking, the uses that indigenous peoples make of the land are connected with the intricate mutual

relationships that exist between natural and social environment and subsistence adaptation. The latter is relatively easy to summarize in a broad typology comprising hunting and gathering, nomadism, shifting cultivation, intensive cultivation and fishing. A typology of man-land relationships, e.g., based on the above three parameters, within the context of the land tenure or use of land among indigenous peoples would be very interesting to make. The reason for this is that it would provide valuable and important insights into the cross-cultural basis for the current interest in and emphasis on land rights among indigenous peoples.

This brings me to the concept of "land rights".<sup>4/</sup> The current international debate on indigenous land rights has grown up as some kind of dialogue between indigenous organizations, non-indigenous support organizations (NGOs) and the UN human rights system.<sup>5/</sup>

The basic indigenous position on land can now safely be restated as one of "inalienable rights to territory" (cf. WCIP 1987). Indigenous utilization of land is governed by customary law, and this utilization often presents a very complicated and bewildering picture from a non-indigenous point of view. As economics it is judged to be outright irrational. This position is of course wrong, and gives me a chance to restate one of the main arguments in this paper, namely that indigenous modes of production are not geared towards maximizing output, but towards maximizing sustainability of resources, thereby assuring a stable production. In ecological terms indigenous modes of production are more sound and rational than those found among non-indigenous peoples. The only way to secure, maintain and develop this indigenous philosophy with regard to land and use of land is to grant indigenous peoples the necessary self-determination and land rights.

Land rights include the right to control land and all natural resources on it. Control over resources is perhaps the foremost necessary precondition for realization of the right to sustainable development. From this emanates a picture of self-determination and land rights as the two foundations of indigenous rights. However, the idea of self-determination in the context of land rights has to be qualified. Most indigenous peoples are not trying to reclaim their lost land, nor are the majority of them demanding formal independence. But almost all are demanding self-management over their remaining land and natural resources.

As local indigenous organizations are being established, we are slowly getting a more comprehensive picture of the extent and variation of customary law among indigenous peoples.<sup>6/</sup> An important part of this work consists of documenting customary law regarding land rights as a necessary step for demanding recognition in national legislation. This information is important for the indigenous demand for land rights on local, regional

and international levels. In this connection a recent indigenous view on how to get acceptance of demands for land rights is interesting. The World Council of Indigenous Peoples (WCIP 1987) proposes a three-tiered approach and strategy aimed at securing indigenous peoples' rights to their traditional "territories of the earth": (1) understanding the relationship of indigenous peoples to the earth, (2) according this relationship recognition and protection and (3) protecting and interacting with indigenous societies.

Several indigenous organizations have over the years presented their position on land rights publicly in national and international fora (see Appendix no. 2C for an example). One indigenous organization, Four Directions Council, proposes the following points as basic to an indigenous statement on land rights (UN 1985): (1) exclusive territorial rights, (2) the requirement of free and informed consent by treaty or otherwise, (3) express condemnation of the pretence of discovery, (4) restoration of lands taken unlawfully and (5) non-discrimination.

On the level of the state there are various modes of dealing with indigenous demands for land rights based on customary law. There are states where no special legislation has been enacted to deal with indigenous ownership of land, while we also find states where laws have been enacted to provide for this. In between are all the cases of states that recognize some rights in some categories of indigenous land. The categories of indigenous land acknowledged by states vary. Bodley (1975) presents the following list: (1) land traditionally exploited, (2) land considered necessary to meet the future needs of an expanding or recovering population, (3) land actually occupied or actively exploited at a given time and (4) land with registered title.

The UN has a long tradition in working with and for human rights. Starting with the Declaration of Human Rights, the UN deals with aspects of human rights that have implications for the present focus on land rights. The ILO Convention 107 devoted much thought to the aspect of land for indigenous peoples (see Appendix no. 2A). The Cobo-report commissioned by the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities is another milestone (Cobo 1986). This organizational aspect of indigenous land rights will be further dealt with in the following section.

## **7. Organization and action**

Since the early 1970s we have witnessed a large increase in the number of organizations among indigenous peoples as well as in their organizational capability. As a consequence of this, the parallel increasing emphasis on

indigenous human rights within the UN as well as the concomitantly large increase in non-indigenous support organizations, other indigenous peoples have been drawn into this increasing organizational internationalization of the indigenous cause.<sup>77</sup>

The various organizations and their characteristics are so numerous as to almost evade any generalizations. On a very general level the concrete historical relation between an indigenous people and the state in question together with any intra-group conflicts are key determining factors. Furthermore, organizations can be characterized by whether they represent one or more indigenous peoples, by the focus of their activities as well as by who controls them (Cultural Survival Quarterly 1984). Indigenous organizations usually function as a kind of broker or mediator between the indigenous peoples and the non-indigenous peoples.

The various political strategies and alliances pursued are as diverse as the organizations are. A list of the main types of strategies used in an effort to gain recognition for customary land rights run the whole gamut from court litigations and negotiations via political protest, demonstrations and acts of civil disobedience to outright guerilla warfare. Strategies chosen will depend on what type of self-determination is preferred, together with an assessment of the historic and current contact situation as well as the state's interest and willingness to come forward and negotiate. The implications of various strategies and alliances are important to predict, both within states where several indigenous peoples are operating as well as regionally and internationally. One sad consequence of indigenous strategies has been that indigenous peoples have been drawn into regional and international conflicts often unknowingly and to their own detriment.

Another important variable here is the level of organization. Some indigenous peoples who started early now have their own educated experts to run organizations and a population backing them that sees the importance of this work. The organizing efforts started in the early 1970s in the Americas, South Pacific and the Arctic. Africa and Asia unfortunately still lag behind. The Saami of Northern Scandinavia are central in this picture and it may be of interest to summarize the various organizational levels they operate on (see Table no. 3).

Table no. 3: Levels of ethno-political activity utilized by the Saami of Northern Scandinavia

Ethno-political development	Ethno-political level	Sami activity or involvement
↑	4 Inter-national level	Saami represented in the World Council of Indigenous Peoples (WCIP), which is in consultative status with the UN Social and Economic Council (ECOSOC)
↑		
↑		
↑		
↑		
↑	3 Regional level	Saamiland. The Nordic Saami Council vs. states and the Nordic Council
↑		
↑		
↑	2 Intra-state level	E.g. from Norway: NRL, NSL and SLF vs. the government
↑		
↑		
↑	1 Intra-Saami level	E.g. from Norway: NRL, NSL and SLF vs. each other

Sources: Adapted from Brantenberg (1985) and own lecture notes for a lecture series on "Ethnicity and ethno-politics in plural Societies" at the Department of Anthropology, University of Zürich, Summer Semester 1988.

Notes: (1) A certain developmental idea is implied. This moves upwards, gradually encompassing increasing rights and obligations inherent in each respective ethno-political level, (2) Saamiland covers a region divided between the states Finland, Norway, Soviet Union and Sweden, (3) The acronyms NRL, NSL and SLF represent Saami organizations advocating sector interests.

Currently a main focus of indigenous organizations is work within the UN on what is usually referred to as "standard setting activities". This will be dealt with in the next section.

## 8. Current standard setting activities

The framework for setting international standards in the field of indigenous human rights is today being dramatically changed. This is due first of all to the increase in ethnic awareness and the concomitant emphasis on self-determination. Secondly it is caused by the important rise of indigenous peoples' organizations. The UN is charged with the responsibility for developing international standards on human rights, and the Working Group is currently working on the formulation of a draft declaration on universal indigenous rights. In addition there is also some discussion on the ongoing revision of



ILO Convention 107. These standard setting activities need to be discussed as they relate to land and rights to land.

ILO Convention 107 is extremely important for indigenous peoples and especially so when it comes to land rights.<sup>8/</sup> The main reason for this is that it is the only binding international standard on indigenous land rights (see Appendix no. 2A). It recognizes the right to ownership over traditional lands, and also customary law regarding, e.g., land use and inheritance. Furthermore it represents the first attempt at defining indigenous peoples. As the indigenous cause developed it gradually came under attack, and one major criticism was that it was "paternalistic" and had a too narrow conception of land rights. Proposals for a partial revision were reviewed in 1988 (cf. ILO 1988a, see also Appendix no. 2E), and it is hoped that the final proposal will be adopted in 1989.

The IWGIA-representative at the meeting in 1988 filed a report that paints a fairly grim picture of the current situation regarding the revision procedure (IWGIA 1988b). According to this report the discussion on land issues became so complicated that no conclusions could be drawn with the result that this important issue remains unresolved until the meeting in 1989. Another fundamental issue for indigenous peoples concerns their right to have traditional law regarding use of land recognized. The conclusion here was negative from the indigenous point of view. On another front, the concept of self-determination still was seen as dangerous by many delegates. It is too early to come forward with clear conclusions regarding the future implications of what took place, however. A main reason for this is that ILO itself presents a markedly more positive picture of the deliberations and conclusions (cf. ILO 1988b, UN 1988a). Nonetheless there seems to be a strong possibility that indigenous peoples will again consider demanding that the ILO put off any further work on the revision until such time as it is possible for indigenous peoples to participate more fully in the work.

On this background, the parallel focus in the Working Group on drafting a set of indigenous rights is especially important. The eventual plan with this drafting work is that it will be incorporated into a Universal Declaration of Indigenous Rights to be proclaimed by the UN General Assembly.<sup>9/</sup> For the Working Group, an emphasis on land and land rights always was very central. Indigenous organizations supported this while governments were more lenient if they were not outright opposing it (a plan to devote the third session in 1984 to land rights was not followed up and produced little of interest). At the fourth session in 1985 several indigenous organizations presented a complete draft declaration (see Appendix no. 2C for a later version of this declaration). The provisions on land and

self-determination proved provocative, but in the debate these two issues were however generally considered to be important subjects for a declaration.<sup>107</sup> At the fifth session in 1987 the discussion continued. Land rights were discussed implicitly as part of a larger focus on self-determination. The Preparatory Meeting convened by indigenous organizations made an important contribution to the session with an extensive definition of self-determination based on among other things rights to land (cf. Preparatory Meeting 1987, see also Appendix no. 2D). Indigenous speakers tied this comprehensive view on self-determination to access to resources as well as right to sustainable development. A draft declaration of 28 principles prepared by the Working Group was made available before the 1988 Preparatory Meeting (cf. UN 1988b, see also Appendix no. 2F). Reviewing it, the Preparatory Meeting had to conclude that it was not satisfactory (Preparatory Meeting 1988). The main reasons for this was that the following aspects were not adequately addressed: (1) the importance of lands and resources including surface and subsurface resources, (2) the collective rights to lands and territories and (3) the right of self-determination. Based on this, the Preparatory Meeting declined to accept the set of 28 principles, and stood by the draft declaration of 22 principles agreed upon by the 1987 Preparatory Meeting as properly representing their views (UN 1987). The indigenous people present agreed to bring the two draft declarations back to their respective constituents and work on a revised draft declaration to be discussed at the 1989 Preparatory Meeting. There was a consensus to use the draft from the 1987 Preparatory Meeting as basis for this discussion.

What will be the future position for the fundamental question of indigenous land rights is inextricably connected with the outcome of the ongoing work on developing indigenous standards on human rights. The increased level of activity in this area over the last few years is positive. Nonetheless, there are many unsolved problems ahead. The content and extent of the concepts of "self-determination" and "land rights" have so far not been dealt with in any of the existing UN instruments, and much important work needs to be done here. The parallel work on both a Convention and a Declaration is in itself complicating things. Furthermore, concerning the Declaration the Working Group is only a very small part of the whole UN system so much can happen before it reaches the General Assembly. And finally, there are the crucial factors of ratification of the revised Convention, as well as implementing both the Convention and the Declaration.

## 9. Conclusions

For several reasons, these are very important and crucial times for indigenous peoples worldwide. First of all there is the ongoing work on standard setting activities with an emphasis on self-determination and land rights. Secondly there are the much discussed anniversaries of the discovery of Australia in 1988 and the Americas in 1992 with their implication for indigenous peoples. And thirdly 1988 is the fortieth anniversary of the Universal Declaration of Human Rights. This is indeed a time to stop and reflect over the central concepts in the Declaration, its development, further extension and how to get there. The Declaration's importance for the future developments on indigenous rights is especially noteworthy.

If present trends continue, indigenous peoples will lose their land, culture and language faster and faster. The papers in this issue focus on land, which is considered to be the most important and basic loss. This is so because in some sense it is correct to say that indigenous peoples' relation with their land and traditional means of subsistence is basic to and primordial to culture and language. As far as human rights are concerned, the rights to self-determination, land and customary land tenure and use are the most important rights. The papers that follow will expand upon the various arguments presented in the light of specific environmental-cultural settings, and thus give more substance to the present general and cross-cultural discourse on the relationship between indigenous peoples and land rights.

Which tasks need to be performed in order to enhance the respect for indigenous peoples' fundamental human rights, and how can we as concerned individuals contribute towards this? I believe this question can be specified with reference to both an international and a national/local level respectively. These political levels should be understood to interact and influence each other. On the international level the task ahead consists of several interrelated elements:<sup>11/</sup>

(1) Environmental factors need to be taken more strongly into consideration.

(2) The present increasing awareness of the destruction of the environment and peoples, especially indigenous peoples, needs to be stressed more heavily. Gradually, global perspectives on the causes for this are becoming more apparent. They are often found to be both intended and unintended consequences of conscious decisions made by governments and military-industrial complexes.

(3) It is necessary to focus more concretely on the special position and plight of indigenous peoples within

the context of both bilateral and multilateral development cooperation.

(4) Indigenous life is fundamentally characterized by a strong emphasis on coherence and interconnectedness. While international declarations and conventions on human rights discuss indigenous culture and life compartmentalized, the reality is a strongly integrated unity. As an example, land rights should not be reduced to a determining factor only, but be understood in its true interrelation with economic, political, cultural and social rights. This basic understanding of indigenous life needs to be grasped.

(5) The interrelation between the above arguments needs to be made more explicit and synthesized within a framework consisting of land rights, self-determination and sustainable resource development.

What can we do on the local level in order to support the indigenous cause? Briefly stated, we can help by raising awareness through gathering information on the indigenous world and disseminating it through publications and the media, as well as by campaigning and supporting indigenous self-determination and rights to land and resources.<sup>12/</sup>

In Switzerland interesting things are happening at the moment, and there are a number of organizations working on various indigenous issues (see Appendix no. 1). The indigenous support work in Switzerland has up to now mainly been focused on the Americas. It is furthermore characterized by a strong link to the refugee question, maybe as a consequence of the deep values connected with the national humanitarian ethos. There is obviously room for development and expansion here, and I would like to put forward suggestions for two main new directions into which the indigenous advocacy in Switzerland could profitably develop in the future.

Firstly it is important to focus on the global character of indigenous issues (see Map no. 1). A global focus needs to take into consideration current indigenous life in its many varied forms as well as the threats to this life, and present it to the Swiss public. Secondly indigenous support work in Switzerland needs to focus attention on the crucial work within the UN on developing human rights standards for indigenous peoples. This work is centered in Geneva and includes the ILO as well as the Working Group (see Appendix no. 1). Indigenous support work in Switzerland is because of this in an important and privileged position.

It may be of interest to explain how one NGO, namely IWGIA/Switzerland (see Appendix no. 1 for more details on this NGO), is exploring these new potentials actively. In 1988 IWGIA/Switzerland collaborated with the University of Zürich and the Anthropological Museum in Zürich in making an exhibition that presented the plight of the indigenous peoples in Chittagong Hill Tracts in

Bangladesh. Another way of informing the public is through publications. The Swiss consultants Renner and Oertle have recently evaluated a timber extraction project on the northeast coast of Papua New Guinea, especially its effect on the local indigenous cultures (Renner and Oertle 1988). IWGIA/Switzerland has encouraged Renner to revise and enlarge the report for later possible publication. Indigenous support work does not necessarily have to take place in the West, and members of IWGIA/Switzerland are currently living in the Philippines where they are actively involved with indigenous organizations. And, finally, IWGIA/Switzerland participated in the official IWGIA-delegation at the 1988 session of the Working Group in Geneva.

In summary, the crucial issues at stake concern the inalienable and collective rights of indigenous peoples to their traditional territories. We must succeed in securing international understanding and acceptance for these rights, and most importantly, we must aim towards securing a broad spectrum of rights, because without this demand for a total solution the result for indigenous peoples will unavoidably be nothing. But not only that, according to an indigenous statement:

... [F]or if we quit - if we fail to develop new rules of interrelationship with one another, than we will not only continue to violate human rights, but in doing so, doom the very humanity in each of us, and with it, destroy our common home, our mother, this planet earth. (WCIP 1988:5)

## Notes

1. Major parts of this paper were first presented in lectures and seminars given at the Department of Anthropology at the University of Zürich during the Winter Semester 1986/87 and the Summer Semester 1988. I am indebted to the participants and especially to fellow members of IWGIA/Switzerland for their contribution in developing the arguments put forward. I am grateful to the Department of Economics at Agder College in Kristiansand for providing the necessary logistic support during the writing phase. Andreas Wimmer is responsible for the translation from English.

2. The United Nations Working Group on Indigenous Populations will hereafter be referred to as "Working Group". See Appendix no. 1 for details on the Preparatory Meeting, the Working Group and other organizational aspects of the UN involvement with human rights.

3. Türk (1987) puts forward six group rights for further discussion. Significantly, he stresses that this emphasis on a group-based development for indigenous peoples which ideally is aided by some form of cultural or administrative autonomy, should not in any way be construed as implicating secessionist moves.

4. Some other terms that have been used to cover more or less the same are: aboriginal title, Indian title, land claim, land title, natural right and territorial right.

5. For overviews of the development of the idea of land rights, cf. Barsh (1986) and Cobo (1986, vol I).

6. For a recent survey of customary law and land rights, cf. Cultural Survival Quarterly (1986).

7. Cf., e.g., Cultural Survival Quarterly (1984) and Downing and Kushner (1988) for more details on these NGO resources.

8. Some of the sources that deal with ILO Convention 107 include Barsh (1986), IWGIA (1987) and Swepston and Plant (1985).

9. For an evaluation of the Working Group, cf. Barsh (1986), Burger (1987), Cultural Survival Quarterly (1984) and IWGIA (1987, 1988a).

10. The ten principles drafted up to 1986 are reprinted in IWGIA (1987: 93-94).

11. The following five points are partly adapted from IWGIA (1988a: 182-183).

12. In Norway there is a very interesting approach to alternative thinking around solutions to the current man-made global crises. Structured within the organization Alternative Future, the focus is among other things on (1) the implications of the recommendations in the Brundtland-report (Our Common Future 1987) and (2) how to

"translate" them meaningfully into the local urban and rural contexts of Norwegian everyday life. Without doubt the indigenous cause is a both necessary and important element in explicating this alternative framework.

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## **Appendix no. 1:**

### **Sources and resources**

#### **A. Introduction**

This appendix provides some brief notes on sources and resources on indigenous issues available in Switzerland. This may be useful for those interested in knowing more about these issues, and especially for those who want to work actively with organizations involved in indigenous support work.

#### **B. International organizations**

All the work dealing with human rights within the UN are organized under the Economic and Social Council (ECOSOC). The Sub-Commission on Prevention of Discrimination and Protection of Minorities is a subsidiary body under ECOSOC especially interesting in the present context. The Sub-Commission has established working groups which meet regularly before each of its annual sessions to assist it with various tasks. One of them is the Working Group on Indigenous Populations. The Working Group reviews developments relating to the protection of the human rights of indigenous peoples. It meets in Geneva around midsummer before the meeting in the Sub-Commission begins. Since it met the first time in 1982, the annual Working Group session has developed into a very important arena where UN-representatives have a unique chance of sitting face to face with the indigenous peoples whose rights they are concerned with. For the indigenous peoples themselves it is maybe even more important that they have a possibility of meeting each other. Gradually these informal meetings have developed into what is now referred to as the Indigenous Peoples Preparatory Meeting. The Preparatory Meeting take place just before the Working Group session begins. The Secretariat functions connected with human rights questions are taken care of by the Centre for Human Rights. All questions pertaining to the Working Group should be addressed to the Centre for Human Rights (address below).

Among the specialized UN agencies that deal with human rights, the ILO is the most important. Its concern for indigenous peoples is shown through its Convention 107 that deals specifically with indigenous peoples (address below). There are a number of NGOs active in this field, and they publish some important journals and reports dealing with indigenous issues (addresses below).

#### **C. Swiss official organizations**

There are no national-level and official organizations devoted only to human rights issues among indigenous

peoples. Two important organizations are however at least implicitly concerned with these issues. One is the humanitarian organization Red Cross International, and the other is the official Swiss Development Corporation (SDC). The work of both these organizations has implications for indigenous peoples' human rights, and it would be very important and interesting to document and detail this as a necessary prior step to creating public awareness on these issues (addresses below).

#### **D. Swiss Non-Governmental Organizations**

The Indigenous Populations' Documentation, Research and Information Center (DOCIP) primarily concentrate on collecting and cataloguing documentation on indigenous issues worldwide. DOCIP appreciates receiving material, and sends copies on request at moderate prices (address below).

The International Committee for the Indians of the Americas (INCOMINDIOS) is organized in local groups. It is concerned solely with the situation of the Indians in the Americas. INCOMINDIOS aims at supporting the Indian struggle for self-determination. It publishes a journal (address below).

The International Work Group for Indigenous Affairs (IWGIA) has headquarters in Denmark and affiliates in Norway, Sweden and Switzerland. IWGIA's work covers indigenous peoples worldwide and is guided by the principle that indigenous peoples determine the form and content of the support. The organization has three publication series (address below).

#### **E. Addresses**

##### *1. International organizations*

- (a) Anti-Slavery Society for the Protection of Human Rights, 180 Brixton Rd., London SW9 6AT, United Kingdom
- (b) Centre for Human Rights, United Nations Office at Geneva, 8-14 Avenue de la Paix, CH-1211 Geneva 10
- (c) Cultural Survival, 11 Divinity Ave., Cambridge, Massachusetts, 02138, USA
- (d) ILO, International Labour Standards Department CH-1211 Geneva 22
- (e) IWGIA, Friensteinstrasse 5, CH-8032 Zürich. Phone: (01) 257 20 71
- (f) Gesellschaft für Bedrohte Völker, Bundesbüro Postfach 2024, D-3400 Göttingen, Federal Republic of Germany

- (g) Minority Rights Group, 29 Craven St., London WC2N 5NT, United Kingdom
- h) Survival International, 310 Edgware Rd., London W2 1DY, United Kingdom

## 2. Swiss official organizations

- (a) Red Cross International, Avenue Paix 17, CH-1202 Geneva
- (b) Swiss Development Corporation, Eigerstrasse 73, CH-3007 Bern

## 3. Swiss Non-Governmental Organizations

- (a) DOCIP, POB 101, CH-1211 Geneva 21
- (b) INCOMINDIOS, Liebrütistrasse 30, CH-4303 Kaiseraugst
- (c) IWGIA, Freiensteinstrasse 5, CH-8032 Zurich.  
Phone: (01) 257 20 71

## F. Recommended reading

Recently the number of publications in this field has begun to show a marked increase. This annotated list is selective and includes mostly recent titles. The interested reader will find that the selected readings provide for further inroads into the field depending on particular interests. Regrettably most of the literature available is in English. The literature is as follows:

- Bodley, John H. 1983. Der Weg der Zerstörung. Stammesvölker und die industrielle zivilisation. München: Trickster. (Contains extensive coverage on the global destruction of indigenous cultures)
- Brøsted, Jens, et al, eds. 1985. Native power. Oslo, Norway: Universitetsforlaget. (A collection of papers devoted to indigenous peoples' right to self-determination)
- Burger, Julian. 1987. Report from the frontier. The state of the world's indigenous peoples. London, United Kingdom: Zed. (Contains an up-to-date overview of the situation of the world's indigenous peoples. Includes a select list of NGO's)
- Downing, Theodore E. and Gilbert Kushner, eds. 1988. Human rights and anthropology. Cambridge, Massachusetts, United Kingdom: Cultural Survival. (Presents a framework for bridging anthropology and the human rights advocacy. Includes an extensive topical bibliography)
- ICHI. 1987. Indigenous peoples. A global quest for justice. London, United Kingdom: Zed. (A comprehensive overview from a human rights

perspective published by the Independent Commission on International Humanitarian issues. The two concluding chapters are important.)

IWGIA Yearbook. Copenhagen, Denmark: International Work Group for Indigenous Affairs. Published since 1987. Provide useful summaries of the situation for the world's indigenous peoples, together with reports on, e.g., the standard setting activities within the UN.)

Moody, Roger, ed. 1988. The indigenous voice: Visions and realities. 2 vols. London, United Kingdom: Zed. (An edited collection of indigenous peoples' own writings.)

Some important journals and periodicals: Cultural Survival Quarterly, Human Rights Internet Reporter, IFDA Dossier, INCOMINDIOS, IWGIA Document, IWGIA Newsletter, IWGIA Yearbook, Law & Anthropology, Minority Rights Group Report, Pogrom.

## **Appendix no. 2:**

### **Important existing legal instruments and proposed draft standards dealing with indigenous land rights**

#### **A. Indigenous and Tribal Populations Convention**

(Extract of ILO Convention no. 107 adopted by the International Labour Conference, 40th Session, Geneva 5 June 1957)

##### Article 11

The right of ownership, collective or individual, of the members of the populations concerned over the lands which these populations traditionally occupy shall be recognised.

##### Article 12

1. The populations concerned shall not be removed without their free consent from their habitual territories except in accordance with national laws and regulations for reasons relating to national security, or in the interest of national economic development or of the health of the said populations.

2. When in such cases removal of these populations is necessary as an exceptional measure, they shall be provided with lands of quality at least equal to that of the lands previously occupied by them, suitable to provide for their present needs and future development. In cases where chances of alternative employment exist and where the populations concerned prefer to have compensation in money or in kind, they shall be so compensated under appropriate guarantees.

3. Persons thus removed shall be fully compensated for any resulting loss or injury.

##### Article 13

1. Procedures for the transmission of rights of ownership and use of land which are established by the customs of the populations concerned shall be respected, within the framework of national laws and regulations, in so far as they satisfy the needs of these populations and do not hinder their economic and social development.

2. Arrangements shall be made to prevent persons who are not members of the populations concerned from taking advantage of these customs or of lack of understanding of the laws on the part of the members of these populations to secure the ownership or use of the lands belonging to such members.

## Article 14

National agrarian programmes shall secure to the populations concerned treatment equivalent to that accorded to other sections of the national community with regard to

(a) the provision of more land for these populations when they have not the area necessary for providing the essentials of a normal existence, or for any possible increase in their numbers;

(b) the provision of the means required to promote the development of the lands which these populations already possess.

### **B. Declaration of the right to development**

(Extract of UN General Assembly resolution 41/128, 4 December 1986)

#### Article 1

2. The human right to development also implies the full realization of the right of peoples to self-determination, which includes, subject to relevant provisions of both International Covenants on Human Rights, the exercise of their inalienable right to full sovereignty over all their natural wealth and resources.

### **C. Declaration of Principles**

(Extract of Declaration of Principles adopted by the Indigenous Peoples Preparatory Meeting, held at Geneva 27-31 July 1987. In: UN 1987)

2. All indigenous nations and peoples have the right to self-determination, by virtue of which they have the right to whatever degree of autonomy or self-government they choose....

3. No State shall assert any jurisdiction over an indigenous nation and people, or its territory, except in accordance with the freely expressed wishes of the nation and people concerned.

4. Indigenous nations and peoples are entitled to the permanent control and enjoyment of their aboriginal ancestral-historical territories. This includes air space, surface and subsurface rights, inland and coastal waters, sea ice, renewable and nonrenewable resources, and the economies based on these resources.

5. Rights to share and use land, subject to the underlying and inalienable title of the indigenous nation or people, may be granted by their free and informed consent, as evidenced in a valid treaty or agreement.

6. Discovery, conquest, settlement on a theory of terra nullius and unilateral legislation are never legitimate bases for States to claim or retain the territories of indigenous nations or peoples.

7. In cases where lands taken in violation of these principles have already been settled, the indigenous nation or people concerned are entitled to immediate restitution, including compensation for the loss of use, without extinction of original title. Indigenous peoples' right to regain possession and control of sacred sites must always be respected.

8. No State shall participate financially or militarily in the involuntary displacement of indigenous populations, or in the subsequent economic exploitation or military use of their territory.

9. The laws and customs of indigenous nations and peoples must be recognized by States' legislative, administrative and judicial institutions and, in case of conflicts with State laws, shall take precedence.

#### **D. Statement on self-determination**

(Extract of Statement on Self-determination by the participants at the Indigenous Peoples Preparatory Meeting, Geneva 27-31 July 1987. In: Preparatory Meeting 1987)

1. The right to self-determination is fundamental to the enjoyment of all human rights. From the right to self-determination flow the right to permanent sovereignty over land - including aboriginal, ancestral and historical lands - and other natural resources, the right to develop and maintain governing institutions, the rights to life, health and physical integrity, and the rights to culture, way of life and religion.

2. The right to self-determination includes the absolute right of indigenous peoples to exist as communities, tribes, nations or other entities according to their own wishes and to define their own membership.

3. The most fundamental element of the right of self-determination is the freedom of choice on the part of indigenous peoples. The relationships between indigenous peoples and states must be based on the free and informed consent of indigenous peoples.

4. Self-determination encompasses the freedom of indigenous peoples to determine the extent of and the institutions of their self-governance, their political status and associations with the state(s) in which they are located, and the extent and nature of their participation within the political processes of such state(s).

5. The right to self-determination may be realized in many ways ranging from the choice of full independence to various forms of autonomy, self-government and participation in the political processes of the state.

6. Self-determination is dependent upon the right of each indigenous people to a land and resource base necessary to sustain an appropriate and sufficient



economy as well as the right to exercise its authority and jurisdiction over the corresponding territory.

#### **E. Proposed conclusions regarding revision of ILO Convention no. 107**

(Extract of Partial Revision of the Indigenous and Tribal Populations Convention 1957. In: ILO 1988a)

27. The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy should be recognized.

28. Governments should take steps as necessary to identify the lands which the peoples concerned traditionally use and occupy, and to guarantee effective protection of their rights of ownership and possession.

29. Special measures should be taken to safeguard the control of the peoples concerned over natural resources pertaining to their traditional territories, including flora and fauna, waters and sea ice, and other surface resources.

30. Governments should seek the consent of the peoples concerned . . . . before undertaking or permitting any programme for the exploration or exploitation of mineral and other subsoil resources pertaining to their traditional territories. Fair compensation should be provided for any such activities undertaken within the territories of the said peoples.

31. Subject to Points 32, 33 and 34 below, the peoples concerned should not be removed from their habitual territories.

32. Where the removal of the said peoples is considered necessary as an exceptional measure, such removals should take place only with their free and informed consent. Where their consent cannot be obtained, such removals should take place only following appropriate procedures established by national laws and regulations, including public inquiries, which provide the opportunity for effective representation of the peoples concerned.

33. In such exceptional cases of removal, these peoples should be provided with lands of quality and legal status at least equal to that of the lands previously occupied by them, suitable to provide for their present needs and future development. In cases where chances of alternative employment exist, and where the peoples concerned prefer to have compensation in money or in kind, they should be so compensated under appropriate guarantees.

34. Persons thus removed should be fully compensated for any resulting loss or injury.

35. Procedures for the transmission of rights of ownership, possession and use of land which are established by the customs of the peoples concerned should be respected, within the framework of national laws and regulations.

36. The consent of the peoples concerned should be sought when considering the adoption of national laws or regulations concerning the capacity of the said peoples to alienate their land or otherwise transmit rights of ownership, possession and use of their land.

37. Persons who are not members of these peoples should be prevented from taking advantage of the customs referred to in Point 35 or of lack of understanding of the laws on the part of the members of these peoples to secure the ownership, possession or use of land belonging to them.

38. Unauthorised intrusion upon, or use of, the lands of the peoples concerned should be considered as an offence, and appropriate penalties for such offences and other appropriate recourse procedures should be established by law.

40. Adequate procedures should be established within the national legal system to resolve land claims by the peoples concerned, including claims arising under treaties.

#### **F. UN Working Group on Indigenous Populations: Draft principles for a Universal Declaration on Indigenous Rights**

(Extract of A working paper by Ms. Erica-Irene A. Daes containing a set of draft preambular paragraphs and principles for insertion into a universal declaration on indigenous rights. In: UN 1988b)

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 systems for the protection and promotion of the use, enjoyment and occupancy of the land.

14. The right to special measures to ensure their control over surface resources pertaining to the territories they have traditionally occupied.

15. The right to reclaim land and surface resources ... 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 mechanisms, 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.