ANNEX

(of Letter to UK Prime Minister Tony Blair, September 10, 2004, from Indigenous nations and organizations and non-Indigenous organizations)

TOWARDS A *U.N. DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES*: INJUSTICES AND CONTRADICTIONS IN THE POSITIONS OF THE UNITED KINGDOM

September 10, 2004

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INTRODUCTION

1. In 1993, after nine years of careful discussion and reflection, the expert members of the Working Group on Indigenous Populations (WGIP) formulated and approved the draft *U.N. Declaration of the Rights of Indigenous Peoples*. Throughout this dynamic process, Indigenous peoples, States, specialized agencies and academics actively participated and exchanged views.

2. In 1994, the Sub-Commission on the Prevention of Discrimination and Protection of Minorities approved the draft *Declaration* elaborated by the WGIP and submitted it for consideration to the U.N. Commission on Human Rights (UNCHR).

> *United Nations Declaration on the Rights of Indigenous Peoples* (Draft), in U.N. Doc. E/CN.4/1995/2; E/CN.4/Sub.2/RES/1994/45, 26 August 1994, Annex, *reprinted in* (1995) 34 I.L.M. 541.

3. Therefore, the Commission of Human Rights established in 1995 an open-ended inter-sessional Working Group to elaborate a Declaration. As a basis for its work, this Working Group is using the draft *U.N. Declaration* that was approved by the experts of both the WGIP and the Sub-Commission.

> U.N. Commission on Human Rights, *Establishment of a working group of the Commission on Human Rights to elaborate a draft declaration in accordance with paragraph 5 of General Assembly resolution 49/214 of 23 December 1994*, Res. 1995/32, 3 March 1995.

4. Within the inter-sessional Working Group, representatives of participating States and Indigenous peoples are striving to reach consensus on each Article of the *Declaration*. Should the Working Group approve a common text, it would be then considered by the UNCHR and ultimately sent to the U.N. General Assembly for possible adoption.

5. It is appalling that, during the past ten years, the UNCHR inter-sessional Working Group has only provisionally approved 2 of the 45 Articles of the draft *Declaration*. To a large degree, this serious lack of progress is a result of the lack of political will among a number of participating States, including the United Kingdom.

6. This lack of progress has been noted in a recent Report of the U.N. Secretary-General. Only two more meetings are scheduled before the end of the International Decade of the World's Indigenous People in December 2004. The adoption of a Declaration by the General Assembly - "a major objective of the Decade" - is being unfairly jeopardized.

> **The Working Group on the draft declaration will meet twice this year to work on the text of the draft declaration on the rights of indigenous peoples: to date, only two of the 45 articles have been adopted. Indigenous peoples remain hopeful that consensus will be reached in this the final year of the Decade.**
>
> Economic and Social Council, *Information concerning indigenous issues requested by the Economic and Social Council: Report of the Secretary-General*, E/2004/85, 6 July 2004, para. 52. [emphasis in original]

> … the adoption of a declaration on the rights of indigenous peoples [is] a major objective of the Decade …
>
> U.N. General Assembly, *International Decade of the World's Indigenous People*, Res. 52/108, 18 February 1998, para. 6.

7. In March 2004, a comprehensive Joint Submission by Indigenous organizations and supported by human rights organizations was sent to the Office of the High Commissioner for Human Rights. The Submission described major "impediments" to the adoption by the U.N. of a strong and uplifting Declaration on the rights of Indigenous peoples. In particular, the State approaches, techniques and arguments were addressed that have little or no validity under international law.

> Grand Council of the Crees (Eeyou Istchee) *et al.*, "Assessing the International Decade: Urgent Need to Renew Mandate and Improve the U.N. Standard-Setting Process on Indigenous Peoples' Human Rights", Joint Submission to the Office of the High Commissioner for Human Rights, Geneva, March 2004, Heading IV ("'Impediments' to the Adoption of a Strong and Uplifting *U.N. Declaration*"), pp. 37-82.
>
> For significant excerpts of the Joint Submission, see "The UN Draft Declaration: 2003 Developments" in International Work Group For Indigenous Affairs, *The Indigenous World 2004* (Copenhagen: IWGIA, 2004) 444; and "Assessing the International Decade" in *Justice as Healing*, Newsletter, Native Law Centre, University of Saskatchewan, Saskatoon, Canada, vol. 9, No. 2 (Summer 2004).

8. In this context, we feel that it is now critical to bring to the specific attention of Prime Minister Tony Blair and others some basic positions taken by the government of the United Kingdom in the UNCHR inter-sessional Working Group. In our respectful

view, these positions are unjust and obstructionist. In some cases, they squarely contradict the very values and principles that the UK government claims to uphold.

9. Further, these UK positions are largely inconsistent with international law and its progressive development. If maintained, they will continue to severely impede progress within the current U.N. standard-setting process.

10. Clearly, in light of the stark historical and contemporary realities impacting upon Indigenous peoples, the UK government should be demonstrating respect for human dignity, tolerance, and a genuine commitment to justice.

11. Although we could have presently examined the unjustified positions of a number of other States in the UNCHR Working Group, we have selected the United Kingdom. There are a number of reasons for our choice.

12. First, the existing potential for the UK to play a positive role in the Working Group is a significant factor. Unlike the United States government, the UK appears to make a serious commitment to supporting the United Nations and principles of international cooperation. Second, Indigenous representatives are in the process of initiating a dialogue with European Union (EU) States. Obstructionist UK interventions are impeding our efforts towards attaining unified supportive positions from the EU bloc of States.

13. Third, we wish to demonstrate that a developed State, such as the UK, cannot credibly extol to others the virtues of respecting human rights and other universal principles and values, if it fails to uphold its own legal obligations in this context. In our respectful view, the potentially adverse consequences for the international human rights system are far-reaching and unacceptable.

14. The UK and other States are increasingly aware of the global challenges we face. In all regions of the world, Indigenous peoples have been subjected to colonialism, widespread dispossession of lands and resources, discrimination, exclusion, marginalization, forced assimilation and other forms of cultural genocide, genocide and rampant violations of treaty rights. All of these elements are inseparably linked to violations of human rights.

> *Genocide has been committed against indigenous, Indian or tribal peoples in every region of the world, and it is in this context that any discussion of indigenous rights must occur*. The general perspective of the state toward indigenous peoples - that they are to be conquered or

converted to the beliefs of the dominant, more "advanced" society - has *remarkable similarities, whether the state is found in North, Central, South America*; the Caribbean; the Pacific; Asia, from Bangladesh to China; Africa, with respect to groups such as the pygmies; or northern Europe.

> H. Hannum, "New Developments in Indigenous Rights", (1988) 28 Virginia J. Int'l L. 649 at p. 649. [emphasis added]

Wounded Knee, the Trail of Tears, the Siege of Cusco [Spanish killing of all captured Indian women] - these words, vessels of meaning, capture only a tiny fragment of the history of suffering, actual and cultural genocide, conquest, penetration, and marginalization endured by indigenous peoples around the world.

> S. Wiessner, "Rights and Status of Indigenous Peoples: A Global Comparative and International Legal Analysis", (1999) 12 Harv. H. Rts. J. 57, at p. 57.

… noting that certain states have concluded treaties with indigenous peoples in the past and that some of those treaties have been shamelessly violated; whereas in this connection, in the context of increasing impoverishment, indigenous peoples are often the first to be dispossessed of rights, land and resources …

> European Parliament, *Resolution on Action Required Internationally to Provide Effective Protection for Indigenous Peoples*, Eur. Parl. Doc. PV 58(II) (1994), adopted by the European Parliament in its plenary session, Strasbourg, 9 February 1994, preamble, para. F.

The Maasai land case [East Africa] is a typical example of the violations and the injustices caused by the treaty-making process. It is a classic instance of how colonial law was molded to suit the needs of British policy. The crown treated the Maasai as an independent state for the purposes of taking power, yet when the Crown itself violated the terms of such treaties; no remedy was available to the indigenous people. … The treatment of the Maasai was compounded by the racism of the colonial authorities.

> J.O. Simel, "The Anglo-Maasai-Agreements/Treaties – a case of Historical Injustice and the Dispossession of the Maasai Natural Resources (Land), and the Legal Perspectives", Background paper, Expert Seminar on Treaties, Agreements and Other Constructive Arrangements Between States and Indigenous Peoples, organized by OHCHR, Geneva, 15-17 December 2003, HR/GENEVA/TSIP/SEM/2003/BP.7, p. 3.

> I am chairman of the Indian Affairs Committee, Mr. President … This committee has to act upon 800 treaties--800 treaties--entered into by sovereign Indian nations and the sovereign Government of the United States. But, shamefully, 430 of these treaties were not even considered by this body. And of the 370 that we did consider and ratify, we violated provisions in every one of them.
>
> *Congressional Record – Senate*, vol. 139, no. 147, S14880, 103d Congress, First Session, October 27, 1993 (U.S. Senator Daniel Inouye).

15. Increasingly, the U.N. Secretary-General and other international leaders are highlighting the urgent circumstances facing Indigenous peoples on a worldwide basis. These leaders are reminding the international community of the most fundamental principles of the *U.N. Charter* and calling for strong support for Indigenous peoples globally.

> For far too long, indigenous peoples' lands have been taken away, their cultures denigrated or directly attacked, their languages and customs suppressed, their wisdom and traditional knowledge overlooked or exploited, and their sustainable ways of developing natural resources dismissed. Some have even faced the threat of extinction.
>
> …
>
> On this 10th anniversary of the International Day of the World's Indigenous People, let us remember the most fundamental principles of the United Nations Charter -- peace, development and human rights -- and reaffirm our determination to broaden the circle of solidarity for indigenous peoples so that these principles are turned into practice for indigenous peoples everywhere.
>
> U.N. Secretary-General, "Secretary-General calls for renewed determination to ensure peace, development, human rights for indigenous people, in international message", *Press Release*, SG/SM/9437, HR/4784, OBV/433, 30 July 2004.

> … the conditions in which indigenous peoples live very often remain precarious. Their tangible and intangible cultural heritage is still vulnerable; the threats linked to globalization, migration and environmental factors are very real, and social and economic discrimination remain manifest.
>
> K. Matsuura, "Message of the Director-General of UNESCO on the occasion of the International Day of the World's Indigenous People - 9 August 2004", http://portal.unesco.org/en/ev.php-URL_ID=22036&URL_DO=DO_TOPIC&URL_SECTION=201.html.

16. The UK and U.S. governments, each in its own way, effectively disregard its international obligations as a Member State of the United Nations. Without credible substantiation, both actively challenge the fundamental principles in the draft *U.N. Declaration*. Both seriously impede progress on Indigenous peoples' human rights and thereby perpetuate our global impoverishment. Yet, each of these same governments makes vigorous public speeches about their principled foreign policy objectives.

> On External Policy, the EU must be both effective and seen to be effective internationally. Political will, not hot air. We need to project our values on the world stage, to be open, outward-looking, supportive of … human rights and democracy, and playing a major role in the great international issues of the day. … arcane disputes must no longer stand in the way of effective action.
>
> T. Blair, "Speech by the Prime Minister on the British Presidency of the European Union", 6 December 1997, http://www.number-10.gov.uk/output/Page1087.asp.

> … We fight against poverty because hope is an answer to terror. We fight against poverty because opportunity is a fundamental right to human dignity. We fight against poverty because faith requires it and conscience demands it. And we fight against poverty with a growing conviction that major progress is within our reach.
>
> G. Bush, "United States of America: Remarks by Mr. George W. Bush President at the International Conference on Financing for Development", Monterrey, Mexico, March 22, 2002.

17. At the same time, the UK government has publicly declared that its human rights record is "gladly open" to "legitimate international scrutiny". The government is "constantly working to improve, including learning from others, and admitting and correcting mistakes". It is in this collaborative spirit of constructive scrutiny, accountability and advancement of human rights that we have prepared this in-depth analysis.

> … the UK does not pretend its own [human rights] record is perfect. … We are constantly working to improve, including learning from others, and admitting and correcting mistakes where we make them. In this context, we gladly open ourselves up to legitimate international scrutiny of our record. …
>
> B. Rammell (UK Parliamentary Under Secretary), "'We are Determined to Succeed' – Bill Rammell Speaks at the UN Commission on Human Rights", Geneva, 18 March 2004,

http://www.fco.gov.uk/servlet/Front?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1007029391647&a=KArticle&aid=1078995799540.

18. This Annex will elaborate our urgent concerns and strong criticisms relating to the fundamental positions of the UK government. This is not a criticism of the people in the United Kingdom, many of whom are fair-minded and supportive of Indigenous peoples' human rights.

19. In summary, in relation to Indigenous peoples and the positions of the UK government, we will briefly address the following major aspects:

i) Human rights obligations of the U.N. and Member States;
ii) Indigenous peoples' collective human rights;
iii) right of self-determination;
iv) rights to lands, territories and resources;
v) defining the term "peoples" or "Indigenous peoples"
vi) use of "should" rather than "shall" throughout the draft *U.N. Declaration*; and
vii) implications of UK government positions in the broader global context.

I. HUMAN RIGHTS OBLIGATIONS OF U.N. AND MEMBER STATES

20. In assessing the positions of the UK government in the current standard-setting process concerning Indigenous peoples' human rights, the following human rights obligations of the United Nations and Member States are relevant.

21. The Purposes and Principles of the *U.N. Charter* require actions "promoting and encouraging respect" for human rights and not undermining them. The duty to promote respect for human rights is to be based on "respect for the principle of equal rights and self-determination of peoples".

> The Purposes of the United Nations are:
> …
> 3. To achieve international cooperation … in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion … (Art. 1, para. 3)

> With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

…
c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion. (Art. 55, para. c)

All Members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55. (Art. 56)

Charter of the United Nations.

22. In addition, the international obligation to respect human rights, including the right of self-determination, is of an *erga omnes* character. An *erga omnes* obligation refers to a duty that is binding upon all States. It is also a duty owed to the international community as a whole.

> This international obligation [to respect human rights] ... is *erga omnes*; it is incumbent on every State in relation to the international community as a whole, and every State has a legal interest in the protection of human rights. This obligation further implies a duty of solidarity among all States to ensure as rapidly as possible the effective protection of human rights throughout the world.
>
> International Law Institute, "The Protection of Human Rights and the Principle of Non-Intervention in Internal Affairs of States" (1990) 63 Annuaire de l'Institut de droit int'l 338.

"*Erga omnes*" literally means "against everyone." Thus an *erga omnes* right is a right in which all states have a legal interest in its protection. Similarly, an *erga omnes* obligation is an obligation owed by a state toward the international community as a whole and *thus all states have a legal interest in its fulfilment*. In this way, an *erga omnes* obligation differs from an ordinary legal obligation whose breach engages only the state that is the direct and immediate victim.

> H.M. Kindred *et al.*, eds., *International Law: Chiefly as Interpreted and Applied in Canada*, 6th ed. (Toronto: Emond Montgomery Publications, 2000), at p. 59. [emphasis added]

... that the right of peoples to self-determination as it evolved from the Charter and from United Nations practice, has an *erga omnes* character, is irreproachable. The principle of self-determination of peoples has been recognized by the United Nations Charter and in the jurisprudence of the Court ... ; it is one of the essential principles of contemporary international law.

> *Case Concerning East Timor (Portugal v. Australia)*, [1995] I.C.J. Rep. 90 at 102, para. 29, *per* Judge Weeramantry.
>
> See also *Barcelona Traction, Light, & Power Co. (Belgium v. Spain)*, [1970] I.C.J. Rep. 3 at p. 32, para. 34.

23. All Member States of the United Nations are legally bound to uphold at all times the Purposes and Principles of the *Charter*.

> The Organization and its Members, in pursuit of the Purposes stated in Article 1, shall act in accordance with the following Principles.
> …
> 2. All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfill in good faith the obligations assumed by them in accordance with the present Charter. (Art. 2, para.2)
>
> All Members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55. (Art. 56)
>
> *Charter of the United Nations.*

24. Upholding the Purposes and Principles of the *U.N. Charter*, as well as international law generally, is critical for all States, peoples and individuals in the international community.

> We recall that non-compliance with obligations under the Charter of the United Nations constitutes a violation of international law.
>
> *Charter of Paris for a New Europe, A New Era of Democracy, Peace and Unity*, November 21, 1990, *reprinted in* (1991) 30 I.L.M. 190.

> The participating States will respect human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief, for all without distinction as to race, sex, language or religion.
> …
> In the field of human rights and fundamental freedoms, the participating States will act in conformity with the purposes and principles of the Charter of the United Nations and with the Universal Declaration of Human Rights. They will also fulfil their obligations as set forth in the international declarations and agreements in this field, including inter alia the International Covenants on Human Rights, by which they may be bound.

> *Final Act of the Conference on Security and Co-operation in Europe (Helsinki Final Act)*, signed by 35 states (including Canada and the United States) on August 1, 1975, *reprinted in* (1975) 14 I.L.M. 1295, Principle VII (Respect for human rights and fundamental freedoms).

25. Clearly, it would not be in the interests of the international community for the U.N. and its Member States to undermine their own credibility. They must not fail to fully respect the *U.N. Charter* and fundamental principles of justice, fairness, democracy and respect for human rights. Otherwise, they could hardly insist that other States, peoples and individuals must adhere to these same precepts and respect the rule of law. As U.N. Secretary-General Kofi Annan has emphasized:

> … every government that is committed to the rule of law at home, must be committed also to the rule of law abroad. And all States have a clear interest, as well as clear responsibility, to uphold international law and maintain international order.
>
> U.N. Secretary-General, "When Force is Considered, There is No Substitute for Legitimacy Provided by United Nations, Secretary-General Says in General Assembly Address", *Press Release*, SG/SM/8378/GA/10045, 12 September 2002.

26. In regard to promoting respect for and observance of human rights, it would be a violation of the legal duty of States under Arts. 55 and 56 of the *U.N. Charter* to substantially undermine human rights, fail to cooperate with the U.N. or be otherwise obstructive. This is especially the case, if a class of persons or peoples – such as the world's Indigenous peoples – are the affected subjects.

> As treaty provisions applicable to the Organization and its members these prescriptions [in Arts. 55 and 56 of the U.N. Charter] are of paramount importance. Article 55 is perhaps oblique – the United Nations "shall promote". However, Article 56 is stronger and involves the members; and the political and judicial organs of the United Nations have interpreted the provisions as a whole to constitute legal obligations. ... Thus, while it may be doubtful whether states can be called to account for every alleged infringement of the rather general Charter provisions, *there can be little doubt that responsibility exists under the Charter for any substantial infringement of the provisions, especially when a class of persons, or a pattern of activity, are involved*.
>
> I. Brownlie, *Principles of Public International Law*, 5th ed. (Oxford: Clarendon Press, 1998), at p. 574. [emphasis added]

... Art. 56 not only requires co-operation among the member states but

> between the member states and the Organization. ... Art. 56, however, does require that member states co-operate with the UN in a constructive way; obstructive policies are thus excluded.
>
> R. Wolfrum, "Article 56" in B. Simma, ed., *The Charter of the United Nations: A Commentary* (New York: Oxford University Press, 1994) 793, at p. 794.

27. In particular, State acts of discrimination based on race, sex, etc. would be a violation of international law, including the Purposes and Principles of the *U.N. Charter*.

> In accordance with the wording of Art. 55(c), the [General Assembly] has frequently emphasized that discrimination based upon race, sex, language, or religion is inconsistent with the pledges of the member states under Art. 56. ... In Res. 1248 (XIII) of October 30, 1958, for example, the GA states that 'governmental policies of Member States which are designed to perpetuate or increase discrimination are inconsistent with the pledges of the Members under Article 56 of the Charter of the United Nations'.
>
> R. Wolfrum, "Article 56" in B. Simma, ed., *The Charter of the United Nations: A Commentary*, *supra*, at p. 795.

> The principle of the equality in dignity and rights of all human beings and all peoples, irrespective of race, colour and origin, is a generally accepted and recognized principle of international law. Consequently any form of racial discrimination practised by a State constitutes a violation of international law giving rise to its international responsibility.
>
> *Declaration on Race and Racial Prejudice*, E/CN.4/Sub.2/1982/2/Add.1, Annex V (1982). Adopted and proclaimed by the General Conference of the United Nations Educational, Scientific and Cultural Organization at its twentieth session on 27 November 1978, Art. 9, para. 1.

> [Commonwealth] members … share a commitment to certain fundamental principles. …
> - we recognise racial prejudice and intolerance as a dangerous sickness and a threat to healthy development, and racial discrimination as an unmitigated evil;
> - we oppose all forms of racial oppression, and we are committed to the principles of human dignity and equality …
>
> *Harare Commonwealth Declaration, 1991*, issued by Heads of Government in Harare, Zimbabwe, 20 October 1991, para. 4.

28. State actions that are based on race would also violate the peremptory norm prohibiting racial discrimination. For example, States could not validly agree to

discriminatory double standards through a new Declaration on the rights of Indigenous peoples or other U.N. instrument.

> The major distinguishing feature of such rules [i.e. peremptory norms] is their relative indelibility. They are rules of customary law which cannot be set aside by treaty or acquiescence but only by the formation of a subsequent customary rule of contrary effect. The least controversial examples of the class are the prohibition of the use of force, the law of genocide, *the principle of racial non-discrimination*, crimes against humanity, and the rules prohibiting trade in slaves and piracy.
>
> I. Brownlie, *Principles of Public International Law*, 5th ed., *supra*, at p. 515. [emphasis added]

> Every State has the duty to fulfil in good faith the obligations assumed by it in accordance with the Charter of the United Nations.
>
> …
>
> Where obligations arising under international agreements are in conflict with the obligations of Members of the United Nations under the Charter of the United Nations, the obligations under the Charter shall prevail.
>
> *Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the United Nations*, UNGA Res. 2625 (XXV), 25 U.N. GAOR, Supp. (No. 28) 121, U.N. Doc. A/8028 (1971). Reprinted in (1970) 9 I.L.M. 1292.

> In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.
>
> *Charter of the United Nations*, Art. 103.
>
> Similarly, in regard to the superiority of the U.N. Charter, see *Vienna Convention on the Law of Treaties*, U.N. Doc. A/CONF.39/27 at 289 (1969), 1155 U.N.T.S. 331, *reprinted in* 8 I.L.M. 679 (1969), Art. 30, para. 1; and Nguyen Quoc Dinh, P. Daillier, & A. Pellet, *Droit international public*, 5th ed. (Paris: L.G.D.J., 1994), at p. 269, para. 177.

29. Yet in the UNCHR Working Group, the UK and a number of other participating States pay little attention to the Purposes and Principles of the *U.N. Charter*. They also show little respect for their *erga omnes* obligations relating to the right of self-determination and the prohibition against racial discrimination.

30. This ongoing, illegitimate conduct has been a major contributor to the lack of progress on the draft *U.N. Declaration* within the UNCHR Working Group. Clearly concrete and effective measures are required by the United Nations, in terms of ensuring the proper functioning of the current standard-setting process and upholding the *U.N. Charter* and its most basic precepts.

II. UNJUST POSITIONS OF THE UK GOVERNMENT

31. Within the U.N. standard-setting process on Indigenous peoples' human rights, most governments do not provide written texts of their diverse interventions.

32. In addition, in his yearly report of each session, the Chair- Rapporteur of the UNCHR Working Group solely provides a summary. In describing various positions and concerns, the specific names of governments are often omitted, except if they have submitted a written proposal to the Working Group.

33. As a result, in assessing some of the basic positions of the government of the United Kingdom, we rely on other sources in the analysis that follows. These include: UK government reports, policies, speeches, and other documents that are available, as well as the written commentaries and analyses by informed observers.

34. Generally, in our view, the UK government positions expressed at the UNCHR Working Group have been highly unhelpful, discriminatory and intolerant on some of the key aspects of the draft *U.N. Declaration* (see discussion below). Too often, on these essential issues, the UK government takes a position that undermines the status and rights of Indigenous peoples globally. Too often, the UK government aligns itself with the United States or others, who express some of the most regressive positions within the U.N. standard-setting process.

35. We are not suggesting that every UK government intervention in the Working Group serves to undermine the existing text of the draft *U.N. Declaration*. However, the strong tendency of the UK government to be "unhelpful" and "obstructionist" has been noticed by numerous representatives of Indigenous and non-Indigenous organizations in the Working Group sessions. For example:

> In assessing the relative influence of each of these [State government] positions, it is important to note that two members of the Security Council – the UK and the USA - belong to the bloc which raised fundamental objections. … There were surprisingly unhelpful and obstructionist

[interventions] by the UK. Australia and the US continued to be regarded as the "hard-liners".

> S. Pritchard, *Setting International Standards: An Analysis of the United Nations Declaration on the Rights of Indigenous Peoples and the first six sessions of the Commission on Human Rights Working Group*, paper, 3rd ed., June 2001, p. 28.

In a joint statement, an indigenous participant referred to the position of the United Kingdom that the collective rights of indigenous peoples were not recognized under international law. … He further noted that the United Kingdom had failed to recognize that the draft declaration elaborated the rights of the indigenous as peoples, and not as individuals.

> U.N. Sub-Commission on the Promotion and Protection of Human Rights, Working Group on Indigenous Populations, *Report of the Working Group on Indigenous Populations on its twenty-second session, Chairperson-Rapporteur: Mr. Miguel Alfonso Martínez*, E/CN.4/Sub.2/2004/28, 3 August 2004, 20, para. 100.

We are quite concerned over what appears to be serious inconsistencies in Canada's positions and strategies. In its public statements, Canadian officials have been relatively supportive of the draft Declaration, however in negotiations at the UN working group Canada persists in allying with the *States that have shown the greatest resistance to recognition of a strong Declaration: Australia, the United Kingdom, and the United States of America.*

> Rights and Democracy, *et al.*, "A New Course on Indigenous Rights Is Urgently Needed: Major Canadian Human Rights Groups Make a Joint Appeal to the Canadian Government Concerning the Draft *United Nations Declaration on the Rights of Indigenous Peoples*, Ottawa, 2 February 2004, available at http://www.ichrdd.ca/frame2.iphtml?langue=0&menu=m01&urlpage=/english/commdoc/publications/jointAppealUN.html. [emphasis added]

36. Over the years, the "obstructionist" positions of the UK government in the UNCHR Working Group have continued. For example:

> At CHRWG6 [Working Group session in 2000], the approaches of States to the Declaration could be tabulated as follows:
>
> …
>
> Those which challenged fundamental principles underlying the Declaration, in particular, the concept of self-determination, language of Indigenous peoples and/or the recognition of collective rights: Australia, Japan, the United Kingdom and the USA.

In assessing the relative influence of each of these positions, two members of the Security Council, the UK and the USA, raised fundamental, conceptual

> objections. … *Generally speaking, CHRWG6 saw … continuing obstructionist interventions by the UK*; … and Australia and the USA consolidating their position as hard-liners.
>
> S. Pritchard, *Setting International Standards: An Analysis of the United Nations Declaration on the Rights of Indigenous Peoples and the first six sessions of the Commission on Human Rights Working Group*, paper, 3rd ed., 2001, at pp. 47-48. [emphasis added]

37. It is disturbing that, for the most part, the UK government plays an unconstructive role in the UNCHR Working Group. In contrast, outside the current standard-setting context relating to Indigenous peoples, the same government expresses its firm adherence to many international values and principles that are uplifting and serve to strengthen international human rights law.

> The truth is that when it comes to the common rights of all peoples there is no 'clash of civilisations'. Freedom, democracy, respect for human rights and the rule of law are universal values.
>
> J. Straw (UK Foreign Secretary), "Strategic Priorities for British Foreign Policy", FCO Leadership Conference, London, 6 January 2003, http://www.fco.gov.uk/servlet/Front?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1007029391647&a=KArticle&aid=1041605967494.

38. The injustices, contradictions and discrimination in UK government positions will be amply illustrated below.

2.1 Collective Human Rights of Indigenous Peoples

39. Over a number of years, the UK government's opposition to recognizing the collective human rights of Indigenous peoples has been repeatedly addressed by representatives of both Indigenous peoples and non-Indigenous human rights organizations. These discussions have taken place both within and outside the UNCHR Working Group. For example, see generally:

> F. MacKay, "The UN Draft Declaration on the Rights of Indigenous Peoples and the Position of the United Kingdom", Submission to the Government of the United Kingdom, London, 26 May 2003.
>
> Grand Council of the Crees (Eeyou Istchee) *et al.*, "Assessing the International Decade: Urgent Need to Renew Mandate and Improve the U.N. Standard-Setting Process on Indigenous Peoples' Human Rights", *supra*, at pp. 43-53.

40. At the December 2002 meeting of the UNCHR Working Group, the UK and U.S. government representatives conceded that the term "peoples" applies to some Articles of the draft *U.N. Declaration* that contain collective rights. However, both the UK and U.S. refused to specify to which Articles they were referring. In our view, this demonstrates the weak and arbitrary bases that underlie their positions on our crucial issues. These vague government positions remain unsubstantiated in international law and have not contributed to making substantial progress in the Working Group.

> For the first time, both the US and the UK conceded that they were "willing to consider the usage of 'peoples' in the appropriate places". *While they disagreed that the term 'peoples' underlies the entire Declaration, they nevertheless acknowledged that the term 'peoples' applies to some articles of the Declaration that contain collective rights. When prompted by indigenous delegates, the US and UK were unable to specify which articles contained collective and which individual rights.* Instead, they insisted on an article-by-article discussion of the Declaration, and stated that they would only be able to determine the articles pertaining to collective rights once their language was finalized.
>
> "8th session of the Working Group on the Draft Declaration on the Rights of Indigenous Peoples", in International Work Group For Indigenous Affairs, *The Indigenous World 2002 – 2003* (Copenhagen: IWGIA, 2003) 416, at pp. 420-421. [emphasis added]

41. To date, it is clear that the UK government is adamant in maintaining its opposition to Indigenous peoples' collective rights, regardless of what human rights arguments under international law are advanced by Indigenous representatives or others. This "significant difference of opinion" is readily acknowledged by the UK government:

> On 22 November 2002, the FCO held a round table [with representatives of Indigenous and non-indigenous organizations] to discuss proposals for collective rights for indigenous people and their impact on international human rights law. … A second round table was held on 11 June 2003 … A significant difference of opinion exists between the UK Government and these NGO representatives. With the exception of the right of self-determination, the UK does not accept that collective human rights (human rights belonging to *groups* of people) exist within the core international human rights treaties because human rights are calls upon states to treat *individuals* in accordance with international standards. … The NGOs present at the round tables disagree, citing international jurisprudence which they believe has interpreted human rights law to protect collective rights.
>
> United Kingdom (Foreign and Commonwealth Office), *Human Rights: Annual Report 2003* (London: 2003), at p. 217.

42. The position of the UK government position on the collective human rights of Indigenous peoples is expressed on its web site in the following terms:

> The UK Government believes firmly that the individual rights of indigenous people should be recognised and protected. All indigenous people are entitled to full respect of their individual human rights, both within and without their communities. *But we do not think that granting new collective rights to indigenous people is the best means to achieve this.*
>
> The UK has a long-held position on the idea of collective human rights: with the exception of the right of self-determination (Common Article 1 of the two International Covenants on Human Rights), *we do not accept the concept of collective rights.* Human rights obligations negotiated and developed over the last half century require States to treat individuals in accordance with international standards. *In our view, the ratification and implementation of the six core UN human rights treaties by states with indigenous communities would do more to improve the human rights of indigenous people than the creation of new collective rights.* Of course certain rights belonging to individuals can often be exercised collectively, in community with others, for example, freedom of association, freedom of religion or a collective title to property.
>
> The key is that indigenous people should be able to realise their individual rights and participate effectively in decision-making, particularly on issues concerning land and resources.
>
> *Collective Human Rights*, United Kingdom, Foreign and Commonwealth Office, http://www.fco.gov.uk/servlet/Front?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1086624724300. [emphasis added]
>
> The six core U.N. human rights treaties referred to by the U.K. are:
>
> *International Covenant on Civil and Political Rights*, G.A. Res 2200 (XXI), 21 U.N. GAOR, Supp. (No. 16) at 52, U.N. Doc. A/6316, Can. T.S. 1976 No. 47 (1966). Adopted by the U.N. General Assembly on December 16, 1966 and entered into force March 23, 1976
>
> *International Covenant on Economic, Social and Cultural Rights*, G.A. Res. 2200 (XXI), 21 U.N. GAOR, Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966); Can. T.S. 1976 No. 46 (entered into force 3 January 1976, accession by Canada 19 May 1976)
>
> *International Convention on the Elimination of All Forms of Racial Discrimination*, 660 U.N.T.S. 195, (1966) 5 I.L.M. 352. *Adopted by* U.N. General Assembly on December 21, 1965, opened for signature on March 7, 1966, and *entered into force* on January 4, 1969

> *Convention on the Elimination of All Forms of Discrimination against Women*, 1249 U.N.T.S. 13; Can. T.S. 1982 No. 31, adopted by the General Assembly in resolution 34/180 of 18 December 1979 and entered into force on September 3, 1981
>
> *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, U.N. GAOR, 39th Sess., Supp. No. 51, at 197, U.N. Doc. A/39/51 (1985), adopted by the General Assembly in resolution 39/46 of 10 December 1984 and entered into force on 26 June 1987
>
> *Convention on the Rights of the Child*, U.N. GAOR, 44th Sess., Supp. No. 49, at 166, U.N. Doc. A/RES/44/49 (1990), adopted by the General Assembly in resolution 44/25 of 20 November 1989 and entered into force on 2 September 1990.

43. Since the UK government has steadfastly refused to alter its positions, we will briefly address some of the injustices, deficiencies, contradictions and discrimination that UK positions entail.

44. First, however, the central importance of collective rights for Indigenous peoples, nations, communities and individuals is described in the sub-heading below.

2.1.1 Importance of collective Indigenous human rights

45. From the outset, it is essential to underline that Indigenous rights are human rights and are predominantly of a collective nature. Consistent with equality, non-discrimination and other human rights principles, Indigenous peoples and individuals are free and equal to all other peoples and individuals in dignity and rights.

> Like the rights in the various international human rights instruments, Indigenous rights are of a political, economic, social, cultural and spiritual nature. However, Indigenous rights are predominantly "collective". Therefore, it is necessary to elaborate Indigenous rights from an Indigenous perspective in new instruments, such as is being done in the *U.N. Declaration on the Rights of Indigenous Peoples*. This is wholly consistent with Indigenous peoples' right to be different and tolerance for difference is a fundamental international value.
>
> P. Joffe & W. Littlechild, "Administration of Justice and How to Improve it: Applicability and Use of International Human Rights Norms" in Commission on First Nations and Métis Peoples and Justice Reform, *Submissions to the Commission*, Final Report, vol. 2 (Saskatchewan: 2004), Section 12, at pp. 12-8 and 12-9.

...a ninth category [of human rights] … increasingly recognized in international human rights law – is the category of *aboriginal rights*.

> I. Cotler, "Human Rights Advocacy and the NGO Agenda" in I. Cotler & F.P. Eliadis, (eds.), *International Human Rights Law: Theory and Practice* (Montreal: Canadian Human Rights Foundation, 1992) 63, at p. 66.

Among the developments arising from the advancement of indigenous human rights has been recognition that rights and freedoms are frequently exercised and enjoyed by indigenous communities in a collective manner, in the sense that they can only be properly ensured through their guarantee to an indigenous community as a whole.

> I/A Comm. H.R., *Maya Indigenous Communities of the Toledo District*, Belize, Case No. 12.053, Report No. 96/03, 24 October 2003, at para. 112.

… specific "group rights" such as those applicable to … "indigenous peoples" … also form an integral part of modern human rights. This does not imply that the general norms and standards applicable to the general masses of people do not apply to groups and persons falling within the "group rights" categories.

> S. Gutto, "Current concepts, core principles, dimensions, processes and institutions of democracy and the inter-relationship between democracy and modern human rights", Office of the High Commissioner for Human Rights, Seminar on the Interdependence Between Democracy and Human Rights, Geneva, 25 – 26 November 2002, at p. 12, para. 27.

Constitutional entrenchment of Aboriginal and treaty rights was intended to ensure that elected representatives, the administrative agencies, and the courts gave due regard and protection to the rights of Aboriginal peoples. It provided a safeguard for their distinct human rights and individual freedoms called "Aboriginal rights" ...

> J.Y. Henderson, M.L. Benson & I.M. Findlay, *Aboriginal Tenure in the Constitution of Canada* (Toronto: Carswell, 2000), at p. 447.

… Indigenous rights are human rights and are treated as such by the United Nations and its various treaty bodies. Our fundamental rights are clearly of an economic, social, cultural, spiritual and political nature. These same classes of rights are addressed in the two international human rights Covenants. *In relation to Indigenous peoples, these types of rights cannot suddenly lose their human rights quality simply because of their crucial collective dimensions.*

> R. Saganash, "Lands, Territories and Resources: Indigenous Peoples' Human Rights and State International Obligations", paper presented at the Meeting of Indigenous Representatives with European States, United Nations, Geneva, April 6-7, 2004, p. 3. [emphasis added]

> See also R. A. Williams, Jr., *Encounters on the Frontiers of International Human Rights Law: Redefining the Terms of Indigenous Peoples' Survival in the World*, [1990] Duke L.J. 660, at p. 686 (indigenous rights as collective human rights); M. L. Schwartz, *International Legal Protection for Victims of Environmental Abuse*, (1993) 18 Yale J. Int'l L 355 (rights of indigenous peoples are human rights); C. Berkey, *International Law and Domestic Courts: Enhancing Self-Determination for Indigenous Peoples*, (1992) 5 Harv. Hum. Rts. J. 65 (rights of indigenous peoples are human rights); M.E. Turpel, *Indigenous Peoples' Rights of Political Participation and Self-Determination: Recent International Legal Developments and the Continuing Struggle for Recognition*, 25 Cornell Int'l L. J. 579, (rights of indigenous peoples are human rights); R. Torres, *The Rights of Indigenous Populations: The Emerging International Norm*, (1991) 16 Yale J. Int'l L. 127 (rights of indigenous peoples are human rights); Amnesty International, "Indigenous Rights Are Human Rights: Four Cases of Rights Violations in the Americas", Just Earth! Program, Amnesty International USA, May 2003.

> Indigenous individuals and peoples are free and equal to all other individuals and peoples in dignity and rights, and have the right to be free from any kind of adverse discrimination, in particular that based on their indigenous origin or identity.

> *U.N. Declaration on the Rights of Indigenous Peoples* (Draft), Art. 2.

46. The significance of the collective human rights of Indigenous peoples is far-reaching. Our collective rights are essential for the integrity, survival and well-being of our distinct nations and communities. They are inextricably linked to our cultures, spirituality and worldviews. As illustrated below, collective rights are also critical to the effective exercise and enjoyment of the rights of Indigenous individuals.

> For indigenous peoples, secure and effective collective property rights are fundamental to their economic and social development, to their physical and cultural integrity, and to their livelihoods and sustenance. Secure land and resource rights are also essential for the maintenance of their worldviews and spirituality and, in short, to their very survival as viable territorial and distinct cultural collectivities.

> F. MacKay, "Indigenous Peoples' Right to Free, Prior and Informed Consent and the World Bank's Extractive Industries Review", Forest Peoples Programme, 28 June 2004, available at http://forestpeoples.gn.apc.org/, at p. 17.

> … recognition [of collective rights] is indispensable in order to effectuate a workable system of protection of indigenous traditions and ways of life. To "individualize" these rights would frustrate the purpose they are supposed to achieve. Culture is a group phenomenon. It includes the tribal ways of life and the natural and spiritual environment in which these traditions are maintained and developed. Prescriptions aiming at preserving such phenomena assume, of necessity, a collective character.
>
> S. Weissner, "Rights and Status of Indigenous Peoples: A Global Comparative and International Legal Analysis" (1999) 12 Harv. H. Rts. J. 57, at 121.

47. Failure to recognize and respect our collective human rights threatens our collective security, perpetuates our impoverishment and undermines a vast range of our other rights as self-determining peoples.

> For indigenous peoples, secure, effective, collective ownership rights over the lands, territories, and resources they have traditionally owned or otherwise occupied and used are fundamental to economic and social development, to physical and cultural integrity, to livelihoods and sustenance. *Secure rights to own and control lands, territories, and resources are also essential for the maintenance of the worldviews and spirituality of indigenous peoples – in short, to their very survival as viable territorial communities. Without secure and enforceable property rights, indigenous peoples' means of subsistence are permanently threatened.* Loss or degradation of land and resources results in deprivation of the basics required to sustain life and to maintain an adequate standard of living. Failure to recognize and respect these rights undermines efforts to alleviate indigenous peoples' poverty and to achieve sustainable development.
>
> Extractive Industries Review, *Striking a Better Balance[:]The Final Report of the Extractive Industries Review*, Vol. I (*The World Bank Group and Extractive Industries*), December 2003, available at: http://www.eireview.org/eir/eirhome.nsf/be65a087e9e6b48085256acd005508f7/75971F6A8E5111385256DE80028BEE2?Opendocument, at p. 40. [emphasis added]

> Human rights and fundamental freedoms, the rule of law and democratic institutions are the foundations of peace and security, representing a crucial contribution to conflict prevention, within a comprehensive concept of security. The protection of human rights … is an essential foundation of democratic civil society. Neglect of these rights has, in severe cases, contributed to extremism, regional instability and conflict.
>
> Conference on Security and Co-operation in Europe, *Budapest Document*, 1994, Ch. VIII, para. 2.

48. It would appear that the UK government perceives the collective rights of Indigenous peoples as a threat to the human rights of Indigenous individuals. Such a view fails to appreciate the important role of collective rights in Indigenous nations and societies, in ensuring the effective enjoyment of individual rights.

> The claim that collective rights jeopardise traditional individual rights misunderstands the interdependent relationship between group and individual rights. The apparent tension between individual and collective rights is partially resolved once it is recognised that certain individual rights cannot be exercised in isolation from the community. This is particularly the case in indigenous communities … It is often the case that the protection and promotion of collective rights is a pre-requisite for the exercise and enjoyment of individual rights.
>
> Race Discrimination Commissioner, "Alcohol Report", Human Rights and Equal Opportunity Commission, 1995, Canberra, Australia, p. 27.

> The effective protection of individual human rights and fundamental freedoms of indigenous peoples can not be fully attained without the recognition of their collective rights …
>
> *Report on the United Nations Seminar on the effects of racism and racial discrimination on the social and economic relations between indigenous peoples and States, Geneva, Switzerland*, 16-20 January 1989, U.N. Doc. E/CN.4/1989/22, 8 February 1989, Conclusions, p. 8, para. (iv).

49. In international or domestic law, there is a natural tension between collective and individual rights. This is to be expected – just as there exists a natural tension between the individual rights of different people. The UK government should be more sensitive to the fact that failure to recognize Indigenous peoples' collective rights can have far-reaching adverse impacts on the enjoyment and exercise of the rights of Indigenous peoples and individuals.

> … it is important to recall that not all disputes in human rights are between individual and collective rights: individual rights also collide and intersect in confusing ways.
>
> P. Thornberry, *Indigenous peoples and human rights* (Manchester: Manchester University Press, 2002), at p. 421.

> The claims of indigenous people over land and natural resources are collective and therefore complex. The idea of collective rights is troubling in a democracy because it seems to contradict individual rights. *But the lack of legal recognition of collective rights violates individual rights.*

> Countries such as Bolivia, Colombia, Ecuador and Mexico have begun to find ways to recognize diversity in their constitutions.
>
> United Nations Development Programme, *Human Development Report 2004: Cultural liberty in today's diverse world* (New York: UNDP, 2004), p. 68. [emphasis added]
>
> See also J. Raz, *The Morality of Freedom* (New York: Oxford University Press, 1994), at 193-216 (groups rights are often a pre-condition of individual rights).

50. It is important to emphasize that the balancing of collective and individual rights cannot and need not be done within the draft *U.N. Declaration on the Rights of Indigenous Peoples*. A human rights approach provides a framework for a contextual analysis to be carried out subsequently. The analysis and balancing would be based on the historical and contemporary circumstances of a particular case. A similar approach occurs at the domestic level.

> ...the human rights approach...does provide a framework to enable every situation to be considered and all the relevant rights and interests to be taken into account, balanced and analysed. This balance means that the geopolitical context of the right being claimed – the particular historical circumstances – and the present constitutional order of the State and of international society, is acknowledged and addressed.
>
> R. McCorquodale, *Self-Determination: A Human Rights Approach*, (1994) 43 Int'l & Comp. L.Q. 857, at pp. 884-885.

> … the contextual approach to s. 15 [of the *Canadian Charter of Rights and Freedoms*] requires that the equality analysis of provisions relating to Aboriginal people must always proceed with consideration of and respect for Aboriginal heritage and distinctiveness, recognition of Aboriginal and treaty rights, and with emphasis on the importance for Aboriginal Canadians of their values and history.
>
> *Corbière* v. *Canada (Minister of Indian and Northern Affairs)*, [1999] 2 S.C.R. 203, (1999) 173 D.L.R. (4th) 1, [1999] 3 C.N.L.R. 19 (S.C.C.), para. 54 (L'Heureux-Dubé J.).
>
> See also *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11.

51. The UK and other participating States in the UNCHR Working Group must not attempt to restrict the broad and flexible terms of the draft *U.N. Declaration* – especially if proposed limitations are based on imagined and hypothetical situations in the future. Human rights instruments are dynamic in nature and must be capable of interpretation in light of contemporary international human rights law.

> International human rights law … is not a set of stagnant rules, but rather a dynamic concept which aims at addressing the real suffering of individuals and groups.
>
> > S.I. Skogly, "Crimes Against Humanity – Revisited: Is There a Role for Economic and Social Rights?" (2001) 5 Int'l J. Hum. Rts. 58, at pp. 74-75.
>
> … in determining the present case, the Commission will, to the extent appropriate, interpret and apply the pertinent provisions of the American Declaration in light of current developments in the field of international human rights law, as evidenced by treaties, custom and other relevant sources of international law.
>
> > I/A Comm. H.R., *Maya Indigenous Communities of the Toledo District*, Belize*, supra*, at para. 87.
> >
> > *American Declaration on the Rights and Duties of Man*, O.A.S. Res. XXX, adopted by the Ninth International Conference of American States (1948), reprinted in *Basic Documents Pertaining to Human Rights in the Inter-American System*, OEA/Ser.L/V/I.4 Rev.9 at 17, 31 January 2003.
>
> … Canadian government representatives have … in effect argued that the wording in the draft *U.N. Declaration* is so broad that it would allow Indigenous peoples to assert ownership and control of whole countries. *With respect, such an interpretation of the draft Declaration is grounded in fiction. It seriously misconstrues how human rights instruments are interpreted*.
> …
> Human rights instruments must necessarily be drafted in broad terms, in order to encompass a wide range of foreseeable and unforeseeable circumstances. However, this would not mean, for example, that an Indigenous people in a land-locked, tropical country and with no past or present use of the sea would have the right to sea ice simply because this resource is referred to in the draft *U.N. Declaration*.
>
> > R. Saganash, "Lands, Territories and Resources: Indigenous Peoples' Human Rights and State International Obligations", paper presented at the Meeting of Indigenous Representatives with European States, United Nations, Geneva, April 6-7, 2004, p. 4. [emphasis added]

52. In the UNCHR and other forums, the UK government actively promotes "respect for *all* human rights" as a "foundation for freedom, justice and peace". Yet, in relation to Indigenous peoples, the same government insists that it can refuse to recognize most of our collective human rights in the draft *U.N. Declaration*.

> … if the UN is failing to promote and protect human rights, it is failing in perhaps its most vital task. For without respect for human rights, we can never achieve our collective goals of global security and prosperity.
> …
> … the ideas I have set out here do not belong to any one region or tradition. They reflect simple common sense based on universal values. The UN human rights system gives us all a framework to promote sustainable development by promoting respect for *all* human rights.
>
> B. Rammell (UK Parliamentary Under Secretary), "UN Commission: 'Promoting Respect for All Human Rights'", UN Commission on Human Rights, Geneva, 19 March 2003, http://www.fco.gov.uk/servlet/Front?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1007029391647&a=kArticle&aid=1048078547275. [emphasis added]

> The UN human rights system gives us all a framework to promote the necessary foundation for freedom, justice and peace, by promoting respect for *all* human rights. I believe firmly that that must be our task at this Commission and we are determined to succeed.
>
> B. Rammell (UK Parliamentary Under Secretary), "'We are Determined to Succeed' – Bill Rammell Speaks at the UN Commission on Human Rights", Geneva, 18 March 2004, *supra*. [emphasis added]

53. This official UK position of largely denying the collective human rights of Indigenous peoples worldwide is wholly inconsistent with any culture of peace.

> A culture of peace is a set of values, attitudes, traditions and modes of behaviour and ways of life based on:
> …
> (*c*) Full respect for and promotion of *all* human rights and fundamental freedoms …
>
> U.N. General Assembly, *Declaration and Programme of Action for a Culture of Peace*, Res. 53/243, 13 September 1999, Part A (Declaration on a Culture of Peace), Art. 1. [emphasis added]

> *Recognizing* the relationship between international peace and security and the enjoyment of human rights and fundamental freedoms …
>
> *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, U.N.G.A. Res. 53/144, U.N. Doc. A/RES/53/144, 8 March 1999, Annex, preamble.

> After a period of approximately thirty years of unceasing litigation and disputes [over Cree resource and other collective rights], we are only now beginning to achieve a "culture of peace" which is of course, solidly founded on respect for human rights.
>
> … through the Cree-Québec Agreement, or La Paix des Braves, signed in February 2002, both parties are committed to significantly altering our mutual relations. A "nation-to-nation" relationship is the basis for this renewable 50-year Agreement that is to end an era of Cree marginalization and exclusion.
>
> Grand Council of the Crees (Eeyou Istchee), "Notes for a Speech by Grand Chief Dr. Ted Moses to a Meeting of the Harvard Fellows Organized by the Canadian Department of External Affairs", Québec City, September 1, 2004, pp. 1-2.
>
> See also *Agreement Concerning a New Relationship Between Le Gouvernement du Québec and The Crees of Québec* ["La Paix des Braves"], entered into in Waskaganish, Québec, 7 February 2002.

54. As the Inter-American Court makes clear, "indigenous communities have the right to live freely on their own territories" in accordance with our own communal rights and traditions. By seeking to deny us recognition of our collective human rights in the draft *U.N. Declaration*, the UK government is undermining the very values of freedom, justice and peace that it promotes in other contexts.

> Among indigenous communities, there is a communal tradition as demonstrated by their communal form of collective ownership of their lands, in the sense that ownership is not centered in the individual but rather in the group and in the community. By virtue of the fact of their very existence, *indigenous communities have the right to live freely on their own territories; the close relationship that the communities have with the land must be recognized and understood as a foundation for their cultures, spiritual life, cultural integrity and economic survival.*
>
> I/A Court H.R., *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Judgment of August 31, 2001, Ser. C No. 79 (2001), at para. 149. [emphasis added]

> The participating States express their conviction that the protection and promotion of human rights and fundamental freedoms is one of the basic purposes of government, and reaffirm that the recognition of these rights and freedoms constitutes the foundation of freedom, justice and peace.

> Conference on Security and Co-operation in Europe, *Document of the Copenhagen Meeting on the Human Dimension of the Conference on Security and Co-operation in Europe,* June 29, 1990, (1990) 29 I.L.M. 1305, para. 1.

> … we should do all we can to spread the values of freedom, democracy, the rule of law, religious tolerance and justice for the oppressed, however painful for some nations that may be …
>
> T. Blair, "PM warns of continuing global terror threat", 05 March 2004, http://www.number-10.gov.uk/output/Page5461.asp.

55. In the UNCHR Working Group, the United Kingdom and the United States have repeatedly proposed converting some of the basic rights in the draft *U.N. Declaration* to "freedoms". We find this approach highly objectionable and discriminatory. To a large degree, this would unjustly and arbitrarily lead to a lowering of Indigenous human rights norms. In light of the pervasive human rights violations suffered by Indigenous peoples worldwide, it is unacceptable that some States seek to weaken our fundamental rights in the draft *Declaration*.

> The term 'human rights and fundamental freedoms' combines two different concepts, which are distinguishable according to their literal meanings. 'Rights' may refer to any kind of claims, either in a positive or negative sense, used in an offensive or defensive manner. *'Freedoms' do not encompass demands for positive action. Rather, they demand exemptions from burdens or from intervention in a sphere.* The historical origin of these concepts confirms this difference. The cry for human rights was heard in revolutions; *'fundamental freedom' is a term used primarily in state constitutions to denote norms protecting individuals against interference by public authorities. Thus, 'human rights' is apparently the broader term.*
>
> K.-J. Partsch, "Article 55(c)" in B. Simma, ed., *The Charter of the United Nations: A Commentary* (New York: Oxford University Press, 1994) 776, at p. 778. [emphasis added]

56. In the Indigenous context, the enjoyment and exercise of individual rights is profoundly interrelated with our collective human rights. Therefore, if the UK government genuinely believes that "[a]ll indigenous people are entitled to full respect of their individual human rights, both within and without their communities", this still requires recognition and respect of Indigenous peoples' collective rights.

> *Collective Human Rights*, United Kingdom, Foreign and Commonwealth Office, *supra*.

2.1.2 International law embraces *all* human rights

57. It is fundamentally incorrect for the UK government to suggest that recognition and protection of the individual human rights of Indigenous people is all that is required under international law.

> It can be said that by now all, or nearly all, States agree on the following essential points. First, the dignity of human beings is a basic value that every State should try to protect, regardless of considerations of nationality, race, colour, gender, etc. Second, *it is also necessary to aim at the achievement of fundamental rights of groups and peoples.* Third, racial discrimination is universally considered one of the most repulsive and unbearable conditions.
>
> A. Cassese, *International Law* (Oxford/N.Y.: Oxford University Press, 2001), at p. 373. [emphasis added]

> ... the situation of indigenous people must surely prompt us to ponder more deeply human rights as they are today. Henceforth, *we must realize that human rights are not only the rights of individuals. They are also collective rights - historic rights*.
>
> B. Boutros-Ghali, Statement to U.N. General Assembly, in "Living History: Inauguration of the 'International Year of the World's Indigenous People'", (1993) 3 Transnat'l L. & Contemp. Probs. 168, at p. 170.

> The promotion and protection of *all human rights* and fundamental freedoms must be considered as *a priority objective of the United Nations* in accordance with its purposes and principles, in particular the purpose of international cooperation.
>
> United Nations World Conference on Human Rights, *Vienna Declaration and Programme of Action*, adopted June 25, 1993, U.N. Doc. A/CONF.157/24 (Part I) at 20 (1993), *reprinted in* (1993) 32 I.L.M. 1661, Part I, para. 4. [emphasis added]

> Among the developments arising from the advancement of indigenous human rights has been recognition that rights and freedoms are frequently exercised and enjoyed by indigenous communities in a collective manner, in the sense that they can only be properly ensured through their guarantee to an indigenous community as a whole.
>
> I/A Comm. H.R., *Maya Indigenous Communities of the Toledo District*, Belize*, supra*, at para. 112.

58. In particular, in relation to the collective human rights of Indigenous peoples, the UK government should be examining the full scope of international human rights law and not unjustly limiting itself to what it refers to as six "core international human rights treaties". This standard is both arbitrary and discriminatory. For non-Indigenous people, the UK government expressly applies a much broader standard. Human rights are considered to include "international covenants and conventions, respect of norms and non-discrimination".

> With the exception of the right of self-determination, the UK does not accept that collective human rights (human rights belonging to *groups* of people) exist within the core international human rights treaties because human rights are calls upon states to treat *individuals* in accordance with international standards. …
>
> United Kingdom (Foreign and Commonwealth Office), *Human Rights: Annual Report 2003* (London: 2003), at p. 217. [emphasis in original]

> … good governance can be said to exist where the following elements are present:
>
> …
>
> - Promotion and protection of human rights (*as defined in the international covenants and conventions, respect of norms and non-discrimination*).
>
> *Democracy and Good Governance*, United Kingdom, Foreign and Commonwealth Office, http://www.fco.gov.uk/servlet/Front?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1070037618836. [emphasis added]

59. **The recognized sources of international law include both general and particular international conventions, as well as international custom, among other diverse sources**.

> Custom and treaties constitute the two most important sources of international law. … There are other sources to which [Article 38 of the *Statute of the International Court of Justice*] makes no reference, but which are nonetheless envisaged by international law and applied by the ICJ itself: unilateral acts of States creating rules, general principles of international law, and binding decisions of international organizations.
>
> A. Cassese, *International Law* (Oxford/N.Y.: Oxford University Press, 2001), at p. 149.
>
> See also *Statute of the International Court of Justice*, concluded at San Francisco, 26 June 1945, entered into force, 24 October 1945, 1978 Y.B.U.N. 1052; 1945 Can. T.S. 7; 1945 U.K.T.S. 67; U.S.T.S. 993, 59 Stat. 1031.

… the term 'human rights' refers to those rights presently found in widely existing and accepted international instruments generally recognized as human rights instruments and/or rights broadly accepted by judicial bodies and/or experts, in the form of either customary international law or *jus cogens* (a peremptory norm) in international law.

> T.S. Orlin & M. Scheinin, "Introduction" in T.S. Orlin, A. Rosas & M. Scheinin, eds., *The Jurisprudence of Human Rights Law: A Comparative Interpretative Approach* (Turku/Åbo, Finland: Institute for Human Rights, Åbo Akademi University, 2000) 1, at p. 24.

… the Commission concludes that the Maya people of southern Belize have a communal property right to the lands that they have traditionally used and occupied, and that the character of these rights is a function of Maya customary land use patterns and tenure. The Commission also considers that this right is embraced and affirmed by Article XXIII of the American Declaration [on the Rights and Duties of Man].

> I/A Comm. H.R., *Maya Indigenous Communities of the Toledo District*, Belize*, supra*, at para. 150.
>
> See also *American Declaration on the Rights and Duties of Man*, O.A.S. Res. XXX, adopted by the Ninth International Conference of American States (1948), reprinted in *Basic Documents Pertaining to Human Rights in the Inter-American System*, OEA/Ser.L/V/I.4 Rev.9 at 17, 31 January 2003.

… restricting an analysis of human rights to the six 'core' instruments dismisses a large body of binding and persuasive sources of law that are very relevant to the issue of collective rights and the present state and emerging nature of human rights law. In particular, it ignores the two and presently only binding instruments exclusively focused on indigenous peoples' rights – ILO Convention Nos. 107 and 169 – which clearly demonstrate that the international community has recognized the applicability, relevance and importance of collective rights in the case of indigenous peoples. ILO 169 was adopted by a vote of 328 in favour, 1 against and 40 abstentions. The UK accepted collective rights in ILO 169 and earlier in ILO 107.

> F. MacKay, "The UN Draft Declaration on the Rights of Indigenous Peoples and the Position of the United Kingdom", *supra*, p. 2.
>
> *Indigenous and Tribal Peoples Convention, 1989*, (No. 169), I.L.O. 76th Sess., adopted June 27, 1989, reprinted in (1989) 28 I.L.M. 1382

Indigenous and Tribal Populations Convention, 1957 (No. 107), entered into force June 2, 1959, 328 U.N.T.S. 247 (see especially Art. 11, which addresses both "collective or individual" rights to land).

60. In regard to the *Indigenous and Tribal Peoples Convention, 1989*, (No. 169), it is clear that this legally binding instrument generally recognizes our collective human rights. Throughout the Convention, reference is made to the rights of the "[Indigenous and tribal] peoples concerned". The term "members of the peoples concerned" is used solely when the Convention specifically addresses the rights of individuals. In addition, in emphasizing the integral importance of the relationship that Indigenous peoples have with our lands or territories, reference is made to the "collective aspects" of this relationship.

> Indigenous and tribal peoples shall enjoy the full measure of human rights and fundamental freedoms without hindrance or discrimination. The provisions of the Convention shall be applied without discrimination to male and female members of these peoples. (Art. 3, para. 1)
>
> In applying the provisions of this Part of the Convention governments shall respect the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories, or both as applicable, which they occupy or otherwise use, and in particular the collective aspects of this relationship. (Art. 13)

Indigenous and Tribal Peoples Convention, 1989, *supra*, Art. 3, para. 1.

> Several governmental representatives pointed out that collective indigenous rights were already recognized in a legally binding international instrument, International Labour Organization Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries. As signatories to that convention, *the Governments concerned had recognized collective indigenous rights in various areas*.

U.N. Commission on Human Rights, *Report of the working group established in accordance with Commission on Human Rights resolution 1995/32*, U.N. Doc. E/CN.4/2002/98, 6 March 2002 (Chairperson-Rapporteur: Mr. Luis-Enrique Chávez (Peru)), p. 8, para. 36. [emphasis added]

61. Increasingly, Indigenous peoples' collective human rights are being addressed in the context of various human rights treaties and other instruments. This is occurring at both international and regional levels. For example:

> In regard to the *International Convention on the Elimination of All Forms of Racial Discrimination*, "groups" are referred to in Art. 1 (advancement, etc. of groups); Art. 2(1)(a) (prohibition against racial discrimination);

Art. 4 (punishment for inciting racial discrimination); and Art. 14 (communications to CERD).

The [CEARD] Convention is group-orientated to the extent that 'advancement', 'development' and 'protection' relate to groups as well as individuals, opening up significant possibilities for addressing the collective interests of indigenous groups within the parameters of the Convention rights.

P. Thornberry, *Indigenous peoples and human rights*, *supra*, at p. 208.

In the *African Charter of Human and Peoples' Rights*, a wide range of collective rights are specifically affirmed: see Art. 19 (equality); Art. 20 (self-determination); Art. 21 (free disposal of natural resources); Art. 22 (economic, social and cultural development); Art. 23 (peace and security); and Art. 24 (satisfactory environment).

See *African Charter of Human and Peoples' Rights*, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), *entered into force* Oct. 21, 1986.

… in addressing complaints of violations of the American Declaration [on the Rights and Duties of Man] it is necessary for the Commission to consider those complaints in the context of the evolving rules and principles of human rights law in the Americas and in the international community more broadly, as reflected in treaties, custom and other sources of international law. *Consistent with this approach, in determining the claims currently before it, the Commission considers that this broader corpus of international law includes the developing norms and principles governing the human rights of indigenous peoples. As the following analysis indicates, these norms and principles encompass distinct human rights considerations relating to the ownership, use and occupation by indigenous communities of their traditional lands.* Considerations of this nature in turn controvert the State's contention that the Danns' complaint concerns only land title and land use disputes and does not implicate issues of human rights.

I/A Comm. H.R., *Mary and Carrie Dann v. United States*, Case Nº 11.140, Report No. 113/01, at para. 124. [emphasis added]

The States recognise the contribution of the indigenous peoples to the development process and undertake to continue to protect their historical rights and respect the culture and way of life of these peoples.

Charter of Civil Society for the Caribbean Community, unanimously adopted at the Conference of Heads of Government of the Caribbean Community, 8th Inter-

Sessional meeting, St. Johns, Antigua, and Barbuda, Feb. 19, 1997, Art. XI (Rights of Indigenous Peoples).

62. Even if some major human rights instruments do not explicitly refer to Indigenous peoples, U.N. human rights bodies are increasingly applying relevant provisions to safeguard our collective rights.

> It is also of interest that the Human Rights Committee's views in *Ominayak* address the position of the Band rather than the rights of Chief Ominayak, although he was the only individual author. This is an illustration of how Article 27 [of the *International Covenant on Civil and Political Rights*] is likely to be regarded increasingly as a vehicle for direct recognition of collective rights.
>
> B. Kingsbury, "Claims by Non-State Groups in International Law", (1992) 25 Cornell Int'l L.J. 481, at p. 491.
>
> See also *Ominayak, Chief of the Lubicon Lake Band* v. *Canada* (Communication no. 167/1984), *Official Records of the Human Rights Committee 1989/90*, Vol. II (New York: United Nations, 1995), pp. 381-391. See also Communication no. 167/1984, Decisions of the Human Rights Committee, U.N. Doc. CCPR/C/38/D/167/1984 (1990).

> The Committee views with concern the direct connection between Aboriginal economic marginalization and the ongoing dispossession of Aboriginal people from their lands, as recognized by RCAP [Royal Commission on Aboriginal Peoples], and endorses the recommendations of RCAP that policies which violate Aboriginal treaty obligations and the *extinguishment, conversion or giving up of Aboriginal rights and title should on no account be pursued by the State Party*.
>
> Committee on Economic, Social and Cultural Rights, *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Canada*, U.N. Doc. E/C.12/1/Add.31, 10 December 1998, para. 18. [emphasis added]
>
> See also Royal Commission on Aboriginal Peoples, *Report of the Royal Commission on Aboriginal Peoples* (Ottawa: Canada Communication Group, 1996), 5 vols.

> The Committee is also concerned over allegations of forced relocation and violations of the indigenous peoples' right to own, develop, control and use their traditional homelands and resources in the name of wildlife preservation.
>
> The Committee recommends that the State party take stricter measures to combat discrimination against indigenous peoples, in line with its General Recommendation XXIII on Indigenous Peoples. It requests the State party

> to include in the next report information on actions taken, especially on its efforts to reconcile indigenous peoples' land rights with the preservation of wildlife.
>
> Committee on the Elimination of Racial Discrimination, *Concluding observations of the Committee on the Elimination of Racial Discrimination: Nepal*, CERD/C/64/CO/5, 12 March 2004, para. 13.

63. However, existing international human rights instruments – which are predominantly focused on individual rights – are not adequate in safeguarding Indigenous peoples and individuals. It is therefore urgent that, as a first step, the United Nations adopt relevant and uplifting standards through a strong Declaration on the Rights of Indigenous Peoples.

> … the current system for the protection of human rights, centering on the relationship of the individual to the jurisdictional state, is incapable, even if fully implemented, of protecting the elements essential to the survival of indigenous societies.
>
> Panel, "Are Indigenous Peoples Entitled to International Juridical Personality?" [1985] Proc. A.S.I.L. 189, at p. 191 (remarks of Howard Berman).

64. Representatives of the UK government have suggested that recognition of Indigenous peoples' collective human rights in the draft *U.N. Declaration* may not be consistent with the notion of universality in the international human rights context. Such a view misconstrues, to the severe detriment of Indigenous peoples worldwide, the flexible nature of "universality" under international law.

> The 1966 Covenants … enable us to affirm … that civil and political rights and economic, social and cultural rights are equally important and worthy of attention.
>
> We all know, however, that *the General Assembly did not stop there: it expanded still further on the concept of universality by enunciating, after these collective rights, what I like to call rights of solidarity* … Since Article 1 of the Charter enunciated the right of peoples to self-determination, the General Assembly has proclaimed the right to a healthy environment, the right to peace, the right to food security, the right to ownership of the common heritage of mankind and, above all, the right to development.
>
> B. Boutros-Ghali, Opening Statement by the United Nations Secretary-General, "Human Rights: The Common Language of Humanity", in World Conference on Human Rights, *The Vienna Declaration and Programme of Action June 1993* UN DPI/1394-39399-August 1993-20 M, at 12. [emphasis added]

> As an examination of contemporary international instruments would suggest, basic indigenous rights are human rights. International instruments that explicitly address the fundamental rights of indigenous peoples, such as the Draft *United Nations Declaration on the Rights of Indigenous Peoples*, complement existing human rights standards in the *International Bill of Rights*. They do so, by providing the social, economic, cultural, political, and historical context relating to indigenous peoples.
>
> P. Joffe, "Assessing the Delgamuukw Principles: National Implications and Potential Effects in Québec", (2000) 45 McGill L.J. 155, at p. 182.

> International indigenous rights may be considered as a more specific body of human rights, which target a more defined group of people and are derived from the more general body of human rights principles.
>
> J.P. Kastrup, "The Internationalization of Indigenous Rights from the Environmental and Human Rights Perspective" (1997) 32 Tex. Int'l L.J. 97 at p. 106.

65. In particular, the 1993 *Vienna Declaration* describes the necessary flexibility and diversity included in the notion of "universality". However, these differences do not diminish the "duty of States … to promote and protect *all* human rights":

> All human rights are universal, indivisible, interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. *While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and freedoms.*
>
> United Nations World Conference on Human Rights, *Vienna Declaration and Programme of Action*, *supra*, Part I, para. 5. [emphasis added]

66. Outside the Indigenous context, UK Prime Minister Tony Blair has publicly advocated a broad agenda of justice and security that must be "fair to all peoples by promoting their human rights, wherever they are". However, this principled view is directly contradicted by the UK government's position in relation to Indigenous peoples' human rights worldwide.

> Britain's role is try to find a way through this: to construct a consensus behind a broad agenda of justice and security and means of enforcing it.

> *This agenda must be … fair to all peoples by promoting their human rights, wherever they are.* It means tackling poverty in Africa and justice in Palestine as well as being utterly resolute in opposition to terrorism as a way of achieving political goals. It means an entirely different, more just and more modern view of self-interest.
>
> T. Blair, "PM warns of continuing global terror threat", 05 March 2004, http://www.number-10.gov.uk/output/Page5461.asp. [emphasis added]

67. It is universally recognized that all cultures form part of the common heritage of humankind. It would therefore be unjust, discriminatory and contradictory for the UK government to refuse to affirm in the draft *U.N. Declaration* the central collective aspects of Indigenous peoples' cultures.

> In their rich variety and diversity, and in the reciprocal influences they exert on one another, all cultures form part of the common heritage of mankind.
>
> *Declaration of Principles of International Cultural Cooperation*, proclaimed by the General Conference of the United Nations Educational, Scientific and Cultural Organization, fourteenth session, 4 November 1966, Art. 1, para. 3.

> … cultural diversity is as necessary for humankind as biodiversity is for nature. In this sense, it is the common heritage of humanity and should be recognized and affirmed for the benefit of present and future generations.
>
> *UNESCO Universal Declaration on Cultural Diversity***,** Resolution 25 adopted by the General Conference at its 31st session, (2001), Art. 1.

> [The European Parliament] … Reaffirms the positive contribution of indigenous peoples' civilizations to mankind's common heritage and the essential role which they have played and which they must continue to play in the conservation of their natural environment …
>
> European Parliament, *Resolution on Action Required Internationally to Provide Effective Protection for Indigenous Peoples*, Eur. Parl. Doc. PV 58(II) (9 February 1994), para. 11.

> … all peoples are united by common bonds, their cultures pieced together in a shared heritage, and concerned that this delicate mosaic may be shattered at any time …

> *Rome Statute of an International Criminal Court*, U.N. Doc. A/Conf.183.9 (1998), adopted in Rome, entered into force July 1, 2002, 17 July 1998, preamble.

68. The UK government claims that it "has a *long-held position* … we do not accept the concept of collective rights". This statement is both misleading and inaccurate. Over the centuries, the UK government has entered into numerous treaties with Indigenous peoples and multilateral conventions with States, issued Royal Proclamations, and adopted domestic laws that include collective rights.

> The UK has a *long-held position* on the idea of collective human rights: with the exception of the right of self-determination (Common Article 1 of the two International Covenants on Human Rights), we do not accept the concept of collective rights.
>
> > *Collective Human Rights*, United Kingdom, Foreign and Commonwealth Office, *supra*. [emphasis added]

> The UK/Great Britain has long recognized collective rights in its dealings with indigenous peoples and in its colonies. This is evident in Royal Proclamations, Acts of Parliament, numerous treaties with indigenous peoples, decisions, including recent ones, of the Law Lords and Judicial Committee of the Privy Council, colonial ordinances and general colonial policy.
>
> > F. MacKay, "The UN Draft Declaration on the Rights of Indigenous Peoples and the Position of the United Kingdom", *supra*, at pp. 14-15.

> … there are many cases where the UK has recognised collective rights, going back centuries. The British Crown signed hundreds of treaties with North American Indians, many African peoples and the New Zealand Maori. Although these were broken by the colonists, they nevertheless clearly acknowledged collective rights.
>
> Also, since the beginning of the 20th century successive UK governments have ratified a number of international instruments based on collective rights. One is the 1948 Genocide Convention which deals with a crime directed at a whole people, not just an individual.
>
> > Survival International, "UK: Government rejects collective rights for tribal peoples", *Action bulletin*, London, March 2004.
> >
> > See also *Convention on the Prevention and Punishment of the Crime of Genocide*, 78 U.N.T.S. 277; 1949 Can. T.S. 27; concluded at New York, 9 December 1948. Entered into force, 12 January 1951.

> The subject of the Treaty of Waitangi is, in a sense, that of group rights. In the modern evolution of international law, group rights have been a derivative of human rights.
>
> > I. Brownlie (F.M. Brookfield, ed.), *Treaties and Indigenous Peoples: The Robb Lectures 1991* (Oxford: Clarendon Press, 1992), at p. 26.
>
> Her Majesty the Queen of England confirms and guarantees to the Chiefs and Tribes of New Zealand and to the respective families and individuals thereof the full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties which they may *collectively or individually possess* so long as it is their wish and desire to retain the same in their possession …
>
> > *Treaty of Waitangi*, 1840, Aotearoa/New Zealand (English version), Article the Second. [emphasis added]
>
> … Aboriginal rights are human rights. While each treaty should be examined on its own merits, it may at least be generally concluded that, to a large degree, Indigenous peoples' treaty rights are also human rights. Their treaties often entail a wide range of human rights considerations. Whether in general or specific terms, Indigenous peoples' treaties constitute an elaboration of arrangements relating to the political, economic, social, cultural or spiritual rights and jurisdictions of the Indigenous peoples concerned. These treaties also often include important dimensions relating to the collective and individual security of Indigenous peoples and individuals.
>
> > P. Joffe & W. Littlechild, "Administration of Justice and How to Improve it: Applicability and Use of International Human Rights Norms", *supra*, at p. 12 – 14.

69. Therefore, it is manifestly unfair and contrary to principles of justice and good faith for the UK government to now declare that, except for the right of self-determination, it does not recognize the concept of collective human rights. In regard to treaties, the UK government cannot unilaterally alter their status, nature or terms.

> The principle of good faith is of central importance in the Vienna Convention on the Law of Treaties of 1969. This convention can be regarded as an expression of the practice of the UN. ...
>
> > J.P. Müller, "Article 2(2) in B. Simma, ed., *The Charter of the United Nations: A Commentary* (New York: Oxford University Press, 1994) 89, at 95.
>
> > *Vienna Convention on the Law of Treaties*, *supra*, Arts. 26 & 31.

> Perhaps the most important general principle, underpinning many international legal rules is that of good faith.
>
> > M. Shaw, *International Law*, 4th ed. (Cambridge: Cambridge University Press, 1997), at p. 81.
>
> One of the basic principles governing the creation and the performance of legal obligations, whatever their source, is the principle of good faith. Trust and confidence are inherent in international co-operation, in particular in an age when this co-operation in many fields is becoming essential.
>
> > *Nuclear Tests (Australia v. France)*, [1974] I.C.J. Rep. 253 (Merits), at p. 267.
>
> Our Treaty is with the Queen of the United Kingdom, Great Britain and Northern Ireland. When did this Treaty transfer to the Crown in the right of Canada? By what instrument? Did the UK obtain the free, prior and informed consent of the Treaty partner, i.e. the Plains and Wood Cree? How did or did the Crown in the right of Canada accept the Treaty obligations? Did they pass legislation of recognition and implementation? The essential question is for the UK. If they did not obtain the consent of the Cree Nation tribes as a Treaty partner, why not? We need an international independent tribunal to address this fundamental issue of justice.
>
> > International Organization of Indigenous Resource Development, "Re: Article 36", Working Group Established in Accordance with Commission on Human Rights Resolution 1995/32, ninth session, 15-26 September 2003, intervention by W. Littlechild.

70. In our respectful view, the UK government is in violation of international law when it declares that it does "not accept the concept of collective rights" and denies these rights to Indigenous peoples. For example, in the *Cotonou Agreement*, entered into by the UK and other European States with States from Africa, the Caribbean and Pacific region, the Parties not only explicitly refer to their international obligations concerning respect for human rights. They also "*reiterate their deep attachment to human dignity and human rights, which are legitimate aspirations of individuals and peoples*". Many of the 78 States that are currently in the ACP Group include Indigenous peoples.

> The Parties refer to their international obligations and commitments concerning respect for human rights. *They reiterate their deep attachment to human dignity and human rights, which are legitimate aspirations of individuals and peoples.* Human rights are universal, indivisible and inter-

related. *The Parties undertake to promote and protect all fundamental freedoms and human rights*, be they civil and political, or economic, social and cultural.

> *Cotonou Agreement* (Partnership agreement between the members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States, of the other part), signed in Cotonou on 23 June 2000, 2000/483/EC, Official Journal L 317, 15/12/2000 P. 0003 – 0353, Art. 9(2). [emphasis added]

2.1.3 Collective human rights include more than "self-determination"

71. It is erroneous for the UK government to claim that the sole collective human right under international law is the right of self-determination. To a large degree, this has been illustrated in the above sub-headings of this Annex. However, we wish to provide here a further elaboration.

> Some rights are purely collective, such as the right to self-determination or the physical protection of the group as such through the prohibition of genocide …
>
> M. Shaw, *International Law*, *supra*, at p. 209.

> Apart from the two categories of "civil and political" and "economic, social and cultural", modern human rights also recognise and incorporate what some label as "collective or "solidarity" rights. Environmental and ecological rights, the right to peace and security and the right to political or cultural and economic self-determination belong to this category.
>
> S. Gutto, "Current concepts, core principles, dimensions, processes and institutions of democracy and the inter-relationship between democracy and modern human rights", *supra*, pp. 11-12, para. 26.

72. In particular, the right to development is both a collective and individual human right. It is interrelated with the right to self-determination, including the right to natural resources, and other human rights.

> 1. The right to development is an *inalienable human right* by virtue of which *every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development*, in which all human rights and fundamental freedoms can be fully realized.

> 2. *The human right to development also implies the full realisation 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.
>
> > *Declaration on the Right to Development*, adopted by the U.N. General Assembly, Dec. 4, 1986. U.N.G.A. Res. 41/128, 41 U.N.GAOR, Supp. (No. 53) U.N. Doc. A/41/925 (1986), Art.1.
>
> There is little sense in recognizing self-determination as a superior and inviolable principle if one does not recognize *at the same time* a 'right to development' for the peoples that have achieved self-determination. This right to development can only be an 'inherent' and 'built-in' right forming an inseparable part of the right to self-determination.
>
> > M. Bedjaoui, "The Right to Development" in M. Bedjaoui, ed., *International Law: Achievements and Prospects* (1991) 1178, at p. 1184.
>
> The World Conference on Human Rights reaffirms the right to development, as established in the Declaration on the Right to Development, as a universal and inalienable right and an integral part of fundamental human rights.
>
> > United Nations World Conference on Human Rights, *Vienna Declaration and Programme of Action*, *supra*, Part I, para. 10.

73. Thus the UK position leads to additional contradictions. While the UK government insists to Indigenous peoples that the only collective human right under international law is the right of self-determination, the same government declares in other forums that it is "commit[ted] to achieving the right to development" (which is also a collective human right). The government adds that the "Millennium Development Goals can only be achieved if human rights are respected". Yet the *U.N. Millennium Declaration* also clearly affirms that the right to development is a human right.

> [UK financial assistance] is *hard evidence of the UK's practical commitment to achieving the right to development*. We recognise that helping people realise their human rights is an essential part of freeing them from poverty. And the *Millennium Development Goals can only be achieved if human rights are respected*. Human rights are central to development because they provide a means of empowering all people - including the poorest - to make effective decisions about their own lives. Respect for human rights remains one of the clearest indicators of a stable society, living in peace with itself and its neighbours.

B. Rammell (UK Parliamentary Under Secretary), "UN Commission: 'Promoting Respect for All Human Rights'", UN Commission on Human Rights, Geneva, 19 March 2003, http://www.fco.gov.uk/servlet/Front?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1007029391647&a=kArticle&aid=1048078547275. [emphasis added]

We will spare no effort to promote democracy and strengthen the rule of law, as well as respect for all internationally recognized human rights and fundamental freedoms, including the right to development.

United Nations Millennium Declaration, U.N. Doc. A/RES/55/2, 8 September 2000, para. 24.

74. It is difficult to comprehend how the UK government could possibly fulfill its diverse international obligations, while continuing to deny Indigenous peoples affirmation of our collective human rights, such as the right to development. Our collective rights are essential to the survival and well-being of Indigenous peoples.

Mobilizing and increasing the effective use of financial resources and achieving the national and international economic conditions needed to fulfill internationally agreed development goals, including those contained in the Millennium Declaration, to eliminate poverty, improve social conditions and raise living standards, and protect our environment, will be our first step to ensuring that the twenty-first century becomes the century of development for all.

Final outcome of the International Conference on Financing for Development, Monterrey Consensus, U.N. Doc. A/AC.257/L.13, 30 January 2002, para. 3.

The issue of extractive resource development and human rights involves a relationship between indigenous peoples, Governments and the private sector which must be based on the full recognition of indigenous peoples' rights to their lands, territories and natural resources, which in turn implies the exercise of their right to self-determination. Sustainable development is essential for the survival and future of indigenous peoples, whose right to development means the right to determine their own pace of change, consistent with their own vision of development, including their right to say no.

U.N. Commission on Human Rights, Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen, submitted in accordance with Commission resolution 2001/65, E/CN.4/2003/90, 21 January 2003, p. 23, para. 66 (Conclusions and Recommendations). [bold in original]

> See also U.N. Sub-Commission on the Promotion and Protection of Human Rights, *Report of the workshop on indigenous peoples, private sector natural resource, energy and mining companies and human rights, Geneva, 5-7 December 2001*, U.N. Doc. E/CN.4/Sub.2/AC.4/2002/3, 17 June 2002 (Chairperson-Rapporteur: Mr. Wilton Littlechild).

> The right to development is a self-standing right. It is also a composite of all other internationally recognized rights and freedoms. The key elements of the right include the requirement of direct participation by the people in development, the notion of sustainable development, the right to peace and security and the right and principle of self-determination. In many respects the right to development fulfils the principles of interdependence, interrelatedness and equality of rights.

> U.N. Sub-Commission on the Promotion and Protection of Human Rights, *Note by the Secretariat: The legal nature of the right to development and enhancement of its binding nature*, E/CN.4/Sub.2/2004/16, 1 June 2004, p. 2 (Summary).

75. It is erroneous for the UK government to proclaim that, except for the right of self-determination, recognition of collective human rights would constitute a "grant" of "new collective rights" to Indigenous peoples. Under both international and domestic law, our collective rights are "inherent" or "pre-existing". They are not dependent on recognition by States for their existence.

> … the [Human Rights] Committee emphasizes that the right to self-determination requires, *inter alia,* that all peoples must be able to freely dispose of their natural wealth and resources and that they may not be deprived of their own means of subsistence (art. 1, para. 2). … The Committee … recommends that the practice of extinguishing *inherent aboriginal rights* be abandoned as incompatible with article 1 of the Covenant.

> Human Rights Committee, *Concluding observations of the Human Rights Committee: Canada*, UN Doc. CCPR/C/79/Add.105, 7 April 1999, para. 8. [emphasis added]

> See generally P. Joffe & M.E. Turpel, *Extinguishment of the Rights of Aboriginal Peoples: Problems and Alternatives*, A study prepared for the Royal Commission on Aboriginal Peoples, 3 vols., 1995.

> Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

> *International Covenant on Civil and Political Rights*, Art. 47; and *International Covenant on Economic, Social and Cultural Rights*, Art. 25.

This right to development can only be an 'inherent' and 'built-in' right forming an inseparable part of the right to self-determination.

> M. Bedjaoui, "The Right to Development" in M. Bedjaoui, ed., *International Law: Achievements and Prospects* (1991) 1178, at p. 1184.

The right to own, occupy and use land collectively is *inherent* in the self-conception of indigenous people, and this right is generally vested not in the individual but in the local community, the tribe or the indigenous nation.

> United Nations Development Programme, *Human Development Report 2004: Cultural liberty in today's diverse world* (New York: UNDP, 2004), at p. 67. [emphasis added]

...as a matter of existing Canadian constitutional law, Aboriginal peoples in Canada have the *inherent* right to govern themselves. This legal right arises from the original status of Aboriginal peoples as independent and sovereign nations in the territories they occupied. This status was recognized and given effect in the numerous treaties, alliances and other relations negotiated with the French and British Crowns. This extensive practice gave rise to a body of customary law that was common to the parties and eventually became part of the general law of Canada.

> Royal Commission on Aboriginal Peoples, *Report of the Royal Commission on Aboriginal Peoples*, *supra*, vol. 2(1), at p. 185.

The principle that a change of sovereignty over a particular territory does not in general affect the presumptive title of the inhabitants was approved in *Amodu Tijani* v. *Secretary, Southern Nigeria*, [1921] 2 A.C. 399. That principle supports the assumption implicit in *Calder* that Indian title is an independent legal right which, although recognized by the Royal Proclamation of 1763, none the less predates it...*[The Indians'] interest in their lands is a pre-existing legal right not created by Royal Proclamation, by s. 18(1) of the Indian Act, or by any other executive order or legislative provision*.

> *Guerin* v. *The Queen*, (1984) 13 D.L.R. (4th) 321 (S.C.C.), at p. 336. [emphasis added]
>
> See also *Royal Proclamation of 1763*, R.S.C. 1985, App. II, No. 1, pp. 4-5.
>
> *Calder* v. *A.G. British Columbia*, [1973] S.C.R. 313 (S.C.C.).

2.1.4 Equality and the right to be different

76. In order to achieve substantive equality, it is often necessary to treat different peoples differently. Conversely, treating everyone the same can result in inequality and unjust treatment.

> [T]he principle of equality before the law does not mean the absolute equality, namely equal treatment of men without regard to individual, concrete circumstances, but it means the relative equality, namely the principle to treat equally what are equal and unequally what are unequal.
>
> *South West Africa Cases (Second Phase)*, [1966] I.C.J. Rep. 6, at pp. 303–304, Judge Tanaka (dissenting).

> Equality has both a negative aspect (non-discrimination) and a positive aspect (special measures of protection). 'Equality in law' no longer means purely formal or absolute equality, but relative equality, which often requires differential treatment.
>
> W. McKean, *Equality and Discrimination Under International Law* (Oxford: Clarendon Press, 1983) at p. 51.

> The right not to be discriminated against in the enjoyment of the rights guaranteed under the [European Convention on Human Rights] is … violated when States without an objective and reasonable justification fail to treat differently persons whose situations are significantly different.
>
> European Court of Human Rights, *Thlimennos* v. *Greece*, Appl. No. 34369/97, Judgment of 6 April 2000, para. 44.
>
> See also *European Convention for the Protection of Human Rights and Fundamental Freedoms*, (ETS No. 5), 213 U.N.T.S. 222, entered into force Sept. 3, 1953, as amended by Protocols Nos 3, 5, 8, and 11 which entered into force on 21 September 1970, 20 December 1971, 1 January 1990, and 1 November 1998 respectively, Art. 14.

77. It is essential for the UK government to realize that, treating all peoples the same is not always consistent with the principles of equality and respect for human rights. This is especially the case with Indigenous peoples and our distinct collective rights.

> The right of an Aboriginal or Torres Strait Islander person to protect and

enjoy his or her culture, for example, cannot be exercised if an indigenous culture is struggling to survive within the majority culture and the indigenous community has no right to protect and develop its culture. If rights are not granted collectively to indigenous peoples which enable them to defend their culture, the practice of their religion and the use of their languages, the result is unequal and unjust treatment.

> Race Discrimination Commissioner, "Alcohol Report", Human Rights and Equal Opportunity Commission, 1995, Canberra, Australia, p. 27.

The effective protection of individual human rights and fundamental freedoms of indigenous peoples can not be fully attained without the recognition of their collective rights …

> *Report on the United Nations Seminar on the effects of racism and racial discrimination on the social and economic relations between indigenous peoples and States,* Geneva, Switzerland, 16-20 January 1989, U.N. Doc. E/CN.4/1989/22, 8 February 1989, Conclusions, p. 8, para. (iv).

78. Indigenous peoples have the right to be different. This is an essential aspect of our human rights. It precludes States and others from denying us the diversity or uniqueness of our collective human rights.

All individuals and groups have the right to be different, to consider themselves as different and to be regarded as such. However, the diversity of life styles and the right to be different may not, in any circumstances, serve as a pretext for racial prejudice; they may not justify either in law or in fact any discriminatory practice whatsoever …

> *Declaration on Race and Racial Prejudice*, Art. 1(2).

… indigenous peoples are equal in dignity and rights to all other peoples, while recognizing the right of all peoples to be different, to consider themselves different, and to be respected as such …

> *U.N. Declaration on the Rights of Indigenous Peoples* (Draft), first preambular para..

… States should, in accordance with international law, take concerted *positive* steps to ensure respect for *all* human rights and fundamental freedoms of indigenous people, *on the basis of equality and non-discrimination, and recognize the value and diversity of their distinct identities, cultures and social organization.*

> United Nations World Conference on Human Rights, *Vienna Declaration and Programme of Action*, *supra*, Part I, para. 20. [emphasis added]

79. Under international law, the recognition of Indigenous peoples' collective human rights does not constitute racial discrimination. Rather, there is an "urgent need" to respect and protect our "inherent" collective rights.

> …the fact that a primary criterion involves a reference to race does not make the rule discriminatory in law, provided the reference to race has an objective basis and a reasonable cause. …
>
> Thus the question of discrimination is that of the *relevance* of the reference to race, or religion, or sex. Only women can become pregnant, but that does not mean that making special arrangements for women is in legal terms discrimination on grounds of sex. … The fact that traditional ownership is peculiar to aborigines does not make the recognition of such land rights discriminatory *in law*. The legal recognition has an objective basis; it is not discriminatory …
>
> > I. Brownlie (F.M. Brookfield, ed.), *Treaties and Indigenous Peoples: The Robb Lectures 1991*, *supra*, at p. 44. [emphasis in original]
>
> *Recognizing* the urgent need to respect and promote the inherent rights and characteristics of indigenous peoples, especially their rights to their lands, territories and resources …
>
> > *U.N. Declaration on the Rights of Indigenous Peoples* (Draft), 6th preambular para..

80. For centuries, Indigenous peoples' cultures and societies have exercised collective rights. Yet the stated position of the UK government implies that it knows best what is beneficial for Indigenous peoples and individuals – that is, a rejection of collective rights in favour of individual rights.

> … the inherent rights … of indigenous peoples, especially their rights to their lands, territories and resources, … derive from their political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies …
>
> > *U.N. Declaration on the Rights of Indigenous Peoples* (Draft), 6th preambular para..
>
> … indigenous people are entitled to full respect of their individual human rights, both within and without their communities. But we do not think

that granting new collective rights to indigenous people is the best means to achieve this.

> *Collective Human Rights*, United Kingdom, Foreign and Commonwealth Office, *supra*.

81. However, standard-setting on the international human rights of Indigenous peoples is not based in any way on what any given State believes is "best" for us or our people. It smacks of Eurocentric arrogance and colonialism of an earlier era to insist that Indigenous peoples should in effect abandon our essential collective rights in favour of an individual rights orientation.

> Attitudes of racial and cultural superiority led to a suppression of Aboriginal culture and values. As a country, we are burdened by past actions that resulted in weakening the identity of Aboriginal peoples, suppressing their languages and cultures, and outlawing spiritual practices ... We must acknowledge that *the result of these actions was the erosion of the political, economic and social systems of Aboriginal people and nations*.
>
> > "Statement of Reconciliation" in Indian Affairs and Northern Development, *Gathering Strength – Canada's Aboriginal Action Plan* (Ottawa: Minister of Public Works and Government Services, 1997), at p. 4. [emphasis added]

> … the links between past and present are of central importance to any analysis of indigenous rights. *In both United States law and international law, however, the connections between pre-colonial indigenous self-determination and contemporary status and rights have been clouded by racial and legal concepts of the colonial era.* The Eurocentric arrogance and social Darwinism of the late nineteenth and twentieth centuries effectively erased the memory of a centuries-old historical record of indigenous peoples functioning on the international plane, and of a definite if grudging recognition of indigenous rights in principle and practice.
>
> > H. Berman, "Perspectives on American Indian Sovereignty and International Law, 1600 to 1776", in O. Lyons & J.C. Mohawk, eds., *Exiled in the Land of the Free: Democracy, Indian Nations, and the U.S. Constitution* (Santa Fe: Clear Light Publishers, 1992) 125, at p. 127. [emphasis added]

State laws and policies that arbitrarily deny or limit indigenous peoples' interests in the natural resources pertaining to their lands appear to be vestiges of colonialism that ought to be abandoned.

> U.N. Sub-Commission on the Promotion and Protection of Human Rights, *Indigenous peoples' permanent sovereignty over natural resources: Final*

report of the Special Rapporteur, Erica-Irene A. Daes, E/CN.4/Sub.2/2004/30, 13 July 2004, p. 18, para. 60. [Principal conclusions, bold in original]

82. The U.K. government appears to have little appreciation of the ongoing devastating effects that forced assimilation and denial of collective rights have had on Indigenous peoples. For example, by imposing an individual land rights scheme on Indigenous peoples by means of the *General Allotment Act* of 1887, the United States shattered the integrity of many Indigenous territories. This failed policy also resulted in the loss of title to 90 million acres of land.

> The allotment of Indian lands--dividing tribal lands into small parcels and allocating those parcels to individual Indians--became Federal policy in 1887 with the enactment of the *General Allotment Act*. By the 1930s, however, it was widely accepted that the policy was a failure … . Interests in these allotted lands started to "fractionate" as interests divided among the heirs of the original allottees, expanding rapidly with every generation.
>
> Today, there are approximately four million owner interests in the 10 million acres of individually-owned trust lands, and these four million interests could expand to 11 million interests by 2030. Moreover, there are an estimated 1.4 million fractional interests of 2 percent or less involving 58,000 tracks of individually-owned trust and restricted lands. There are now single pieces of property with ownership interests that are less than 0.000002 percent of the whole interest.
>
> Bureau of Indian Affairs, Office of the Special Trustee for American Indians, Working Group on Land Consolidation Program: Call for Nominations, "Action: Notice", *Federal Register*: April 22, 2003, Vol. 68, No. 77, pp. 19845-19846.
>
> See also *General Allotment Act* (Dawes Act), ch. 119, 24 Stat. 338 (1887) (codified as amended at 25 U.S.C. §§ 331-334, 336, 339, 341-342, 348-349, 381 (1988)).

In total disregard of the treaties, the Dawes Act was implemented. Individual tribal members were allotted - 160, 80, and 40 acre - parcels. Remaining reservation (treaty) lands were declared surplus and sold to non-Indians through surplus land sales. This action was in direct violation of the treaty agreements and resulted in Indians losing title to 90 million acres of land.

> Indian Land Working Group (Oregon), "Impact Of Allotment On Indian Lands", available at: http://www.ilwg.net/impact.htm.

> See also B.W. Dippie, *The Vanishing American: White Attitudes and U.S. Indian Policy* (Middletown, Connecticut: Wesleyan University Press, 1982), at p. 308 (loss of more than 90 million acres of land)

83. Clearly, the UK government's proposed denial of Indigenous peoples' collective rights would not achieve equality. Instead, it would be a gross violation of our human rights. It would be a form of forced assimilation or cultural genocide. History has amply demonstrated that such acts are devastating to Indigenous peoples and nations.

> Having dispossessed aboriginal nations, settler nations then set out to civilize them. Assimilation was to be the solution for aboriginal inferiority. …
>
> This policy had catastrophic results, and these results are plain to see not just in Canada, but also in Australia, New Zealand, the United States, and Brazil – wherever aboriginal peoples were denied the right to rule themselves. This is more than a story of the damage done by racist contempt and imperialist arrogance. It is also a terrible demonstration of why rights matter.
>
> M. Ignatieff, *The Rights Revolution* (Toronto: Anansi, 2000), at pp. 60-61.

> Following the Civil War, the assimilation of the individual Indian became the government's cherished goal. Congress ended treaty making and passed a variety of bills designed to destroy the tribes' political, economic, and cultural life. The courts, in case after case, legitimized the government's objectives to secure jurisdictional control over individual Indians.
>
> S.L. O'Brien, "Tribes and Indians: With Whom Does the United States Maintain a Relationship?" (1991) 66 Notre Dame L. Rev. 1461, at p. 1480.

> Indigenous peoples have the collective and individual right not to be subjected to ethnocide and cultural genocide, including prevention of and redress for:
>
> (a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;
> (b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;
> …
> (d) Any form of assimilation or integration by other cultures or ways of life imposed on them by legislative, administrative or other measures …
>
> *U.N. Declaration on the Rights of Indigenous Peoples* (Draft), Art. 7.

2.1.5 Elimination of terms "cultural genocide" and "ethnocide"

84. Instead of effectively addressing the devastating and ongoing impacts of cultural genocide or ethnocide against Indigenous peoples, a number of States in the UNCHR Working Group have recommended eliminating these terms from the draft *U.N. Declaration*. These States continue to insist "the terms 'ethnocide' and 'cultural genocide' [a]re not terms … generally accepted in international law".

> The document [drafted by some government delegations] for discussion stated that the terms "ethnocide" and "cultural genocide" were not terms that were generally accepted in international law. The document clarified that the term "ethnocide" was used in the 1991 Declaration of San José, a declaration that was developed by experts on ethnodevelopment and ethnocide, not by states, and which was not generally accepted in international law.
>
> U.N. Commission on Human Rights, *Report of the working group established in accordance with Commission on Human Rights resolution 1995/32*, U.N. Doc. E/CN.4/2003/92, 6 January 2003 (Chairperson-Rapporteur: Mr. Luis-Enrique Chávez (Peru)), p. 12, para. 52.

> Ethnocide means that an ethnic group is denied the right to enjoy, develop and transmit its own culture and its own language, whether collectively or individually. This involves an extreme form of massive violation of human rights and, in particular, the right of ethnic groups to respect for their cultural identity, as established by numerous declarations, covenants and agreements of the United Nations and its Specialised Agencies, as well as various regional intergovernmental bodies and numerous non-governmental organisations.
>
> *Declaration of San José*, UNESCO Doc. FS 82/WF.32 (1982), Meeting of Experts on Ethno-Development and Ethnocide in Latin America, Final Report, San José, Costa Rica (7-11 December 1981).

> Ethnocide is a process of cultural change and destruction as a result of specific policies that undermine a cultural community's ability for self-preservation.
>
> U.N. Commission on Human Rights, *Human Rights and Indigenous Issues: Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Mr. Rodolfo Stavenhagen, submitted pursuant to Commission resolution 2001/57*, E/CN.4/2002/97, 4 February 2002, at p. 36, n. 26.

85. With respect, these State positions are neither accurate nor helpful in addressing horrific acts committed against Indigenous peoples. First, the various elements identified as constituting cultural genocide or ethnocide are considered as violating international and domestic human rights standards.

> Some governments … adopt clear-cut policies of forced assimilation of ethnic minorities … Some of the measures come close to the crime of genocide, prohibited by the United Nations Convention against Genocide … but many of them are "merely" *ethnocide, thus not sanctioned by international law but clearly in contravention of national and international human rights standards.*
>
> R. Stavenhagen, *The Ethnic Question: Conflicts, Development, and Human Rights* (Tokyo: United Nations University Press, 1990), at p. 89. [emphasis added]

> The right not to be subjected to ethnocide or cultural genocide, although the subject of debate at the time of negotiation of the Convention on the Prevention and Punishment of the Crime of Genocide, is not contained in any existing international human rights instruments. … *However, the incidence of ethnocide or cultural genocide fall within the scope of the International Covenant on Civil and Political Rights (art. 27)*.
>
> U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities, *Technical review of the United Nations draft declaration on the rights of indigenous peoples: Note by the secretariat*, UN Doc E/CN 4/Sub 2/1994/2, 5 April 1994, p. 7, para. 36. [emphasis added]

86. Second, **evidence of cultural genocide or ethnocide can and does play an important role in establishing the intent to commit genocide under international law.** The decisions of the International Criminal Tribunal for the former Yugoslavia have repeatedly confirmed the legal relevance of these terms in this critical context.

> … *where there is physical or biological destruction there are often simultaneous attacks on the cultural and religious property and symbols of the targeted group as well, attacks which may legitimately be considered as evidence of an intent to physically destroy the group.* In this case, the Trial Chamber will thus take into account as evidence of intent to destroy the group the deliberate destruction of mosques and houses belonging to members of the group.
>
> *Prosecutor* v. *Krstic*, International Criminal Tribunal for the former Yugoslavia, Trial Chamber I (Case No. IT-98-33) Judgment 2 August 2001 ("Srebrenica-Drina Corps"), at para. 580. [emphasis added]

> Similarly, see *Prosecutor* v. *Akayesu*, International Criminal Tribunal for the former Yugoslavia, Trial Chamber (Case No. ICTR-96-4-T), Judgment, 2 September 1998, para. 477 ("…it is possible to deduce genocidal intent in a particular act charged from the general context of the perpetration of other culpable acts systematically directed against the same group"); and *Prosecutor* v. *Karadzic* and *Mladic*, International Criminal Tribunal for the former Yugoslavia, Trial Chamber (Case No. IT-95-5-R61, IT-95-18-R61), para. 84.

> Although the Genocide Convention does not recognize *cultural genocide* as a criminal act falling within its scope, *proofs of attacks directed against cultural institutions or monuments, committed in association with killing, may prove important in establishing the existence of a genocidal rather than merely a homicidal intent*.
>
> W.A. Schabas, *Genocide in Law*, (2000), at pp. 223-224. [emphasis added]

87. This significant connection between acts of cultural genocide and those of genocide is widely known. History has recorded that Western States "understood the connection between cultural genocide and physical genocide", at least as early as around World War II.

> History has born out the point that, more often than not, acts of cultural genocide are but a prelude to acts of physical genocide. (p. 1054)
>
> *Having witnessed Hitler's act of ethnic cleansing first-hand, the Western delegates understood the connection between cultural genocide and physical genocide*, which the communist and Arab delegations were making. They argued, however, that the right place to make that connection was in the Universal Declaration and not in the Genocide Convention itself. Therefore, *they voted to delete the cultural genocide prohibition from the Convention on the promise that they would support a similar measure for the Universal Declaration.* However, when the time came, they chose (for reasons having to do with the rhetoric and reality of the Cold War) not to make good on those promissory notes. (pp. 1009-1019)
>
> J. Morsink, "Cultural Genocide, the Universal Declaration, and Minority Rights" (1999) 21 Human Rts. Q. 1009.

88. Based on the above, there is no justification for States seeking to eliminate the term "cultural genocide" or "ethnocide" from the draft *U.N. Declaration*. We strongly urge the United Kingdom, United States, Australia, New Zealand, Canada and other States to fully acknowledge the existence and usage of these concepts under international law. Further, States must support the effective development of human rights standards that prevent recurrence of the horrific actions that these concepts entail.

> The criminalising of Aboriginal people as a whole and their massive levels of incarceration are accurately described and characterised as processes of ethnocide. But as Alison Palmer points out, 'ethnocide is rarely successful … and cultural resurgence of the oppressed group is a common consequence'. She goes on to argue that 'while ethnocidal policies are relatively easy to pursue, it is less easy for them to succeed'.
>
> D. McDonald, "Australia: The Royal Commission into Aboriginal Deaths in Custody" in P. Havemann, *Indigenous Peoples' Rights in Australia, Canada and New Zealand* (Oxford: Oxford University Press, 1999) 283, at pp. 298-299.
>
> See also A. Palmer, "Ethnocide" in M. Dobkowski & I. Wallimann, eds., *Genocide in Our Time: An Annotated Bibliography with Analytical Introduction* (Ann Arbor: Pierian Press, 1992) 1.
>
> … where population transfer is the primary cause for an indigenous people's land loss, it constitutes a principal factor in the process of ethnocide … (para. 101)
>
> For indigenous peoples, the loss of ancestral land is tantamount to the loss of cultural life, with all its implications. (para. 336)
>
> U.N. Commission on Human Rights, *The human rights dimensions of population transfer, including the implantation of settlers* (Preliminary report prepared by Mr. A.S. Al-Khasawneh and Mr. R. Hatano), UN Doc. E/CN.4/Sub.2/1993/17.
>
> The mistreatment of aboriginal children by white society is one of the ugliest blots on Canadian history. From the 1870s through the 1960s, thousands of native children were removed from their homes and placed in government-run residential schools committed to a philosophy of "killing the Indian in the child." This policy was devastating to the children, many of whom suffered physical, emotional and sexual abuse.
>
> "Native adoption, or not", *Globe and Mail*, editorial, (11 August 2003), p. A12.

89. The terms "cultural genocide" and "ethnocide" will continue to evolve in both content and application under international law. Indigenous peoples have a right to benefit from these legal developments on an equal footing and with the same emphasis as other peoples. In this context, it would be unconscionable for States to seek either more restrictive or less graphic legal terminology to describe the atrocities committed by many of them, among others, against Indigenous peoples worldwide.

> *Quite frequently, ... [Indigenous peoples'] disappearance as identifiable communities is not simply a regrettable by-product of development but results from a stated or implicit policy. This process has been called*

> *cultural genocide or ethnocide. It has economic as well as cultural aspects.* Economic ethnocide flows from the belief that pre-modern forms of economic organization must give way for either private or multinational capitalism or state-planned socialism or mixes of these. Cultural ethnocide is the process whereby a culturally distinct people loses its identity as its land and resource base is eroded, and as the use of its language and social and political institutions, as well as its traditions, art forms, religious practices and cultural values is restricted. This may be the result of systematic government policy: but even when due to the impersonal forces of economic development it is still ethnocidal in its effects.
>
> World Commission on Culture and Development, *Our Creative Diversity: Report of the World Commission on Culture and Development* (Paris: UNESCO Publishing, 1996), at pp. 69-70. [emphasis added]

> Crimes committed against Indigenous Peoples, including crimes of genocide, ethnocide and crimes against humanity, must be investigated, prosecuted and punished by governments and international criminal justice bodies.
>
> *Declaration of the Indigenous Peoples Summit of the Americas*, adopted by representatives of Indigenous peoples, nations and organizations from the North, Central and South Americas and the Caribbean meeting in Ottawa, Canada, March 31, 2001, para. 6.

2.1.6 Lack of tolerance in UK government position

90. As amply illustrated in this Annex, the refusal of the U.K. government to recognize Indigenous peoples' collective human rights is unjustifiable.

91. The UK government's position runs directly counter to the UK's legal obligations under the *U.N. Charter*. It violates the principles of equality and non-discrimination. It fails to respect the conclusions, interpretations and other rulings of international and regional bodies whose respective mandates pertain to human rights. It is inconsistent with the treaties that the UK entered into, Royal Proclamations that it issued, and other instruments that the U.K. adopted.

92. Ongoing UK government efforts to repress recognition of our collective human rights demonstrate a severe lack of tolerance. According to the *U.N. Millennium Declaration* that the UK supports, "tolerance" is a fundamental value essential to international relations.

> We consider certain fundamental values to be essential to international relations in the twenty-first century. These include:
> …
> • **Tolerance.** Human beings must respect one other, in all their diversity of belief, culture and language. Differences within and between societies should be neither feared nor repressed, but cherished as a precious asset of humanity. A culture of peace and dialogue among all civilizations should be actively promoted.
>
> *United Nations Millennium Declaration*, *supra*, Art. 6.

93. Tolerance entails respect of the "rich diversity of our world's cultures". This is not only a moral duty, but also a "political and legal requirement".

> Tolerance is respect, acceptance and appreciation of the rich diversity of our world's cultures, our forms of expression and ways of being human. … Tolerance is harmony in difference. It is not only a moral duty, it is also a political and legal requirement. Tolerance [is] the virtue that makes peace possible …
>
> *Declaration of Principles on Tolerance*, adopted at UNESCO's General Conference, Paris, 28th sess., 16 November 1995, Art. 1.1.

94. Tolerance is a responsibility of States, among others, that upholds human rights.

> Tolerance is, above all, an active attitude prompted by recognition of the universal human rights and fundamental freedoms of others. … Tolerance is to be exercised by individuals, groups and States. (Art. 1.2)
>
> Tolerance is the responsibility that upholds human rights, pluralism (including cultural pluralism), democracy and the rule of law. … (Art. 1.3)
>
> *Declaration of Principles on Tolerance*, *supra*.

95. In adopting the *Declaration of Principles of Tolerance*, UNESCO expressly links it to the objectives of the International Decade of the World's Indigenous Peoples. As already highlighted, the Decade's objectives include the adoption by the U.N. General Assembly of a Declaration on the rights of Indigenous peoples.

> **Bearing in mind** the objectives of the Third Decade to Combat Racism and Racial Discrimination, the World Decade for Human Rights

> Education, and the International Decade of the World's Indigenous People …
>
> *Declaration of Principles on Tolerance*, *supra*, preamble.

> Further support the attainment of the goals of the International Decade of the World's Indigenous People …
>
> U.N. General Assembly, *Declaration and Programme of Action for a Culture of Peace*, Res. 53/243, 13 September 1999, Part B (Programme of Action for a Culture of Peace), para. 14(e).

96. In this whole context, the UK government has a responsibility to combat intolerance and not to contribute to it.

> **Emphasizing** the responsibilities of Member States to develop and encourage respect for human rights and fundamental freedoms for all, without distinction as to race, gender, language, national origin, religion or disability, and to combat intolerance …
>
> *Declaration of Principles on Tolerance*, *supra*, preamble.

2.1.7 UK double standards on economic, social and cultural rights

97. The UK government takes the view that, in relation to Indigenous peoples, States would do more by ratifying and implementing the six core U.N. human rights treaties than recognizing our collective rights. These treaties include the *International Covenant on Economic, Social and Cultural Rights* (ICESCR).

> In our view, the ratification and implementation of the six core UN human rights treaties by states with indigenous communities would do more to improve the human rights of indigenous people than the creation of new collective rights.
>
> *Collective Human Rights*, United Kingdom, Foreign and Commonwealth Office, *supra*.

98. We have already demonstrated in this Annex that recognition of our collective rights in the draft *U.N. Declaration* is not a matter of "creating" new collective rights. However, the UK position is also contradictory in urging other States to implement the ICESCR, when it refuses to do the same. Its own record in this regard has been severely criticized by the U.N. Committee on Economic, Social and Cultural Rights.

> The Committee deeply regrets that, although the State party has adopted a certain number of laws in the area of economic, social and cultural rights, the Covenant has still not been incorporated in the domestic legal order and that there is no intention by the State party to do so in the near future. *The Committee reiterates its concern about the State party's position that the provisions of the Covenant, with minor exceptions, constitute principles and programmatic objectives rather than legal obligations that are justiciable, and that consequently they cannot be given direct legislative effect* …
>
> Committee on Economic, Social and Cultural Rights, *Concluding Observations of the Committee on Economic, Social and Cultural Rights: United Kingdom of Great Britain and Northern Ireland, United Kingdom of Great Britain and Northern Ireland - Dependent Territories*, U.N. Doc. E/C.12/1/Add.79, 5 June 2002, para. 11. [emphasis added]

99. The UK government has not modified significantly its position that the provisions of the ICESCR are mainly "principles and programmatic objectives rather than legal obligations". The government declares that, to a large degree, it is "not convinced" that it can meaningfully incorporate economic, social and cultural rights within the British legal system.

> *While some states have chosen to incorporate economic, social and cultural rights into their domestic law, the UK is not convinced that we can do this in a meaningful way within the British legal system.* Our view is that there is little point in directly incorporating the Covenant if it is unclear that it will lead to meaningful and beneficial outcomes. However, we believe that there is some degree of justiciability. Some economic and social rights can be incorporated into domestic law …
>
> *Economic, Social and Cultural Rights. Civil and Political Rights. A history and progress this year.* United Kingdom, Foreign and Commonwealth Office, http://www.fco.gov.uk/Files/kfile/CP%20ECS%20rights%20History%20and%20Progress.pdf. [emphasis added]

100. If the UK government takes the firm view that "many of the rights [in the ICESCR] are expressed in ambiguous terms" and ineffective, then it is curious that the UK would insist that implementation of the ICESCR would be more beneficial for Indigenous peoples than recognition of our collective rights. In any event, it is inconsistent with international law to frame the discussion of Indigenous peoples' rights as a matter of choosing the ICESCR or elaborating our inherent collective rights in the draft *U.N. Declaration*.

> We believe that the way in which economic and social rights are expressed in the Covenant does not lend them easily to justiciable

> decision-making, meaning decisions with direct legal enforceability in UK courts. … *Many of the rights are expressed in ambiguous terms.*
>
> > *Economic, Social and Cultural Rights. Civil and Political Rights. A history and progress this year.* United Kingdom, Foreign and Commonwealth Office, *supra*. [emphasis added]

> *All* human rights, according to the Final Declaration of the World Conference on Human Rights in Vienna (1993), must be treated by the international community globally in a fair and equal manner, on the same footing, and with the same emphasis. *The word "all" refers to collective rights.*
>
> > P.R. Baehr, *Human Rights: Universality in Practice* (New York: St. Martin's Press, 1999), at p. 32. [emphasis added]

101. It is widely recognized in international law – and the UK government appears to agree – that civil and political rights are interrelated with economic, social and cultural rights. Since the government is refusing to recognize our collective human rights, it is contradictory and misleading to proclaim that UK policies are "designed" so as to "realis[e] all basic human rights, civil, cultural, economic, social and political."

> It has been part of UN doctrine that the entire family of rights—civil and political as well as economic, social and cultural—are indivisible. The conceptual interdependence of the two sets of rights is beyond dispute.
>
> > R. Howse & M. Mutua, "Protecting Human Rights in a Global Economy: Challenges for the World Trade Organization", paper prepared for the International Centre for Human Rights and Democratic Development, Montreal, 2001, at p. 21.

> As human rights and fundamental freedoms are indivisible and interdependent, equal attention and urgent consideration should be given to the implementation, promotion and protection of both civil and political, and economic, social and cultural rights.
>
> > *Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights*, U.N. ESCOR, Comm'n on Hum. Rts., 43rd Sess., Agenda Item 8, U.N. Doc. E/CN.4/1987/17/Annex (1987), *reprinted in* "The Limburg Principles on the Implementation of the Covenant on Economic, Social and Cultural Rights", (1987) 9 Hum. Rts. Q. 122, para. 3.

> Since human rights and fundamental freedoms are indivisible, the full realization of civil and political rights without the enjoyment of economic, social and cultural rights is impossible.
>
> > *Proclamation of Teheran*, proclaimed by the International Conference on Human Rights at Teheran on 13 May 1968, 23 U.N. GAOR Supp. (No. 41) at 1, U.N. Doc. A/Conf.32/41 (1968), para. 13.
>
> Too often, the debate about human rights has been presented as a choice between civil and political rights on the one hand; and economic, social and cultural rights on the other. This is a false choice. *The two sets of rights are inextricably linked. ... Civil and political rights and economic and social rights are mutually reinforcing* and together provide the foundations for sustainable development.
>
> > B. Rammell (UK Parliamentary Under Secretary), "UN Commission: 'Promoting Respect for All Human Rights'", UN Commission on Human Rights, Geneva, 19 March 2003, *supra*. [emphasis added]
>
> The UK's policies are designed to make that difference in realising *all* basic human rights, civil, cultural, economic, social and political.
>
> > *Economic, Social and Cultural Rights versus Civil and Political Rights*, United Kingdom, Foreign and Commonwealth Office, http://www.fco.gov.uk/servlet/Front?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1028302591742. [emphasis added]

102. In particular, in the *Cotonou Agreement* concerning 78 African, Caribbean and Pacific region States, the UK and other EU States have agreed to "international obligations … *to promote and protect all fundamental freedoms and human rights, be they civil and political, or economic, social and cultural*". These human rights are explicitly stated to include those "which are legitimate aspirations of individuals and peoples".

> The Parties refer to their international obligations and commitments concerning respect for human rights. *They reiterate their deep attachment to human dignity and human rights, which are legitimate aspirations of individuals and peoples.* Human rights are universal, indivisible and inter-related. *The Parties undertake to promote and protect all fundamental freedoms and human rights, be they civil and political, or economic, social and cultural*.
>
> > *Cotonou Agreement*, *supra*, Art. 9(2). [emphasis added]

103. In the *Cotonou Agreement*, the UK and other Parties have reiterated their "deep attachment … to human rights … of peoples" and undertaken "to promote and protect *all* … human rights, be they civil and political, or economic, social and cultural". Therefore, the UK cannot in good faith and with any legitimacy at the same time declare that it does "not accept the concept of collective rights" and refuse to recognize them in regard to Indigenous peoples globally. This position is not only contradictory, but also discriminatory.

2.2 Use of the Term "Peoples" or "Indigenous Peoples"

104. In the UNCHR Working Group, some States can accept the term "peoples" or "Indigenous peoples" in the draft *U.N. Declaration*. However, the UK government and certain other States appear to be seeking a variety of ways to avoid equal application of the right of self-determination to Indigenous peoples *under international law*:

> Some States can accept the use of the term "indigenous peoples" pending consideration of the issue in the context of discussions on the right to self-determination. Other States cannot accept the use of the term "indigenous peoples", in part because of the implications this term may have in international law, including with respect to self-determination and individual and collective rights. Some delegations have suggested other terms in the declaration, such as "indigenous individuals", "persons belonging to an indigenous group", "indigenous populations", "individuals in community with others", or "persons belonging to indigenous peoples".
>
> "Compilation of Amendments Proposed by Some States for Future Discussions Based on the Sub-Commission Text" in U.N. Commission on Human Rights, *Report of the working group established in accordance with Commission on Human Rights resolution 1995/32*, U.N. Doc. E/CN.4/2002/98, 6 March 2002 (Chairperson-Rapporteur: Mr. Luis-Enrique Chávez (Peru)), Annex I, p. 22.

105. In its *Human Rights: Annual Report 2003*, the UK government only refers to Indigenous "people" and not "peoples". The same is true for the UK's Foreign and Commonwealth Office (FCO) web site.

106. As illustrated in this Annex, the refusal of the UK government to use the term "peoples" or "Indigenous peoples" relates to the fact that the government refuses to recognize the collective human rights of Indigenous peoples. The refusal to recognize our status as "peoples" is also because the government is not prepared to fully

recognize our right of self-determination in conformance with the international human rights Covenants (Art. 1). In both cases, the UK position is untenable.

> The position of the FCO is basically that, with the exception of the right to self-determination, collective human rights are not recognized in international law, at least in the six core human rights instruments, nor should they be as these rights undermine the human rights regime and threaten individual rights. The FCO states that for this reason, it cannot accept, presumably among others, the use of the term 'indigenous peoples' in a human rights context. We believe that this position as a matter of fact, law and principle is incorrect …
>
> F. MacKay, "The UN Draft Declaration on the Rights of Indigenous Peoples and the Position of the United Kingdom", *supra*, p. 1.

> Literal as well as more comprehensive interpretation supports the evidence that the words "*all* peoples have the right …," in Article 1 refer to any people irrespective of the international political status of the territory it inhabits. It applies, then, not only to the peoples of territories that have not yet attained independence, but also to those of independent and sovereign states.
>
> A. Cassese, "The Self-Determination of Peoples" in L. Henkin (ed.), *The International Bill of Rights: The Covenant on Civil and Political Rights* (New York: Columbia University Press, 1981) 92, at p. 94.

107. The UK and other States that seek to restrict or deny Indigenous peoples our status as "peoples", in order to restrict or deny our right of self-determination or other collective human rights, are violating the *International Convention on the Elimination of All Forms of Racial Discrimination* and the *International Covenant on Civil and Political Rights*. Such actions constitute racial discrimination.

> … any distinction, *exclusion, restriction* or preference based on race, colour, descent, or national or ethnic origin which has the *purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing*, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.
>
> *International Convention on the Elimination of All Forms of Racial Discrimination*, Art. 1. [emphasis added]

> ... the term "*discrimination*" as used in the Covenant should be understood to imply *any distinction, exclusion, restriction or preference which is based on any ground such as race*, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other

> status, and *which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms*.
>
> > Human Rights Committee, General Comment No. 18, *Non-discrimination*, 37th sess., (1989), at para. 7.

> [The right of self-determination] now applies to all peoples in all territories, *not just colonial territories, and to all peoples within a state*.
>
> > R. McCorquodale, "Human Rights and Self-Determination" in M. Sellers, ed., *The New World Order [:] Sovereignty, Human Rights, and the Self-Determination of Peoples* (Oxford/Washington, D.C.: Berg, 1996) 9, at p. 9. [emphasis added]

> There are no longer any scientific or historical grounds to doubt that the lands and territories settled by Europeans in the New World were, and continue to be, occupied by organized societies of indigenous peoples who have their own cultures, laws, languages, lands, beliefs and other attributes which characterize them as peoples and nations.
>
> > R.J. Epstein, "The Role of Extinguishment in the Cosmology of Dispossession" in G. Alfredsson & M. Stavropoulou, eds., *Justice Pending: Indigenous Peoples and Other Good Causes* (The Hague: Kluwer Law International, 2002) 45, at p. 47.

108. Neither international institutions nor States have any valid authority to withhold from, or deny, Indigenous peoples our status as "peoples", in order to restrict or deny us our right to self-determination or other human rights. Yet this is what the UK and some other States are continuing to do in the UNCHR inter-sessional Working Group. Unconscionably, similar approaches are tolerated within the European Union and the Organization of American States.

> There is no common EU position on the use of the term indigenous peoples. Some Member States are of the view that indigenous peoples are not to be regarded as having the right of self-determination for the purposes of Article 1 of the ICCPR and the ICESCR, and that use of the term does not imply that indigenous people or peoples are entitled to exercise collective rights.
>
> > Council of the European Union, "Council Conclusions on Indigenous Peoples", Document 13466/02, 18th of November 2002, n. 1.

> … note that the use of the term "peoples" in this document cannot be construed as having any implications as to the rights that attach to the

term under international law and that the rights associated with the term "indigenous peoples" have a context-specific meaning that is appropriately determined in the multilateral negotiations of the texts of declarations that specifically deal with such rights …

> Summit of the Americas, 2001, *Plan of Action*, adopted at the Third Summit of the Americas, Québec City, Canada, April 22, 2001 (Implementation of International Obligations and Respect for International Standards).

109. Clearly, "peoples" is the correct term in referring to Indigenous peoples. Any attempt to replace the term "peoples" or "Indigenous peoples" in the draft *U.N. Declaration* with another term would be discriminatory. The same would be true if the U.K. and certain other States sought to define these terms, so as to create a lesser and different standard under international law.

> The ILO worked for three years during the adoption of the Convention [No. 169] to decide whether or not to change the term "populations" in Convention No. 107 to the term "peoples" in the new Convention. … It was finally agreed that the only correct term was "peoples", because this term recognizes the existence of organized societies with an identity of their own rather than mere groupings sharing some racial or cultural characteristics.
>
> > M. Tomei & L. Swepston, "Indigenous and Tribal Peoples: A Guide to ILO Convention No. 169", International Labour Office, Geneva, 1996, p. 7.

Indigenous groups are unquestionably peoples in every political, social, cultural and ethnological meaning of this term. They have their own specific languages, laws, values and traditions; their own long histories as distinct societies and nations; and a unique economic, religious and spiritual relationship with the territories in which they have lived. *It is neither logical nor scientific to treat them as the same peoples as their neighbours, who obviously have different languages, histories and cultures.*

> E.-I. Daes, *Explanatory note concerning the draft declaration on the rights of indigenous peoples*, U.N. Doc. E/CN.4/Sub.2/1993/26/Add.1, at 2, para. 7. [emphasis added]

[I]ndigenous peoples … are not, strictly speaking, ethnic minorities at all …

> R. Stavenhagen, *The Ethnic Question: Conflicts, Development, and Human Rights*, (Tokyo: United Nations Univ. Press, 1990) at p. 88.

> For purposes of self-determination, Aboriginal peoples should be seen as organic political and cultural entities, not groups of individuals united by racial characteristics.
>
> Royal Commission on Aboriginal Peoples, *Report of the Royal Commission on Aboriginal Peoples*, *supra*, vol. 2(1), at p. 176.

110. As renowned international law professor James Crawford has concluded, to define the term "peoples" for international purposes "in such a way that it reflects neither normal usage nor the self-perception and identity of diverse and long-established human groups … That would make the principle of self-determination into a cruel deception".

> J. Crawford, "The Right of Self-Determination in International Law: Its Development and Future" in P. Alston, ed., *Peoples' Rights* (Oxford: Oxford University Press, 2001) 7, at p. 64.

111. It is widely recognized that Indigenous peoples have a right of self-identification.

> Self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply.
>
> *Indigenous and Tribal Peoples Convention, 1989*, Art. 1, para. 2.

> Indigenous peoples have the collective and individual right to maintain and develop their distinct identities and characteristics, including the right to identify themselves as indigenous and to be recognized as such.
>
> *United Nations Declaration on the Rights of Indigenous Peoples* (Draft), para. 8.

> [Indigenous peoples] constitute distinct peoples and societies, with the right to self-determination, self-government, and self-identification.
>
> *Nuuk Conclusions and Recommendations on Indigenous Autonomy and Self-Government*, United Nations Meeting of Experts, Nuuk, Greenland, 24-28 September 1991, U.N. Doc. E/CN.4/1992/42 and Add.1 at 11, para. 54.
>
> See also I. Schulte-Tenckhoff, *La question des peuples autochtones* (Brussels: Bruylant, 1997), at p. 141 (creating a definition of "Indigenous people" would be in flagrant contradiction with the principle of self-identification rightfully claimed by Indigenous peoples and accepted at the international level).

> Aboriginal peoples are entitled to identify their own national units for purposes of exercising their right of self-determination. ... [A]ny self-identification initiative must necessarily come from the people actually concerned.
>
> Royal Commission on Aboriginal Peoples, *Report of the Royal Commission on Aboriginal Peoples* (Ottawa: Canada Communication Group, 1996), vol. 2(1), at p. 182.

112. Denial of Indigenous peoples' right of self-identification by States and their imposition of restrictive and unfair definitions have resulted in widespread suffering, exclusion, confusion and other adverse consequences that still continue today.

> The experience of a legal identity is, as all identities, both psychological and political. Who we believe ourselves to be is often *not* what the colonial legal system defines us to be. This disjunction causes a kind of suffering nearly impossible to end without ending the colonial definitions of who we are. … We are besieged by state powers attempting to decrease our numbers and therefore our claims by merely defining us out of existence. Or, we are categorized in a manner alien to our cultures in the hopes of strangling our ancestral attachments to our own people.
>
> H.-K. Trask, *From a Native Daughter: Colonialism and Sovereignty in Hawai'i*, revised ed. (Hawai'i: University of Hawai'i Press, 1999), at p. 104.

> Enrollment in a federally recognized tribe … is not the only eligibility criteria employed by congressional legislation. According to a 1978 congressional survey, *federal legislation contained thirty-three definitions of Indians*.
>
> S.L. O'Brien, "Tribes and Indians: With Whom Does the United States Maintain a Relationship?", *supra*, at p. 1481.

> [In regard to political recognition by the U.S. government of "Indians" or "Indian tribes", w]hat emerges is a picture of American bureaucratic incrementalism, ineptitude, and political sensitivity, which have resulted in shifting thresholds and inconsistent decisions for more than 60 years.
>
> R.L. Barsh, "Political Recognition: An Assessment of American Practice" in P. Chartrand, ed. *Who Are Canada's Aboriginal Peoples? Definition, Recognition, and Jurisdiction* (Saskatoon, Saskatchewan: Purich Publishing Ltd., 2002), at p. 232.

113. Some Member States are seeking to include in the draft *U.N. Declaration* a reference to Art. 1, para. 3 of the *Indigenous and Tribal Peoples Convention, 1989*. Apparently,

the intention and effect of inserting such a reference in the draft *Declaration* would be to limit or deny the status and right of self-determination of Indigenous peoples under international law, unless States agreed otherwise in the future.

> Some delegations have suggested that if the term "indigenous peoples" is used, reference should also be made to article 1.3 of ILO Convention No. 169.
>
> > "Compilation of Amendments Proposed by Some States for Future Discussions Based on the Sub-Commission Text" in U.N. Commission on Human Rights, *Report of the working group established in accordance with Commission on Human Rights resolution 1995/32*, *supra*, Annex I, p. 22.

> The use of the term "peoples" in this Convention shall not be construed as having any implications as regards the rights which may attach to the term under international law.
>
> > *Indigenous and Tribal Peoples Convention, 1989* (No. 169), Art. 1, para. 3.

114. However, Art. 1, para. 3 was included in the *Indigenous and Tribal Peoples Convention, 1989* for a wholly different purpose. In the Report of the Committee of the International Labour Organization (ILO), it is expressly stated that this clause was inserted because the matter of self-determination was "outside the competence of the ILO". As a result, the clause was added to maintain the neutrality of the ILO on this matter.

> The Chairman considered that the text was distancing itself to a certain extent from a subject which was *outside the competence of the ILO*. In his opinion*, no position for or against self-determination* was or could be expressed in the Convention, *nor could any restrictions be expressed in the context of international law*.
>
> > International Labour Organization, *Report of the Committee on Convention No. 107*, International Labour Conference, Provisional Record, 76th Session, Geneva, 1989, No. 25, p. 8, para. 42. [emphasis added]

> After two years of hard work, the [ILO] negotiating committee agreed to the use of the term "peoples", subject to a clarification that *it was not intended to convey any general implications under international law.* The negotiating committee felt that the ILO lacks competence to interpret Article 1 of the Charter and referred this question to the Working Group on Indigenous Populations and its parent bodies.
>
> > E.-I. Daes, "Striving for Self-Determination of Indigenous Peoples" in Y.N. Kly & D. Kly, eds., *In Pursuit of the Right of Self-Determination: Collected Papers and Proceedings of the First International Conference on the Right of Self-*

> *Determination, Geneva 2000* (Atlanta, Georgia: Clarity Press, 2001) 50, at p. 52. [emphasis added]

> It is important to stress that the Convention [No. 169] does not provide a definition of who indigenous and tribal peoples are, but rather a statement of coverage. It was thought that a definition would limit and exclude some of these peoples from enjoying the rights accorded by the Convention.
>
> M. Tomei & L. Swepston, "Indigenous and Tribal Peoples: A Guide to ILO Convention No. 169", *supra*, p. 7.

115. International law has no accepted single definition of "peoples". Rather, in view of the risk of unfair exclusion, the notion of devising precise definitions is described as "destructive".

> There is no legal definition of *a* people. There is not even an accepted sociological or political definition of *a* people. The United Nations carefully avoided to define "people", even as it has conceded all peoples have the right of self-determination.
>
> R. Stavenhagen, *The Ethnic Question: Conflicts, Development, and Human Rights*, *supra*, at p. 68.
>
> See also N. Rouland, S. Pierré-Caps & J. Poumarède, *Droit des minorities et des peuples autochtones* (Paris: Presses Universitaires de France, 1996), at pp. 444-445 (no definition of term "peoples" in international law).

> In fact, the [Indigenous and Tribal Peoples] Convention takes a broad approach to the rights of indigenous and tribal peoples. It carries on the earlier ILO practice of referring to indigenous *and tribal* peoples, and includes a wide statement of coverage, thus avoiding the destructive discussions about precise definitions being used by some to prevent the [draft U.N.] declaration from applying to Asia and Africa.
>
> L. Swepston & G. Alfredsson, "The Rights of Indigenous Peoples and the Contribution by Erica Daes" in G. Alfredsson & M. Stavropoulou, eds., *Justice Pending: Indigenous Peoples and Other Good Causes*, Essays in Honour of Erica-Irene A. Daes (The Hague: Kluwer Law International, 2002) 69, at p. 76.

116. While the U.K. and some other States may claim that a definition of the term "peoples" is required, the practice of the United Nations demonstrates that this has not been a factor for the success or failure of any instrument. Neither the term "peoples" nor "minorities" has been defined satisfactorily in international law.

> Yet the United Nations in its forty-five-year-old history has not defined "minorities" nor "peoples" and the lack of definition was not crucial for its failures or successes in those domains.
>
> E. Stamatopoulou, "Indigenous Peoples and the U.N." (1994) 16 Hum. Rts. Q. 58.

> There is no precise definition of 'minority' in international law. Several international organizations seek to address minority-related issues but none with a precise definition. ... Indeed, there is no general agreement on the definition of a national minority either in the OSCE or elsewhere, as has been noted by the OSCE High Commissioner on National Minorities, Mr. Van der Stoel.
>
> J. Boucaouris, "Minority Issues and the Organization for Security and Cooperation in Europe (OSCE)" in G. Alfredsson & M. Stavropoulou, eds., *Justice Pending: Indigenous Peoples and Other Good Causes*, *supra*, at p. 79.
>
> Similarly, see M. Telalian, "European Framework Convention for the Protection of National Minorities and its Personal Scope of Application" in G. Alfredsson & M. Stavropoulou, eds., *Justice Pending: Indigenous Peoples and Other Good Causes*, *supra*, at p. 120.

2.3 Right of Self-Determination

117. In regard to the right of self-determination, the United Kingdom, United States, Australia, and a few other States have indicated that Art. 3 of the draft *U.N. Declaration* "needed to be made more precise".

> The representatives of Australia, Canada, New Zealand, the Russian Federation, the United Kingdom of Great Britain and Northern Ireland and the United States of America said that article 3 as currently drafted needed to be made more precise. The representative of the United States of America expressed concern about the reference to self-determination in several places in the draft declaration and therefore preferred a reference to "internal" self-determination.
>
> U.N. Commission on Human Rights, *Report of the working group established in accordance with Commission on Human Rights resolution 1995/32*, U.N. Doc. E/CN.4/2003/92, 2003, *supra*, p. 6, para. 22.

118. This position of the UK and a few other States is highly questionable. In regard to Art. 3 of the draft *U.N. Declaration*, it is critical to note that a technical review, carried out in 1994 by the U.N. Centre for Human Rights, had concluded that the

"text of this article is precisely based on article 1, paragraph 1, of the two International Covenants." Therefore, amendments by States that would have the effect of altering the meaning of Article 3 would be creating a double standard.

> U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities, *Technical review of the United Nations draft declaration on the rights of indigenous peoples: Note by the secretariat*, UN Doc E/CN 4/Sub 2/1994/2, 5 April 1994, p. 7, para. 30.

> Indigenous peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
>
> *U.N. Declaration on the Rights of Indigenous Peoples* (Draft), Art. 3.

> All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
>
> *International Covenant on Civil and Political Rights*, Art. 1, para. 1; and *International Covenant on Economic, Social and Cultural Rights*, Art. 1, para. 1.

119. As already described, the UK government refuses to recognize the collective rights of Indigenous peoples, based on the reasoning that such rights are not explicitly set out in the international human rights Covenants and four other "core" international human rights instruments (see sub-heading 1.1 *supra*). At the same time, although the collective right of peoples to self-determination is explicitly recognized in both Covenants, the UK is not prepared to fully affirm this right in relation to Indigenous peoples. These arbitrary positions are contradictory and discriminatory.

120. In regard to the United Kingdom and United States, the approach in the UNCHR Working Group has been to simply and openly attack the content of Article 3 and demand substantive changes. Both States have sought to restrict the right of self-determination to some form of "internal" self-determination.

> Those who *challenged fundamental principles* underlying the Draft Declaration, in particular the concept of self-determination, language of indigenous peoples and/or the recognition of collective rights: Australia, Japan, the United Kingdom and the United States.
>
> S. Pritchard, "The Draft Declaration on the Rights of Indigenous Peoples Remains on its Troubled Path Through the UN", in International Work Group For Indigenous Affairs, *The Indigenous World 1999-2000* (Copenhagen: IWGIA, 2000) 381, at pp. 401-402. [emphasis in original]

> The representative of the United States of America expressed concern about the reference to self-determination in several places in the draft declaration and therefore preferred a reference to "internal" self-determination.
>
> U.N. Commission on Human Rights, *Report of the working group established in accordance with Commission on Human Rights resolution 1995/32*, 6 January 2003, p. 6, para. 22.

121. In the case of the U.S. government, its State Department and other representatives have engaged in overt ultimatums or threats to Indigenous representatives. If Indigenous peoples were not prepared to support its proposal of "internal self-determination", the U.S. would have "no other option but to eliminate a reference to 'the right of self-determination of indigenous peoples' from the Declaration". This Declaration on Indigenous peoples' rights is being prepared within the Organization of American States (OAS). As explicitly stated in a "Consultation" by the U.S. government:

> **[The US government delegation] expressed concern that if the US proposal on "internal self-determination" did not receive support, there would be no other option but to eliminate a reference to "the right of self-determination of indigenous peoples" from the Declaration.**
>
> U.S. Department of State, "Draft Minutes of the U.S. / Tribal Government Consultation held in Albuquerque, NM, July 22 and 23, 2003", Bureau of Western Hemisphere, U.S. Department of State, Washington, DC, Posted August 28, 2003, http://www.state.gov/p/wha/rt/oas/23615.htm. [emphasis added]

122. Clearly, the UK, U.S. and certain other States do not seek to uphold the international law principle of "equal rights and self-determination of peoples". They do not wish to precisely reflect Article 1 of the international human rights Covenants. Rather, they seek to establish lesser and discriminatory standards. Such actions are undemocratic. They serve to perpetuate State dominance and superiority over Indigenous peoples both internationally and domestically.

> *The term "equality of peoples" [in Art. 1(2) of the U.N. Charter] was meant to underline that no hierarchy existed between the various peoples.* To this extent, the prohibition of racial discrimination was transferred from the national level to the international level of international relations. Apart from that, the principle of equality of peoples and the right to self-determination are united. With this, it is assured that no peoples can be

denied the right to self-determination on the basis of any alleged inferiority.

> R. Wolfrum, "Chapter 1. Purposes and Principles" in B. Simma, ed., *The Charter of the United Nations: A Commentary* (New York: Oxford University Press, 1994) 49, at p. 53. [emphasis added]

[*The Commission on Human Rights*] … *Condemns* … practices based on racism, racial discrimination, xenophobia and related intolerance as incompatible with democracy and transparent and accountable governance … (para. 2)

Reaffirms that racism, racial discrimination, xenophobia and related intolerance condoned by governmental policies violate human rights and may endanger friendly relations among peoples, cooperation among nations, international peace and security … (para. 3)

> U.N. Commission on Human Rights, *The incompatibility between democracy and racism*, E/CN.4/RES/ 2003/41, 23 April 2003.

…any doctrine of superiority based on racial differentiation is … scientifically false, morally condemnable, socially unjust and dangerous, and … there is no justification anywhere for racial discrimination, in theory or in practice, anywhere …

> *International Convention on the Elimination of All Forms of Racial Discrimination*, preamble.

123. The UK government should reconsider its support for U.S. positions on the right of self-determination. The National Security Council, which is headed by the President of the United States, has in effect targeted the world's 300 million Indigenous people as some kind of security risk. While there is one national security strategy for all of the United States, there is another very specific one to limit the human rights of all Indigenous peoples globally – in the absence of any factual, legal or political context.

The President of the United States shall preside over meetings of the [National Security] Council …

The function of the Council shall be to advise the President with respect to the integration of domestic, foreign, and military policies relating to the national security so as to enable the military services and the other departments and agencies of the Government to cooperate more effectively in matters involving the national security.

> *National Security Act*, 50 U.S.C. 401, at s. 402 (National Security Council).

> National Security Council (U.S.), "The National Security Strategy of the United States of America", September 2002.
>
> National Security Council (U.S.), "Position on Indigenous Peoples", January 18, 2001.

124. Without exception, the U.S. seeks to categorically deny the world's Indigenous peoples full and equal application of the right of self-determination under the international human rights Covenants. This global strategy is being directed by means of a U.S. National Security Council document entitled, "Position on Indigenous Peoples", dated January 18, 2001. **No other peoples in the world are singled out, as a class of people, for such wholesale discriminatory treatment.**

125. In the U.S. National Security Council's "Position on Indigenous Peoples", specific instructions are issued to all U.S. delegations in international affairs. Directives are given as to how Indigenous peoples' status as "peoples" and our right to self-determination, including our right to natural resources, must be expressed. The intention and effect is to subject Indigenous peoples to a standard that is less than and different from that of other peoples under international law.

> The US delegation should support use of the term "internal self-determination" in both the UN and OAS declarations on indigenous rights, defined as follows:
>
> "Indigenous peoples have a right of *internal* self-determination. By virtue of that right, they *may negotiate their political status within the framework of the existing nation-state* and are free to pursue their economic, social, and cultural development. …" (para. 3, emphasis added)
>
> … the US delegation to both the UN and OAS working groups on the indigenous declarations will read a prepared statement that expresses the US understanding of the term "internal self-determination" and indicates that it does not include a right of independence or permanent sovereignty over natural resources. (para. 4)
>
> While the US domestic concept of self-determination is similar to the rights articulated in the draft declaration, *it is not necessarily synonymous with more general understandings of self-determination under international law*. (para. 4, emphasis added)

126. Both the UK and the U.S. positions on the right of self-determination serve to undermine our fundamental status and human rights. Rather than enhancing our

security, both governments generally promote the insecurity of the world's Indigenous peoples.

127. The right of self-determination is a collective human right and a prerequisite for the enjoyment of all other human rights.

> … human rights can only exist truly and fully when self-determination also exists. Such is the fundamental importance of self-determination as a human right and as a prerequisite for the enjoyment of all the other rights and freedoms.
>
> H. Gros Espiell, Special Rapporteur, *The Right to Self-Determination: Implementation of United Nations Resolutions*, Study for the Sub-Commission on Prevention of Discrimination and Protection of Minorities, (New York: United Nations, 1980), U.N. Doc. E/CN.4/Sub.2/405/Rev.1 at 10, para. 59.

128. According to the U.N. Human Rights Committee, the right of self-determination "is an essential condition for the effective guarantee and observance of individual human rights and for the promotion and strengthening of those rights". Although the UK government states that it supports the full recognition and respect of the human rights of Indigenous individuals, it is not prepared to fully recognize Indigenous peoples' right to self-determination.

> The right of self-determination is of particular importance because its realization is an essential condition for the effective guarantee and observance of individual human rights and for the promotion and strengthening of those rights. It is for that reason that States set forth the right of self-determination in a provision of positive law in both Covenants and placed this provision as article 1 apart from and before all of the other rights in the two Covenants.
>
> Human Rights Committee, *General Comment No. 12, Article 1*, 21st sess., A/39/40 (1984), para. 1.

> The UK Government believes firmly that the individual rights of indigenous people should be recognised and protected. All indigenous people are entitled to full respect of their individual human rights, both within and without their communities.
>
> *Collective Human Rights*, United Kingdom, Foreign and Commonwealth Office, *supra*.

129. Indigenous peoples have repeatedly emphasized that our right of self-determination is a core element of the draft *U.N. Declaration* and must be affirmed in a manner

consistent with principles of equality and non-discrimination. We have reminded the United Kingdom and other States that the right of self-determination is a democratic entitlement and that racial discrimination is incompatible with democratic principles.

> ... *self-determination is the oldest aspect of the democratic entitlement* ... Self-determination postulates the right of a people in an established territory to determine its collective political destiny in a democratic fashion and is therefore at the core of the democratic entitlement.
>
> T. Franck, "The Emerging Right to Democratic Governance", (1992) 86 Am. J. Int'l L. 46, at p. 52. [emphasis added]

> ... the denial of self-determination is essentially incompatible with true democracy. Only if the peoples' right to self-determination is respected can a democratic society flourish ...
>
> R. Stavenhagen, "Self-Determination: Right or Demon?" in D. Clark & R. Williamson, eds., *Self-Determination: International Perspectives* (New York: St. Martin's Press, 1996) 1, at p. 8.

> Only in a democracy can human rights truly be respected, and without human rights, there can be no genuine democracy. …
> …
> … good governance can be said to exist where the following elements are present:
>
> …
>
> - Promotion and protection of human rights (as defined in the international covenants and conventions, respect of norms and non-discrimination).
>
> *Democracy and Good Governance*, United Kingdom, Foreign and Commonwealth Office, *supra*.

130. The Commission on Human Rights specifically links the realization of the right to self-determination to "a democratic and equitable international order":

> ... a democratic and equitable international order requires, inter alia, the realization of the following:
> (a) The right of all peoples to self-determination, by virtue of which they can freely determine their political status and freely pursue their economic, social and cultural development ...
>
> U.N. Commission on Human Rights, *Promotion of a democratic and equitable international order*, E/CN.4/RES/2003/63, 24 April 2003, para. 4.

131. The principle of equal rights and self-determination of peoples and the right of self-determination are considered to be essential elements in strengthening international peace and understanding.

> The Purposes of the United Nations are:
>
> …
>
> 2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace …
>
> *Charter of the United Nations*, Art. 1.

> The Committee considers that history has proved that the realization of and respect for the right of self-determination of peoples contributes to the establishment of friendly relations and cooperation between States and to strengthening international peace and understanding.
>
> Human Rights Committee, General Comment No. 12, *Article 1*, *supra*, para. 8.

132. Although not all agree, many jurists characterize the right of self-determination as a peremptory norm (*jus cogens*) under international law. As a peremptory norm, the right of self-determination cannot be derogated from by States in the draft *U.N. Declaration* – even if they so agree.

> The right of self-determination is overwhelmingly characterized as forming part of the peremptory norms of international law. However, this evaluation is also rejected by some. It can nevertheless be proved that such a qualification is correct.
>
> K. Doehring, "Self-Determination" in B. Simma, ed., *The Charter of the United Nations: A Commentary* (New York: Oxford University Press, 1994) 56, at p. 70.

> [N]o one can challenge the fact that, in light of contemporary international realities, the principle of self-determination necessarily possesses the character of *jus cogens*.
>
> H. Gros Espiell, Special Rapporteur, *The Right to Self-Determination: Implementation of United Nations Resolutions*, *supra*, at p. 12.

> This right [of self-determination] has been declared in other international treaties and instruments, is generally accepted as customary international law and could even form part of *jus cogens*.

R. McCorquodale, *Self-Determination: A Human Rights Approach*, *supra*, at p. 858.

A peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole ... from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.

Vienna Convention on the Law of Treaties, art. 53.

The major distinguishing feature of such rules [i.e. peremptory norms] is their relative indelibility. They are rules of customary law which cannot be set aside by treaty or acquiescence but only by the formation of a subsequent customary rule of contrary effect.

I. Brownlie, *Principles of Public International Law*, *supra*, at p. 515.

133. The United Kingdom and certain other States are also ignoring the conclusions of U.N. treaty bodies. For example, the U.N. Human Rights Committee has confirmed that the right of self-determination of Indigenous peoples, like all peoples, is affirmed in Art. 1 of the human rights *Covenants*.

The Committee is concerned about the precarious situation of indigenous communities in the State party, affecting their right to self-determination under article 1 of the Covenant.

Committee on Economic, Social and Cultural Rights, *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Russian Federation*, U.N. Doc. E/C.12/1/Add.94, 12 December 2003, para. 11.

… the Committee expects Norway to report on the Sami people's right to self-determination under Article 1 of the Covenant, including paragraph 2 of that article.

Human Rights Committee, *Concluding observations of the Human Rights Committee: Norway*, UN Doc. CCPR/C/79/Add.112, 5 November 1999, para. 17.

See also Human Rights Committee, *Concluding observations of the Human Rights Committee: Canada*, UN Doc. CCPR/C/79/Add.105, 7 April 1999, para. 8.

Human Rights Committee, *Concluding observations of the Human Rights Committee: Mexico*, UN Doc. CCPR/C/79/Add.109, 27 July 1999, para. 19.

> Human Rights Committee, *Concluding observations of the Human Rights Committee: Australia*, U.N. Doc. A/55/40, paras. 498-528, 28 July 2000 (Heading 3: Principal subjects of concern and recommendations).

134. It is universally recognized that human rights are indivisible, interdependent and interrelated. Nevertheless, some States in the UNCHR Working Group are still attempting to only affirm a portion of the human right of self-determination in any draft *U.N. Declaration*.

> Peoples' right of self-determination takes a prominent place in the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights respectively. This right remains relevant in today's international context and deserves further the attention of the international community.
>
> The right of self-determination, by virtue of which peoples can freely determine their political status and freely pursue their economic, social and cultural development, clearly illustrates the interdependence, indivisibility and interrelation of all human rights recognized in the 1993 Vienna Declaration on Human Rights.
>
> > "Statement by Mrs. Hanne Fugl Eskjaer, First Secretary, Permanent Mission of Denmark to the UN on behalf of the European Union", UNGA, 57th Sess., Third Committee, Item 107 and 108 (Elimination of Racism and Racial Discrimination and the Right of Peoples to Self-Determination), New York, 23 October 2002.

135. In today's complex world, aspects of "internal" and "external" self-determination are interrelated and interdependent. In many essential ways, they are indivisible elements of the human right to self-determination.

> Both the internal and external aspects of the right to self-determination of peoples and nations are constitutive and inseparable elements of this basic collective human right.
>
> > F. Przetacznik, "The Basic Collective Right to Self-Determination of Peoples and Nations as a Pre-Requisite to Peace" (1990) 8 N.Y.L.Sch. J. of H. Rts. 49, at p. 55.
>
> It would be artificial and illogical to argue that in the case of external self-determination the Covenants grant an international right, whilst in the case of internal self-determination this right would only exist and manifest itself within the municipal system of each Contracting State. The better view is that Article 1 common to the Covenants addresses itself directly to

peoples, whatever the 'dimension' (internal or external) of the legal entitlement it provides for.

A. Cassese, *Self-Determination of Peoples: A Legal Appraisal*, *supra*, at p. 144.

136. In an era of globalization, Indigenous peoples are necessarily expanding the exercise of our self-determination beyond State borders. We are substantially expanding our role in standard-setting and other international forums. We are utilizing international complaints processes. We are engaging in international relations with a wide range of State governments and Indigenous peoples. Regardless of transnational boundaries, we are using and managing our lands, territories and resources. These are positive contributions to the international community, as well as to our own nations and people. These are also essential manifestations of our external right of self-determination.

Today, the distinction between domestic and foreign affairs is diminishing. In a globalized world, events beyond America's borders have a greater impact inside them.

National Security Council (U.S.), "The National Security Strategy of the United States of America", September 2002, at p. 31. [emphasis added]

As stated by the Special [Parliamentary] Joint Committee, *"Domestic policy is foreign policy...foreign policy is domestic policy."* For example, international trade rules now directly impact on labour, environmental and other domestic framework policies, previously regarded as the full prerogative of individual states.

Canada, *Canada in the World*, Canadian Foreign Policy Review, 1995 in http://www.dfait-maeci.gc.ca/foreign_policy/cnd-world/menu-en.asp.

This false dichotomy [of "internal" and "external" self-determination] has been set up by States in order to confine indigenous peoples right to self-determination to one of domestic or State prescription. … The expressions of indigenous peoples in this seminar, at the UN, the Arctic Council and other international fora are examples of the external exercise of the right to self-determination. We, ourselves, are expressing our worldviews and perspectives on the international plane, and making our voices heard outside of or external to our own communities. And, this is one aspect of the right to self-determination.

D. Sambo Dorough, "Indigenous Peoples and the Right to Self-Determination: The Need for Equality: An Indigenous Perspective" in International Centre for Human Rights and Democratic Development, *Seminar: Right to Self-*

Determination of Indigenous Peoples (Montreal: ICHRDD, 2002) 43 at p. 44-45.

137. State objections to affirming this collective human right of indigenous peoples have no justifiable basis. Should the inalienable right of self-determination not be recognized under international law for Indigenous peoples with the same emphasis and on an equal footing as for non-Indigenous peoples, States would be violating the peremptory norm that prohibits racial discrimination.

> Failure to recognize indigenous peoples' right to self-determination, when this right is readily accorded to other, non-indigenous peoples, is clearly racism.
>
> International Centre for Human Rights and Democratic Development, *Libertas*, Summer 2001, vol. 11, No. 1, p. 3 (quoting its then President, the Hon. Warren Allmand).

> … I believe that discrimination and racism are at the heart of the indigenous issue, whether this is expressed in the reluctance of many States to recognize the right of self-determination of indigenous peoples - a right recognized for all other peoples - or in the absurd denial of the use of the term "indigenous peoples", contradicting all logic of language and pretending in so doing that the different indigenous peoples of the world do not have a language, history or culture unique to them, or in the insistence by the dominant world that indigenous peoples do not have their own long-established and dynamic systems of knowledge and law.
>
> *Working Paper on discrimination against indigenous peoples submitted by Mrs. Erica-Irene Daes in accordance with Sub-Commission resolution 1999/20*, E/CN.4/Sub.2/2001/2, 18 August 2001, para. 11.

> The exclusion of an indigenous people from the status of being a "people" has at least the effect of creating discriminatory access to the special kind of freedom that other peoples enjoy, namely that of the human right to self-determination.
>
> C. Scott, *Indigenous Self-Determination and Decolonization of the International Imagination: A Plea*, (1996) 18 Human Rts. Q. 814, at p. 817.

> The refusal of governments to acknowledge the unqualified right of self-determination for Indigenous Peoples indicates a deep-seated racism at the heart of the international human rights system. It has enormous negative consequences across a range of areas that directly affect the lives and well-being of Indigenous Peoples ...

> B. Butler, "Sydney Meeting: Neglecting Collective Rights is Racism" in Netherlands Centre for Indigenous Peoples (NCIV), ed., *Final Report Indigenous Peoples' Millennium Conference*, 7-11 May 2001, Panama, Republic of Panama, C.A., (Amsterdam: NCIV, 2001) 31, at p. 32.

138. Such an act would also run counter to the existing affirmative obligations of states under the *Charter of the United Nations*, Arts. 1, 2 and 55c), namely, to promote universal respect for, and observance of, human rights and freedoms, based on respect for the principle of equal rights and self-determination of peoples. States would also fail to honor their legal obligations in Art. 1, para. 3, of the two international human rights Covenants to "promote the realization of the right of self-determination, and … respect that right, in conformity with the provisions of the Charter of the United Nations".

> The States Parties to the present Covenant ... shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.
>
> *International Covenant on Civil and Political Rights,* Art. 1, para. 3.
>
> *International Covenant on Economic, Social and Cultural Rights*, Art. 1, para. 3.

2.4 Right to Lands, Territories and Resources

139. The government of the United Kingdom recognizes that the right of self-determination under the two international human rights Covenants is a collective human right. Yet, as already described, the UK has refused to recognize that this right of *all* peoples applies equally to the world's Indigenous peoples.

140. Despite ratifying both Covenants, the UK government's positions in the UNCHR Working Group suggest vigorous opposition to a fair and non-discriminatory application of the two Covenants to Indigenous peoples. In particular, the UK has refused to affirm that the natural resource rights of *all* peoples in Article 1, para. 2 of these human rights instruments apply fully and without discrimination to Indigenous peoples.

141. As one might expect, these unjustifiable and biased government positions have led to other questionable actions, as well as a general failure to fulfill its international obligations and uphold the basic principles and values of the international human rights system.

142. When the U.N. Sub-Commission decided that Madame Erica-Irene Daes – a renowned international law expert on Indigenous peoples' rights – be appointed Special Rapporteur to undertake a study on "Indigenous peoples' permanent sovereignty over natural resources", the UK government opposed her appointment on what allegedly were procedural grounds.

> In a measure on indigenous peoples' permanent sovereignty over natural resources, adopted in a recorded vote of 34 in favour and 8 against, with 10 abstentions, the Commission endorsed the decision of the Sub-Commission on the Promotion and Protection of Human Rights to appoint Erica-Irene A. Daes as Special Rapporteur to undertake a study on the topic.
>
> The result of the vote was as follows:
> …
> Against (8): Australia, Brazil, Canada, France, Germany, Ukraine, United Kingdom, and United States.
>
> > "Commission Continues to Adopt Measures on Specific Groups and Individuals, Civil and Political Rights, Indigenous Issues", *United Nations Press Release*, 24 April 2003.

143. States who opposed the endorsement by the UNCHR of the Sub-Commission's decision to appoint Madame Daes were largely those who have major objections to the lands, territories and resources Articles in the draft *U.N. Declaration*. These States include United States, Australia, Canada, France and Brazil. For example, the Australia-Canada Proposal tabled at the September 2003 session of the UNCHR Working Group called for drastic wholesale changes to the current text – yet sparked the interest of UK representatives:

> Australia and Canada, "Australia-Canada Proposal for Alternate Language for Articles 25, 26, 27, 28 and 30", Working Group on the Draft Declaration on the Rights of Indigenous Peoples, September 2003.

> In September 2003, a major problem arose at the ninth session of the UNCHR Working Group when Canada and Australia tabled a proposal to seek wholesale changes to all of the lands and resources provisions in the draft *U.N. Declaration*. If adopted, their suggested changes would severely undermine the careful contextual bases for Indigenous land and resource rights that have been developed at the U.N. during the past two decades.

> Grand Council of the Crees (Eeyou Istchee) *et al.*, "Assessing the International Decade: Urgent Need to Renew Mandate and Improve the U.N. Standard-Setting Process on Indigenous Peoples' Human Rights", *supra*, p. 72, para. 143.

144. In regard to the proposed study on "Indigenous peoples' permanent sovereignty over natural resources", it is troubling that the UK government did not place its priority on appointing a "high quality and independent expert". Generally, this is the government's publicly proclaimed position. Mme Daes is widely recognized as an expert with a strong sense of justice and fairness. Her distinguished place within the U.N. human rights system is described as "unique".

> *We ... believe that States have a duty to ensure that high quality and independent experts are identified for the various mandates and committees.* Quality must mean that they are recognised experts in the relevant field. And independence must surely mean that they are neither members of, nor paid to represent, any particular government.
>
> B. Rammell (UK Parliamentary Under Secretary), "'We are Determined to Succeed' – Bill Rammell Speaks at the UN Commission on Human Rights", Geneva, 18 March 2004, *supra*. [emphasis added]

> There is no one like Erica-Irene Daes. The UN world of human rights has, over the years, been fortunate to secure the services of many outstanding scholars and practitioners. Some of them have made important contributions. But *Dr. Daes' place in the UN human rights system remains unique.*
> …
> Her written work output is prodigious. And although she is perhaps particularly associated with her pioneer work on minorities, and on indigenous peoples, her works and interests are in fact of extremely wide range.
>
> R. Higgins, "Words of Personal Appreciation to Erica-Irene Daes" in G. Alfredsson & M. Stavropoulou, eds., *Justice Pending: Indigenous Peoples and Other Good Causes*, Essays in Honour of Erica-Irene A. Daes (The Hague: Kluwer Law International, 2002) 1, at p. 1. [emphasis added]

> [Mme Daes] has actively presented ideas of justice and fairness to the modern world while many of the governments and indeed international bureaucracies are stubbornly refusing to move forward.
>
> L. Swepston & G. Alfredsson, "The Rights of Indigenous Peoples and the Contribution by Erica Daes" in G. Alfredsson & M. Stavropoulou, eds., *Justice Pending: Indigenous Peoples and Other Good Causes*, *supra*, at p. 77.

145. The right of Indigenous peoples to natural resources remains a controversial issue for the UK and many States. Yet this fundamental human right is an integral part of the right of self-determination under international law. The UK government should unequivocally be fulfilling its international obligations and respecting the rule of law.

> All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.
>
> *International Covenant on Civil and Political Rights*, Art. 1, para. 2.
>
> *International Covenant on Economic, Social and Cultural Rights*, Art. 1, para. 2.

> This paragraph [in Art. 1], however, is not merely a reaffirmation of the right of every state over its own natural resources; it clearly provides that the right over natural wealth belongs to *peoples*.
>
> A. Cassese, "The Self-Determination of Peoples", in L. Henkin, (ed.), *The International Bill of Rights: The Covenant on Civil and Political Rights*, *supra*, 92 at p. 103. [emphasis in original.]

> The human right to development also implies the full realization of the right of peoples to self-determination, which includes, subject to the 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.
>
> *Declaration on the Right to Development*, *supra*, Art. 1, para. 2.

146. In all regions of the world, the rights to lands, territories and natural resources are of critical importance to Indigenous peoples. Indigenous lands, territories and resources have also always been prime targets for dispossession by States.

> In their interventions on the provisions of the declaration concerning lands, territories and natural resources, all indigenous representatives emphasized the critical importance of their relationship with their lands, territories and resources for their survival, their spiritual, economic, social and cultural well-being, and the effective exercise of indigenous self-determination.

U.N. Commission on Human Rights, *Report of the working group established in accordance with Commission on Human Rights resolution 1995/32*, 6 March 2002, *supra*, p. 8, para. 38.

> The Committee … is … concerned at the human rights implications for indigenous groups of economic activities, such as mining operations.

Human Rights Committee, *Concluding observations of the Human Rights Committee: Philippines*, UN Doc. CCPR/CO/79/PHL, 1 December 2003, para. 16.

> …[indigenous peoples] are surrounded by other, more powerful nations that desperately want our lands and resources and for whom we pose an irritating problem. This is just as true for the Indians of the Americas as it is for the tribals of India and the aborigines of the Pacific. This economic reality is also a political reality for most if not all indigenous peoples. The relationship between ourselves and those who want control of us *and* our resources is not a *formerly* colonial relationship but an *ongoing* colonial relationship.

H.-K. Trask, *From a Native Daughter: Colonialism and Sovereignty in Hawai'i*, revised ed., *supra*, at p. 103. [emphasis in original]

> *Concerned* that indigenous peoples have been deprived of their human rights and fundamental freedoms, resulting, *inter alia*, in their colonization and dispossession of their lands, territories and resources …

U.N. Declaration on the Rights of Indigenous Peoples (Draft), preamble.

147. As affirmed in the human rights Covenants, the right of "all" peoples to enjoy and utilize fully and freely their natural wealth and resources is an inherent right. While the U.S. government, for example, may show little respect for this basic right of peoples, the U.S. Senate has highlighted its relevance in the context of international law.

> Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

International Covenant on Civil and Political Rights, Art. 47

International Covenant on Economic, Social and Cultural Rights, Art. 25.

> That it is the view of the United States that States Party to the Covenant should wherever possible refrain from imposing any restrictions or limitations on the exercise of the rights recognized and protected by the Covenant, even when such restrictions and limitations are permissible under the terms of the Covenant.
> …
> That the United States declares that the right referred to in Article 47 [inherent right of all peoples to their natural wealth and resources] may be exercised only in accordance with international law.
>
> *U.S. reservations, declarations, and understandings, International Covenant on Civil and Political Rights*, 138 Cong. Rec. S4781-01 (daily ed., April 2, 1992), para. III.

148. In regard to the draft *U.N. Declaration*, some States have argued that the Articles on lands, territories and resources are too broad. As drafted, the text would allow Indigenous peoples to assert ownership and control of virtually entire countries. With respect, such statements are made without any substantiation. They seriously misconstrue how human rights instruments are interpreted. The harsh reality is that the degree of proof demanded of Indigenous peoples in domestic courts is most often excessive – even in democratic States. For example, in Canada, no Indigenous people has ever succeeded in proving its Aboriginal title to land:

> The Committee expresses concern about the difficulties which may be encountered by Aboriginal peoples before courts in the establishment of Aboriginal title over land. The Committee notes in that connection that to date, no Aboriginal group has proven Aboriginal title, and recommends that the State party examine ways and means to facilitate the establishment of proof of Aboriginal title over land in procedures before courts.
>
> Committee on the Elimination of Racial Discrimination, *Concluding observations of the Committee on the Elimination of Racial Discrimination: Canada,* CERD/C/61/CO/3,23 August 2002, para. 16.

149. The principles of democracy, rule of law and respect for human rights are profoundly interrelated. Thus, the rule of law and democracy – as applied to Indigenous peoples – are being seriously compromised when Indigenous rights are disrespected, ignored or denied. This is true for our rights to lands, territories and resources, as it is for all of our other human rights.

> The [European] Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States.

> *Treaty on European Union*, February 7, 1992, Maastricht, O.J. No. C191/1 (1992), reprinted in 31 Int. Leg. Mat. 247, Art. 6, para. 1.

Only in a democracy can human rights truly be respected, and without human rights, there can be no genuine democracy.

> *Democracy and Good Governance*, United Kingdom, Foreign and Commonwealth Office, *supra*.

Democracy within nations requires respect for human rights and fundamental freedoms, as set forth in the [U.N.] Charter ... This is not only a political matter.

> B. Boutros-Ghali, *An Agenda for Peace: Report of the Secretary General*, U.N. Doc. A/47/277, 17 June 1992, at p. 22, para. 81.

The rule of law is ultimately enforced through the application of democratic principles and international human rights and humanitarian norms.

> U.N. General Assembly, *Road map towards the implementation of the United Nations Millennium Declaration, Report of the Secretary-General*, A/56/326, 6 September 2001, p. 8, para. 15.

The interrelationship or relation of mutual dependence between human rights, the rule of law and democracy has also been given expression in the 1948 American Declaration of the Rights and Duties of Man (art. XXVIII), the 2001 Inter-American Democratic Charter (art. 7), the Convention for the Protection of Human Rights and Fundamental Freedoms adopted by the member States of the Council of Europe in 1950 (art. 11) and the American Convention on Human Rights, signed on 22 November 1969 (art. 29).

> U.N. Sub-Commission on the Promotion and Protection of Human Rights, *Expanded working paper by Mr. Manuel Rodríguez Cuadros on the measures provided in the various international human rights instruments for the promotion and consolidation of democracy, in accordance with the mandate contained in decision 2000/116 of the Sub-Commission on the Promotion and Protection of Human Rights*, E/CN.4/Sub.2/2002/36, 10 June 2002, para. 31.

150. The human rights of Indigenous peoples are inseparable from environment and development issues. Peace, development and environmental protection are interdependent and indivisible. Safeguarding the integrity of the environment is essential to the well-being of peoples and individuals, and to the enjoyment of human rights.

The experience of indigenous peoples and development clearly demonstrated that *human rights and development are inseparable, for the abuse of the rights of indigenous peoples is principally a development issue.* Forced development has deprived them of their human rights, in particular the *right to life and the right to their own means of subsistence, two of the most fundamental of all rights*. Indigenous peoples have been, in fact, victims of development policies which deprive them of their economic base - land and resources …

> U.N. Commission on Human Rights, *Global Consultation on the Realization of the Right to Development as a Human Right: Report prepared by the Secretary-General pursuant to Commission on Human Rights resolution 1989/45*, U.N. Doc. E/CN.4/1990/9/ Rev. 1, 26 September 1990, para. 104. [emphasis added]

Peace, development and environmental protection are interdependent and indivisible.

> *Rio Declaration on Environment and Development*, U.N. Doc. A/Conf. 151/5/Rev. 1, June 13, 1992, 31 I.L.M. 874 (1992), Principle 25.

Recognizing that adequate protection of the environment is essential to human well-being and the enjoyment of basic human rights, including the right to life itself …

> *Convention on Access to Information, Public Participation and Access to Justice in Environmental Matters*, adopted on 25 June 1998, Åarhus, Denmark, entered into force on 30 October 2001, *reprinted in* 38 I.L.M. 515 (1999), preamble.

The promotion and observance of economic, social, and cultural rights are inherently linked to integral development, equitable economic growth, and to the consolidation of democracy in the states of the Hemisphere. (Art. 13)

The exercise of democracy promotes the preservation and good stewardship of the environment. It is essential that the states of the Hemisphere implement policies and strategies to protect the environment, including application of various treaties and conventions, to achieve sustainable development for the benefit of future generations. (Art. 15)

… democracy is a way of life based on liberty and enhancement of economic, social, and cultural conditions for the peoples of the Americas. (Art. 26)

> *Inter-American Democratic Charter*, adopted by acclamation by the

> Hemisphere's Foreign Ministers and signed by the 34 countries of the Americas at the 28th special session of the OAS General Assembly, Lima, Peru, September 11, 2001.

151. It is important to highlight that U.N. "treaty bodies through their general comments contribute to the clarification of the legal and policy ramifications of the implementation of the human rights standards". These treaty monitoring bodies also contribute to the implementation of U.N. Millennium goals, which the UK and other States have explicitly committed themselves to support.

> The activities of human rights treaty monitoring bodies contribute to the implementation of the [U.N. Millennium] goals. While analysing reports of States parties, the treaty bodies consider country policy, law and practice, and advise Governments on shortcomings and possible improvements. This dialogue, although focusing on treaty obligations, provides, given the link between human rights and the goals, an important support to the latter. *The treaty bodies through their general comments contribute to the clarification of the legal and policy ramifications of the implementation of the human rights standards* and thus provide an invaluable input to the concretization and realization of the goals.
>
> Economic and Social Council, *Human Rights: Report of the United Nations High Commissioner for Human Rights to the Economic and Social Council*, U.N. Doc. E/2003/73, 25 June 2002, p. 3, para. 4. [emphasis added]

152. Yet in regard to the rights of Indigenous peoples to lands, territories and resources, the UK government has demonstrated little or no respect for the interpretations or conclusions of U.N. bodies that monitor "core" human rights treaties. These are the very same treaties that the UK itself highlights as being the most important.

> In our view, the ratification and implementation of the six core UN human rights treaties by states with indigenous communities would do more to improve the human rights of indigenous people than the creation of new collective rights.
>
> *Collective Human Rights*, United Kingdom, Foreign and Commonwealth Office, *supra*.

153. For example, the U.N. Human Rights Committee has clearly applied to Indigenous peoples the natural resource provision in Article 1, para. 2 of the *International Covenant on Civil and Political Rights*.

> … the [Human Rights] Committee emphasizes that the right to self-determination requires, *inter alia,* that all peoples must be able to freely dispose of their natural wealth and resources and that they may not be

> deprived of their own means of subsistence (art. 1, para. 2). … The Committee … recommends that the practice of extinguishing inherent aboriginal rights be abandoned as incompatible with article 1 of the Covenant.
>
> Human Rights Committee, *Concluding observations of the Human Rights Committee: Canada*, *supra*, para. 8.

> The State party should take the necessary steps in order to secure for the indigenous inhabitants a stronger role in decision-making over their traditional lands and natural resources (art. 1, para. 2).
>
> Human Rights Committee, *Concluding observations of the Human Rights Committee: Australia*, U.N. Doc. A/55/40, paras. 498-528, 28 July 2000.
>
> Similarly, see Human Rights Committee, *Concluding observations of the Human Rights Committee: Norway*, *supra*, para. 17.

154. Similarly, the Committee on Economic, Social and Cultural Rights has applied to Indigenous peoples the natural resource provision in Article 1, para. 2 of the *International Covenant on Economic, Social and Cultural Rights*. In particular, States must ensure that Indigenous peoples are not deprived of our means of subsistence.

> The Committee, recalling the right to self-determination enshrined in article 1 of the Covenant, urges the State party to intensify its efforts to improve the situation of the indigenous peoples and to ensure that they are not deprived of their means of subsistence.
>
> Committee on Economic, Social and Cultural Rights, *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Russian Federation*, *supra*, para. 39.

> Taking note of the duty in article 1, paragraph 2, of the Covenant, which provides that a people may not "be deprived of its means of subsistence", States parties should ensure that there is adequate access to water for subsistence farming and for securing the livelihoods of indigenous peoples.
>
> Committee on Economic, Social and Cultural Rights, General Comment No. 15, *The right to water (arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)*, 29th sess., U.N. Doc. E/C.12/2002/11, 20 January 2002, para. 7.

> The importance of lands and resources to the survival of indigenous cultures is widely acknowledged. Relevant to indigenous peoples' linkage

with lands and resources is the self-determination provision common to the International Human Rights Covenants, which affirms: "In no case may a people be deprived of its own means of subsistence."

> S.J. Anaya, "The Native Hawaiian People and International Human Rights Law: Toward a Remedy for Past and Continuing Wrongs" (1994) 28 Georgia L. R. 309, at p. 346.

We have the right to benefit from the resources of the land as an expression of our right of self-determination. We may not be denied a means of subsistence; moreover, we may not be denied our *own* means of subsistence. We have the right to use our lands and waters to live by our own means as we always have, and by whatever means we deem necessary to address contemporary challenges. *Self-determination protects our right to subsist, and it protects as well our right to subsist based on our own values and perspectives.* In view of the profound relationship we have with our lands, resources and environment, subsistence for indigenous peoples has vital economic, social, cultural, spiritual and political dimensions.

> T. Moses, "The Right of Self-Determination and Its Significance to the Survival of Indigenous Peoples", in P. Aikio & M. Scheinin, eds., *Operationalizing the Right of Indigenous Peoples to Self-Determination* (Turku/Åbo, Finland: Institute for Human Rights, Åbo Akademi University, 2000) 155, at p. 161. [emphasis added]

155. Moreover, the U.N. Committee on the Elimination of Racial Discrimination has emphasized that Indigenous peoples have the "right to own, develop, control and use their communal lands, territories and resources".

> The Committee [on the Elimination of Racial Discrimination] especially calls upon States parties to *recognise and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources* and, where they have been deprived of their lands and territories traditionally owned or otherwise inhabited or used without their free and informed consent, to take steps to return these lands and territories.
>
> > Committee on the Elimination of Racial Discrimination, *General Recommendation XXIII (51) concerning Indigenous Peoples*, CERD/C/51/Misc.13/Rev.4, (adopted at the Committee's 1235th meeting on 18 August 1997), para. 5. [emphasis added]

… the Committee [on the Elimination of Racial Discrimination] recommends that the State party adopt urgent measures to recognize and protect, in practice, the right of indigenous peoples to own, develop,

control and use their lands, territories and resources.

> Committee on the Elimination of Racial Discrimination, *Concluding observations of the Committee on the Elimination of Racial Discrimination: Brazil*, CERD/C/64/CO/2, 12 March 2004, para. 15.

[The Committee] recommends legal acknowledgement by the State party of the rights of indigenous and tribal peoples to possess, develop, control and use their communal lands and to participate in the exploitation, management and conservation of the associated natural resources.

> Committee on the Elimination of Racial Discrimination, *Concluding observations of the Committee on the Elimination of Racial Discrimination: Suriname*, CERD/C/64/CO/9, 12 March 2004, para. 11.

The situation of the country's indigenous people, the Veddas, and the creation of a national park on their ancestral forestland is of concern. In this context attention is drawn to the Committee's general recommendation XXIII calling upon States parties to recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources.

> Committee on the Elimination of Racial Discrimination, *Concluding observations of the Committee on the Elimination of Racial Discrimination: Sri Lanka*, A/56/18, 14 September 2001, paras. 321-342, at para. 335.

156. The Committee on the Rights of the Child has explicitly underlined the huge significance of lands and resources, in the context of the right of Indigenous peoples to self-determination under Article 1 of the human rights Covenants. The Committee urges States to embrace this perspective, in order "to address the gap in life chances between Aboriginal and non-Aboriginal children".

The Committee urges the Government to pursue its efforts to address the gap in life chances between Aboriginal and non-Aboriginal children. In this regard, it reiterates in particular the observations and recommendations with respect to land and resource allocation made by United Nations human rights treaty bodies, such as the Human Rights Committee (CCPR/C/79/Add.105, para. 8), the Committee on the Elimination of Racial Discrimination (A/57/18, para. 330) and the Committee on Economic, Social and Cultural Rights (E/C.12/1/Add.31, para. 18). The Committee equally notes the recommendations of the Royal Commission on Aboriginal Peoples and encourages the State party to ensure appropriate follow-up.

> Committee on the Rights of the Child, *Concluding observations: Canada*, U.N. Doc. CRC/C/15/Add.215, 27 October 2003, para. 59.

157. Even in regard to complaints filed under the ICCPR *Optional Protocol* – where the Human Rights Committee has interpreted its mandate as limited to human rights violations of individuals – the Committee is using the collective right of Indigenous peoples to self-determination as a normative standard. This is increasingly apparent in complaints concerning violations of other human rights under the *International Covenant on Civil and Political Rights*.

> *Optional Protocol to the International Covenant on Civil and Political Rights*, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 59, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 302, entered into force March 23, 1976 (communications from individuals for alleged human rights violations under the *Covenant*).

> As shown by the Committee's jurisprudence, there is no objection to a group of individuals, who claim to be commonly affected, to submit a communication about alleged breaches of these rights [ICCPR, arts. 6 to 27 inclusive]. Furthermore, *the provisions of article 1 may be relevant in the interpretation of other rights protected by the Covenant, in particular article 27* [right to enjoy one's culture, etc. in community with others in one's group].
>
> > *Mahuika et al. vs. New Zealand* (Communication No. 547/1993, 15/11/2000)), Human Rights Committee, UN Doc. CCPR/C/70/D/547/1993 (2000), para. 9.2. [emphasis added]
>
> *… the right of self-determination … is implied and used as a normative standard in the application of Article 27.* Together with the recent pronouncements by the Human Rights Committee explicitly on Article 1 in relation to Canada and Norway, the development under Article 27 points towards the following conclusion: *Indigenous peoples and their representatives should put more emphasis on the economic or resource dimension of the right of self-determination as a justification for their more general claims on self-determination* and in their everyday struggle for a stronger say in decision-making that affects their lives.
>
> > M. Scheinin, "The Right to Self-Determination Under the Covenant on Civil and Political Rights" in P. Aikio & M. Scheinin, eds., *Operationalizing the Right of Indigenous Peoples to Self-Determination* (Turku/Åbo, Finland: Institute for Human Rights, Åbo Akademi University, 2000) 179, at p. 198. [emphasis added]

158. The right of peoples to "permanent sovereignty over their natural resources" is said to be included in Article 1 of the international human rights Covenants. This right has been explicitly affirmed in a number of international instruments.

Just as a matter of ordinary treaty interpretation, one cannot interpret Article 1 as limited to the colonial case. Article 1, paragraph 1 does not say that some peoples have the right of self-determination. Nor can the term 'peoples' be limited to colonial peoples. [Paragraph] 3 deals expressly, and non-exclusively, with colonial territories. … *Any remaining doubt is removed by paragraph 2, which deals with permanent sovereignty over natural resources. ... No one has ever suggested that the principle of permanent sovereignty over natural resources is limited to colonial territories.* So far as the interpretation of Article 1 goes, that surely settles the point.

> J. Crawford, "The Right of Self-Determination in International Law: Its Development and Future" in P. Alston, ed., *Peoples' Rights* (Oxford: Oxford University Press, 2001) 7, at p. 27. [emphasis added]

The right of peoples and nations to permanent sovereignty over their natural wealth and resources must be exercised in the interest of their national development and of the well-being of the people of the State concerned.

> *Permanent Sovereignty over Natural Resources*, adopted by the U.N. General Assembly, 14 December 1962, GA Res. 1803 (XVII), U.N. GAOR, 17th Sess., Supp. No. 17, at 15, U.N. Doc. A/5217 (1963), reprinted in 2 I.L.M. 223 (1963), para. 1.

The meaning of the term ["sovereignty"] in relation to the principle of permanent sovereignty over natural resources can be generally stated as legal, governmental control and management authority over natural resources, particularly as an aspect of the exercise of the right of self-determination. (p. 7, para. 18)

The right of indigenous peoples to permanent sovereignty over natural resources may be articulated as follows: it is a collective right by virtue of which States are obligated to respect, protect, and promote the governmental and property interests of indigenous peoples (as collectivities) in their natural resources. (Principal conclusions, p. 17, para. 56, bold in original)

> U.N. Sub-Commission on the Promotion and Protection of Human Rights, *Indigenous peoples' permanent sovereignty over natural resources: Final report of the Special Rapporteur, Erica-Irene A. Daes,* E/CN.4/Sub.2/2004/30, 13 July 2004.

[The U.N. Commission on Human Rights] … *Affirms* that a democratic and equitable international order requires, *inter alia*, the realization of the following:

> (*a*) The right of all peoples to self-determination, by virtue of which they can freely determine their political status and freely pursue their economic, social and cultural development;
> (*b*) The right of peoples and nations to permanent sovereignty over their natural wealth and resources;
> (*c*) The right of every human person and all peoples to development, as a universal and inalienable right and an integral part of fundamental human rights …
>
> U.N. Commission on Human Rights*, Promotion of a democratic and equitable international order*, Res. 2003/63, 24 April 2003, para. 4.

> In all, the United Nations has adopted more than 80 resolutions relating to the principle of permanent sovereignty over natural resources. Moreover, the substance of the principle has been incorporated in the draft declaration on the … rights of indigenous peoples. …
>
> E.-I. Daes, "Indigenous Peoples' permanent sovereignty over natural resources", Statement, U.N. Permanent Forum on Indigenous Issues, New York City May 20, 2003.

159. "Permanent sovereignty over resources" is a right of peoples to long-term control over their resources. The principle of permanent sovereignty over resources is said to be a peremptory norm or *jus cogens*.

> Self-determination was a right of peoples, but if it was the first to be accepted it was by no means the only such right. For example, the principle of permanent sovereignty over natural resources could be seen as a right of peoples to long-term control over their own resources, including the right of a later generation to review earlier agreements for the exploitation of natural resources in the light of changed circumstances.
>
> J. Crawford, "The Right of Self-Determination in International Law: Its Development and Future", *supra*, at p. 21.

> Other rules that have this special status [of *jus cogens*] include the principle of permanent sovereignty over natural resources and the principle of self-determination.
>
> I. Brownlie, *Principles of Public International Law*, *supra*, at p. 515.

160. Indigenous peoples have the right to lands, territories and natural resources that we have traditionally owned or otherwise occupied or used. In light of the tragic history of colonialism, dispossession, discrimination, exclusion, genocide and outright theft,

our right is not limited to what we *presently* occupy or otherwise use. To take such a position would be to legitimize past atrocities and gross violations of our human rights.

> Of particular relevance to the present case, the Commission considers that general international legal principles applicable in the context of indigenous human rights to include:
>
> > …
> > • the recognition of their property and ownership rights with respect to *lands, territories and resources they have historically occupied* …
> >
> > I/A Comm. H.R., *Mary and Carrie Dann v. United States*, *supra*, para. 130. [emphasis added]
>
> Articles XVIII and XXIII of the American Declaration specially oblige a member state to ensure that any determination of the extent to which indigenous claimants maintain interests in the *lands to which they have traditionally held title and have occupied and used* is based upon a process of fully informed consent on the part of the indigenous community as a whole.
>
> > I/A Comm. H.R., *Maya Indigenous Communities of the Toledo District*, Belize, *supra*, at para. 141. [emphasis added]
>
> **At a minimum, articles 25 and 26 of the draft [*U.N. Declaration*] should include an express reference to subsurface resources and should include additional language that protects aboriginal property rights as well as rights to lands, territories and resources otherwise occupied, used, or lawfully acquired by indigenous peoples.**
>
> > U.N. Sub-Commission on the Promotion and Protection of Human Rights, *Indigenous peoples' permanent sovereignty over natural resources: Final report of the Special Rapporteur, Erica-Irene A. Daes*, *supra*, p. 19, para. 71 (Basic recommendations). [bold in original]

161. If there were no right to restitution for past violations to Indigenous peoples' rights to lands, etc., our right to an effective remedy would in effect be denied. The resulting impunity for perpetrators of human rights abuses must not be tolerated. It would severely weaken respect for human rights, the rule of law and democracy. It would encourage recurrence of such damaging and unacceptable actions.

> Article 2, paragraph 3, requires that States Parties make reparation to individuals whose Covenant rights have been violated. *Without reparation to individuals whose Covenant rights have been violated, the obligation to*

provide an effective remedy, which is central to the efficacy of article 2, paragraph 3, is not discharged. … The Committee notes that, where appropriate, reparation can involve restitution, rehabilitation and measures of satisfaction, such as public apologies, public memorials, guarantees of non-repetition and changes in relevant laws and practices, as well as bringing to justice the perpetrators of human rights violations.

> Human Rights Committee, *General Comment No. 31, Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, 80th sess., UN Doc. CCPR/C/21/Rev.1/Add.13, 26 May 2004, para. 16. [emphasis added]

In the exercise of human rights and fundamental freedoms, including the promotion and protection of human rights as referred to in the present Declaration, everyone has the right, individually and in association with others, to benefit from an effective remedy and to be protected in the event of the violation of those rights.

> *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, *supra*, Annex, Art. 9, para. 1.

The Commission on Human Rights … *reaffirms* that any form of impunity condoned by public authorities for crimes motivated by racist and xenophobic attitudes plays a role in weakening the rule of law and democracy and tends to encourage the recurrence of such acts …

> U.N. Commission on Human Rights, *The incompatibility between democracy and racism*, 2003, *supra*, para. 4.

The Committee is concerned about the lack of appropriate measures to investigate crimes allegedly committed by State security forces and agents, in particular those committed against human rights defenders, journalists and leaders of indigenous peoples, and the lack of measures taken to prosecute and punish the perpetrators. Furthermore, the Committee is concerned at reports of intimidation and threats of retaliation impeding the right to an effective remedy for persons whose rights and freedoms have been violated.

> Human Rights Committee, *Concluding observations of the Human Rights Committee: Philippines*, *supra*, para. 8.

… accountability of perpetrators, including their accomplices, for grave human rights violations is one of the central elements of any effective remedy for victims of human rights violations and a key factor in ensuring a fair and equitable justice system and, ultimately, reconciliation and

stability within a State …

> U.N. Commission on Human Rights, *Impunity*, Res. 2003/72, 25 April 2003, preamble.

The right to a remedy against violations of human rights and humanitarian norms includes the right of access to national and international procedures for their protection.

> U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities, *Revised set of basic principles and guidelines on the right to reparation for victims of gross violations of human rights and humanitarian law prepared by Mr. Theo van Boven pursuant to Sub-Commission decision 1995/117*, Forty-eighth session, E/CN.4/Sub.2/1996/17, 24 May 1996, Annex, para. 4.

162. Further, it is a principle of international law that violation of an international obligation carries with it the obligation to provide adequate reparation for the resulting damage.

> … the Court has reiterated in its constant jurisprudence that it is a principle of international law that any violation of an international obligation which has caused damage carries with it the obligation to provide adequate reparation for it.

> I/A Court H.R., *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, *supra*, at para. 163. See also list of jurisprudence accompanying this para.

Laws and legal systems that arbitrarily declare that resources which once belonged to indigenous peoples are now the property of the State are discriminatory against the indigenous peoples, whose ownership of the resources predates the State, and are thus contrary to international law.

> U.N. Sub-Commission on the Promotion and Protection of Human Rights, *Indigenous peoples' permanent sovereignty over natural resources: Final report of the Special Rapporteur, Erica-Irene A. Daes, supra*, p. 18, para. 59. (Principal conclusions, bold in original)

163. In regard to the right to an effective remedy, violations of Indigenous peoples' land and resource rights give rise to both general and specific remedies.

> … violation of indigenous peoples' land and resource rights gives rise to both a general remedy and a specific remedy expressed as a stand alone right. The former requires legal recognition, demarcation and titling of

> indigenous lands and territories, as defined by indigenous law and customs, and/or compensatory measures if damages have been sustained. In the absence of a mutually acceptable agreement to the contrary, the latter involves the right to restitution of lands, territories and resources taken or used without indigenous peoples' free and informed consent and compensation for any damages sustained as a consequence of the deprivation.
>
> F. MacKay, "The Right to Restitution of Lands and Resources", Working Paper, Forest Peoples Programme, London, 12 October 2000, p. 2.

164. Failure to fully recognize the right of Indigenous peoples to natural resources under Article 1 of the international human rights Covenants would be clearly discriminatory. It would also severely impede our right to development, which is an interrelated and interdependent human right.

> … although fundamental economic, social and cultural rights have been recognized in earlier international instruments of both world and regional scope, it is essential that those rights be reaffirmed, developed, perfected and protected in order to consolidate in America, on the basis of *full respect for … the right of its peoples to development, self-determination, and the free disposal of their wealth and natural resources* …
>
> *Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights*, "Protocol of San Salvador," O.A.S. Treaty Series No. 69 (1988), *entered into force* November 16, 1999, reprinted in *Basic Documents Pertaining to Human Rights in the Inter-American System*, OEA/Ser.L/V/I.4 Rev.9 at 73, 31 January 2003, preamble. [emphasis added]

> Failure to respect the right of peoples to self-determination, and their right to permanent sovereignty over their natural resources is a serious obstacle to the realization of the right to development as a human right.
>
> U.N. Commission on Human Rights, *Global Consultation on the Realization of the Right to Development as a Human Right: Report prepared by the Secretary-General pursuant to Commission on Human Rights resolution 1989/45*, *supra*, p. 43, para.161.

> We will spare no effort to promote democracy and strengthen the rule of law, as well as respect for all internationally recognized human rights and fundamental freedoms, including the right to development.
>
> *United Nations Millennium Declaration*, *supra*, Art. 24.

> Indigenous peoples regard their land and resource rights as being an integral part of their right of self-determination. Therefore, *indigenous peoples also regard an interpretation of indigenous peoples' right of self-determination, which excludes their land and resource rights, as incompatible with existing international law.*
>
> > J. B. Henriksen, "The Right of Self-Determination: Indigenous Peoples versus States", in P. Aikio & M. Scheinin, eds., *Operationalizing the Right of Indigenous Peoples to Self-Determination* (Turku/Åbo, Finland: Institute for Human Rights, Åbo Akademi University, 2000) 131, at p. 136. [emphasis added]

165. The lands, territories and natural resources of Indigenous peoples are essential elements of our right of self-determination, including self-government. Without adequate lands and resources, Indigenous peoples will be "pushed to the edge of economic, cultural and political extinction".

> With reference to the conclusion by [the Royal Commission on Aboriginal Peoples] that *without a greater share of lands and resources institutions of aboriginal self-government will fail*, the Committee emphasizes that the right to self-determination requires, *inter alia*, that all peoples must be able to freely dispose of their natural wealth and resources and that they may not be deprived of their own means of subsistence. The Committee recommends that *decisive and urgent action be taken towards implementation of the RCAP recommendations on land and resource allocation*.
>
> > Human Rights Committee, *Concluding observations of the Human Rights Committee: Canada*, *supra*, para. 8. [emphasis added]

> Aboriginal nations need much more territory to become economically, culturally and politically self-sufficient. If they cannot obtain a *greater share of the lands and resources* in this country, their institutions of self-government will fail. Without adequate lands and resources, Aboriginal nations will be unable to build their communities and structure the employment opportunities necessary to achieve self-sufficiency. Currently, on the margins of Canadian society, they will be *pushed to the edge of economic, cultural and political extinction*.
>
> > Royal Commission on Aboriginal Peoples, *Report of the Royal Commission on Aboriginal Peoples*, *supra*, vol. 2(2), at p. 557. [emphasis added]

> *Indigenous territory and the resources it contains are essential to the physical, cultural and spiritual existence of indigenous peoples and to the construction and effective exercise of indigenous autonomy and self-*

> *government*. This territorial and resource base must be guaranteed to these peoples for their subsistence and the ongoing development of indigenous societies and cultures ...
>
> United Nations Meeting of Experts, Nuuk, Greenland, 24-28 September 1991, *supra*, at para. 4. [emphasis added]

166. Denial of the right to lands, territories and natural resources under international law will perpetuate the impoverishment and injustices that most Indigenous peoples suffer. Violations of our human right to lands, territories and natural resources "represent an attack on [our] human dignity's very core".

> … the Committee [on the Elimination of Racial Discrimination] recommends that the State party adopt urgent measures to recognize and protect, in practice, the right of indigenous peoples to own, develop, control and use their lands, territories and resources.
>
> Committee on the Elimination of Racial Discrimination, *Concluding observations of the Committee on the Elimination of Racial Discrimination: Brazil*, CERD/C/64/CO/2, 12 March 2004, para. 15.

> The Committee notes with concern complaints by indigenous and tribal peoples in the interior about the deleterious effects of natural-resource exploitation on their environment, health and culture.
>
> The Committee wishes to point out that *development objectives are no justification for encroachments on human rights*, and that along with the right to exploit natural resources there are specific, concomitant obligations towards the local population …
>
> Committee on the Elimination of Racial Discrimination, *Concluding observations of the Committee on the Elimination of Racial Discrimination: Suriname*, CERD/C/64/CO/9, 12 March 2004, para. 15. [emphasis added]

> All human rights — civil, political, economic, social and cultural — are comprehensive, universal and interdependent. They are the foundations that support human dignity, and any violations of human rights represent an attack on human dignity's very core. Where fundamental human rights are not protected, States and their peoples are more likely to experience conflict, poverty and injustice.
>
> U.N. General Assembly, *Road map towards the implementation of the United Nations Millennium Declaration, Report of the Secretary-General*, A/56/326, 6 September 2001, p. 36, para. 195.

> If we mean to live by this approach of abiding by the international minimum standards, we must address the affront to human dignity posed by widespread poverty.
>
> > U.N. Commission on Human Rights, *Report of the United Nations High Commissioner for Human Rights and Follow-Up to the World Conference on Human Rights*, E/CN.4/2003/14, 26 February 2003, p. 8, para. 24.

167. Clearly denials and other violations of Indigenous peoples' rights to lands, territories and natural resources continue to be primary root causes of disadvantage that must be fully redressed.

> **No policy or strategy for improving the access to justice by indigenous peoples or for eliminating the abuses in the justice system can ultimately be successful in the long term if the root causes of disadvantage are not also addressed.**
>
> > U.N. Commission on Human Rights, *Human Rights and Indigenous Issues: Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Mr. Rodolfo Stavenhagen*, E/CN.4/2004/80, 26 January 2004, p. 22, para. 83 (Conclusion) [bold in original]

168. As human rights defenders, we urge the U.N. and its Member States and regional agencies to ensure consistency with the principles of international cooperation and the duty to respect human rights. In the present context, this would entail explicit affirmation under international law of our right of self-determination, including our land and resource rights.

> *Acknowledging* the important role of international cooperation for, and the valuable work of individuals, groups and associations in contributing to, the effective elimination of all violations of human rights and fundamental freedoms of peoples and individuals, including … from the refusal to recognize the right of peoples to self-determination and the right of every people to exercise full sovereignty over its wealth and natural resources …
>
> > *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, *supra*, 4th preambular para.
>
> To strengthen democracy, create prosperity and realize human potential, our Governments will:
> …

> Seek to promote and give effect to the *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms* [also referred to as the United Nations … Declaration on Human Rights Defenders] …
>
> > Summit of the Americas, 2001, *Plan of Action*, adopted at the Third Summit of the Americas, Québec City, Canada, April 22, 2001, heading 2 (Human rights and fundamental freedoms).

> … one may ask whether the self-determination clause in the Declaration on the Rights of Indigenous Peoples should not be based on Article 1, *paragraph* 2, of the two Covenants, instead of only paragraph 1 as in the present draft. For most indigenous peoples, what self-determination is *really* about is their right to 'freely dispose of their natural wealth and resources' and a negative guarantee of not to 'be deprived of their own means of subsistence'.
>
> > M. Scheinin, "The Right to Self-Determination Under the Covenant on Civil and Political Rights", *supra*, at p. 198. [emphasis in original]

2.4.1 Essential norm of "free, prior and informed consent"

169. Consistent with the right of Indigenous peoples to self-determination under international law, a central issue in matters relating to natural resources and development matters is "free, prior and informed consent". This is another issue that has not been supported by the UK government within the UNCHR Working Group.

> The issue of extractive resource development and human rights involves a relationship between indigenous peoples, Governments and the private sector which must be based on the full recognition of indigenous peoples' rights to their lands, territories and natural resources, which in turn implies the exercise of their right to self-determination. … *Free, prior, informed consent is essential for the human rights of indigenous peoples in relation to major development projects, and this should involve ensuring mutually acceptable benefit sharing, and mutually acceptable independent mechanisms for resolving disputes* between the parties involved, including the private sector.
>
> > U.N. Commission on Human Rights, *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen, submitted in accordance with Commission resolution 2001/65*, E/CN.4/2003/90, 21 January 2003, p. 23, para. 66 (Conclusions and Recommendations). [emphasis added]

… it has become clear that meaningful political and economic self-determination of indigenous peoples will never be possible without indigenous peoples' having the legal authority to exercise control over their lands and territories.

> U.N. Sub-Commission on the Promotion and Protection of Human Rights, *Indigenous peoples' permanent sovereignty over natural resources: Final report of the Special Rapporteur, Erica-Irene A. Daes*, 2004*, supra*, p. 5, para. 8.

In a context of increasing recognition of the rights of Indigenous Peoples (IPs), the principle of free, prior and informed consent (FPIC) of IPs to development projects and plans that may affect them, has emerged as the desired standard to be applied in protecting and promoting their rights in the development process.

> U.N. Permanent Forum on Indigenous Issues, *Inter-agency Support Group on Indigenous Issues Report on Free Prior and Informed Consent*, E/C.19/2004/11, 12 March 2004, para. 1.

The principle of free, prior and informed consent is central to indigenous peoples' exercise of their right of self-determination with respect to developments affecting their lands, territories and natural resources. The substantive and procedural norms underlying free, prior and informed consent empower indigenous peoples to meaningfully exercise choices about their economic, social and cultural development, particularly in relation to development proposals by States and other external bodies in their ancestral lands and territories.

> U.N. Sub-Commission on the Promotion and Protection of Human Rights, Working Group on Indigenous Populations, *Preliminary working paper on the principle of free, prior and informed consent of indigenous peoples in relation to development affecting their lands and natural resources that would serve as a framework for the drafting of a legal commentary by the Working Group on this concept submitted by Antoanella-Iulia Motoc and the Tebtebba Foundation*, U.N. Doc. E/CN.4/Sub.2/AC.4/2004/4, 8 July 2004, para. 9.

Investments that disregard indigenous people's rights to land and its cultural significance as well as its value as an economic resource will inevitably invite opposition. So will patenting traditional knowledge under the same conditions. Three principles are critical: recognizing indigenous people's rights over knowledge and land, *ensuring that indigenous groups have voice (seeking their prior informed consent)* and developing strategies for sharing benefits.

> United Nations Development Programme, *Human Development Report 2004: Cultural liberty in today's diverse world*, *supra*, at p. 11. [emphasis added]

170. Various U.N. bodies have emphasized the requirement of free, prior and informed consent.

> The Committee recalls its General Recommendation 23 on the rights of indigenous peoples which calls upon State parties to ensure that no decisions directly relating to their rights and interests are taken without their informed consent …
>
> > Committee on the Elimination of Racial Discrimination, *Concluding observations of the Committee on the Elimination of Racial Discrimination: Argentina*, CERD/C/65/CO/1, August 2004, para. 18.
> >
> > See also Committee on the Elimination of Racial Discrimination, *General Recommendation XXIII (51) concerning Indigenous Peoples*, *supra*.
>
> The Committee is deeply concerned that natural extracting concessions have been granted to international companies without the full consent of the concerned communities.
>
> > Committee on Economic, Social and Cultural Rights, *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Ecuador*, U.N. Doc. E/C.12/1/Add.100, 7 June 2004, para. 12.
>
> Indigenous peoples have been throughout history the victims of activities carried out in the name of national development. Their *direct participation and consent in decisions regarding their own territories are thus essential to protect the right to development*.
>
> > U.N. Commission on Human Rights, *Global Consultation on the Realization of the Right to Development as a Human Right: Report prepared by the Secretary-General pursuant to Commission on Human Rights resolution 1989/45*, *supra*, at para. 57.

171. Formal in-depth inquiries have also concluded that, in relation to Indigenous peoples, the essential standard is "free, prior and informed consent".

> In a context of increasing recognition of the self-determination of indigenous peoples, the principle of free, prior, and informed consent to development plans and projects affecting these groups has emerged as the standard to be applied in protecting and promoting their rights in the development process.

> World Commission on Dams, *Dams and Development: A new framework for decision-making. The Report of the World Commission on Dams.* (London: Earthscan, 2000), at p. 112 (see also pp. 267, 271, 278).

The EIR concludes that indigenous peoples and other affected parties do have the right to participate in decisionmaking and to give their free prior and informed consent throughout each phase of a project cycle. This consent should be seen as the principal determinant of whether there is a "social license to operate" and hence is a major tool for deciding whether to support an operation. However, the EIR also acknowledges that there are real issues that need to be worked out to make FPIC a clearer and more effective tool.

> Extractive Industries Review, *Striking a Better Balance: The Final Report of the Extractive Industries Review*, Vol. I (*The World Bank Group and Extractive Industries*), December 2003, available at: http://www.eireview.org/eir/eirhome.nsf/be65a087e9e6b48085256acd005508f7/75971F6A8E5111385256DE80028BEE2?Opendocument, at p. 21. [emphasis added]

Logically arising from these property rights, as well as their right to self-determination and the right to development, there is also an increased recognition of indigenous peoples' right to give or withhold their prior and informed consent to activities within their lands and territories and to activities that may affect their lands, territories, and resources.

> U.N. Sub-Commission on the Promotion and Protection of Human Rights, *Indigenous peoples' permanent sovereignty over natural resources: Final report of the Special Rapporteur, Erica-Irene A. Daes*, *supra*, p. 13, para. 38.

[T]ransnational corporations and other business enterprises shall respect the rights of local communities affected by their activities … respect the rights of indigenous peoples and similar communities to own, occupy, develop, control, protect and use their lands, other natural resources … [and] respect the principle of free, prior and informed consent of the indigenous peoples and communities to be affected by their development projects.

> U.N. Sub-Commission on the Promotion and Protection of Human Rights, *Commentary on the Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights*, E/CN.4/Sub.2/2003/38/Rev.2, 26 August 2003, p. 12, para. 10 (c).

172. The Inter-American Commission on Human Rights has stated that the full and informed consent of Indigenous peoples is a "general international legal principle".

> Of particular relevance to the present case, the Commission considers that general international legal principles applicable in the context of indigenous human rights to include:
>
> …
>
> • where property and user rights of indigenous peoples arise from rights existing prior to the creation of a state, *recognition by that state of the permanent and inalienable title of indigenous peoples relative thereto and to have such title changed only by mutual consent between the state and respective peoples when they have full knowledge and appreciation of the nature or attributes of such property*. This also implies the right to fair compensation in the event that such property and user rights are irrevocably lost.
>
> I/A Comm. H.R., *Mary and Carrie Dann v. United States*, *supra*, para. 130. [emphasis added]

> *Articles XVIII and XXIII of the American Declaration specially oblige a member state to ensure that any determination of the extent to which indigenous claimants maintain interests in the lands to which they have traditionally held title and have occupied and used is based upon a process of fully informed consent on the part of the indigenous community as a whole*. This requires, at a minimum, that all of the members of the community are fully and accurately informed of the nature and consequences of the process and provided with an effective opportunity to participate individually or as collectives. In the Commission's view, these requirements are equally applicable to decisions by the State that will have an impact upon indigenous lands and their communities, such as the granting of concessions to exploit the natural resources of indigenous territories.
>
> I/A Comm. H.R., *Maya Indigenous Communities of the Toledo District*, Belize*, supra*, at para. 141. [emphasis added]

173. Based on all of the above considerations, in relation to Indigenous peoples, the principle of "free, prior and informed consent" must be affirmed as the operative legal norm in the draft *U.N. Declaration*. Though often violated in practice, this standard is clearly the most consistent with international law and its progressive development.

2.5 Merits of "Shall" Over "Should" Throughout Draft *U.N. Declaration*

174. It is the position of the UK government that, throughout the draft *U.N. Declaration on the Rights of Indigenous Peoples*, use of the term "should" is more appropriate than

"shall". Indigenous representatives vigorously oppose this view. Also, a number of participating States in the UNCHR Working Group support use of the term "shall".

> … indigenous representatives noted, as they did at CHRWG4 [Working Group session in 1998] that 'shall' is used in numerous UN declarations, including the Universal Declaration of Human Rights. In the ensuing debate, many governments supported the use of 'shall', including Canada, Finland, New Zealand and Switzerland (who did so 'strongly'). Only the UK and Japan insisted on 'should' as more appropriate in an aspirational document such as the Draft Declaration. Australia and the US were conspicuously silent.
>
> S. Pritchard, "The Draft Declaration on the Rights of Indigenous Peoples Remains on its Troubled Path Through the UN", *supra*, at p. 397.

> At the 8th session [December 2002] of the Working Group to elaborate the Declaration on the Rights of Indigenous Peoples, the UK objected to text on the basis that a declaration must not use the term 'shall', but must use the term 'should' instead. In connection with this, we note that a series of UN and regional declarations uses the term 'shall' including the Universal Declaration of Human Rights.
>
> F. MacKay, "The UN Draft Declaration on the Rights of Indigenous Peoples and the Position of the United Kingdom", *supra*, p. 27.

175. In the various "Declarations" at the international level, one can find use of both "shall" and "should". However, there are a number of compelling reasons why the term "shall" must be retained throughout the *U.N. Declaration*.

176. In 1948, the U.N. General Assembly adopted and proclaimed the *Universal Declaration on Human Rights* that uses the term "shall" in every Article with one minor exception ("[Human beings] … should act towards one another in a spirit of brotherhood"). As described in this Annex, the draft *U.N. Declaration* elaborates upon the economic, social, cultural, political and spiritual rights of Indigenous peoples. These are the same classes of rights as found in the *Universal Declaration* and the international human rights Covenants, except that the draft *U.N. Declaration* necessarily includes our collective rights that had not been addressed in 1948.

> The specific identities and grievances of indigenous peoples played literally no role in the influential formulations of the provisions of the Universal Declaration of Human Rights. Amazing as it may seem, indigenous peoples were simply not treated as "human" by the Universal Declaration, despite its drafters being among the most eminent idealists of their day.

> R. Falk, "Forward" in M.C. Lâm, *At the Edge of the State: Indigenous Peoples and Self-Determination* (Ardsley, N.Y.: Transnational Publishers, 2000), at p. xiii.

177. A number of Articles in the draft *U.N. Declaration* reflect customary international law. At least to this extent, such Articles already reflect imperative international legal obligations.

> … insofar as there is both a pattern of communicative behavior regarding the content of indigenous peoples' rights and a convergence of attendant subjectivities of obligation or expectation, as is evident in recent developments, there is customary international law. The claim here is not that each of the authoritative documents referred to [*e.g.* ILO Convention No. 169, draft *U.N. Declaration on the Rights of Indigenous Peoples*] can be taken in its entirety as articulating customary law, but that the documents represent core precepts that are widely accepted and, to that extent, are indicative of customary law.
>
> S. J. Anaya, *Indigenous Peoples in International Law* (Oxford/New York: Oxford University Press, 1996), at p. 56.

178. Similarly, many of the human rights of Indigenous peoples affirmed in the draft *U.N. Declaration* have been elaborated over a number of centuries in diverse ways in countless treaties entered into between Indigenous peoples and States. These treaties are further indication of the existing international and domestic legal obligations of States and reinforce the appropriateness of using the term "shall" in the draft *Declaration*.

179. As already described in this Annex, the right of peoples to self-determination is a part of customary international law and gives rise to *erga omnes* obligations of States. To many jurists, "self-determination" also constitutes a peremptory norm or *jus cogens* under international law. Since the right of self-determination is indivisible, interdependent and interrelated with all other human rights, the use of the term "shall" in the draft *U.N. Declaration* is clearly consistent.

180. The heads of States and Governments have committed themselves to the *U.N. Millennium Declaration* and its crucial objectives, principles and values. Except for exceptions in two of its paragraphs, the *Millennium Declaration* uniformly uses such terms as "will", "must" and "responsibilities". It also refers to the diverse "fundamental values" highlighted as "essential to international relations". Since the draft *U.N. Declaration* is consistent with and is a first step in implementing these

objectives, principles, values and responsibilities, it would be a discriminatory double standard to now substitute the weaker term "should" for "shall".

United Nations Millennium Declaration, *supra*.

181. The draft *U.N. Declaration on the Rights of Indigenous Peoples* is "the most important development within the framework of the United Nations system" concerning the safeguarding on a global basis of Indigenous peoples' human rights. Clearly, the U.N. must take steps to ensure a successful conclusion of the current UNCHR standard-setting process. Continued attempts by the UK and some other States to weaken the draft *Declaration* must be unequivocally rejected.

> … the completion of the work of the draft Declaration at the level of the Working Group on Indigenous Populations and the Sub-Commission constitutes the most important development within the framework of the United Nations system concerning the protection of the basic rights and fundamental freedoms of the world's Indigenous Peoples.
>
> E.-I. Daes, "Striving for Self-Determination of Indigenous Peoples", *supra*, at p. 56.

182. The human rights standards elaborated over many years and now included in the draft *U.N. Declaration* have assumed a normative value that has profoundly influenced organizations and forums at the international level. These same standards are also being used and cited by courts and commissions at the regional and domestic levels.

> *While the draft Declaration has floundered in the Government controlled Working Group on the draft Declaration, it has already been of great normative value.* The consistent elaboration of Indigenous peoples' claims, particularly in relation to cultural identity, self-determination, informed consent and self-identification, has influenced the policy approaches of international agencies such as the World Bank, UNESCO, UNDP and World Health Organisation, and was a major influence in the International Labour Organisation's decision to revise ILO Convention 107 and develop ILO Convention 169, titled *Convention concerning Indigenous and tribal peoples in independent countries*, in 1989.
>
> Human Rights and Equal Opportunity Commission (Australia), *Comments by the Aboriginal and Torres Strait Islander Social Justice Commissioner on the various mechanisms and programmes within the United Nations system on indigenous issues*, submitted to the Office of the High Commissioner for Human Rights, Geneva, December 2002. [emphasis added]

> … in addressing complaints of violations of the American Declaration it is necessary for the Commission to consider those complaints in the context of the *evolving rules and principles of human rights law in the Americas and in the international community more broadly*, as reflected in treaties, custom and other sources of international law. Consistent with this approach, in determining the claims currently before it, the Commission considers that *this broader corpus of international law includes the developing norms and principles governing the human rights of indigenous peoples*.
>
> I/A Comm. H.R., *Mary and Carrie Dann v. United States*, *supra*, at para. 124. [emphasis added]

Mitchell v. *Canada (Minister of National Revenue)* [2001] 1 S.C.R. 911, 3 C.N.L.R. 122 (Supreme Court of Canada), para. 82 (draft *U.N. Declaration*, Art. 35 (right to maintain and develop cross-border contacts)).

R. v. *Powley*, [2000] 2 C.N.L.R. 233 (Ont. Sup. Ct. of Justice), para. 58 (draft *U.N. Declaration*, Art. 3 (right of Indigenous peoples to self-determination); Art. 8 (right to maintain and develop distinct identities and characteristics); Art. 25 (right to maintain and strengthen relationship with the land)).

183. As described in this Annex, Indigenous peoples worldwide continue to face the debilitating legacy of colonialism, dispossession, discrimination, genocide, cultural genocide, exclusion, and marginalization. In this context, virtually all States that include Indigenous peoples bear some responsibility. Substituting "should" for "shall" in the draft *U.N. Declaration* would send the wrong signal globally. It would detract from the continuing urgency. It would serve to perpetuate impunity for ongoing violations against Indigenous peoples in all regions of the world.

> The European Parliament … Calls on the [Economic and Social] Council and the Commission to give due attention to the question of impunity in respect of violations of international human rights and humanitarian law …
>
> *European Parliament resolution on the EU's rights, priorities and recommendations for the 60th Session of the UN Commission on Human Rights in Geneva (15 March to 23 April 2004)*, adopted 10 February 2004, para. 20.

184. Based on all of the above, it would be a most regressive and unjustifiable action to now substitute the term "should" for "shall" in the draft *U.N. Declaration*.

2.6 Undermining of Indigenous Peoples' Dignity

185. As illustrated in this Annex, the United Kingdom government is severely undermining the dignity and human rights of Indigenous peoples globally. This is continually being done in such far-reaching ways as: denying Indigenous peoples' collective human rights; challenging our right of self-identification; proposing discriminatory double standards on our right to self-determination and our rights to lands, territories and natural resources; and overall weakening the draft *U.N. Declaration*.

> All human rights violations, notwithstanding the perpetrator victim, or extent of the violation, must be seriously considered as acts in disregard of human dignity and the rule of law.
>
> S. Leckie, *Another Step Towards Indivisibility: Identifying the Key Features of Violations of Economic, Social and Cultural Rights*, (1998) 20 Hum. Rts. Q. 81, at p. 124.

186. From the outset, in order to better appreciate the gravity of the UK actions, it is important to elaborate upon what "dignity" entails. In this regard, we highlight its inextricable links to such fundamental principles as respect for human rights, non-discrimination, rule of law, justice and peace. Moreover, upholding the principle of human dignity is both a collective and individual responsibility of States.

> We [heads of State and Government] recognize that, in addition to our separate responsibilities to our individual societies, we have a collective responsibility to uphold the principles of human dignity, equality and equity at the global level. As leaders we have a duty therefore to all the world's people, especially the most vulnerable and, in particular, the children of the world, to whom the future belongs.
>
> *United Nations Millennium Declaration*, *supra*, Art. 2.

> **In the United Nations Millennium Declaration, in particular, the collective responsibility to uphold the principles of human dignity, equality and equity at the global level is recognized, in addition to the separate responsibility to individual societies.**
>
> U.N. Commission on Human Rights, *The importance and application of the principle of equity, at both the national and international levels: Report submitted by the High Commissioner for Human Rights pursuant to Commission resolution 2002/69*, E/CN.4/2003/25, 30 December 2002, para. 51 (Conclusions). [bold in original]

> The State has prime responsibility for ensuring human rights and fundamental freedoms on an entirely equal footing in dignity and rights for all individuals and all groups.
>
> *Declaration on Race and Racial Prejudice*, *supra*, Art. 6, para. 1.

187. Since the UK government generally does not accept the notion of collective human rights, we underline here that "dignity" is not simply linked to individuals. It applies equally to "all" peoples and to other collectivities. The violation by a State of the principle of equality in dignity of peoples may well entail racial discrimination – a violation of international law giving rise to international responsibility.

> The principle of the equality in dignity and rights of all human beings and all peoples, irrespective of race, colour and origin, is a generally accepted and recognized principle of international law. Consequently any form of racial discrimination practised by a State constitutes a violation of international law giving rise to its international responsibility.
>
> *Declaration on Race and Racial Prejudice*, *supra*, Art. 9, para. 1.

> Indigenous individuals and peoples are free and equal to all other individuals and peoples in dignity and rights, and have the right to be free from any kind of adverse discrimination, in particular that based on their indigenous origin or identity.
>
> *U.N. Declaration on the Rights of Indigenous Peoples* (Draft), Art. 2.

188. In the *Cotonou Agreement* which we have already mentioned, the UK government explicitly recognizes the dignity and human rights of all individuals and peoples.

> The Parties refer to their international obligations and commitments concerning respect for human rights. *They reiterate their deep attachment to human dignity and human rights, which are legitimate aspirations of individuals and peoples.*
>
> *Cotonou Agreement*, *supra*, Art. 9(2). [emphasis added]

189. The principle of equality of dignity and rights of all peoples embraces the right to be different. It does not exclude it. As stated in the *UNESCO Universal Declaration on Cultural Diversity*, the "defence of cultural diversity is … inseparable from respect for human dignity".

> *Affirming* that indigenous peoples are equal in dignity and rights to all other peoples, while recognizing the right of all peoples to be different, to consider themselves different, and to be respected as such …
>
> > *U.N. Declaration on the Rights of Indigenous Peoples* (Draft), 1st preambular para.

> The defence of cultural diversity is an ethical imperative, inseparable from respect for human dignity. It implies a commitment to human rights and fundamental freedoms, in particular the rights of … indigenous peoples.
>
> > *UNESCO Universal Declaration on Cultural Diversity*, *supra*, Art. 4.

190. The principle of respect for human dignity is of the essence in both international and domestic law. When the UK government denies or devalues our collective rights, it profoundly violates our dignity as Indigenous peoples and individuals.

> The general principle of respect for human dignity is the basic underpinning and indeed the very *raison d'être* of international humanitarian law and human rights law; indeed in modern times it has become of such paramount importance as to permeate the whole body of international law.
>
> > *Prosecutor* v. *Furundžija*, International Criminal Tribunal for the Former Yugoslavia, Trial Chamber II, judgment of 10 December 1998, para. 183. [emphasis added]

> Human dignity means that an individual or group feels self-respect and self-worth. It is concerned with physical and psychological integrity and empowerment. … Human dignity is harmed when individuals and groups are marginalized, ignored, or devalued, and is enhanced when laws recognize the full place of all individuals and groups ...
>
> > *Law* v. *Canada (Minister of Employment and Immigration)*, [1999] 1 S.C.R. 497 at 530, para. 53, *per* Iacobucci J.

191. Denial of Indigenous peoples' human rights has caused debilitating poverty, which in turn further precludes enjoyment of these rights. The resulting deprivation of well-being is incompatible with human dignity.

> Severe poverty can inhibit significantly the enjoyment of human rights. It is well-established that Indigenous peoples and individuals who live in debilitating poverty - even those living in developed countries such as

Canada - are precluded from the effective exercise or enjoyment of fundamental human rights.

In Indigenous communities and nations, denials of Indigenous peoples' collective human rights, including self-determination, are root causes and major contributors to deep-seated health and other socio-economic problems. Land and resource dispossessions entail highly serious and far-reaching human rights abuses. They endanger the survival and well-being of distinct Indigenous peoples and cultures. Both peoples and individuals are impacted.

> P. Joffe & W. Littlechild, "Administration of Justice and How to Improve it: Applicability and Use of International Human Rights Norms", *supra*, at p. 12-11. [emphasis added]

The Committee notes that, in indigenous communities, the health of the individual is often linked to the health of the society as a whole and has a collective dimension.

> Committee on Economic, Social and Cultural Rights, General Comment No. 14, *The right to the highest attainable standard of health*, adopted 11 May 2000, 22nd sess., U.N. Doc. E/C.12/2000/4 (2000), para. 27.

From the perspective of a rights-based approach to human development, the concept of poverty goes much beyond just income poverty. It signifies *an unacceptable level of deprivation of well-being*, a level that a civilized society considers incompatible with human dignity. It is a gross violation of human rights.

> U.N. General Assembly, *Right to Development: Note by the Secretary-General*, A/55/306, 17 August 2000 (Report of the independent expert on the right to development), p. 14, para. 49. [emphasis added]

192. The President of France, Jacques Chirac, has recently expressed the significance and urgency of, and global stakes involved in, respecting the dignity of Indigenous peoples:

> … it is time for the *particularity and dignity of your nations to be affirmed and protected under international law*.
>
> *At issue is humanity's self-respect*. … At issue is the diversity of cultures and languages, without which there is no possible future. At issue is the legacy of our fathers and mothers, for which we are accountable to future generations. At issue is the extremely urgent cause of environmental protection. *The way in which the modern world recognizes and addresses*

> *the issue of indigenous peoples will reflect its ability to bring about a new stage in human progress*.
>
> J. Chirac, "Speech by M. Jacques Chirac, President of the Republic, at the Reception in Honour of the Amerindian Peoples", Paris, 23 June 2004, available at www.france.diplomatie.fr. [emphasis added]

193. As we have noted, the United States has repeatedly played a most obstructionist role in the UNCHR Working Group. Yet, its leaders have celebrated in other public forums the "nonnegotiable demands of human dignity" and linked them to such basic values as the rule of law, equal justice and respect for women.

> As Americans, we believe in what the President has called the nonnegotiable demands of human dignity; that the rule of law, free speech, equal justice, limits on the power of the state, respect for women and religious tolerance are desired by all human beings.
>
> C. Rice, "Remarks by National Security Advisor Condoleezza Rice at the Karamah Iftaar Dinner", Karamah, Washington, D.C, December 4, 2002, http://www.whitehouse.gov/news/releases/2002/12/20021204-17.html.

194. Based on all of the above, the UK government has failed to respect our inherent dignity as Indigenous peoples and as "members of the human family". This repeated conduct has far-reaching impacts on Indigenous peoples globally. It also constitutes a serious and ongoing violation of the most basic values and principles of international law.

> … in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the *inherent* dignity and of the equal and inalienable rights of all members of the human family is the *foundation of freedom, justice and peace in the world* …
>
> *International Covenant on Civil and Political Rights*, preamble. [emphasis added]
>
> *International Covenant on Economic, Social and Cultural Rights*, preamble. [emphasis added]

III. IMPLICATIONS OF UK GOVERNMENT POSITIONS IN THE BROADER GLOBAL CONTEXT

195. Over 300 million Indigenous peoples in the different regions of the world are being severely impacted by the unjust positions being taken by the United Kingdom and

certain other States that participate in the current U.N. standard-setting process on our human rights.

196. As elaborated in this Annex, the UK government continues to largely deny affirmation of Indigenous peoples' collective human rights in the draft *U.N. Declaration*. Despite recognizing for centuries our collective rights in diverse treaties and other legal instruments, the UK now insists that it has a better approach than to "create new collective rights". Indigenous peoples should accept an individual rights approach. These UK positions would have far-reaching assimilative and other damaging effects on our cultures, traditions, practices, and legal systems.

> Reversing a century of progress in the recognition of human rights, the UK government has now decided that *collective* human rights do not exist. If allowed to become official policy, this threatens to harm tribal peoples around the world.
>
> > Survival International, "UK: Government rejects collective rights for tribal peoples", *supra*.

197. If these UK positions were adopted, the integrity of our nations, communities and societies would be undermined for present and future generations. It is universally recognized that all cultures form part of the common heritage of humankind. The UK government's Eurocentric approach challenges in effect the very core of universal principles and values relating to diversity, tolerance and dignity. This form of neo-colonialism must be wholly rejected.

198. In addition, the UK government proposals would create discriminatory double standards on our right of self-determination and our rights to lands, territories and natural resources. These regressive positions run counter to the international human rights Covenants that the government claims to uphold. Other U.K. positions would weaken overall the current text of the draft *U.N. Declaration*. In these and other ways, the UK government is violating the interrelated principles of democracy, rule of law and respect for human rights.

199. In light of these potentially devastating consequences, we consider below the broader global implications of the positions of the government of the United Kingdom.

3.1 Promoting Global Insecurity of Indigenous Peoples

200. Over the past few years, UK government positions in the UNCHR Working Group have demonstrated an inexplicable insensitivity to the historical and contemporary experiences of Indigenous peoples. The government fails to effectively address the

legacy of colonialism, dispossession, and repeated human rights violations that has resulted in, *inter alia*, our debilitating impoverishment. In turn, this acute poverty continues to largely inhibit, if not prevent, the enjoyment by Indigenous peoples of our basic human rights.

> What are the causes of indigenous poverty? There are a number of explanations, which are often linked to each other. In some cases, it is the paucity of resources indigenous peoples have at their disposal for their own development processes, and the negative impacts of large-scale development projects on their lives and lands. In other cases it is the marginal role they play in the national development process and the exclusion from the market, which prevents indigenous peoples from enjoying the same opportunities as others. In yet other situations, it is direct discrimination and exclusion from society that keeps indigenous peoples in poverty.
>
> U.N. Sub-Commission on the Promotion and Protection of Human Rights, Working Group on Indigenous Populations, "Principle Theme: Indigenous Peoples and the Their Right to Development, Including Their Right to Participate in Development Affecting Them", *Note by the secretariat*, E/CN.4/Sub.2/AC.4/2001/2, 20 June 2001, para. 11.

> Existing poverty in some highly developed countries … [is] among the conditions that make the enjoyment of some civil and political rights for many people impossible, and thus, there still is some room for improvement in civil and political rights even in rich democratic countries in the sense of making the enjoyment of these rights real to everyone.
>
> R. Müllerson, "Reflections on the Future of Civil and Political Rights" in B.H. Weston & S.P. Marks, eds., *The Future of International Human Rights* (Ardsley, New York: Transnational Publishers, 1999) 225, at p. 235.

201. The severe poverty facing Indigenous peoples does more than gravely affect our human rights. It also undermines our participatory and other democratic rights. Eradication of poverty is vital to the elimination of all forms of discrimination. While the UK government publicly endorses the commitment in the *U.N. Millennium Declaration* of eradicating poverty, its obstructionist actions in the UNCHR Working Group serve to perpetuate the impoverished conditions and discrimination facing Indigenous peoples worldwide.

> The existence of widespread absolute poverty inhibits the full and effective enjoyment of human rights and makes democracy and popular participation fragile …
>
> U.N. Commission on Human Rights, *Human rights and extreme poverty*, Res. 2003/24, 22 April 2003, para. 1(*c*).

> REAFFIRMING that the fight against poverty, and especially the elimination of extreme poverty, is essential to the promotion and consolidation of democracy and constitutes a common and shared responsibility of the American states …
>
> *Inter-American Democratic Charter*, *supra*, preamble.

> The experts recognized that the eradication of poverty was vital to the elimination of all forms of discrimination and concluded that greater efforts must be made by the international community to provide sufficient resources to that end …
>
> U.N. Commission on Human Rights, *Views of the independent eminent experts on the implementation of the Durban Declaration and Programme of Action: Note by the secretariat*, E/CN.4/2004/112, 10 February 2004, para. 6(i).

> We will spare no effort to free our fellow men, women and children from the abject and dehumanizing conditions of extreme poverty, to which more than a billion of them are currently subjected. We are committed to making the right to development a reality for everyone and to freeing the entire human race from want.
>
> *United Nations Millennium Declaration*, *supra*, para. 11.

> The only answer is to construct a common agenda that recognises both sets of issues [one set: immediate security; the other set: global poverty, environmental degradation, etc.] have to be confronted for the world's security and prosperity to be guaranteed. *There will be no lasting peace whilst there is appalling injustice and poverty.*
>
> T. Blair, "Prime Minister's speech on sustainable development", London, 24 February 2003, http://www.number-10.gov.uk/output/Page3073.asp. [emphasis added]

202. In other forums, the UK government has highlighted the importance of ensuring human rights and "human security" in distant countries, since these key issues are indivisible from and affect the interests of the UK and other States. Yet by undermining the existing text of the draft *U.N. Declaration*, the UK government is unfairly lowering the "minimum standards for the survival, dignity and well-being of the indigenous peoples of the world".

> The rights recognized herein constitute the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world.

U.N. Declaration on the Rights of Indigenous Peoples (draft), Art. 42.

> … human rights will continue to rise up the international agenda, as more states come to realise that human security is indivisible, that there is no such thing any more as a quarrel in a faraway country which is indifferent to our interests.
>
> B. Rammell (UK Parliamentary Under Secretary), "Why Human Rights Matter", Institute for Public Policy Research/British Council Conference on the Government's International Human Rights Policy , London, 25 November 2003, http://www.fco.gov.uk/servlet/Front?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1007029391647&a=KArticle&aid=1068720888818.

> … as democratic states committed to the principles of the Charter of the United Nations and the OAS, we reaffirm that the basis and purpose of security is the protection of human beings. Security is strengthened when we deepen its human dimension. Conditions for human security are improved through full respect for people's dignity, human rights, and fundamental freedoms, as well as the promotion of social and economic development, social inclusion, and education and the fight against poverty, disease, and hunger.
>
> *Declaration on Security in the Americas*, adopted at the third plenary session of October 28, 2003, Special Conference on Security, Mexico City, OEA/Ser.K/XXXVIII, CES/DEC. 1/03 rev.1, 28 October 2003, at para. 4 e.

203. Respect for human rights, dignity, well-being and human security are all interrelated. By undermining the minimum norms in the draft *U.N. Declaration*, the UK is adversely affecting Indigenous peoples and individuals globally in profound and far-reaching ways.

> The understanding of human well-being has evolved to embrace many different aspects. Securing basic human well-being goes beyond conventional requirements of security and the absence of conflict. … Human security … provides a link between conceptions of security, development, and human rights.
>
> Extractive Industries Review, *Striking a Better Balance: The Final Report of the Extractive Industries Review*, vol. III (*Annexes*), Annex 6: Views of Academia and International Organizations, December 2003, available at: http://www.eireview.org/eir/eirhome.nsf/be65a087e9e6b48085256acd005508f7/75971F6A8E5111385256DE80028BEE2?Opendocument, p. 140.

> Human security also reinforces human dignity. People's horizons extend far beyond survival … Protecting a core of activities and abilities is essential for human security, but that alone is not enough. *Human security must also aim at developing the capabilities of individuals and communities to make informed choices and to act on behalf of causes and interests in many spheres of life.* That is why human security starts from the recognition that people are the most active participants in determining their well-being.
>
> Commission on Human Security, *Human Security Now* (New York: 2003), p. 4. [emphasis added]

The right of permanent sovereignty over natural resources is critical to the future well-being, the alleviation of poverty, the physical and cultural survival, and the social and economic development of indigenous peoples.

> U.N. Sub-Commission on the Promotion and Protection of Human Rights, *Indigenous peoples' permanent sovereignty over natural resources: Final report of the Special Rapporteur, Erica-Irene A. Daes*, *supra,* p. 17, para. 57. [Principal conclusions, bold in original]

> … issues of social justice and human security provide compelling reasons as to why genuine democracies are associated with the promotion and protection of fundamental human rights.
>
> S. Gutto, "Current concepts, core principles, dimensions, processes and institutions of democracy and the inter-relationship between democracy and modern human rights", *supra*, p.2, para. 3.

204. Good health is instrumental to human dignity and human security. Severe violations and ongoing denial of Indigenous peoples' human rights severely undermine the integrity of Indigenous nations, communities and families and impair the mental and physical health and security of individuals.

> Good health is both essential and instrumental to achieving human security. It is essential because the very heart of security is protecting human lives. Health security is at the vital core of human security—and illness, disability and avoidable death are "critical pervasive threats" to human security. … Health is both objective physical wellness and subjective psychosocial wellbeing and confidence about the future.
>
> In this view, good health is instrumental to human dignity and human security.
>
> Commission on Human Security, *Human Security Now*, *supra*, p. 96.

> … "indigenous peoples human security" … encompasses many elements, *inter alia* physical, spiritual, health, religious, cultural, economic, environmental, social and political aspects. In my opinion, the desirable human security situation exists when the people concerned and its individual members have adequate legal and political guarantees for their fundamental rights and freedoms, including the right of self-determination.
>
> J.B. Henriksen, "Implementation of the Right of Self-Determination of Indigenous Peoples Within the Framework of Human Security", in M.C. van Walt van Praag & O. Seroo, eds., *The Implementation of the Right to Self-Determination as a Contribution to Conflict Prevention* (Barcelona: Centre UNESCO de Catalunya, 1999) 226, at p. 226.

> The health of Indigenous Peoples is overwhelmingly affected by determinants outside the realm of the health sector, namely social, economic, environmental and cultural determinants. These are the consequences of colonization …
>
> *Geneva Declaration on the Health and Survival of Indigenous Peoples*, adopted at the International Consultation on the Health of Indigenous Peoples, organized by the World Health Organization, Geneva, 23-26 November 1999, Part IV.

> ...the factors contributing to ill health of Aboriginal people stem not from bio-medical factors, but from social, economic and political factors.
>
> Royal Commission on Aboriginal Peoples, *Report of the Royal Commission on Aboriginal Peoples*, *supra*, vol. 3, at p. 201.

205. According to the World Health Organization, women living in poverty are "disproportionately affected" by violence from their partners. Thus, the widespread impoverishment inflicted upon Indigenous peoples increases the risk of such violence.

> … while physical violence against partners cuts across all socioeconomic groups, women living in poverty are disproportionately affected …
>
> It is as yet unclear why poverty increases the risk of violence – whether it is because of low income in itself or because of other factors that accompany poverty, such as overcrowding or hopelessness. … Whatever the precise mechanisms, it is probable that poverty acts as a ''marker'' for a variety of social conditions that combine to increase the risk faced by women …

> World Health Organization, *World Report on Violence and Health* (E.G. Krug, *et al.*, eds.) (Geneva: World Health Organization, 2002), at p. 99.
>
> See also Amnesty International, *It's in our hands: Stop violence against women* (London: Amnesty International Publications, 2004), p. 40 (Entrenched poverty, entrenched violence).

> The Convention [on the Elimination of All Forms of Discrimination Against Women] in article 1 defines discrimination against women. The definition of discrimination includes gender-based violence, that is, violence that is directed against a woman because she is a woman *or that affects women disproportionately*.
>
> Committee on the Elimination of Discrimination Against Women, *Violence against women*, General Recommendation No. 19, A/47/38, 30 January 1992, para. 6.[emphasis added]

206. Violence against women constitutes a violation of the human rights of women and impairs or nullifies the enjoyment of those basic rights. If the United Kingdom and other Member States are truly committed to gender equality and other women's rights, they must also address the *root causes* of the appalling socio-economic and other conditions that Indigenous peoples suffer. This must include the adoption of a comprehensive and uplifting U.N. instrument on Indigenous human rights standards.

> … gender should not always be seen as an isolated policy area, unconnected to our other work.
>
> *Gender*, United Kingdom, Foreign and Commonwealth Office, http://www.fco.gov.uk/servlet/Front?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1087554559002.

> **Violence against women is a continuum of acts that violate women's basic human rights, resulting in devastating consequences for women who experience it, traumatic impact on those who witness it, de-legitimization of States that fail to prevent it and the impoverishment of entire societies that tolerate it.**
>
> U.N. Commission on Human Rights, *Towards an effective implementation of international norms to end violence against women: Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk*, E/CN.4/2004/66, 26 December 2003, para. 69 (Conclusion). [bold in original]

> The General Assembly … Concerned that violence against women is an obstacle to the achievement of equality, development and peace …

> Affirming that violence against women constitutes a violation of the rights and fundamental freedoms of women and impairs or nullifies their enjoyment of those rights and freedoms, and concerned about the long-standing failure to protect and promote those rights and freedoms in the case of violence against women …
>
> *Declaration on the Elimination of Violence against Women*, G.A. res. 48/104, 48 U.N. GAOR Supp. (No. 49) at 217, U.N. Doc. A/48/49 (1993), preamble.

> We [heads of State and Government] resolve therefore: … To combat all forms of violence against women …
>
> *United Nations Millennium Declaration*, *supra*, Art. 25.

> The links between human rights and violence prevention are well established. *A lack of respect for human rights is often the root cause of violence, while specific acts of violence may themselves amount to a violation of human rights.* Introducing a human rights approach to violence prevention brings to bear States' international obligations concerning risk factors for violence such as poverty, gender discrimination, lack of equal access to education, and other social and economic inequalities.
>
> U.N. Commission on Human Rights, *The right of everyone to the enjoyment of the highest attainable standard of physical and mental health: Report of the Special Rapporteur, Paul Hunt*, E/CN.4/2004/49, 16 February 2004, para. 82. [emphasis added]

207. A further crucial consideration is the heartrending and devastating impacts that human rights denials have on Indigenous children and youth.

> ...the evidence also shows that the hugely disproportionate rate at which Aboriginal and Torres Strait Islander children and young people are being incarcerated today is reflective of a systemic denial of Indigenous rights. These abuses include the failure to remedy the appalling levels of social and economic disadvantage which prevent the enjoyment of citizenship; they include the failure to ensure that the lives of Indigenous children and young people are free from direct and indirect racial discrimination; and they include the failure to provide conditions where Indigenous people might enjoy the right of self-determination, particularly in relation to decisions which affect their children and young people.
>
> C. Cunneen, "Reforming Juvenile Justice and Creating Space for Indigenous Self-Determination", (1998) 21 U.N.S.W. L.J. 241, at p. 246.

> It is crucial to appreciate that the persistent undermining and denial of indigenous peoples' human rights, including the right to self-determination, is a major root cause and contributing factor to the acute health and socio-economic problems in many Indigenous communities and nations. If not reversed, this negative dynamic will continue to severely undermine the integrity of our families, communities and nations.
>
> American Indian Law Alliance, "Self-Determined Indigenous Children and Youth", Second session of the Permanent Forum on Indigenous Issues, 12-23 May 2003, United Nations Headquarters, New York, preface.

> One of the best ways to guarantee that an indigenous child receives adequate protection from violence, abuse and exploitation is to support and build on the strengths of his or her family, kinship network and community. *An indigenous community that lives in security (including land security), free from discrimination and persecution, and with a sustainable economic base has a solid foundation for ensuring the protection and harmonious development of its children.*
>
> UNICEF Innocenti Research Centre, *Ensuring the Rights of Indigenous Children*, Innocenti Digest No. 11, February 2004, p. 17. [emphasis added]

208. Based on the above, the prejudicial global implications of the UK positions being taken are wide-ranging in relation to Indigenous peoples including women, youth and children. Clearly, the UK needs to fundamentally reassess its policies and positions and adopt a rights-based approach. Such a perspective must unequivocally strengthen human security and fully respect our human rights.

> Turning to the issue of human security, …[t]here is already a broad-based consensus that the human rights norms give meaning to the content of human security. In short, the rights-based approach is the route to the achievement of human security.
>
> U.N. Commission on Human Rights, *Report of the United Nations High Commissioner for Human Rights and Follow-up to the World Conference on Human Rights*, E/CN.4/2003/14, 26 February 2003, para. 31.

> An active commitment to the strengthening of democracy, to the protection and promotion of human rights and to respect for the rule of law is the foundation of human security. Human security is at greatest risk where human rights are ignored and confidence in justice systems and democratic governance is uncertain.

Canada, *Human Security in the Americas*, OAS/SER.P, AG/doc.3851/00, 26 April 2000, document presented at OAS General Assembly, 30th sess., at p. 3.

209. **Rather than ensuring our security, the UK and U.S. governments are promoting the insecurity of the world's Indigenous peoples by undermining our fundamental status and human rights.**

210. This lack of genuine commitment to human rights issues is also reflected in the formal inquiries related to global security undertaken by both the UK and U.S. Issues of human rights and human security were not accorded any consideration, despite regional policies in Europe and the Americas that include these "core" issues as integral elements of a regional security framework.

> Respect for human rights and fundamental freedoms, democracy and the rule of law is at the core of the OSCE's comprehensive concept of security. (p. 1, para. 4)
>
> We seek the contribution of a strengthened OSCE to meet the threats and challenges facing the whole OSCE area, and to improve human security, thereby making a difference in the life of the individual — the aim of all our efforts. (p. 10, para. 58 (Conclusion))

Organization for Security and Co-operation in Europe, "OSCE Strategy to Address Threats to Security and Stability in the Twenty-First Century", Eleventh Meeting of the Ministerial Council 1 and 2 December 2003, Maastricht, MC.DOC/1/03, 2 December 2003.

> The OSCE considers security more than merely the absence of war. Instead, it was the intention of the OSCE participating States to create a comprehensive framework for peace and stability in Europe. The Helsinki Final Act acknowledges as one of its 10 guiding principles the "(r)espect for human rights and fundamental freedoms ... ". This constitutes a milestone in the history of human rights protection. *For the first time human rights principles were included as an explicit and integral element of a regional security framework on the same basis as politico-military and economic issues.* This acknowledgement has been reinforced by numerous follow-up documents. *It is therefore now well established and beyond question. There is no hierarchy among these principles, and no government can claim they have to establish political or economic security before addressing human rights and democracy.*

Organization for Security and Co-operation in Europe, *OSCE Human Dimension Commitments: A Reference Guide* (Warsaw, Poland: OSCE Office for Democratic Institutions and Human Rights, 2001), at xiii-xiv. [emphasis added]

> *Our new concept of security in the Hemisphere is multidimensional in scope*, includes traditional and new threats, concerns, and other challenges to the security of the states of the Hemisphere, incorporates the priorities of each state, contributes to the consolidation of peace, integral development, and social justice, and *is based on democratic values, respect for and promotion and defense of human rights*, solidarity, cooperation, and respect for national sovereignty. (para. 2)
>
> …
>
> In our Hemisphere, as democratic states committed to the principles of the Charter of the United Nations and the OAS, we reaffirm that the basis and purpose of security is the protection of human beings. Security is strengthened when we deepen its human dimension. *Conditions for human security are improved through full respect for people's dignity, human rights* … (para. 4.e)
>
> *Declaration on Security in the Americas*, 2003, *supra*. [emphasis added]

211. In the case of the UK inquiry, the mandate of the Committee of Privy Counsellors was carefully restricted to questions pertaining to "weapons of mass destruction" and "intelligence". This in effect precluded any examination or scrutiny whatsoever of human rights policies and considerations, in an overall strategy to strengthen human security and prevent terrorism. In the case of the U.S. inquiry, the National Commission on Terrorist Attacks on the United States ultimately received a very broad mandate. However, it never gave human rights issues the slightest consideration.

> This committee will … have the following terms of reference: to investigate the intelligence coverage available in respect of WMD programmes in countries of concern and on the global trade in WMD, taking into account what is now known about these programmes; as part of this work, to investigate the accuracy of intelligence on Iraqi WMD up to March 2003,and to examine any discrepancies between the intelligence gathered, evaluated and used by the Government before the conflict, and between that intelligence and what has been discovered by the Iraq survey group since the end of the conflict; and to make recommendations to the Prime Minister for the future on the gathering, evaluation and use of intelligence on WMD, in the light of the difficulties of operating in countries of concern.
>
> House of Commons, *Review of Intelligence on Weapons of Mass Destruction*, Report of a Committee of Privy Counsellors, (London: The Stationery Office, July 2004), at p. 1.

> Our mandate is sweeping. The law directed us to investigate the "facts and circumstances relating to the terrorist attacks of September 11, 2001," including those relating to intelligence agencies, law enforcement agencies, diplomacy, immigration issues and border control, the flow of assets to terrorist organizations, commercial aviation, the role of congressional oversight and resource allocation, and other areas determined relevant by the Commission.
>
> National Commission on Terrorist Attacks Upon the United States, *The 9/11 Commission Report: The Final Report of the National Commission on Terrorist Attacks upon the United States* (New York: W.W. Norton & Co., 2004), at p. xv. The Commission made no reference to "collective security" or "human security", and solely two passing references to "human rights" in relation to the Taliban and Sudan.

See also U.S. Public Law 107-306, s. 602:

> The purposes of the Commission are to—
> (1) examine and report upon the facts and causes relating to the terrorist attacks of September 11, 2001, occurring at the World Trade Center in New York, New York, in Somerset County, Pennsylvania, and at the Pentagon in Virginia;
> …
> (4) make a full and complete accounting of the circumstances surrounding the attacks, and the extent of the United States' preparedness for, and immediate response to, the attacks; and
> (5) investigate and report to the President and Congress on its findings, conclusions, and recommendations for corrective measures that can be taken to prevent acts of terrorism.

212. Since there are additional global implications to the current UK government positions, these are examined briefly below.

3.2 Failure to Honour UK's International Obligations

213. UK government positions that undermine Indigenous peoples' human rights or otherwise discriminate against us violate the Purposes and Principles of the *U.N. Charter*. State obligations under the *Charter* explicitly require actions "promoting and encouraging respect" for human rights and not undermining them. The affirmative duty to promote respect for human rights must be based on "respect for the principle of equal rights and self-determination of peoples".

We recall that non-compliance with obligations under the Charter of the United

Nations constitutes a violation of international law.

> *Charter of Paris for a New Europe, A New Era of Democracy, Peace and Unity*, *supra*.

Human rights remain at the heart of the foreign policy agenda and the UK works through international forums and bilateral relationships to spread the values of human rights, civil liberties and democracy.

> *Global Issues: Human Rights*, United Kingdom, Foreign and Commonwealth Office, http://www.fco.gov.uk/servlet/Front?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1007029393564.

214. Upholding the Purposes and Principles of the *U.N. Charter*, as well as international law generally, is critical for all peoples and States in the international community. However, the United Kingdom has additional important responsibilities.

215. The United Kingdom is currently a member of the U.N. Commission of Human Rights. According to the UK government, "responsibilities come with membership" of the UNCHR and each member "has a duty to enhance domestic and international protection of human rights". Based on the UK government's own criteria, the UK is severely undermining the credibility of the UNCHR as well as its own reputation.

> **We strongly believe that responsibilities come with membership of the Commission on Human Rights. Above all, we believe that each member has a duty to enhance domestic and international protection of human rights. We believe appropriate human rights behaviour by members states is key to the credibility of CHR.**
>
> B. Rammell (UK Parliamentary Under Secretary), "'We are Determined to Succeed' – Bill Rammell Speaks at the UN Commission on Human Rights", Geneva, 18 March 2004, *supra*. [emphasis added]

216. The United Kingdom is also one of the five Permanent Members of the U.N. Security Council. This elite and privileged group has onerous responsibilities relating to international peace and security. All Security Council Members should be role models in terms of upholding the basic values and principles of the *U.N. Charter*. Strict adherence to the Purposes and Principles of the *U.N. Charter* is of the utmost importance.

217. This is especially crucial in the current geo-political context. The U.N. and its Member States are implementing a diverse range of measures internationally. These

include promotion of international peace, security and cooperation; combatting terrorism; prosecution of crimes against humanity; and addressing other issues of global concern.

218. States who selectively apply, or fail to comply with, the principles of democracy, rule of law, peace, justice, non-discrimination and respect for human rights can hardly demand full respect for these same precepts and values from other States.

219. On human rights issues, the lack of impartiality in the positions of the UK, U.S. and certain other States have grave implications that go far beyond the more than 300 million Indigenous people in different regions of the globe. **Selective or discriminatory application of the *Charter*'s Principles – whether by developed or developing States – substantially weakens the United Nations and the international human rights system as a whole.**

> The principles of the Charter must be applied consistently, not selectively, for *if the perception should be of the latter, trust will wane and with it the moral authority which is the greatest and most unique quality of the instrument*.
>
> > B. Boutros-Ghali, *An Agenda for Peace: Report of the Secretary General*, *supra*, at p. 23. [emphasis added]

> *... UN membership is not a right, but a commitment to uphold the principles and purposes of the organization. …* The time has come to revisit the basis upon which membership in [UN] bodies is determined. And as Article Six [of the *U.N. Charter*] envisions, the UN must consider suspending or expelling member states that have failed in their obligation to the organization and violated the basic principles of the Charter.
>
> > B. Graham, "Notes for an Address by the Honourable Bill Graham, Minister of Foreign Affairs [Canada], at the 16th Annual Meeting of the Academic Council of the United Nations System", New York, New York, June 13, 2003. [emphasis added]

> The World Conference on Human Rights reaffirms the importance of ensuring the universality, objectivity and non-selectivity of the consideration of human rights issues.
>
> > United Nations World Conference on Human Rights, *Vienna Declaration and Programme of Action*, *supra*, Part I, para. 32.

> [The Commission on Human Rights] … *Reaffirms* that the promotion, protection and full realization of all human rights and fundamental freedoms should be guided by the principles of universality, non-selectivity, objectivity and transparency, in a manner consistent with the purposes and principles of the Charter …
>
> U.N. Commission on Human Rights, *Enhancement of international cooperation in the field of human rights*, E/CN.4/RES/2003/60, 24 April 2003, para. 3.

220. Similarly, the United Kingdom is a participating member of the Organization for Security and Cooperation in Europe. Adherence to the Purposes and Principles of the *U.N. Charter* and other commitments "provides the basis for participation and co-operation" in this regional organization.

> We welcome the commitment of all participating States to our shared values. Respect for human rights and fundamental freedoms ... democracy, the rule of law, economic liberty, social justice and environmental responsibility are our common aims. They are immutable. *Adherence to our commitments provides the basis for participation and co-operation in the CSCE* and a cornerstone for further development of our societies.
>
> Conference on Security and Co-operation in Europe, *Helsinki Summit Declaration*, in Helsinki Document, 1992 ("Challenges of Change"), para. 6. [emphasis added]

> Nothing in the present Charter precludes the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action, *provided that such arrangements or agencies and their activities are consistent with the Purposes and Principles of the United Nations*.
>
> *Charter of the United Nations*, Art. 52, para. 1. [emphasis added]

221. In regard to the Cotonou Agreement that involves 78 States from Africa, the Caribbean and the Pacific region and the UK and other European Union States, all parties are obliged to respect certain "essential elements" in their domestic and international policies. These elements are human rights, democratic principles and the rule of law. Since the UK is continually violating these solemn obligations in its policies on Indigenous peoples, this may well encourage other States under the Agreement to do the same.

> Respect for human rights, democratic principles and the rule of law, which underpin the ACP-EU Partnership, *shall underpin the domestic and*

> *international policies of the Parties* and constitute the *essential elements* of this Agreement.
>
> *Cotonou Agreement*, *supra*, Art. 9 (2). [emphasis added]

222. As the UK government is well aware, representatives of Indigenous peoples have initiated discussions with European Union (EU) States with the objective of seeking unified support from them for Indigenous human rights. This would expedite consensus-building within the UNCHR Working Group. As long as the UK remains rigidly committed to its regressive positions on Indigenous human rights, it will be exceedingly difficult for us to make significant progress within the EU context.

> … we will demonstrate that Europe can work together effectively and be a force for good in its relations with the outside world.
>
> Europe must play a major role on the world stage - a role that is open and outward looking, strong in its advocacy of … human rights and democratic values.
>
> T. Blair, "Speech by the Prime Minister on the British Presidency of the European Union", 6 December 1997, *supra*.

223. Serious questions arise as to why the UK government would take such firm positions against the human rights of Indigenous peoples. After all, these positions run counter to international law; contradict many of the universal principles and values that the UK claims to support; and undermine the international human rights system, as well as the credibility and reputation of the UK.

> We have provided leadership in the international community on human rights. And that leadership has brought us new respect. We have shown that far from being at the expense of our interests, a strong support for human rights increases the respect in which Britain is held by our partners overseas.
>
> R. Cook (UK Foreign Secretary), "Human Rights: Making the Difference", Amnesty International Human Rights Festival, London, 16 October 1998, http://www.fco.gov.uk/servlet/Front?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1007029391629&a=kArticle&aid=1013618394614.

224. In relation to Indigenous peoples, historical and contemporary experiences strongly suggest that numerous States, commercial companies and others simply wish to seize, exploit or otherwise benefit from our lands, territories and resources. Present UK policies and actions seem to be unjustifiably motivated by other UK interests. The urgent issue of respecting Indigenous human rights is being overlooked in favour of State self-interest. Examples most recently include:

> Indigenous participants and the observer for Mauritius expressed their serious concern over two recent Orders in Council made by the Government of the United Kingdom on 10 June 2004 which prohibited Chagossians from returning to and residing in the islands of the Chagos Archipelago. This was a violation of the human rights of the persons concerned. *The observer for the United Kingdom indicated that the territory in question would be ceded to Mauritius when the Government considered that it was no longer required for defence purposes.* Indigenous participants indicated their intention to take the case to the European Court of Human Rights.
>
> U.N. Sub-Commission on the Promotion and Protection of Human Rights, Working Group on Indigenous Populations, *Report of the Working Group on Indigenous Populations on its twenty-second session - Chairperson-Rapporteur: Mr. Miguel Alfonso Martínez*, 2004, *supra*, p. 9, para. 34. [emphasis added]

> Britain is facing a £25 million claim for compensation from tribes in Papua New Guinea who claim the government has backed a project that destroyed their ancestral lands, poisoned their water and made them ill.
> …
> *The UK Department for International Development is the major shareholder in a company called Higaturu Oil Palms, the firm that runs the controversial plantation.* It has put £4m of British taxpayers' money into the company through the government-owned CDC Group, which invests aid money in projects it believes will benefit developing countries.
>
> A. Barnett, "Tribes attack UK over 'destruction of homeland'", *The Observer* (15 August 2004), available at: http://observer.guardian.co.uk/international/story/0,6903,1283473,00.html. [emphasis added]

> In many regions of the world indigenous peoples have been, and are still being, discriminated against, deprived of their human rights and fundamental freedoms and…have lost their land and resources to colonists, commercial companies and State enterprises. Consequently the preservation of their culture and their historical identity has been and still is jeopardized.
>
> Committee on the Elimination of Racial Discrimination, *General Recommendation XXIII (51) concerning Indigenous Peoples*, *supra*, para. 3.

225. As illustrated by this Annex, the United Kingdom, United States and a number of other States are repeatedly striving to dilute or lower standards in the current text of the draft *U.N. Declaration*. Yet, in regard to key issues, they have failed to provide

credible substantiation for their positions. State proposals that would undermine our human rights have not been consistent with international law and its progressive development. This is especially the case for the issues highlighted in this Annex.

> *As they had done many times before, indigenous delegates challenged obstructive states to support their arguments with reference to contemporary human rights law, something the latter were unable to do.* Instead, and despite the fact that the WGDD must produce a document founded on international human rights law, states argued time and again solely on the basis of domestic problems, while ignoring both the universal principles of equality and non-discrimination and the progressive work of the UN's human rights treaty bodies.
>
> "8th session of the Working Group on the Draft Declaration on the Rights of Indigenous Peoples", in International Work Group For Indigenous Affairs, *The Indigenous World 2002 – 2003* (Copenhagen: IWGIA, 2003) 416, at pp. 423-424. [emphasis added]

226. In light of the damaging implications of the UK positions for Indigenous peoples and others in the global context, we strongly urge the government to undertake a profound reform of its human rights strategies and positions. In particular, in the UNCHR Working Group, the adoption of strong and effective human rights norms to prevent and redress the widespread dispossession of Indigenous lands, territories and resources remains of central importance.

> Indigenous peoples are aware of the fact that unless they are able to retain control over their land and territories, *their survival as identifiable, distinct societies and cultures is seriously endangered*.
>
> R. Stavenhagen, *The Ethnic Question: Conflicts, Development, and Human Rights*, *supra*, at p. 105. [emphasis added]

> *The land is the physical and spiritual core that binds communities together*. When indigenous peoples lose their land, they lose their language, their complex social and political systems, and their knowledge. At a deeper level traditions are eroded with their sacred beliefs. Although some may integrate and recover meaning to their lives, the *removal of first peoples from their land can be likened to genocide in slow motion*.
>
> J. Burger, *The Gaia Atlas of First Peoples* (New York: Anchor Books, 1990), at p. 122. [emphasis added]

227. Indigenous peoples worldwide, as well as the broader international community, simply cannot afford the current lack of accountability and discriminatory double standards of certain so-called democratic States. Such actions are the

antithesis of hope, trust and achievement. These are qualities and goals that we will not relinquish.

> People talk about surviving, even thriving, because they didn't give up, because they had hope - not because everything turned out the way they wanted. Hope is ... interpret[ed] … very personally, not as some depersonalized reference to goals or expectations. Hope is *not* about naive or excessive optimism. It is *not* solely about achievement. It *is* about not losing sight of the goodness of life even when it is not visible.
>
> R. Jevne, "Magnifying Hope: Shrinking Hopelessness", in Commission on First Nations and Métis Peoples and Justice Reform, *Submissions to the Commission*, Final Report, vol. 2 (Saskatchewan: 2004), Section 6, p. 6-1. [emphasis in original]

228. "Human rights" is the "common language of humanity". However, it is much more than mere words or pious intentions. Rather, it is a language of commitment, honour and uncompromising fulfillment of fundamental obligations.

> B. Boutros-Ghali, Opening Statement by the United Nations Secretary-General, "Human Rights: The Common Language of Humanity", *supra*.

229. Indigenous peoples are determined to achieve a strong and uplifting Declaration through the current standard-setting process. We welcome and expect the United Kingdom and other States to contribute positively to this urgent and vital process.

> **… this is a pivotal year in [Indigenous peoples'] struggle to end marginalization. They have set their hopes on the full support of the United Nations in efforts for the betterment of their lives and in having their legitimate rights and aspirations respected and protected. We should all do our utmost to respond to their expectations.**
>
> Economic and Social Council, *Information concerning indigenous issues requested by the Economic and Social Council: Report of the Secretary-General*, 2004, *supra*, para. 53. [bold in original]

CONCLUSIONS AND RECOMMENDATIONS

Introduction

A. In 1993, after nine years of careful discussion and reflection, the expert members of the Working Group on Indigenous Populations (WGIP) formulated and approved the draft *U.N. Declaration of the Rights of Indigenous Peoples*. Throughout this dynamic process, Indigenous peoples, States, specialized agencies and academics actively participated and exchanged views.

B. In 1994, the Sub-Commission on the Prevention of Discrimination and Protection of Minorities approved the draft *Declaration* elaborated by the WGIP and submitted it for consideration to the U.N. Commission on Human Rights (UNCHR).

C. Therefore, the Commission of Human Rights established in 1995 an open-ended inter-sessional Working Group to elaborate a Declaration. As a basis for its work, this Working Group is using the draft *U.N. Declaration* that was approved by the experts of both the WGIP and the Sub-Commission.

D. It is appalling that, during the past ten years, the UNCHR inter-sessional Working Group has only provisionally approved 2 of the 45 Articles of the draft *Declaration*. To a large degree, this serious lack of progress is a result of the lack of political will among a number of participating States, including the United Kingdom.

E. In this context, it is now critical to bring to the specific attention of Prime Minister Tony Blair and others some basic positions taken by the government of the United Kingdom in the UNCHR inter-sessional Working Group. In our respectful view, these positions are unjust and obstructionist. In some cases, they squarely contradict the very values and principles that the UK government claims to uphold.

F. Although we could have presently examined the unjustified positions of a number of other States in the UNCHR Working Group, we have selected the United Kingdom. There are a number of reasons for our choice. One significant factor is that the obstructionist UK interventions are impeding our efforts towards attaining unified supportive positions from the EU bloc of States.

Human rights obligations of U.N. and Member States

G. In regard to the human rights obligations of the United Nations and Member States, the Purposes and Principles in the *U.N. Charter* are explicit and clear. They require actions "promoting and encouraging respect" for human rights and not undermining them. The duty to promote respect for human rights is to be based on "respect for the principle of equal rights and self-determination of peoples".

H. In addition, the international obligation to respect human rights, including the right of self-determination, is of an *erga omnes* character. An *erga omnes* obligation refers to a duty that is binding upon all States. It is also a duty owed to the international community as a whole.

I. Yet in the UNCHR Working Group, the UK and a number of other participating States pay little attention to the Purposes and Principles of the *U.N. Charter*. They also show little respect for their *erga omnes* obligations relating to the right of self-determination and the prohibition against racial discrimination.

J. This ongoing, illegitimate conduct has been a major contributor to the lack of progress on the draft *U.N. Declaration* within the UNCHR Working Group. Clearly concrete and effective measures are required by the United Nations, in terms of ensuring the proper functioning of the current standard-setting process and upholding the *U.N. Charter* and its most basic precepts.

Unjust positions of the UK government

K. The UK, U.S. and a number of other States are repeatedly striving to dilute or lower standards in the current text of the draft *U.N. Declaration*. Yet, in regard to key issues, they have failed to provide credible substantiation for their positions. State proposals that would undermine our human rights have not been consistent with international law and its progressive development. This is especially the case for the issues highlighted in this Annex.

L. Generally, the UK government positions expressed at the UNCHR Working Group have been highly unhelpful, discriminatory and intolerant on some of the key aspects of the draft *U.N. Declaration*. Too often, on these essential issues, the UK government takes a position that undermines the status and rights of Indigenous peoples globally. Too often, the UK government aligns itself with the United States or others, who express some of the most regressive positions within the U.N. standard-setting process.

M. Tolerance entails respect of the "rich diversity of our world's cultures". This is not only a moral duty, but also a political and legal requirement. In this whole context, the UK government has a responsibility to combat intolerance and not to contribute to it.

N. In contrast, outside the current standard-setting context relating to Indigenous peoples, the same government expresses its firm adherence to many international values and principles that are uplifting and serve to strengthen international human rights law. These ongoing contradictions and double standards are extremely unfair and discriminatory against Indigenous peoples.

UK denial of Indigenous collective human rights

O. To date, the UK government has been adamant in maintaining its opposition to Indigenous peoples' collective rights, regardless of what human rights arguments under international law are advanced by Indigenous representatives or others.

P. The UK claims to have a "long-held" position: with the exception of the right of self-determination, the UK does not accept the concept of collective rights. This statement is both inaccurate and misleading. Over the centuries, the UK government has entered into numerous treaties with Indigenous peoples and multilateral conventions with States, issued Royal Proclamations, and adopted domestic laws that include collective rights.

Q. Therefore, it is manifestly unfair and contrary to principles of justice and good faith for the UK government to now declare that, except for the right of self-determination, it does not recognize the concept of collective human rights.

R. It is erroneous for the UK government to proclaim that, except for the right of self-determination, recognition of collective human rights would constitute a "grant" of "new collective rights" to Indigenous peoples. Under both international and domestic law, our collective rights are "inherent" or "pre-existing". They are not dependent on recognition by States for their existence. At the same time, the UK refuses to recognize that the right of self-determination under international law fully applies to Indigenous peoples.

S. The UK government misconstrues the meaning of "equality" under international and domestic law. In order to achieve substantive equality, it is often necessary to treat different peoples differently. Conversely, treating everyone the same can result in

inequality and unjust treatment. This is especially the case with Indigenous peoples and our distinct collective rights.

T. Under international law, Indigenous rights are human rights and are predominantly of a collective nature. Consistent with equality, non-discrimination and other human rights principles, Indigenous peoples and individuals are free and equal to all other peoples and individuals in dignity and rights.

U. The significance of the collective human rights of Indigenous peoples is far-reaching. Our collective rights are essential for the integrity, survival and well-being of our distinct nations and communities. They are inextricably linked to our cultures, spirituality and worldviews. Collective rights are also critical to the effective exercise and enjoyment of the rights of Indigenous individuals.

V. In the UNCHR and other forums, the UK government actively promotes "respect for *all* human rights" as a "foundation for freedom, justice and peace". Yet, in relation to Indigenous peoples, the same government insists that it can refuse to recognize most of our collective human rights in the draft *U.N. Declaration*.

W. Outside the Indigenous context, UK Prime Minister Tony Blair has publicly advocated a broad agenda of justice and security that must be "fair to all peoples by promoting their human rights, wherever they are". However, this principled view is directly contradicted by the UK government's position in relation to Indigenous peoples' human rights worldwide.

X. For centuries, Indigenous peoples' cultures and societies have exercised collective rights. Yet the stated position of the UK government implies that it knows best what is beneficial for Indigenous peoples and individuals – that is, a rejection of collective rights in favour of individual rights. This attitude smacks of Eurocentric arrogance and colonialism of an earlier era.

Y. Clearly, the U.K. government appears to have little appreciation of the ongoing devastating effects that forced assimilation and denial of collective rights have had on Indigenous peoples.

Attempts to eliminate use of term "cultural genocide" or "ethnocide"

Z. Instead of effectively addressing the devastating and ongoing impacts of cultural genocide or ethnocide against Indigenous peoples, a number of States in the UNCHR

Working Group have recommended eliminating these terms from the draft *U.N. Declaration*. These States continue to insist "the terms 'ethnocide' and 'cultural genocide' [a]re not terms … generally accepted in international law".

AA. These State positions are erroneous and misguided. First, the various elements identified as constituting cultural genocide or ethnocide are considered as violating international and domestic human rights standards. Second, as indicated in decisions of the International Criminal Tribunal for the former Yugoslavia, evidence of such acts can and does play an important role in establishing the intent to commit genocide under international law.

BB. We strongly urge the United Kingdom, United States, Canada and other States to fully acknowledge the existence and usage of these concepts under international law. It would be unconscionable for States to seek either more restrictive or less graphic legal terminology to describe the atrocities committed by many of them, among others, against Indigenous peoples worldwide. States must support the effective development of human rights standards that prevent recurrence of the horrific actions that these concepts entail.

Discriminatory application of human right of self-determination

CC. The right of self-determination is a collective human right and a prerequisite for the enjoyment of all other human rights. Since the UK has ratified both international human rights Covenants, it has an affirmative legal obligation to "promote the realization of the right of self-determination, and … respect that right, in conformity with the provisions of the Charter of the United Nations".

DD. Yet the UK and certain other States are seeking to restrict or deny Indigenous peoples our status as "peoples", in order to restrict or deny our right of self-determination or other collective human rights. These actions violate the *International Convention on the Elimination of All Forms of Racial Discrimination* and the *International Covenant on Civil and Political Rights* and are discriminatory.

EE. The U.K. also claims that a definition of the term "peoples" or "Indigenous peoples" is required in the draft *U.N. Declaration*. Based on past experience, this would open up a very divisive and unnecessary debate. Neither the term "peoples" nor "minorities" has been defined satisfactorily in international law. Yet the practice of the United Nations demonstrates that this has not been a factor for the success or failure of any instrument.

FF. In regard to the right of self-determination, the approach of both the United Kingdom and United States in the Working Group has been to openly attack the content of the draft *U.N. Declaration* and demand substantive changes. Their proposed changes, if adopted, would lead to a lesser and diminished right of self-determination than what applies to all other peoples in international law. This would violate the peremptory norm that prohibits racial discrimination.

GG. In insisting on these far-reaching changes, the UK government is ignoring the conclusions of U.N. treaty bodies. For example, the U.N. Human Rights Committee has confirmed that the right of self-determination of Indigenous peoples, like all peoples, is affirmed in the human rights *Covenants*.

Denial of Indigenous resource rights under the human rights Covenants

HH. Despite ratifying both Covenants affirming the natural resource rights of *all* peoples in Article 1, para. 2, the UK government has refused to affirm that these same rights *apply fully and without discrimination* to Indigenous peoples.

II. Both the U.N. Human Rights Committee and the Committee on Economic, Social and Cultural Rights have explicitly applied to Indigenous peoples the natural resource provision in Article 1, para. 2 of the Covenants. Also, the U.N. Committee on the Elimination of Racial Discrimination has emphasized that Indigenous peoples have the "right to own, develop, control and use their communal lands, territories and resources".

JJ. Yet, neither the Covenants nor the treaty monitoring bodies appear to have had any effect on the biased positions of the UK government. Thus, the interrelated principles of democracy, rule of law and respect for human rights – as applied to Indigenous peoples – are being seriously compromised.

KK. In all regions of the world, the rights to lands, territories and natural resources are of critical importance to Indigenous peoples. Our lands, territories and resources continue to be prime targets for dispossession by States.

LL. Denial of the right to lands, territories and natural resources under international law will perpetuate the impoverishment and injustices that most Indigenous peoples suffer. These same denials and related human rights violations are the primary root causes of disadvantage that must be fully redressed.

MM. In the present context, this would entail explicit affirmation under international law of our right of self-determination, including our land and resource rights.

"Free, prior and informed consent" – operative legal norm

NN. Consistent with the right of Indigenous peoples to self-determination under international law, a central issue in matters relating to natural resources and development matters is "free, prior and informed consent". This is another issue that has not been supported by the UK government within the UNCHR Working Group.

OO. In relation to Indigenous peoples, the principle of "free, prior and informed consent" must be affirmed as the operative legal norm in the draft *U.N. Declaration*. Though often violated in practice, this standard is clearly the most consistent with international law and its progressive development.

Undermining of Indigenous peoples' dignity

PP. "Dignity" is inextricably linked to such fundamental principles as respect for human rights, non-discrimination, rule of law, justice and peace. Upholding the principle of human dignity is both a collective and individual responsibility of States.

QQ. Denial of Indigenous peoples' human rights has caused debilitating poverty, which in turn further precludes enjoyment of these rights. The resulting deprivation of well-being is incompatible with human dignity.

RR. Yet the UK government is severely undermining the dignity and human rights of Indigenous peoples globally. This is continually being done in such far-reaching ways as: denying Indigenous peoples' collective human rights; challenging our right of self-identification; proposing discriminatory double standards on our right to self-determination and our rights to lands, territories and natural resources; and overall weakening the draft *U.N. Declaration*.

Promoting global insecurity of Indigenous peoples

SS. Over 300 million Indigenous peoples in the different regions of the world are being severely impacted by the unjust positions being taken by the UK and certain other States that participate in the current U.N. standard-setting process on our human rights.

TT. If these UK positions were adopted, the integrity of our nations, communities and societies would be undermined for present and future generations. It is universally recognized that all cultures form part of the common heritage of humankind. The UK government's policies and positions challenge in effect the very core of universal principles and values relating to diversity, tolerance and dignity. This form of neo-colonialism and Eurocentric dominance must be wholly rejected.

UU. In other forums, the UK government has highlighted the importance of ensuring human rights and "human security" in distant countries, explaining that these key issues are indivisible from and affect the interests of the UK and other States. Yet by undermining the existing text of the draft *U.N. Declaration*, the UK government is unfairly lowering the "minimum standards for the survival, dignity and well-being of the indigenous peoples of the world" that the U.N. Sub-Commission and WGIP have already approved.

VV. Rather than ensuring our security, the UK and U.S. governments are promoting the insecurity of the world's Indigenous peoples by undermining our fundamental status and human rights.

WW. Good health is instrumental to human dignity and human security. Severe violations and ongoing denial of Indigenous peoples' human rights severely undermine the integrity of Indigenous nations, communities and families and impair the mental and physical health and security of individuals. The prejudicial global implications of the UK positions being taken are wide-ranging in relation to Indigenous peoples including women, youth and children.

XX. We urge the UK government to fundamentally reassess its policies and positions and adopt a rights-based approach. Such a perspective must unequivocally strengthen human security and fully respect our human rights.

Failure of UK to honour its international obligations

YY. As already described, UK government positions in the UNCHR Working Group that undermine Indigenous peoples' human rights or otherwise discriminate against us violate the Purposes and Principles of the *U.N. Charter*.

ZZ. On human rights issues, the lack of impartiality in the positions of the UK and certain other States have grave implications that go far beyond the more than 300 million Indigenous people in different regions of the globe. **Selective or discriminatory**

application of the *Charter*'s Principles – whether by developed or developing States – substantially weakens the United Nations and the international human rights system as a whole.

AAA. Strict adherence to the Purposes and Principles of the *U.N. Charter* is of the utmost importance. This is especially crucial in the current geo-political context. A diverse range of measures is being implemented internationally by the U.N. and its Member States. These include promotion of international peace, security and cooperation; combatting terrorism; prosecution of crimes against humanity; and addressing other issues of global concern.

BBB. The United Kingdom is currently a member of the U.N. Commission of Human Rights. According to the UK government, "responsibilities come with membership" of the UNCHR and each member "has a duty to enhance domestic and international protection of human rights". Based on the UK government's own criteria, the UK is severely undermining the credibility of the UNCHR as well as its own reputation.

CCC. The United Kingdom is also one of the five Permanent Members of the U.N. Security Council. This elite and privileged group has onerous responsibilities relating to international peace and security. All Security Council Members should be role models in terms of upholding the basic values and principles of the *U.N. Charter*.

DDD. Similarly, the United Kingdom is a participating member of the Organization for Security and Cooperation in Europe. Adherence to the Purposes and Principles of the *U.N. Charter* and other commitments "provides the basis for participation and co-operation" in this regional organization.

EEE. As the UK government is well aware, representatives of Indigenous peoples have initiated discussions with European Union (EU) States with the objective of seeking unified support from them for Indigenous human rights. This would expedite consensus-building within the UNCHR Working Group. As long as the UK remains rigidly committed to its regressive positions on Indigenous human rights, it will be exceedingly difficult for us to make significant progress within the EU context.

FFF. Based on the above considerations, Indigenous peoples worldwide, as well as the broader international community, simply cannot afford the current lack of accountability and discriminatory double standards of certain so-called democratic States.

Need for fundamental reform of UK human rights strategies and positions

GGG. Serious questions arise as to why the UK government would take such firm positions against the human rights of Indigenous peoples. After all, these positions run counter to international law; contradict many of the universal principles and values that the UK claims to support; and undermine the international human rights system, as well as the credibility and reputation of the UK.

HHH. In relation to Indigenous peoples, historical and contemporary experiences strongly suggest that numerous States, commercial companies and others simply wish to seize, exploit or otherwise benefit from our lands, territories and resources. Present UK policies and actions seem to be unjustifiably motivated by other UK interests. The urgent issue of respecting Indigenous human rights is being overlooked in favour of State self-interest.

III. In particular, in the UNCHR Working Group, the adoption of strong and effective human rights norms to prevent and redress the widespread dispossession of Indigenous lands, territories and resources remains of central importance. In light of the damaging implications of the UK positions for Indigenous peoples and others in the global context, we strongly urge the government to undertake a profound reform of its human rights strategies and positions.

JJJ. Indigenous peoples are determined to achieve a strong and uplifting Declaration through the current standard-setting process. We welcome and expect the United Kingdom and other States to contribute positively to this urgent and vital process.

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