Urgent information for Indigenous peoples of all regions

UN DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

Report of the Global Indigenous Peoples’ Caucus Steering Committee

This report contains the latest and important news on the Declaration
Responses are needed by Tuesday, September 3, 12:00 noon, New York time.
You will find attached four documents for your review.

In 2006 the Global Indigenous Peoples’ Caucus decided by consensus, and thereafter on several occasions confirmed, that Indigenous Peoples’ work on the Declaration on the Rights of Indigenous Peoples be coordinated through the Global Indigenous Peoples’ Caucus Steering Committee (“Steering Committee”). Members of the Steering Committee are appointed from each of the seven regions of the world consider issues at the global level and to coordinate communications in their regions. Les Malezer, the Pacific regional representative and Chairperson of the Global Indigenous Peoples’ Caucus, is convenor of the Steering Committee.

The Steering Committee met in New York during the week of August 27-31. (A list of the participating regional coordinators is attached.) This is a report of these meetings.

Background

Since the adoption of the Declaration on the Rights of Indigenous Peoples in June 2006 by the UN Human Rights Council, the Global Indigenous Peoples’ Caucus has lobbied hard for the UN General Assembly to endorse the Declaration without changes or amendments. The decision in December 2006 by the UN General Assembly to delay the adoption of the Declaration was a serious setback for this effort. Nevertheless, the Global Indigenous Peoples’ Caucus has continued to advocate for the Declaration in New York, in Geneva and around the world.

In recent months, the governments seeking approval of the Declaration adopted by the Human Rights Council – these governments are known as the “Co-sponsors” - have indicated that the achievement of outright adoption in the UN General Assembly was proving to be extremely difficult as they continued to engage in consultations with other states.

In May of 2006 some of the Co-sponsors - Guatemala, Mexico and Peru - engaged in serious discussions in New York with the Africa Group of States (the “Africa Group”). They undertook these consultations to see if an acceptable agreement could be achieved between the Co-sponsors and the Africa Group leading to final adoption of the Declaration.

Such consultations among states were also recommended in the report of Ambassador Davide, the “facilitator” appointed by the President of the UN General Assembly to bring the opposing States closer together.
The Indigenous Peoples Caucus has continued to call for the adoption of the Declaration as adopted by the Human Rights Council. Indigenous peoples have not been included in the discussions between the Co-sponsors and the Africa Group. We also have no capacity to participate in the final decision by the General Assembly.

**Developments this week**

On Tuesday, August 29, the Co-sponsors met with the Steering Committee to report on their negotiations with the African Group. They reported that this has been a very difficult process, but that they were now very close to an agreement. However, a few details remained unresolved in the negotiations.

They did not present the Steering Committee with any of the language being discussed, and did not go into details as to what the emerging agreement looked like. They did reaffirm that an agreement would need to include a specific reference to State territorial integrity in the Declaration. In return, all key provisions including on land and resource rights, self-determination, free prior and informed consent and treaties remain intact.

The co-sponsors said the reason they had entered into negotiations was that it was clearly impossible to reach an agreement with the African Group that did not include at least some amendments to the Declaration text. The co-sponsor group deems it much too risky to push the Declaration through the General Assembly against opposition from the African Group. Very unfavourable amendments would be introduced during the debate at the General Assembly and it would be impossible to control the outcome. Hence, in the co-sponsor group’s assessment it was necessary to enter into text negotiations with the African Group.

The Steering Committee took note of this report from the Cosponsors.

The Committee expressed its appreciation for the co-sponsors’ efforts to reach an acceptable agreement on the Declaration. However the Steering Committee emphasised that it would not comment on any arrangement until they had time to see and consider all amending text under the arrangement. The States said they would provide the Steering Committee with the agreed text as soon as a formal agreement with the African Group was confirmed.

The Co-sponsors argued that there is a glaring need to now conclude negotiations and adopt the Declaration. The “opposing” states – predominantly Canada and New Zealand – are reacting strongly to signals that an agreement with the Africa Group might soon be concluded. They are demanding to be included in negotiations and that they have produced proposed language (see attachment) for amendments to the Declaration.

The Co-sponsors expressed the opinion that if the adoption of the Declaration is delayed into the 62nd session of the General Assembly (less than three weeks away) it would be impossible to keep Canada, New Zealand et al – and their proposed amendments - out of the negotiations. The only outcome would, in the co-sponsors’ opinion, be a seriously diluted Declaration.
The co-sponsor group confirmed that an agreement with the Africa Group would include a pact to jointly vote down any amendments on the floor of the General Assembly, coming from Canada, or other opposing States.

The Chair of the Steering Committee distributed a document containing the amendments to the Declaration that he foresaw might be included in a negotiated agreement between the co-sponsor group and the African Group. Since these amendments were not confirmed, the Steering Committee decided not to distribute the document. It was considered better to wait for an official text before circulating the agreement in the regions.

Nevertheless, the Steering Committee discussed and analysed the amendments, as foreseen and presented by the committee Chair. The Steering Committee noted that there were much fewer amendments than had been sought by the Africa Group or the Canada Group.

The Steering Committee quickly concluded that, of the envisioned amendments, the one that caused the most concern was the inclusion of a reference to territorial integrity in Article 46. The committee understood that it would be nearly impossible to avoid a reference to territorial integrity in the Declaration. It is evidently too important to many African (and also Asian) states. Some committee members, however, thought that the proposal was discriminatory, and potentially could be harmful to Indigenous peoples and the rights in the Declaration. Other committee members did not see any problem with the proposed language.

Given that an agreement between the co-sponsor group and the African Group was imminent, the Steering Committee recognized that it would be very difficult, probably impossible, to influence the text amendments at this stage. Some committee members proposed that the language on territorial integrity, if it had to be included, should at least be stated in a way that was more consistent with text that already appeared in international law. The committee decided to make an attempt to craft more acceptable language on territorial integrity to be handled over to Mexico for use in the final negotiations with the African Group. Two paragraphs with suggested wording along those lines were drafted to present to the co-sponsors without delay.

On the evening of August 29, the Chair of the Steering Committee together with the Chair of the Permanent Forum, and also regional member of the Steering Committee, Victoria Tauli-Corpuz, met with the co-sponsors and presented the committee’s suggested wording for improvements on the language on territorial integrity.

**The Co-sponsor/ Africa Agreement**

On the afternoon August 30, the government of Mexico informed the Steering Committee by telephone call that the co-sponsor group and the African Group had reached an agreement on the Declaration. On August 31 the co-sponsors met with the Steering Committee and presented the text of the negotiated agreement, which contained nine proposals to change text in the Declaration as passed by the Human Rights Council.

Committee members first thanked the co-sponsors for all their efforts and for being able to successfully reach an agreement with the African Group. The Steering Committee reminded the Co-sponsors that Indigenous peoples in each of the seven regions would now study the
agreement. Following the hasty consultations the Steering Committee would respond to the co-
sponsors. The committee agreed to meet with the Co-sponsors after the regional consultations
and report back indigenous people’s positions on the Declaration with the negotiated changes.

Responding to questions and concerns from members of the Steering Committee, the co-sponsors
offered the following information about the agreement:

- In their view this is the final document. The African Group has committed to not come
  forward with any further request for additional amendments to the Declaration and has
  agreed to vote against any amendments made on the floor.

- The co-sponsors were satisfied that they had managed to reach an agreement with the
  African Group that includes amendments to very few of the provisions in the Declaration,
  in particular compared to the long list of amendments that the African Group initially
  wanted to see included in the Declaration. The co-sponsors further stated that they were
  very pleased to present an agreed Declaration that leaves all – in their opinion – the most
  central articles in the Human Rights Council Declaration intact. These include the articles
  on self-determination; lands, territories and natural resources; free, prior and informed
  consent; treaties; and pre-ambular paragraphs recognizing inherent and equal rights of
  Indigenous peoples.

- The co-sponsors stated that even though, technically speaking, it is not a closed
  document, in their view it would not be possible to open up the negotiated text for any
  further refinement by the Indigenous Peoples. Other interested parties – such as opposing
  states like Canada, New Zealand and the Russian Federation – would also find their way
to the negotiating table.

- They further stated that the agreement must be seen as an integrated whole or “package”.
  This means that if the co-sponsor group would go back to the African Group and attempt
  to re-negotiate the language on territorial integrity, the African Group would instantly
  respond by wanting to open up the articles on lands and natural resources for negotiation,
  which are unchanged from the Human Rights Council text. Hence, in the co-sponsor
  group’s opinion, it is not a viable option for Indigenous peoples to try to further amend
  the agreed changes as presently drafted. Their interest now is to know whether
  Indigenous peoples can accept the Declaration or not with the newly negotiated changes.

- They repeated what has always been the case: that the co-sponsors will not go ahead and
  push for adoption of a Declaration that Indigenous peoples do not want.

- If a Declaration that enjoys the support of the African Group is presented to the UN
  General Assembly, the co-sponsor group is certain that the vast majority of Asian, Eastern
  European and Caribbean states will also support the Declaration. Western Europe and
  Latin America’s votes have already been secured. (Currently there are 67 co-sponsors, 15
  additional countries who voted in favour of the Human Rights Council resolution and the
  African Group adds an additional 51 votes.)
If the Indigenous peoples of the world support the adoption of the Declaration as agreed to by the co-sponsors and the African Group, the co-sponsors believe it will be adopted by the UN General Assembly with an almost unanimous vote, with only very few opposing States.

Discussions regarding changes to Article 46 and “territorial integrity”

The co-sponsors were well aware that many Indigenous peoples had argued for many years against the inclusion of a provision upholding state territorial integrity in the Declaration. They explained that they understood that this might be the most difficult provision for Indigenous peoples to accept in the newly negotiated text. They also once again expressed that an agreement with the African Group would not be possible without this inclusion.

Members of the Steering Committee again asked the co-sponsors why their suggested wording on territorial integrity had not been included in the final agreed changes. The co-sponsor group reported that it was not possible to include the language on territorial integrity submitted by the Steering Committee, because it would have lead to the African Group insisting on opening up the land and resource articles for changes.

They further stated that in their view it is not necessary to include the language on territorial integrity that could make the provision to more acceptable Indigenous peoples, since that language is already included in the Declaration, through reference to the Vienna Declaration and Programme of Action in the preamble.

Other Steering Committee members asked that if in the view of the co-sponsors the provision on territorial integrity now included in Article 46 would affect all the rights in Declaration since the paragraph begins “Nothing in this Declaration may be interpreted as implying…”. The co-sponsors responded that in existing international law, territorial integrity is clearly tied to the exercise of the right to self-determination and therefore would not be construed as affecting other rights.

In further discussion, members of the Steering Committee responded to concerns expressed for Indigenous peoples’ territorial integrity by affirming that in their view Article 26 left intact in fact recognizes Indigenous peoples’ territorial integrity over lands they have traditionally owned and occupied. Article 37 on treaties further affirms these rights.

Indigenous peoples’ responses needed immediately

The Steering Committee is immediately sending out the Declaration as agreed by the co-sponsor group and the African Group. This document is going to Indigenous peoples globally.

This is obviously a decisive moment in the history of Indigenous peoples struggle for respect and recognition of our rights. **Indigenous peoples must now decide whether they can now accept the Declaration or not,** with the new changes. As agreed by the Global Indigenous Caucus, we now require an orderly process to decide on the Declaration.
To register your position on the Declaration, please *do not contact the states directly*, or circulate your position through list-serves etc.

Please convey your opinions to the regional coordinator in your region. The regional coordinators will report back to the Steering Committee on the responses from each region. The Steering Committee will let the co-sponsor group know whether Indigenous peoples support adoption of the Declaration with the changes or not. By using this agreed manner of communicating, we avoid confusion and disclosing of information that can be used by opposing states.

*The regional coordinators need to receive your responses by Tuesday, September 4 at 12:00 noon, New York time.*

The Steering Committee will meet with co-sponsors, to deliver the results of the consultations. If the message is that Indigenous peoples can support the Declaration with the changes, the co-sponsor group will set meetings with other States, notably the Asian and the Eastern European Groups at the end of the week to present the agreed Declaration to them.

**Please consider the attached documents.**

In taking a position on the Declaration, indigenous representatives may find it helpful to also study the African Proposal and the proposed amendments to the Declaration tabled by Canada et al. The African Proposal shows the starting point for the African Group coming into the negotiations, and the kinds of amendments that could potentially be presented on the floor. The Canada et al document shows proposed amendments that would have to be considered in any negotiations that go beyond General Assembly’s 61st session.

Attached are the following documents:

- Declaration with changes (“Co-sponsor/ Africa agreed draft”). *Changes are highlighted.*
- The Canada/ New Zealand/ Russia/ Colombia proposal (“Canada et al Proposals”).
- A list of the regional coordinators and their contact information.

There are very different kinds of amendments contained in these documents: the Africa Proposed Amendments contains changes to 36 provisions and the Canada et al Proposal contains changes to 20 provisions. The new Co-sponsor/ Africa agreed draft has nine amendments.

The Steering Committee is meeting with the co-sponsor group late Tuesday afternoon or early Wednesday morning, we will need you comments by Tuesday 12:00 noon. We regret the short time given to you on such an important matter, but we are not in charge of the time table. The vote on the Declaration must take place before the end of the 61st Session of the General Assembly on September 17.

Keep watch. In some regions there will be follow-up messages from the regional coordinators shortly. Again, please respond to them as soon as possible.