

# THE UNITED NATION DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES: A MAJOR VICTORY OR DEFEAT FOR INDIGENOUS PEOPLES?

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## I. INTRODUCTION

The term “Indigenous Peoples” has no universal standard or fixed definition, but can be used about any ethnic group who inhabit the geographic region with which they have the earliest historical connection. There is no International agreement on the definition of Indigenous Peoples although there have been several attempts to define or describe indigenous peoples. A working definition of it has been formulated by Jose Martinez Cobo, the United Nations Special Rapporteur to the Sub-Commission on Prevention of Discrimination and Protection of Minorities, Indigenous Communities, Peoples and Nations as:

Indigenous Communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sections of the societies now prevailing in those territories, or parts of them. They form at present non-dominant sections of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their own cultural patterns, social institutions and legal systems.<sup>1</sup>

The term “Indigenous” is defined by characteristics that relate to the identity of a particular people in a particular area, and that distinguish them culturally from other people or peoples.

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Henriksen, John B, *Implementation of the Right of Self-Determination of Indigenous Peoples*, INDIGENOUS AFFAIRS ( Copenhagen: International Work Group for Indigenous Affairs) III 2001, pp. 6-21.

Other related terms for Indigenous Peoples include aborigines, aboriginal peoples, native peoples, first peoples, first nations and autochthonous (this last term having a derivation from Greek, meaning “sprung from the earth”). Indigenous Peoples may often be used in preference to these or other terms, as a neutral replacement where these terms may have taken on negative or pejorative connotations by their prior association and use. It is the preferred term in use by the United Nations and its subsidiary organizations. The term “Indigenous” has the common meaning of “having originated in and being produced, growing, living, or occurring naturally in a particular region or environment. Therefore, in a purely adjectival sense any given people, ethnic group or community may be described as being Indigenous in reference to some particular region or location.<sup>2</sup>

## II. MEANING OF “ABORIGINAL”

The word Aboriginal appeared in English since at least 17<sup>th</sup> century and means “First or earliest known, indigenous”, In Latin Aborigines is derived from “Abs” meaning from and “Oregon” which means origin and beginning.

## III. KEY FACTS

Indigenous Peoples worldwide number between 300-500 million, embody and nurture 80% of the world’s cultural and biological diversity, and occupy 20% of the world’s land surface<sup>3</sup>. The Indigenous Peoples of the world are very diverse. Most of them live in remote areas in the world. Indigenous Peoples are divided into at least 5000 peoples ranging from the forest peoples of the Amazon to the tribal Peoples of India and from the Inuit of the Arctic to the Aborigines in Australia<sup>4</sup>. Very often they inhabit land which is rich in minerals and natural resources. In some countries, Indigenous Peoples form the majority of the population, others comprise small minorities.

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<sup>2</sup> *Who are indigenous peoples?* FACTSHEET, UNPFII, <http://www.un.org/esa/socdev/unpfi/documents/>

<sup>3</sup> <http://www.unfpa.org/rights/people.htm>.

<sup>4</sup> *Indigenous Issues*, International Work Group on Indigenous Affairs. See, <http://www.iwgia.org/>.

Indigenous Peoples represent over 4000 different languages of the 6700 languages that are believed to exist today. Most of the Indigenous languages are considered to be endangered, meaning they are at a high risk of being replaced by dominant languages by the end of the twenty-first century.

The Amazon River Basin is about 7 percent of the world's surface area but harbors more than half of the world's biodiversity. The Amazon River is also home to about 400 different indigenous groups.<sup>5</sup>

Indigenous Peoples are the inheritors and parishioners of unique cultures and ways of living. They have retained social, cultural, traditional, economic and political characteristics that are distinct from those of the dominant societies in which they live. Indigenous Peoples are often marginalized and discriminated against because their language, religion, culture, physical characteristics and their whole way of life were different and perceived by the dominant society as being inferior.

#### **IV. ISSUES AND PROBLEMS**

Despite their cultural differences, the various groups of indigenous peoples around the world share common problems related to their rights as distinct people. Indigenous Peoples are the disadvantaged descendants of those peoples that inhabited a territory prior to colonization or formation of the present state. Indigenous peoples around the world have sought recognition of their identities, their ways of life and their right to traditional lands and resources, yet through out history, their rights have been violated. Indigenous peoples are arguably among the most disadvantaged and vulnerable groups of people in the world today.

Today many Indigenous Peoples are still excluded from society and often even deprived of their rights as equal citizens of a state. They face serious difficulties such as the constant threat of territorial invasion and murder, the plundering of their resources, cultural and legal discrimination, as well as a lack of recognition of their own institutions. Indigenous Peoples have prior rights to their territories, lands and resources, but often these have been taken from them or are threatened. They have distinct cultures and economies compared to those of the dominant society. Indigenous Peoples' self-identification as indigenous is a crucial part of their identity.

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<sup>5</sup> [http://en.wikipedia.org/wiki/Amazon\\_Basin](http://en.wikipedia.org/wiki/Amazon_Basin).

All Indigenous Peoples through out world have one thing in common they all share a history of injustice. They were victims of genocide, torture and slavery and denied the right to participate in governing processes of their own states. They have been subjected to new kinds of political conquest and economic plunder in their own native states.

Indigenous Peoples are concerned with preserving land, traditional knowledge, protecting language, culture, customs and traditions and promoting all these to younger generation. They seek greater say and participation in the current state structures and process of development. Like all cultures and civilizations, Indigenous Peoples are always adjusting and adapting to changes in the world. Indigenous Peoples recognize their common plight and work for their self-determination, a cherished dream for them.

## V. ROLE OF UNO

The international community now recognizes that special measures are required to protect the rights of the world's indigenous peoples.

Amongst all the International bodies, it's the United Nation Organization which has taken up the issues of Indigenous Peoples as an important agenda. It has been catalyst for many initiatives related to indigenous peoples. In 1982 the Working Group on Indigenous Populations was established as a subsidiary organ to the Sub-Commission on the promotion and protection of Human Rights. Its mandate was:

- To facilitate and encourage dialogue between governments on fundamental freedoms of indigenous peoples.
- To review events relating to the promotion and protection of human rights and fundamental freedoms of indigenous peoples.
- To give particular attention to changes in international standards relating to the human rights of indigenous peoples.

The Working Group has produced some important studies, e.g. a "Study on Indigenous Peoples and their Relationship to land", but the most important achievement has been the formulation and adoption of UN Declaration on Indigenous Peoples.

In April 2000 the United Nations Commission on Human Rights adopted a resolution to establish the United Nations Permanent Forum on

Indigenous Issues (PFII) as an advisory body to the Economic and Social Council with a mandate to review indigenous issues.

The International Day of the World's Indigenous People is celebrated on 9<sup>th</sup> August every year as resolved by the General Assembly of United Nations. The Assembly has also proclaimed 2005-2014 as the Second International Decade of the World's Indigenous Peoples<sup>6</sup>. The main goal of the new decade will be to strengthen international cooperation around resolving the problems faced by indigenous people in areas such as culture, education, health, human rights, and the environment, the social and economic development.

## **VI. OTHER ACCREDITED ORGANIZATIONS**

Various organizations are devoted to the preservation or study of indigenous issues. Of these, several have widely-recognized credentials to act as an intermediary or representative on behalf of indigenous peoples' groups, in negotiations on indigenous issues with governments and international organizations. These include:

- African Commission on Human and Peoples' Rights(ACHPR)
- Society for Threatened Peoples International(STP)
- International Work Group for Indigenous Affairs(IWGIA)
- Indigenous Peoples of Africa Co-coordinating Committee(IPACC)
- Movement in the Amazon for Tribal Subsistence and Economic Sustainability
- Survival International
- Indigenous Dialogues
- Cultural Survival
- Asia Pacific Indigenous Youth Network<sup>7</sup>

## **VII. UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES**

After more than two decades of negotiations between governments and indigenous peoples' representatives, the UN General Assembly adopted

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<sup>6</sup> WGIP(2001), INDIGENOUS PEOPLES AND THE UNITED NATIONS SYSTEM, Office of the High Commissioner for Human Rights, United Nations Office at Geneva.

<sup>7</sup> [http://en.wikipedia.org/wiki/indigenous\\_peoples](http://en.wikipedia.org/wiki/indigenous_peoples).

the Declaration on the Rights of Indigenous Peoples on 13 September 2007. The Declaration establishes a universal framework of minimum standards for the survival, dignity, well-being and rights of the world's indigenous peoples.

The UN Declaration was adopted by a majority of 143 states in favour, 4 votes against (Australia, Canada, New Zealand and the United States) and 11 abstentions.<sup>8</sup>

### VIII. NATURE OF THE DECLARATION

The UN Declaration on the Rights of Indigenous Peoples is a non-binding text. Nevertheless, the Declaration reflects a growing international consensus concerning the content of the rights of indigenous peoples. It is a step forward in the consolidation of international mechanisms for the protection of the human rights of all persons, to which all the Members of the UN are committed.

### IX. IMPORTANT PROVISIONS OF THE UN DECLARATION

The UN Declaration on the Rights of Indigenous Peoples<sup>9</sup> (“the Declaration”) contains 46 articles in total. It sets out both individual and collective rights which are of fundamental importance to the overall development of Indigenous Peoples. The Declaration can act as a guiding light to the Nations in establishing suitable mechanisms of protection for its indigenous population within their state. Some of the important provisions are:

- a) Right to individual or collective human rights and fundamental freedoms of Indigenous Peoples<sup>10</sup>.
- b) Right to freedom and equality and the right to be free from any kind of discrimination.<sup>11</sup>

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<sup>8</sup> India has voted in favour of the Declaration. Australia, Canada, New Zealand and the US who voted against it have substantial population of indigenous peoples in these countries. The 11 abstentions were: Azerbaijan, Bangladesh, Bhutan, Burundi, Colombia, Georgia, Kenya, Nigeria, Russian Federation, Samoa and Ukraine. See, <http://www.un.org/news/press/docs/2007/ga10612.doc.htm>.

<sup>9</sup> For full text of the “Declaration on the rights of the indigenous Peoples”; see- Resolution adopted by the General Assembly, Sixty-first session, Agenda item 68.

<sup>10</sup> *Id.*, Art.1.

<sup>11</sup> *Id.*, Art.2.

- c) Right to self-determination of political status, economic, social and cultural development.<sup>12</sup>
- d) Right to autonomy or self-government.<sup>13</sup>
- e) Every indigenous individual has the right to a nationality.<sup>14</sup>
- f) Right to life, liberty, security, physical and mental integrity. Freedom from any act of genocide and violence.<sup>15</sup>
- g) Right against forced assimilation or destruction of their culture, dispossession of lands, territories or resources, forced population transfer, and racial or ethnic discrimination.<sup>16</sup>
- h) Relocation of the indigenous peoples only with free, prior and informed consent on just and fair compensation.<sup>17</sup>
- i) Right to maintain, protect and develop the past, present and future manifestations of their cultures. Restitution of cultural, intellectual, religious and spiritual property taken without their prior and informed consent.<sup>18</sup>
- j) Right to establish and control educational systems and institutions and indigenous children's right to all forms of education without discrimination<sup>19</sup>.
- k) State shall promote tolerance, understanding and good relations among indigenous peoples and all other segments of society.<sup>20</sup>
- l) Right to establish their own media in their own languages. States shall ensure that State as well as private owned media duly reflect indigenous cultural diversity.<sup>21</sup>
- m) Right to enjoy full rights given under applicable international and domestic labour laws. States shall protect indigenous children from

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<sup>12</sup> *Id.*, Art.3.

<sup>13</sup> *Id.*, Art.4.

<sup>14</sup> *Id.*, Art.6.

<sup>15</sup> *Id.*, Art.7 (1), (2).

<sup>16</sup> *Id.*, Art. 8(1),(2).

<sup>17</sup> *Id.*, Art. 10.

<sup>18</sup> *Id.*, Art. 11 (1),(2).

<sup>19</sup> *Id.*, Art. 14 (1),(2).

<sup>20</sup> *Id.*, Art.15 (2).

<sup>21</sup> *Id.*, Art.16 (1),(2).

economic exploitation, hazardous work which will be harmful to the child's health and interfere with his education.<sup>22</sup>

- n) Right to participate in decision-making through their representatives and to maintain and develop their own indigenous decision-making institutions.<sup>23</sup>
- o) Right to engage freely in all their traditional and other economic activities and right to just and fair redress on deprivation of their means of subsistence and development<sup>24</sup>.
- p) States shall pay particular attention to rights and special needs of indigenous elders, women, youth, children and persons with disabilities and protection against all forms of violence and discrimination<sup>25</sup>.
- q) Right to maintain and conserve their traditional medicines and health practices, medicinal plants, animals and minerals.<sup>26</sup>
- r) Right to maintain their distinctive spiritual relationship with their lands, territories, waters, coastal seas and other resources<sup>27</sup>.
- s) Right to fair and equitable compensation for confiscation of indigenous peoples lands, territories and resources.<sup>28</sup>
- t) Right to the conservation and protection of environment assisted by the States with effective measures.<sup>29</sup>
- u) No military activities shall take place in the lands or territories of indigenous peoples without effective consultations with them<sup>30</sup>.
- v) Right to maintain and protect traditional knowledge, traditional cultural heritage, human and genetic resources, seeds, medicines, flora and fauna, folklores, literatures, designs, sports, traditional games, visual and performing arts. The right to have intellectual property over these matters.<sup>31</sup>

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<sup>22</sup> *Id.*, Art.17 (1),(2),(3).

<sup>23</sup> *Id.*, Art. 18.

<sup>24</sup> *Id.*, Art. 20.

<sup>25</sup> *Id.*, Art. 21 and 22 (related provisions).

<sup>26</sup> *Id.*, Art.24 (1) [protection to traditional knowledge on medicine]. Also see, Art.31.

<sup>27</sup> *Id.*, Art.25, also see, Arts.26 and 27.

<sup>28</sup> *Id.*, Art.28 (1),(2).

<sup>29</sup> *Id.*, Art.29

<sup>30</sup> *Id.*, Art.30 (1),(2).

<sup>31</sup> *Id.*, Art. 31(1),(2).

- w) States shall obtain their informed consent prior to the approval of any project affecting their lands or territories and other resources.<sup>32</sup>
- x) Right to determine their own identity or membership as per their customs and traditions and the right to obtain citizenship of the States in which they live.<sup>33</sup>
- y) Indigenous Peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.<sup>34</sup>
- z) Indigenous Peoples divided by international borders will have right to maintain and develop contacts with other peoples across borders for spiritual, cultural, political, economic and social purposes.<sup>35</sup>
- aa) States shall honor and recognize treaties, agreements and other constructive arrangements concluded with the Indigenous Peoples.<sup>36</sup>
- bb) States in consultation and cooperation with Indigenous Peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration.<sup>37</sup>
- cc) Indigenous Peoples have the right to have access to financial and technical assistance from states and through international cooperation, for the enjoyment of the rights contained in this Declaration.<sup>38</sup>
- dd) The United Nations System and its specialized agencies and other intergovernmental organizations shall work together to the full realization of the Declaration by mobilizing financial cooperation and technical assistance.<sup>39</sup>
- ee) The UN, its bodies, including the Permanent Forum on Indigenous

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<sup>32</sup> *Id.*, Art. 32(1),(2),(3).

<sup>33</sup> *Id.*, Art. 33 (1),(2).

<sup>34</sup> *Id.*, Art. 34.

<sup>35</sup> *Id.*, Art. 36 (1),(2).

<sup>36</sup> *Id.*, Art. 37(1),(2).

<sup>37</sup> *Id.*, Art. 38.

<sup>38</sup> *Id.*, Art. 39.

<sup>39</sup> *Id.*, Art. 41.

Issues and States shall promote respect and full application of this Declaration and follow up its effectiveness.<sup>40</sup>

- ff) The rights recognized herein constitute the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world.<sup>41</sup>
- gg) Nothing in this Declaration may be construed as diminishing or extinguishing the rights Indigenous Peoples have now or may acquire in the future.<sup>42</sup>
- hh) Nothing in this Declaration may be interpreted by anybody to engage in activity contrary to the Charter of the UN or to impair the territorial integrity or political unity of sovereign and independent states. The rights set forth in this Declaration shall be subject to such limitations as determined by law and in accordance with international human rights obligations.<sup>43</sup>

## X. CRITICAL APPRAISAL OF THE DECLARATION

The Declaration is undoubtedly one of the United Nation's most important initiatives for indigenous peoples. Its adoption by 143 Nations give the strongest indication yet that the international community has committed themselves to the protection of indigenous peoples all over the world. While this Declaration will not be legally binding on States who voted in its favour, and will not, therefore, impose legal obligations on governments. However, the Declaration will carry considerable moral force.

What is seem to be lacking in the Declaration is that it does not define "Indigenous People" in the text. In the light of some controversies with respect to the use of this term the Declaration should have contained an Internationally recognized definition of indigenous peoples.

Most of the provisions of the Declaration are already adopted in the States Constitution and Human Rights Legal Instruments in various forms as a basic or minimum human rights standards. It seems that article 46 of the Declaration which recognize the states territorial integrity or political unity

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<sup>40</sup> *Id.*, Art. 42.

<sup>41</sup> *Id.*, Art. 43.

<sup>42</sup> *Id.*, Art. 45.

<sup>43</sup> *Id.*, Art. 46 (1),(2),(3).

and sovereignty appealed to majority of the states who voted in favour of the Declaration.

The Declaration is the first comprehensive International instrument dealing with indigenous peoples. It covers almost all aspects of the lives of indigenous peoples. Deficiency if any can be rectified in the domestic legislations when the Declaration is given effect by the states.

The given quotation aptly apply to the current Declaration-

*A treaty, in the minds of our people, is an eternal word. Events often make it seem expedient to depart from the pledged word, but we are conscious that the first departure creates logic for the second departure, until there is nothing left of the word<sup>44</sup>.*

#### **XI. WHY SOME COUNTRIES VOTED AGAINST THE DECLARATION?**

Australia, Canada, New Zealand and the United States have voted against the Declaration on different grounds. In Australia, the indigenous Australians includes both the Torres Strait Islanders and the Aboriginal and its population was estimated to be 458,500, or 2.4% of the total population<sup>45</sup>. Aboriginal and Torres Strait Islander people are disadvantaged across a range of socio-economic factors reported in the 2001 Census. They experienced lower incomes than the non-indigenous population, higher rates of unemployment, poorer educational outcomes, higher rates of ill health and lower rates of home ownership.

These facts fail to explain why Australia did not favour the Declaration. Australia's representative said his Government had long expressed its dissatisfaction with the references to self-determination and their potential to be misconstrued, on the extension of indigenous intellectual property rights

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<sup>44</sup> Declaration of Indian Purpose (1961) American Indian Chicago Conference.

<sup>45</sup> As per census ( by Australian Bureau of Statistics) Aboriginal and Torres Strait Islander people have inhabited Australia for around 60,000 years. They are ethnically and culturally different from one another. Historically , aboriginal people are from mainland Australia and Tasmania. Torres Strait Islanders come from the islands between the tip of Queensland and Papua New Guinea. The rest of Australia's people are migrants or descendants of migrants, who have arrived during the past two centuries from some 200 countries. [ source: Australian Government, Department of Foreign Affairs and Trade].

as unnecessary under current international and Australian law and expressed concerns that the Declaration places indigenous customary law in a superior position to national law.<sup>46</sup> They are of the view that, "There should only be one law for all Australians and we should not enshrine in law practices that are not acceptable in the modern world."<sup>47</sup> They seem to have taken a very narrow view of Self-determination applying it only to situations of decolonization and where a particular group with a defined territory was disenfranchised and was denied political or civil rights. The distinctiveness of people's identity and their rights to preserve their heritage should have been duly acknowledged.

Canada has over 1.3 million Aboriginal populations in 2001; it represents 4.4% of the total population.<sup>48</sup> Canada's aboriginals face problems such as housing shortages, higher teenage pregnancy and suicide rates, and lower life expectancy and school graduation rates than the non-aboriginal population. An estimated 40% of the aboriginal population lives in poverty, compared with 15.7% of the country as a whole.<sup>49</sup> Aboriginal people now total 16.4 percent of all AIDS cases in Canada.<sup>50</sup> Canada said that while it supported the spirit of the Declaration, it contained elements that were "fundamentally incompatible with Canada's constitutional framework. They took objection particularly to articles 19 which required governments to secure the consent of indigenous peoples regarding matters of general public policy and articles 26 and 28 which could allow for the re-opening or repudiation of historically settled land claims. They regarded the document as "unworkable in a western democracy under a constitutional government." It is believed that Canada has worked hard at the UN to persuade other

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<sup>45</sup> Matters of Urgency : United Nations Declaration on the Rights of Indigenous Peoples, Senate Hansards, 10 September 2007.

<sup>46</sup> Quoting Mal Brought, Australia's Minister for Families, Community Services and Indigenous Affairs, referring to the provision regarding the upholding of indigenous peoples' customary legal systems.

<sup>47</sup> Aboriginals of Canada are: North American Indian, Metis and Inuit. Their population has good growth rate.

<sup>48</sup> Reported in BBC news, *Canada Outlines native cash deal*, November 2005.

<sup>49</sup> Reported in CBC news, *Aboriginal People: Canada's most vulnerable population*.

<sup>50</sup> *Aboriginal Women Protest Ottawa's Refusal to back UN Declaration*, published on CBC news, Canada.

countries to withdraw their support of the Declaration. Joseph Ole Simulate coordinator of the African Regional Indigenous Caucus, described Canada's actions at the UN as "a crime against indigenous people globally, and a crime against indigenous people in Canada". The decision of the Canadian government to vote against it is receiving wide criticism nationally and internationally. Ellen Gabriel, president of Quebec Native Women, said "Canada presents itself as a defender of human rights, but it's not living up to that reputation. It's kind of hypocritical of Canada not to support this Declaration".<sup>51</sup> The International Indigenous Women's Forum passed a resolution calling on all nations to back aboriginal rights.

The indigenous peoples of USA are called Native Americans, American Indians, Indians, Amerinds, Indigenous, Aboriginal or Original Americans, Alaska Natives. It makes up 2 percent of the population, with more than 6 million people identifying themselves as such and 1.8 million are registered tribal members.<sup>52</sup>

In its explanation for not voting in favour the United States says that the States had been given no opportunity to discuss it collectively. The Declaration had been adopted by the Council in a splintered vote. The Declaration should have been written in terms that were transparent and capable of implementation. They had problems with many of its provisions such as, Self-determination, lands and resources, redress and the nature of the Declaration which were found to be flawed. The text as a whole was unacceptable to them.<sup>53</sup>

The Maori, New Zealand's indigenous population, migrated from Polynesia around 1000 years ago. They comprise 14% of New Zealand's Population. It is a multicultural South Pacific nation.<sup>54</sup> New Zealand's Minister

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<sup>51</sup> Alaska Natives are: Yupik, Inupiat Eskimos, Aleuts. There are also many southwestern US tribes as Yaqui, and Apache. See, *Indigenous Peoples of the Americas*, Wikipedia.

<sup>52</sup> Position of the US ( explanation of vote by Advisor Robert Hagen and document), *Observations of the United States with respect to the Declaration on the rights of indigenous Peoples*.

<sup>53</sup> Refer, <http://www.stats.govt.nz/census/default.htm>.

<sup>54</sup> *Maori Party's head in the clouds*, New Zealand's government press release ,via [scoop.co.nz](http://scoop.co.nz), 14 September 2007.

of Maori Affairs described the Declaration as “toothless”, and said, “There are four provisions we have problem with, which make the Declaration fundamentally incompatible with New Zealand’s constitutional and legal arrangements.” Article 26 in particular, he said, “appears to require recognition of rights to lands now lawfully owned by other citizens, both indigenous and non-indigenous. This ignores contemporary reality and would be impossible to implement.”<sup>55</sup>In reply, the Maori Party leader Pita Sharpies said it was “shameful to the extreme that New Zealand voted against the outlawing of discrimination against indigenous people; voted against justice, dignity and fundamental freedoms for all.”<sup>56</sup>

Overall, it was unfortunate that New Zealand with such high percentage of indigenous population voted against the Declaration. The same can be said about Canada, USA and Australia. It was a historical opportunity for all to take a meaningful and effective action at home and abroad to promote the rights of indigenous people based on its existing human rights obligations and commitments. The USA’s view that States have not been given enough opportunity to discuss the Declaration is not tenable in view of the fact that the Declaration was the product of over two decades of negotiations. Ironically, Canada originally played an important leadership role in the UN working group that finalized the text. However, since the election of the Conservative government, Canadian officials lobbied to have the Declaration re-opened for further negotiation and to encourage other states to oppose its adoption. It also must be noted that much of the supporters of the document have been European countries with few indigenous citizens, such as Denmark and Germany, and much of Latin America, whose record of respecting indigenous rights is often poor. The adoption of the Declaration is a positive sign for the indigenous peoples of these countries.

“If a few states do not accept the Declaration, then it would be a reflection on them rather than the document,” said Les Malabar, an aboriginal leader from Australia, before the resolution was presented to the General Assembly.

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<sup>55</sup> NZ indigenous rights stance ‘shameful’- Maori Party,stuff.co.nz,14 September 2007.

<sup>56</sup> Rights’ Indigenous Declaration still powerful, GALDU.

When the Declaration was only in draft form before its adoption, it was the basis for the formulation of the indigenous People's Rights Act in the Philippines and also used as a framework for changing constitution in Latin America.<sup>57</sup>

The Declaration is not legally binding, but it represents a dynamic instrument of international norms that will help to protect indigenous peoples from discrimination and marginalization. Even the Universal Declaration of Human Rights is/was non-binding. Now many parts of it are customary international law. It's not perfect and violations still occur, but it's there. It's a global rallying point for change and justice. We have criminal penal provisions in the states which are legally binding on every person, but it doesn't mean crime is not there anymore. The importance of the adoption lies in the fact that until now much of the content of emerging norms on indigenous rights have been contested and controversial. The Declaration is now solid evidence of evolving standards pertaining to indigenous peoples in international law. The adoption of the Declaration by the General Assembly is confirmation of the crystallizing of these rights into a widely accepted normative framework.

## **XII. INDIAN POSITION ON INDIGENOUS PEOPLES**

The government of India refers to indigenous peoples as "Scheduled Tribes", however, Adivasi has become the popular term for India's indigenous or tribal peoples. It is a Sanskrit word meaning "original people".

In the 2001 census, 84.33 million persons were classified as members of Scheduled Tribes, corresponding to 8.2% of the total population. The census lists 461 groups recognized as tribes, while estimates of the number of tribes living in India reach up to 635. While the number of members of the largest tribes, such as the Gonds, Santals, Oraon, Bhils or Nagas go into the million others, such as the Onge or the Great Andaman's, are on the brink of extinction.<sup>58</sup>

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<sup>57</sup> Highest concentration of tribal people in India is in the central region, where more than 50% of the tribal people live. The highest ethnic diversity among the indigenous and tribal population is in the north-eastern region where more than 220 distinct groups have been identified. They comprise approximately 12% of the total indigenous population of India. Source-IWGIA, International Work Group for Indigenous Affairs.

<sup>58</sup> MP Jain, INDIAN CONSTITUTIONAL LAW (5<sup>th</sup> ed.) p. 1399 to 1400.

The Constitution of India provides specific measures for the protection and promotion of the social and economic interests of the Scheduled Tribes. Thus, the Legislatures have been empowered to impose restrictions on the Fundamental Rights guaranteed by Articles 19(1) (d), 19(1) (e) and 19(1)(f) in the interests of the Scheduled Tribes, in order that movement of people from developed areas to tribal areas may be restricted so that the tribal people are not exploited by outsiders. Laws have, therefore, been enacted prohibiting the entry of non-tribal's into the tribal areas without permits, living of non-tribal's permanently in tribal areas, and transfer of tribal land to non-tribals. Further to protect the interests of the tribal people who are simple and less-politically conscious, separate provisions have been made for the administration of the tribal areas under Articles 244 of the Constitution. Reservation of seats can also be made for them in educational institutions and government services under Articles 15(4), 16(4), 41, 46 and 335.<sup>59</sup>

By voting in favor of the Declaration India has shown its serious commitment to continue its work for the promotion and protection of indigenous peoples' rights.<sup>60</sup>

### **XIII. UN PERMANENT FORUM ON INDIGENOUS ISSUES (UNPFII)**

Established by the Commission on Human Rights in April 2000, is an advisory body to the Economic and Social Council. The mandate of the Permanent Forum is to discuss indigenous issues related to culture, economic and social development, education, the environment, health and human rights. It has hailed the Declaration as a major victory after a long struggle of indigenous peoples for their rights as distinct peoples and cultures.

### **XIV. WHAT IS THE SIGNIFICANCE OF THE DECLARATION?**

Many of the rights in the Declaration require new approaches to global issues, such as development, decentralization and multicultural democracy. Countries will need to pursue participatory approaches in their interactions with indigenous peoples that will require meaningful consultations and the building of partnerships with indigenous peoples.

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<sup>59</sup> For explanation in voting for the Declaration by India, refer; General Assembly GA/10612 at <http://www.un.org/news/press/docs/2007/ga10612.doc.htm>

<sup>60</sup> For explanation in voting for the Declaration by India, refer; General Assembly GA/10612 at <http://www.un.org/news/press/docs/2007/ga10612.doc.htm>

## XV. CONCLUDING REMARKS

The effective implementation of the Declaration would test the commitment of states and the whole international community to protect, respect and fulfill indigenous peoples' collective and individual human rights. The correct way to interpret the provisions of the Declaration is to read it in its entirety or in a holistic manner and to relate it with existing international law. The text does not represent the sole viewpoint of the United Nations, nor does it represent the viewpoint of the entire world's indigenous people. It was based on mutual respect. It contained no new provisions of human rights which states have not heard of. It was based on rights that had been approved by the United Nations system but which had somehow, over the years, been denied to indigenous peoples. It was a framework for states to protect and promote the rights of indigenous people without exclusion or discrimination. It ought not to be treated as a mere Declaration with no power of enforcement. If it were so, why did USA, Canada, Australia and New Zealand backed out? They would have simply ratified it to avoid any adverse public criticism. The fact that these four states with large number of indigenous peoples had lobbied vigorously to derail the adoption of the Declaration says a lot about its significance.

Various NGOs, representatives of Indigenous Peoples and Civil Societies of the world who were actively lobbying for the adoption of the Declaration for over twenty years call it a historical moment for them. They regard the Declaration as equal to the Universal Declaration of Human Rights adopted by the General Assembly of the United Nations on December 10, 1948.

The Declaration was "a major victory" indeed but the real test will be whether countries will implement it or not. It will ultimately depend upon the strong political will of the states.

The best way to conclude would be by referring to a beautiful quote below-

*We are not myths of the past, ruins in the jungle, or zoos. We are people and we want to be respected, not to be victims of intolerance and racism.*

— Rigoberta Menchu, Guatemala Nobel Peace Prize Winner, 1992.