

**“CAPAJ”**  
**COMISION JURIDICA PARA EL AUTODESARROLLO DE LOS PUEBLOS**  
**ORIGINARIOS ANDINOS**

**Special Advisory Entity of the Economic and Social Council of the United Nations**

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**Geneva, August 7, 2007**

**President of the United Nations Human Rights Council and Facilitator for appropriate methods of monitoring working groups inherited from the subcommission  
Palace of Nations  
Geneva**

**For your consideration:**

It is an honor to address you in the name of the Comision Juridica del autodesarrollo de los Pueblos Originarios Andinos (CAPAJ) in order to present for your consideration some arguments justifying the continuation of the former Working Group on Indigenous Populations, which could continue functioning within the framework of the new Human Rights Council as a Working Group under its auspices.

We agree that this new stage calls for innovative proposals and that, in this new scenario, it is urgent for indigenous peoples to continue to have a presence at the heart of the Human Rights Council, even if as an advisory indigenous body to the Human Rights Council or as a new Working Group of Indigenous Peoples, as outlined by the new guidelines for a better relationship with the U.N. In addition to those already proposed, it is necessary to gather more supporting suggestions that argue for the continuation of the Working Group of Indigenous Peoples.

- The proposal called, “Indigenous Peoples Human Rights Experts Body to the Human Rights Council” or, in Spanish, “Organo de Expertos de Derechos Humanos a los Pueblos Indígenas para el Consejo de Derechos Humanos” was presented by Claire Charters, representing the International Indian Treaty Council, before the Facilitator on Tuesday, July 31st, to which we add the reinforcement of a few more arguments.

**- The arguments that we support are:**

An innovative dynamic of the advisory indigenous body that replaces the former Working Group on Indigenous Peoples within the new Human Rights Council, to our understanding, should be a body with greater powers that would do its best to offer advice and take effective actions concerning the human rights of indigenous peoples before the Human Rights Council.

But, above all, it is projected to be an agent of complaint before the Treaty Committee in cases of flagrant violations of the human rights of indigenous peoples, thereby preventing genocide and other evils that threaten indigenous peoples.

The body must assume -in its advisory work- the following tasks:

1.- Promote the inclusion of the cultural values of indigenous peoples in the debates among all bodies of the Human Rights Council, including their world vision, or perspective on life, with the goal of eliciting true respect by the States and by system experts.

2.- Elaborate and propose new standards, or norms, that avoid the worsening of the violations of the human rights of indigenous peoples, acknowledging that in the last few years there has been a resurgence of such violations, for example, in the wake of the greed of multinational companies for natural resources existing in ancestral indigenous territories.

3.- Propose demands for the revision of national legislations that infringe upon the human rights of indigenous peoples, and fill legal vacuums that lead to the destruction of these human rights and that limit or negate the existence and expression of their self-identity.

4.- Promote the completion of agreements and recommendations issued by the Treaty Committees that affect the rights of indigenous peoples and have them monitored with the effective participation of the affected communities, of civil society, and of the State itself, in order to have a binding effect.

5.- Recommend concrete actions to the Anti-Discrimination Unit of the High Commissioner of Human Rights, with the aim of offering appropriate attention to indigenous peoples when they appeal to their offices to present reports.

6.- Promote the paradigm of egalitarian multiculturalism in the arena of the collective human rights of indigenous peoples, preventing assimilationist or paternalist policies and condemning any intent to diminish the self-reliant capabilities of indigenous peoples.

7.- Detect and denounce political programs that might incite violation of the human rights of indigenous peoples, while proposing methods for States to act permanently against these various forms of violation that might occur in each country.

8.- Promote cultural resistance by indigenous peoples and their constructive efforts towards the collaboration of nations, encouraging the States to respect the ancestral cultures of indigenous peoples, their spiritual life and their special relationship with the land.

9.- Promote study papers on the memory of indigenous peoples, while condemning crimes against humanity committed against indigenous peoples so that such bloody episodes will not be repeated in future generations.

10.- Receive the reports on indigenous peoples made by the Special Rapporteur and by other thematic Rapporteurs about abuses detected on their country visits, with the goal of alleviating the suffering that may be experienced by indigenous peoples in various parts of the world.

11.- Prevent the incitement of racial hatred against indigenous peoples and elevate perceived instances of such to the Universal Periodic Review of Human Rights in a timely fashion, with the participation of the indigenous peoples affected, of victims, and of other competent authorities.

12.- Encourage a holistic approach towards human rights from the indigenous viewpoint in the United Nations in full consultation with indigenous peoples, in order to guarantee a dialogue between civilizations that is characterized by mutual respect and tolerance.

13.- Support the equilibrium and complementary character of human rights of indigenous peoples in connection with the rest of the United Nations system, while suggesting actions for overcoming the breach that exists between the Nation State (expressive of exclusive national identity) and multiculturalism.

14.- Present and manage the contribution that the indigenous peoples make to the values system to the history and identity of indigenous peoples and nations of the world for a [caval] and effective exercise of the right to self-determination of those peoples.

For these reasons, we propose that this group be not only an indigenous advisory body, but that it may constitute a working group created by the Human Rights Council by virtue of the provenance granted by Article 18 of Resolution A/HRC/5/L.11, dated June 18, 2007, with the following functions:

1. Assume documentary heritage, including the studies elaborated during the 24 years' existence of the working group on indigenous peoples, and monitor it and offer recommendations for the resolution of pending conflicts.
2. Recover the findings concerning certain situations that were submitted by indigenous peoples to the former Working Group on Indigenous Populations.
3. Propose expert seminars in coordination with the Office of the High Commissioner of Human Rights of the U.N. and provide monitoring and application of the conclusions of official human rights seminars.
4. Continue the recommendations currently pending execution that were produced in the monumental study report on the situation of indigenous peoples, which was compiled by Special Rapporteur Mr. Martines Cobo.

Finally, we propose the creation of a Working Group on Indigenous Peoples under the direct oversight of the Council of Human Rights, in accordance with its regulation, Art. 18, Working Procedure section, Working groups and other mechanisms, A/HRC/5/L.11, which reads: *“The Council may set up working groups and other arrangements. Participation in these bodies shall be decided upon by the members, based on rule 7. The rules of procedure of these bodies shall follow those of the Council, as applicable, unless decided otherwise by the Council.”*

This new Working Group would substitute for the former Working Group on Indigenous Peoples, which we propose should have the following mandates:

1. To be in charge of the prevention of the potential acts of genocide that threaten many indigenous peoples around the world.
2. To avert racial hatred against indigenous peoples and to prevent the abuses that are born from lack of understanding of the values of indigenous peoples.
3. To calm, contain and/or annul acts that represent a resurgence of the violation of the rights of indigenous peoples.

4. To make effective the right of self-determination of the indigenous peoples, in conformance with the covenants of human rights: the covenant of civil and political rights, as well as the covenant of economic, social and cultural rights.

**Considerations for the mandate of the Special Rapporteur.-** We suggest from now on that the Special Rapporteur be designated the Special Rapporteur on Indigenous Peoples.

In continuing its mandate, the Special Rapporteur on Indigenous Peoples should have the capability of legal defense in favor of indigenous people and should have the power to:

-Intervene in “lawless regions” on the borders, in airports or in other places where there may be indigenous peoples waiting to emigrate or waiting for asylum.

-Petition the governments within the framework of complaint procedures when grave human rights violations against indigenous peoples are detected, and give an account of such to the Indigenous Advisory Body.

May you, Mr. President and Facilitator, take into account these arguments for a better monitoring of the presence of indigenous peoples on the Human Rights Council.

Sincerely,

Tomas Alarcón  
President CAPAJ