



**Economic and Social
Council**

Distr.
GENERAL

E/CN.4/Sub.2/2003/22
11 August 2003

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Sub-Commission on the Promotion
and Protection of Human Rights
Fifty-fifth session
Agenda item 5 (b)

PREVENTION OF DISCRIMINATION

**PREVENTION OF DISCRIMINATION AND PROTECTION
OF INDIGENOUS PEOPLES**

**Report of the Working Group on Indigenous Populations
on its twenty-first session***

Chairperson-Rapporteur: Mr. Miguel Alfonso Martínez

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- The annexes are being circulated as received, in the language of submission only.

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Introduction

1. The Working Group on Indigenous Populations was proposed by the Sub-Commission on Prevention of Discrimination and Protection of Minorities in its resolution 2 (XXXIV) of 8 September 1981, endorsed by the Commission on Human Rights in its resolution 1982/19 of 10 March 1982 and authorized by the Economic and Social Council in its resolution 1982/34 of 7 May 1982. In its resolution the Council authorized the Sub-Commission to establish annually a working group to meet in order to:

(a) Review developments pertaining to the promotion and protection of human rights and fundamental freedoms of indigenous populations, including information requested by the Secretary-General annually from Governments, specialized agencies, regional intergovernmental organizations and non-governmental organizations in consultative status, particularly those of indigenous peoples, to analyse such materials, and to submit its conclusions and recommendations to the Sub-Commission, bearing in mind, *inter alia*, the conclusions and recommendations contained in the report of the Special Rapporteur of the Sub-Commission, Mr. José R. Martínez Cobo, entitled “Study of the problem of discrimination against indigenous populations” (E/CN.4/Sub.2/1986/7 and Add.1-4);

(b) Give special attention to the evolution of standards concerning the rights of indigenous populations, taking into account both the similarities and the differences in the situations and aspirations of indigenous populations throughout the world.

I. ORGANIZATION OF THE SESSION

A. Attendance

2. The composition of the Working Group at its twenty-first session was as follows: Mr. Miguel Alfonso Martínez, Mr. El Hadji Guissé, Ms. Françoise Hampson, Ms. Antoanella-Iulia Motoc and Mr. Yozo Yokota. The session was attended by all of the members of the Working Group.

3. The Working Group was attended by representatives of 31 Member States, 1 non-member State, 12 United Nations bodies and specialized agencies and a large number of indigenous and non-governmental organizations. A total of 871 participants were accredited (see annex I).

4. Mr. Ole Henrik Magga, Chairman of the Permanent Forum on Indigenous Issues, was invited to attend the session. He accepted the invitation and took the floor during 4th meeting, on 22 July 2003. Mr. Wayne Lord, Mr. Aiytegan Kouevi and Mr. Wilton Littlechild, members of the Permanent Forum, also attended.

B. Documentation

5. A large number of documents were made available for the twenty-first session of the Working Group (see annex II).

C. Opening of the session

6. Mr. Bertrand Ramcharan, Acting High Commissioner for Human Rights, opened the twenty-first session of the Working Group. He recalled the first time that indigenous representatives came to the Working Group in 1982, calling it a “story for the heart” that indigenous peoples could at last tell their own stories to the United Nations. He outlined the nine core principles on which the contemporary human rights movement rested, stating in this regard that it was important to implement international human rights norms through national protection systems in each country, including the draft declaration on the rights of indigenous peoples.

7. In welcoming the participants he underlined the indispensable part that Governments played with regard to the dialogue and discussions undertaken in the Working Group and for their contributions to the Voluntary Fund, thereby ensuring broad participation by indigenous peoples. Indigenous representatives were attending the Working Group in ever-increasing numbers, making it one of the largest human rights meetings organized by the Office. He welcomed the fresh views and perspectives that indigenous participants brought. He extended a particular welcome to Mr. Magga.

8. The two-fold mandate of the Working Group gave it a unique role within the United Nations. Virtually every initiative that had been taken regarding indigenous peoples in the United Nations had emanated from the Working Group, an example being the solution of a long-standing land rights issue raised at the previous session. He referred to the session of the Economic and Social Council taking place at the same time, which had before it, *inter alia*, a report of the Secretary-General on United Nations mechanisms relating to indigenous people (E/2003/72). In that regard, it was important to keep the achievements of this Working Group in mind. He urged participants to think of an appropriate conclusion for the Decade, of how best to evaluate its impact, and of what could be done in relation to its follow-up. Finally, he mentioned the activities on indigenous people’s rights that would be undertaken by the Office in the months ahead. He concluded by saying that the Office would continue to strengthen the promotion and protection of the human rights of indigenous peoples.

D. Election of officers

9. At the first meeting of the twenty-first session, Mr. Alfonso Martínez was elected Chairperson-Rapporteur by acclamation.

10. In his opening statement, the Chairperson/Rapporteur paid tribute to Ms. Erica-Irene Daes who had guided and chaired the Working Group for almost 20 years. However, in his view there should be a rotating chair. He also referred to other initiatives regarding new working methods of the Working Group, which aimed at a more action-oriented and interactive discussion while maintaining the principle of consensus among its members. He also felt it important for the Working Group to consider ways of ensuring even closer cooperation between the three mechanisms (Working Group, Special Rapporteur on the situation of the human rights and fundamental freedoms of indigenous people and Permanent Forum) now functioning within the United Nations on the issues faced by indigenous peoples.

E. Adoption of the agenda

11. At its first meeting, the Working Group considered its agenda on the basis of the provisional agenda (E/CN.4/Sub.2/AC.4/2003/1).
12. Ms. Hampson proposed a new sub-item 6 (e) relating to the problem of the human rights situation of indigenous peoples in States and territories threatened with extinction for environmental reasons. Mr. Yokota and Ms. Motoc supported this suggestion.
13. The following agenda was therefore adopted:
 1. Election of officers.
 2. Adoption of the agenda.
 3. Organization of the work of the session.
 4. Review of recent developments pertaining to the promotion and protection of human rights and fundamental freedoms of indigenous people:
 - (a) General debate.
 - (b) Principal theme: "Indigenous peoples and globalization";
 5. Standard-setting activities.
 6. Other matters:
 - (a) Cooperation with other United Nations bodies in the sphere of indigenous issues;
 - (b) Follow-up to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance;
 - (c) Review of activities undertaken under the International Decade of the World's Indigenous People;
 - (d) State of the Voluntary Funds;
 - (e) The human rights situation of indigenous peoples in States and territories threatened with extinction for environmental reasons;
 7. Presentation of the conclusions and recommendations of the Working Group at its twenty-first session.
14. The Working Group held 10 public meetings during its twenty-first session.

F. Organization of work

15. In organizing its work, the Working Group agreed to a proposal by the secretariat and supported by the Chairperson Rapporteur to introduce an open “break-out” group on the main theme, “Indigenous peoples and globalization”.

16. At the end of the general debate on item 4 (b) an open break-out group was formed under the guidance of Mr. Guissé with the aim of preparing draft elements for recommendations under item 4 (b). The purpose of this break-out group was to foster an interactive and output orientated dialogue between the experts and the representatives of Governments, indigenous organizations, non-governmental organizations (NGOs) and the United Nations system.

17. The output of the break-out group was submitted to the plenary of the Working Group at its 8th meeting and discussed by all participants. This new working method was evaluated by all participants and the members of the Working Group as having been very positive.

G. Adoption of the report

18. The Working Group on Indigenous Populations adopted the report of its twenty-first session on 6 August 2003.

II. MAJOR ISSUES RAISED BY PARTICIPANTS AND MEMBERS

19. The Working Group, owing to the present financial constraints facing the United Nations and the established limit on the length of documents of 10,700 words, decided to organize the report accordingly. The substantive part of the report now contains a summary of the main issues raised by observer delegations and other participants with the commentaries by the Chairperson-Rapporteur and other members of the Working Group, and recommendations. The list of observers who took the floor under each item is contained in annex III.

Item 4. Review of developments pertaining to the promotion and protection of human rights and fundamental freedoms of indigenous people

4 (a) General debate

20. Issues raised under this item included: the right to land and control over natural resources, including the right to safeguard natural resources; the activities of transnational corporations (TNCs); different aspects of the right to self-determination; administration of justice, the right to preserve culture, language, traditions and lifestyle; participation in and benefit from economic and social development in accordance with indigenous views and interests; official and legal recognition as indigenous peoples, children and youth; and issues relating to health, including HIV/AIDS. An early adoption of the draft United Nations declaration on the rights of indigenous peoples was seen as most important in relation to the promotion and protection of the human rights of indigenous peoples.

21. Many of the interventions included calls for recognition of self-determination for indigenous peoples. Several indigenous representatives from, among other places, Canada, Ecuador and Suriname, underlined that, despite official recognition of indigenous peoples in national legislation and constitutional law, the challenge of the practical implementation of policies remained. An observer for the indigenous Pitcairn Island community alleged that the intrusion of British Ministry of Defence police made the small island the heaviest police-monitored community in the world.
22. A number of indigenous participants from, among other places, Australia, Canada, Guatemala, Cameroon, the Philippines and the United States of America reported that their Governments had failed to protect the rights of indigenous peoples and that human rights violations were taking place. They claimed that Governments and, in particular, military authorities were violating international human rights standards, inter alia through summary and arbitrary arrests and killings, use of violence, forced displacement of indigenous peoples and confiscation or denial of access to their communal and individual property. They further stated that internal and regional conflicts and anti-terrorism legislation were often used as excuses to suppress the rights of indigenous peoples.
23. A number of indigenous observers from, among other places, Bangladesh, Ecuador, Indonesia, Nepal, New Zealand, Peru and the Russian Federation stressed the importance of the recognition of their right to land and control over natural resources. In this regard, activities of certain TNCs were considered detrimental to indigenous peoples and, it was claimed, Governments did not take indigenous peoples into consideration and, in particular, did not involve them in the decision-making processes. Several references were made, in particular, to the Amazon region where the overexploitation of natural resources was seen as destructive. There was a call for an early conclusion of the work on the guidelines for TNCs being undertaken in the Sub-Commission and the standard-setting activities by the Working Group on free, prior and informed consent.
24. Several speakers also underlined the importance of education and professional training for indigenous children and youth in their own regions and said that school curricula should contain adequate information on the history, culture and traditions of the indigenous peoples of the region. Indigenous languages and teaching in the native languages needed to be included in the curricula and attempts to change the cultural identity of indigenous children and youth were unacceptable.
25. The issue of institutionalized discrimination against indigenous peoples was also seen as a reality in many countries. In this regard, references were made to the problems associated with administration of justice, including arbitrary detention, and access to social security and health care, including HIV/AIDS treatment for indigenous peoples.
26. Several interventions by indigenous representatives made references to the importance of the work of the Special Rapporteur of the Commission. Many Governments were called upon to invite the Special Rapporteur to make an official visit. Several representatives commended his reports and said that they looked forward to cooperating with him.

27. A number of positive developments were reported by several government representatives. The observer for the Russian Federation reported on the establishment of coordination bodies for activities involving indigenous peoples of the north and said that joint ventures and cooperation were the guiding principles of those bodies.
28. The observer for Canada reported on activities in his country and highlighted a joint National Aboriginal Policy Research Conference that had been held in November 2002 which was expected to provide improved data on the situation of indigenous peoples. In December 2002, the National Working Group on Education submitted a report entitled "Our children – keepers of the sacred knowledge" which included recommendations on First Nation education on indigenous knowledge. The representative also referred to the Tlicho comprehensive land claims and self-government agreement due to be signed on 22 August 2003 which the Tlicho Dene people with 39,000 km² of land, a capital transfer of \$98.6 million, a share of resource royalties and participation in resource management bodies. The representative welcomed the plans of the Special Rapporteur to visit Canada in 2004.
29. The observer for Bangladesh informed the Working Group of recent developments in the country relating to the Chittagong Hill Tracts (CHT). She said that a separate ministry for CHT affairs had been created headed by a representative of the tribal community. Three hill district councils, a regional council and a land commission had been established in the CHT area, about 65,000 refugees and internally displaced people had returned to the region and over 700 indigenous persons had been appointed to posts in government services. Much progress had been made in the area since the signing of the 1997 peace accords.
30. The observer for Finland reported on developments in relation to the Sámi. Even though the Sámi enjoyed clear constitutional recognition some issues remained unresolved. Finland had not yet ratified International Labour Organization (ILO) Convention No. 169 but the authorities had engaged in extensive discussions with the Sámi parliament and hoped to reach a positive outcome soon.
31. The observer for Mexico stressed the Government's support of the Working Group, noting that its mandate was complementary to that of the Permanent Forum and that while the Permanent Forum was mandated to promote coordination of activities relating to indigenous issues in the United Nations system, the important role of the Working Group was the promotion and protection of human rights of the indigenous peoples.
32. The observer for ILO reported on its activities in relation to indigenous issues and in particular in relation to the 17 ratifications of Convention No. 169. The Committee of Experts on the Application of Conventions and Recommendations would examine reports from all 17 countries in November this year. Parallel to the monitoring of conventions ILO also provided technical assistance with a view to improving the living and working conditions of indigenous and tribal peoples in Asia and Africa. It had initiated a fellowship programme similar to the one of the Office of the High Commissioner for Human Rights and would launch a new Internet web page on indigenous peoples in August 2003.

33. Mr. Magga reported on the second session of Permanent Forum on Indigenous Issues held in May 2003. The report of the Permanent Forum (E/C.19/2003/22) was made available to the participants of the Working Group. The principal theme of the Permanent Forum in 2003 had been "Indigenous children and youth" and he was looking forward to the discussion on that theme by the Committee on the Rights of the Child in September 2003. One of the major tasks for the second session of the Forum was to establish operational working methods between the Permanent Forum, the Working Group and Special Rapporteur. In that respect, he underlined the fruitful complementary roles of the different mechanisms and in particular considered the standard-setting role of the Working Group important. He repeated his invitation to the Chairperson-Rapporteur of the Working Group to report on the activities of the Working Group at the Permanent Forum's future sessions.

34. Ms. Hampson stressed three issues in relation to the review of developments. She said that any examination of the administration of justice and indigenous peoples needed to include not only legislation and case law before national courts but also customary law of the indigenous communities. She also identified the different types of dispute which needed to be considered. She referred to the situation of indigenous peoples who were refugees and migrants and therefore would not be indigenous to the territory in which they found themselves. Finally, she thought that consideration might be given, in the context of the reform of the United Nations, to the establishment of a body for nations and peoples where indigenous peoples and also national minorities would be represented alongside States and other actors of the international community.

4 (b) Principal theme: "Indigenous peoples and globalization"

35. The principle theme of the twenty-first session of the Working Group was welcomed by all participants. More than 100 indigenous and government observers spoke under this item.

36. Mr. Guissé introduced the item by presenting his working paper on globalization and economic, social and cultural rights of indigenous populations (E/CN.4/Sub.2/AC.4/2003/14). He said that the consequence of the principal colonial powers on indigenous peoples was the extreme poverty in which many indigenous peoples were living today. The continued exploitation of indigenous lands and resources was what could be called globalization. Globalization had stripped indigenous peoples of their rights because it had destroyed the healthy environment upon which the survival of indigenous communities depended. He expressed concern about the fact that transnational companies that operated on indigenous peoples' land were still not subject to any binding laws or standards to guide their behaviour. The TNCs therefore carried out their activities while totally ignoring the rights and even the existence of indigenous peoples. He mentioned the well-known example of the Ogoni people of Nigeria who demanded a share of the income that came from extracting oil from their territories. That had led to persecution and even the execution of several Ogoni leaders. Mr. Guissé said that in his view the World Bank and other funding agencies had never taken the real interests of indigenous peoples into account in the planning and implementation of development projects. Finally, Mr. Guissé encouraged the elaboration, adoption and implementation of international binding standards concerning the behaviour of TNCs.

37. Most indigenous representatives spoke of the negative effects that globalization was having on indigenous communities and some called globalization “neo-colonialism” or “colonialism in a new format”, because of the detrimental consequences on indigenous peoples’ lands, cultures, identities and lives. Several indigenous representatives felt that globalization was a process that could not be avoided and that it was a human and cultural reality that all indigenous and non-indigenous peoples had to face. It was stressed that globalization was affecting indigenous peoples in both developing as well as developed countries.

38. A number of indigenous representatives raised concerns that globalization would cause the assimilation of indigenous peoples into dominant societies. This process was said to be the consequence of the exclusion of indigenous peoples in political and economic decision-making, the rising migration of young indigenous persons to urban areas and the lack of self-determination over land and resources.

39. Several indigenous speakers also linked the very high number - one speaker referred to 70 per cent - of indigenous peoples living in poverty or extreme poverty. It was claimed that globalization only measured the importance of people and their development by their economic power and that indigenous peoples worldwide were excluded from economic power. Another speaker said that globalization in general had led and continued to lead to greater inequalities between States and between groups within society. Indigenous representatives from Ecuador spoke about the detrimental effects the introduction of the dollar as an official currency had had on the indigenous population.

40. Indigenous representatives inter alia from Colombia, India, and the Philippines gave examples of military activities on their traditional lands, saying that when foreign military bases were allowed by the government to be placed on the traditional lands of the indigenous peoples, which often leading to their displacement, prostitution and poverty. The working group was urged to take this into consideration when considering the impact of globalisation on indigenous peoples.

41. Most indigenous representatives spoke of the severe and negative effects of the activities of TNCs on indigenous peoples. Statements from indigenous representatives from, among other places, Algeria, Bolivia, Canada, Chile, Colombia, Ecuador, Indonesia, Malaysia, New Caledonia, Peru, the Russian Federation and the United States made reference to the invasion by large TNCs extracting natural resources such as oil, gold, silver, gas and timber from their lands. Reference was also made to the devastating impact the building of mega-dams had on indigenous communities. Some of the serious concerns raised by indigenous peoples during the discussion related to the core issues of (a) lack of consultation, thereby denying indigenous peoples the right to free, prior and informed consent; (b) the destruction of the environment; (c) the displacement of communities; (d) the lack of benefit-sharing of the wealth generated from their lands and natural resources; and (e) the need for greater self-determination and control over lands and territories.

42. Indigenous representatives from Canada also underlined the threat to their treaty rights that TNCs were posing. They claimed that the Government of Canada had concluded agreements with mining companies to exploit traditional indigenous territories that violated their treaties with indigenous communities. Other speakers referred to their Governments as “puppets” of the large, powerful and rich TNCs operating on their lands.

43. In this connection, it was stressed by several indigenous observers that the World Bank, the International Monetary Fund and other international financial institutions had facilitated the access of TNCs onto indigenous peoples’ territories. One of the reasons was said to be the enormous debts that developing countries had, leading them to allow activities which generated the largest profit without taking into account respect for the environment and the rights of indigenous peoples. One speaker from the Philippines said that his country had been relying on foreign aid for the last 20 years and a sustainable and healthy economy was still far from being attained. He said that today his Government allocated 30 per cent of its budget to debt repayment.

44. One speaker spoke in detail about the report of a workshop organized by an NGO and an indigenous organization focusing on indigenous peoples, extractive industries and the World Bank. The report claims that the World Bank policies fell short of international human rights standards, and that the Bank continued to insist that it was prohibited from addressing human rights by its Articles of Agreement and argued that it could not require its borrowers or clients to observe even those human rights agreements to which they were party. The Working Group was requested to urge the World Bank to stop its involvement in the extractive industries until it was able to fulfil the recommendations from the workshop, to elaborate guidelines for TNCs and to push for new, legally binding accountability mechanisms for the private sector.

45. Many indigenous representatives from the Americas talked about the North-American Free Trade Agreement (NAFTA) and its negative effects on their livelihoods. It was claimed that the Agreement in fact failed to promote free trade as it did not recognize the traditional knowledge of indigenous peoples, did not respect the environment and in general discriminated against indigenous peoples’ interests.

46. An indigenous representative also called drew attention to the detrimental effects that agricultural subsidies to farmers in rich countries had for indigenous communities in developing countries. It was stressed that these subsidies had led to artificially cheap agricultural products, leading to the loss of livelihood of thousands of indigenous peoples and farmers. A few speakers also raised the question of communication and information technologies and how these bypassed indigenous peoples, leading to difficulties in accessing information and effectively taking part in decision-making processes.

47. A number of indigenous observers reported on the alternative economic and trade systems of indigenous peoples. It was stressed that these systems were based on solidarity, equity and human relations, with the aim of meeting the needs for food and clothing that all humans had. It was also underlined that these alternatives were not exploitative and were founded on respect for the natural environment and resources, thus ensuring sustainability also for future generations.

48. Although the negative effects of globalization on indigenous peoples were highlighted by all speakers, some also pointed out that globalization improved communications and networking among indigenous communities, in certain cases ensured greater access to food even in very remote areas, and led to a sense of belonging to a global society. Some said that if only States would globalize peace, human rights, respect for diversity and the environment, globalization would be for the benefit of all.

49. The observer for the World Bank commented on the two working papers (E/CN.4/Sub.2/AC.4/2003/2 and 14) on this subject. He fully supported the conclusion in the paper prepared by Mr. Guissé that indigenous peoples must be heard in the decision-making process of development projects and stressed that the Bank was currently revising its policy on indigenous peoples to include explicit language to ensure that indigenous peoples were heard and that they shared the benefits of the exploitation of their resources and lands. In addition, the Bank was undertaking several reviews to better understand the impact of development projects on indigenous peoples which it was hoped would lead to improvements.

50. Mr Littlechild made reference to recommendation 7 contained in the report of the second session of the Permanent Forum.

51. The observer for Canada reminded the Working Group that in spite of the wide usage and intense debate on the subject, there was no precise definition of globalization, but it was indisputable that globalization was a phenomenon of many dimensions, presenting both threats and opportunities. Canada believed that inclusion, knowledge and information were tools of empowerment that would allow indigenous peoples to harness the threats and maximize the positive possibilities of globalization. The observer for Spain spoke of initiatives that Spain had taken to strengthen the participation of indigenous peoples in development projects and policies, both in its own international cooperation and through the Development Fund for Indigenous Peoples of Latin America and the Caribbean.

52. Mr. Yokota fully supported the presentation made by Mr. Guissé, noting that, since TNCs were not controlled by Governments, it was all the more urgent for international standards to be developed. In that regard, he said that his work with the Sub-Commission's Working Group on Transnational Corporations also touched upon indigenous peoples and that he would be happy to work with Mr. Guissé and other members of the Working Group in that regard.

53. Ms. Hampson raised two issues in her statement on this agenda item. First was the question of communication technology; she asked indigenous participants as well as the members of the Working Group whether access to broadcasting facilities was a problem. If it was, she suggested that the Working Group should facilitate cooperation between the International Telecommunication Union and indigenous communities. The second issue related to the economic aspects of globalization. This was a very complex issue, which included movement of capital, exploitation of resources on indigenous lands, investment, development and trading patterns. The phenomenon of privatization was part of globalization and it was important to keep in mind that the direct perpetrator of violations of the rights of indigenous peoples commonly came from the same State as the victims. She underlined that the activities of TNCs could not be ignored, but felt that it was important to strike a balance between the responsibilities of TNCs and those of States. She suggested that action be taken in two areas. First she reiterated many indigenous representatives' claims that the main problem was the question of land rights, and she urged States to recognize this fundamental legitimate right. Second, she called for further action, perhaps a study, regarding the scope of the existing human rights obligations of States to protect indigenous peoples from the effects of globalization which had an adverse impact on their human rights.

54. Ms. Motoc underlined the need for all peoples to be involved in decision-making processes and urged the World Trade Organization (WTO) to take into account the views and participation of indigenous peoples. In this regard she suggested that WTO be more involved in the Working Group. She noted that the Permanent Forum had also made similar proposals with respect to WTO.

Item 5: Standard-setting activities

55. Mr. Yokota presented his working paper on the possible elaboration of draft guidelines relating to transnational companies whose activities affect indigenous communities (E/CN.4/Sub.2/AC.4/2003/5); Ms. Motoc a list of standard-setting activities which could be considered by the Working Group (E/CN.4/Sub.2/AC.4/2003/3); and Mr. Alfonso-Martinez a list with commentaries of possible studies to be undertaken by the members of the Working Group in the immediate and near future (E/CN.4/Sub.2/AC.4/2003/4).

56. In reaction to Ms. Motoc's paper, the members of the Working Group discussed the relationship between hard and soft law and on the different interpretations of those concepts in international law.

57. Mrs. Hampson explained why it was not possible to produce a commentary on the text of the draft declaration, since the text was being amended and specific amendments were still being considered. She commented instead on the thrust of the proposed amendments and expressed concern, in particular at what the amendments implied with regard to the status of indigenous rights, particularly their land rights. She said that while ideally the draft declaration should be adopted before the end of the Decade, the priority should be a worthwhile text and that the extension of the working group on the draft declaration should be independent of any decision regarding the follow-up of the International Decade for the World's Indigenous People (1995–

2004) itself. She stressed that international standard-setting did not consist in compiling evidence of what States were already doing and that it was not acceptable for a State to seek to justify an amendment on the grounds that domestic law made different provisions. In that context, she also referred to the right to self-determination which in her view should not be subject to the constitutional framework of a particular State. She stressed that the only ground for proposing an amendment to the draft declaration should be that the proposal better reflected what was or ought to be the position of international law.

58. One of the main issues raised in the discussions on this item was the draft declaration which, it was hoped, would be completed and adopted before the end of the Decade. In that respect concern was expressed regarding attempts by certain Governments to exclude or diminish the right to self-determination of indigenous peoples and the legal character of indigenous peoples' land rights, and the lack of political will of some Governments to adopt the draft declaration before the end of the Decade. On the other hand, some indigenous representatives also stressed that indigenous peoples should not be discouraged by the slow process; the Commission on Human Rights should extend the mandate of the working group in any case. Indigenous representatives called for broader participation in the working group, including by organizations not in consultative status, in line with the open arrangements prevailing in the Working Group on Indigenous Populations and the Permanent Forum.

59. Another issue raised was the fact that while ILO Convention No. 169 remained the only international legally binding instrument for the protection of the rights of indigenous peoples, only a small number of States had ratified or acceded to it. Many indigenous speakers also stressed that further work was needed in relation to the activities of TNCs and their effects on indigenous peoples. The draft norms on the responsibilities of TNCs and other business enterprises with regard to human rights needed to address the concerns and rights of indigenous peoples.

60. Reference was also made to the Special Rapporteur and, in particular, to his upcoming report on administration of justice, underlying the need for analysis of the relationship between positive and customary law.

61. Some indigenous representatives underlined the importance of further developing standards or norms on the protection of traditional knowledge and cultural heritage and identity. In that respect, references were made to the work undertaken by WTO, the World Intellectual Property Organization (WIPO) and the secretariat for the Convention on Biological Diversity. Indigenous peoples had consistently raised the urgent need for a dialogue on the protection of traditional knowledge, but in bodies such as WTO and WIPO indigenous organizations were not well represented or not represented at all, and more work had to be done to include their concerns in all United Nations human rights bodies. Ms. Daes's final report on the protection of the heritage of indigenous people was seen as an important contribution to this issue, but it was thought that the Working Group should carry forward the draft principles and guidelines she had prepared.

62. Another issue raised by indigenous speakers was that the new standard-setting activities should protect indigenous peoples from the adverse effects of globalization. Several

representatives said that guidelines or norms for multi-stakeholder approaches on the national level needed to be elaborated.

63. Several indigenous representatives stressed that norms or standards would be needed to guarantee that free, prior and informed consent of the indigenous peoples was obtained with respect to any activity affecting them and their resources.

64. Indigenous representatives recalled that indigenous organizations could more actively disseminate the existing reports, conclusions and recommendations of the Working Group and the Special Rapporteur and general information on the situation of indigenous peoples to their respective authorities and governmental bodies. Activities in Peru where information and reports had been given by indigenous organizations to libraries and to the Congress were described. Some indigenous peoples had also been able to initiate constitutional reforms by actively disseminating information from the international mechanisms.

65. Mr Guissé pointed out that the Working Group had for several years discussed and studied the issues of standard-setting and had covered certain areas of need. One remaining problem was that indigenous peoples did not always know how standards and norms were to be applied, if the respective national authorities were applying them and which bodies to address when violations took place. Working Group could do further work on information dissemination on human rights education.

66. Commenting on Ms. Motoc's working paper, Mr. Yokota stressed that the use of the concept of soft law was problematic because of its non-legally binding character. In that respect, some further clarification was needed. The view was also supported by Mr. Alfonso-Martinez, who also stressed the need to further explore possible ways to secure effective indigenous participation in the work of both WIPO and WTO on issues affecting indigenous peoples in the light of paragraphs 20 and 32 of the Vienna Declaration and Programme of Action. Ms. Motoc said that the concept of soft law as proposed by Professor Weil referred to binding standards which were less precise and clear. The distinction between law and non-law had lost the force that it had in classical international law. Indigenous peoples' rights were being advanced through norms such as resolutions and declarations. Ms. Hampson pointed out that standards and norms, called here soft law, were not legally binding but they might become binding at the end of a process. In that respect, it was important to keep in mind the appropriate legal language from the beginning when engaging in standard-setting activities.

67. In relation to Mr. Yokota's working paper, Ms. Motoc commented that it would be difficult at this stage to include specific references to indigenous peoples in the draft norms of the Working Group on Transnational Corporations. The way forward was perhaps to include an annex or commentary to the draft norms. Ms. Hampson expressed a similar view and pointed out that the Working Group on Transnational Corporations would be the forum to elaborate such an annex. She further stressed that some kind of prioritization of issues was needed in order to proceed in a coherent and effective manner. Mr. Alfonso-Martinez underlined that the Working Group had optimal possibilities to influence the process of the draft norms and stressed that at the present stage provisions relating to indigenous peoples should be included in the document being discussed in that Working Group, and not be the subject of a new, separate instrument.

Item 6. Other matters

6 (a) Cooperation with other United Nations bodies in the sphere of indigenous issues

68. Mr. Yokota presented his working paper on possible cooperation between the Special Rapporteur and the Working Group (E/CN.4/Sub.2/AC.4/2003/7) and Mr. Alfonso-Martinez a working paper on ways and means of developing cooperation between the Working Group and the Permanent Forum (E/CN.4/Sub.2/AC.4/2003/8).

69. The indigenous representatives heard under this agenda item, and throughout the session, unanimously emphasized the important role of the Working Group, arguing that the Permanent Forum, the Special Rapporteur and the Working Group complemented each other rather than overlapped. The actual added value of the three mechanisms came from the enhanced cooperation in a coordinated and coherent manner that already was being developed. It was also pointed out that the effectiveness of the different mechanisms depended on the political will of Governments.

70. In order to further enhance the relationship between the three mechanisms, indigenous representatives suggested that a yearly dialogue between them be established. This could take the form of a panel discussion or dialogue to be held, perhaps alternatively, during the annual sessions of the Working Group and the Permanent Forum. Indigenous representatives also proposed that the Working Group could facilitate a dialogue between indigenous peoples and the treaty bodies, in particular the Committee on the Elimination of Racial Discrimination, the Human Rights Committee and the Committee on the Rights of the Child. This could advance the understanding of the implementation and interpretation of provisions relating to indigenous issues.

71. Some indigenous representatives raised their concern about the fact that several international bodies or organizations, at both the international and regional levels, did not include indigenous organizations or representatives as members, or even observers. The actual and real participation and influence of indigenous peoples thus became marginal. Specific reference was made to the Organization of American States (OAS) and the work done on the draft Inter-American Declaration on the Rights of Indigenous Peoples.

72. Indigenous representatives further stated that the various bodies dealing with indigenous issues constituted new and additional avenues for indigenous peoples in relation to different issues and problems.

73. Regarding the role of the Special Rapporteur and his relationship with the Working Group, both the Chairperson-Rapporteur and indigenous speakers underlined that the Special Rapporteur could facilitate direct dialogue between Governments and indigenous peoples. Indigenous peoples further stressed that the Special Rapporteur could investigate country situations, which the Working Group could not do. It was further underlined that concrete follow-up to the recommendations in reports of the Special Rapporteur needed to be established.

74. Mr. Yokota underlined that having the Special Rapporteur as a source for objective information from in situ visits was of utmost importance for the Working Group.

75. In relation to the working group on the draft declaration, Ms. Hampson proposed that it could usefully be assisted by a member of the Working Group on Indigenous Populations in order to enhance the understanding of the background and history of the individual paragraphs and the draft as a whole. She further pointed out that there was a precedent for experts of the Sub-Commission advising Commission working groups in the work on a normative instrument for the protection of persons from enforced or involuntary disappearances.

76. Mr. Guissé supported the views expressed on the complementarity of the different mechanisms. In his view the aim was the effective promotion and protection of the human rights of indigenous peoples and the Working Group, the Permanent Forum and the Special Rapporteur should work towards that goal within their respective mandates.

77. Ms. Hampson supported the statements calling for close cooperation between the three, and further suggested that a meeting or seminar could help to ensure that there was no overlapping and set up frameworks for cooperation and information sharing.

6 (b) Follow-up to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance

78. Many of the indigenous speakers under this item recounted how racism affected the lives of indigenous peoples worldwide and stated that, in their view, racism was as strong as ever. A number of speakers called for quality bilingual education based on respect for differences and diversity. One indigenous speaker from Venezuela expressed the view that with the new Government racism was now giving way and more human understanding would prevail. Another speaker said that the visa laws of many countries were racist as they excluded indigenous persons from entering the country.

79. A number of indigenous representatives pointed out that although the Durban Declaration and Programme of Action could be useful for indigenous peoples, the main problem was their implementation. Some suggested that a focal point be created with the cooperation of several United Nations bodies to follow the implementation and follow-up to the conference. It was also suggested that the Special Rapporteur should always include information about this issue in his reports to the Commission. One speaker suggested that the most effective way of promoting the follow-up to the World Conference would be to hold regional conferences; this would also improve networking and cooperation between indigenous communities of the region.

80. The indigenous caucus suggested that the Working Group could monitor and study constitutional, legislative, judicial and administrative measures to ensure that indigenous peoples were protected from assimilation. In particular, it proposed that attention be focused on indigenous political prisoners. Concern was expressed about the pressures on indigenous peoples to extinguish their rights to lands and resources. Reference was also made to the need to

recognize the right of indigenous peoples to give their free, prior and informed consent before development projects were undertaken on their lands. It was recommended that the Working Group should study the policies of some States that facilitated the entry of multinational corporations onto indigenous peoples' lands.

81. The observer for Argentina informed the Working Group about the country's commitment to follow up the World Conference. Argentina was currently working on a national plan to combat racism with specific emphasis on indigenous peoples. Indigenous representatives had been active in making contributions on how to implement this national plan. She mentioned plans for bilingual education and noted the importance of improving the quality of teaching in the bilingual schools. Argentina was also promoting more action at the regional level.

82. Mr. Guissé stated that many people from Africa were marginalized during the World Conference because some States had refused to discuss the issues of slavery, colonization and compensation for these atrocities. He said that the purpose of compensation was to give recognition to the descendants of the victims of slavery, apart from the financial compensation.

83. Mr. Alfonso Martinez stressed the importance of the subject and suggested that the Working Group should undertake further work in the years to come regarding the follow-up to the World Conference.

6 (c) Review of activities undertaken under the International Decade of the World's Indigenous People

84. Several indigenous representatives focused their statements on the need for a second Decade. It was suggested that land issues should be the key area of work and attention during the second Decade; administration of justice and adherence to treaties should also be highlighted. Speakers also said that since it was highly improbable that the draft declaration would be adopted in the present Decade, intensified work must be undertaken for this to happen in the early stage of the second Decade.

85. A number of indigenous representatives spoke on the process of evaluation of the first Decade and the issues such an evaluation should focus on and take into account. First, the dissemination of information about the Decade had not been sufficient and many of the indigenous organizations that should have benefited from the Decade did not even know about the aims and opportunities of the activities undertaken during the Decade. The same speaker also said that in many countries there was a lack of political will and financial support for the Decade. The participation of indigenous peoples was also underlined as very important to any evaluation of the Decade.

86. One indigenous representative criticised the Decade as being very problematic from the beginning. She reminded participants that the Decade arose out of the International Year of the World's Indigenous People that was proclaimed in 1993 instead of 1992, which marked 500 years of colonization in the Americas, as some indigenous peoples had wanted. The Decade had not accepted the term "indigenous peoples", thereby denying indigenous aspirations. Finally, she underlined that only if States were to be committed to a second Decade would it be desirable to consider one, because the lack of government involvement in the first Decade resulted in practical ineffectiveness.

87. An indigenous speaker from the Russian Federation spoke about the important role that the Decade had played for the sustainable development of the indigenous peoples in her country. Her organization had been able to organize several seminars and workshops with the grants that they had received through the Voluntary Fund for the Decade. The result had been greater government involvement in including indigenous peoples in decision-making and an agreement for an integrated approach for the development of indigenous peoples.

88. Mr. Yokota said that the current unacceptable situation that indigenous peoples lived in caused by the worsening of the environment and racism had led him to support the proposal for a second Decade. However, he did feel that important positive steps had been made during the past nine years. The raised awareness of indigenous peoples' situation in the United Nations and in general and the very active participation of indigenous peoples in several world conferences were examples. He further stressed the importance of the adoption of the draft declaration but underlined the need for monitoring its implementation after adoption.

89. Ms. Hampson supported the comments made by Mr. Yokota but said that the completion of the draft declaration should not be associated only with the end of the Decade. She underlined that it was important that the end result should be a strong and useful declaration supported by indigenous peoples.

90. Mr. Alfonso Martinez made reference to the opening statement of the Acting High Commissioner for Human Rights and the three questions he had asked the Working Group concerning (a) the activity or activities that should conclude the Decade; (b) how the Decade should be evaluated and; (c) what should the follow-up be. He suggested that (a) and (b) be merged and that a major closing event be organized with the full participation of indigenous peoples. He also supported a second Decade as a follow-up.

6 (d) State of the voluntary funds

91. Ms. Vicky Tauli-Corpuz, Chairperson of the Board of Trustees of the Voluntary Fund for Indigenous Populations and member of the Advisory Group of the Voluntary Fund for the International Decade of the World's Indigenous People, introduced documents

E/CN.4/Sub.2/AC.4/2003/12 and 13 on the status of the two Funds. She updated the Working Group on the recommendations made by the two Funds in 2003 that were approved by the High Commissioner for Human Rights on behalf of the Secretary-General. The Voluntary Fund for Indigenous Populations had recommended 138 travel grants and concerning the Voluntary Fund for the Decade had approved 48 projects for indigenous communities and organizations as well as a community-led human rights training and a thematic seminar on indigenous peoples and the administration of justice to be carried out by OHCHR. She thanked donors for their contributions and invited them to continue to contribute to the Funds in order for them to be able to continue to carry out their respective mandates.

92. Indigenous representatives emphasized the importance of the activities of both Funds which, in their view, were of great benefit to indigenous communities and organizations. At the same time several proposals were put forward concerning dissemination of information on the Funds, including a greater role for private and public media at the local and regional levels in informing the public about the Funds and application procedures. Other indigenous representatives stressed the importance for Governments to commit themselves to a greater extent to supporting the work of the Funds financially.

93. Ms. Hampson inquired as to the possibility of including statistical information identifying which of the beneficiaries of travel grants from the Voluntary Fund for Indigenous Populations were young people. Ms. Tauli-Corpuz said that the secretariat would in the future provide such information to the Working Group.

6 (e) The human rights situation of indigenous peoples in States and territories threatened with extinction for environmental reasons

94. Ms. Hampson introduced the item and said that for the first time in history whole States were threatened with extinction because of the rising sea level. She raised a range of questions in this regard and stressed that these had so far not been considered by any United Nations or other international body from the perspective of the human rights of the peoples affected. These included, inter alia, questions about what would happen to the indigenous peoples of these States and the debts, loans and other international obligations of the Governments. Ms. Hampson proposed that the Working Group should draft a resolution for consideration by its parent bodies requesting the Economic and Social Council to set up a mechanism to consider all the aspects of the problem of States threatened with physical extinction for environmental reasons, paying special attention to the human rights issues involved.

95. Two indigenous representatives underlined the human rights issues involved in the threat to certain Pacific States because of the rising sea levels.

96. Mr. Guissé proposed that Ms. Hampson prepare a short explanatory paper on this issue for next year's session of the Working Group.

III. CONCLUSIONS

General

97. The Working Group, on the occasion of its twenty-first anniversary, noted the positive developments within the United Nations system relating to indigenous peoples and underlined the new spirit of partnership that had been engendered within the United Nations, as well as the contribution of the Working Group during its more than two decades of existence in bringing together representatives of indigenous communities, organizations, nations and peoples.

98. The Working Group took note of the decision of the Economic and Social Council (2003/...) and the resolution of the Commission on Human Rights (2003/55), the report of the Permanent Forum on Indigenous Issues and the statements of all indigenous representatives who had affirmed their continuing support for the Working Group as an independent human rights body on indigenous peoples.

99. The Working Group expressed its appreciation to representatives of the United Nations system participating in the session who had provided invaluable information. It thanked the Chairperson of the Permanent Forum and other members of the body for taking part in the session, thereby strengthening the cooperation between the two independent bodies. It noted that the Special Rapporteur was on an official mission and could therefore not be present at the session and affirmed its commitment to working closely with him in promoting the rights of indigenous peoples. The Working Group further noted that the necessary cooperation among the three mechanisms had seen important developments within the last two years and affirmed its commitment to this positive cooperation.

Review of developments: principal theme - globalization and indigenous peoples

100. The Working Group recognized that globalization was a complex set of developments having a widespread impact on all peoples, in particular indigenous peoples. It noted that globalization consisted of numerous features including the liberalization of trade, finance and investment; the growing concentration and monopolization of economic resources and power by TNCs; and the growing influence of global financial and trade institutions and investors. The Working Group considered that globalization in its present form weakened the sovereignty of many States, prioritized profits above social concerns, increased disparities among States and within them, and had contributed to long-lasting damage to the environment.

101. The Working Group noted the comments provided by indigenous participants relating to the impact of globalization on their livelihoods, economically self-sufficient ways of life, cultures, social and political organizations, and lands and resources. It noted also the concerns expressed about forced displacement of indigenous peoples due to natural resource extraction and other developments on their lands, the unequal and unjust relations prevailing between indigenous communities and large corporations implementing projects on their territories, the exploitation of indigenous knowledge, and the declining public services available due to privatization, structural adjustment policies, indebtedness and other factors.

102. The Working Group also recognized that globalization could have benefits for indigenous peoples. It appreciated the remark that the Working Group itself was a good example of globalization, allowing indigenous representatives to meet together, dialogue with Governments in a positive environment and develop international perspectives. The Working Group considered that it was necessary to promote a global project to ensure the well-being and human rights of all, promote alternative models of development with social rather exclusively economic goals, and ensure that indigenous peoples determined whether and under what conditions activities took place on their lands on the basis of the principle of free, prior and informed consent.

IV. RECOMMENDATIONS

Economic and Social Council review

103. The Working Group, noting the review by the Council of United Nations mechanisms relating to indigenous peoples (see E/2003/72), invited the Council to take into account the statements made by governmental and indigenous delegations, as well as the Chairperson of the Permanent Forum on Indigenous Issues, at the twenty-first session of the Working Group, and the relevant decision of the Council and resolution of the Commission on Human Rights that underlined the complementarity of the three mechanisms. The Working Group also reiterated the need to recognize the importance of the Working Group as an independent body established to review the current human rights situations of indigenous peoples, deepen understanding of issues affecting them through interactive discussion, working papers and studies, and elaborate appropriate international standards for the protection and promotion of their human rights.

Organization of work

104. The Working Group, considered that the interactive dialogue established between the experts and the representatives of Governments, indigenous organizations, non-governmental organizations and the United Nations system contributed to a positive atmosphere of exchange, cooperation and partnership that should be further enhanced in future sessions. It also considered that the use of a break-out group with an open participation had contributed to forward-looking proposals and recommendations and decided that these working methods should be further strengthened at future sessions.

105. The Working Group decided to develop new methods of cooperation between its members and indigenous peoples and in particular invited indigenous peoples to work in partnership with its members in preparing working papers/studies for its twenty-second session and requested OHCHR to explore practical ways to do this.

Review of developments: general statements

106. The Working Group noted the continuing difficulties faced by indigenous peoples in exercising their rights in many countries as well as the significant and encouraging improvements made in some others. The Working Group, although not able to take action on specific issues raised by participants, agreed to make available to the Special Rapporteur on the

situation of human rights and fundamental freedoms of indigenous people, upon his request, copies of all statements that it had received.

107. The Working Group welcomed the active participation of senior officials of observer States and requested OHCHR to continue to invite Governments and indigenous peoples to provide information under the agenda item. It also encouraged indigenous participants to consider ways of providing substantive information on recent developments through joint statements, perhaps by combining contributions relating to regions or subregions. It asked OHCHR to communicate this message to participants prior to the twenty-second session of the Working Group.

108. The Working Group called upon all States, international financial institutions and the private sector financing or implementing major projects that affected negatively the livelihoods and lands of indigenous peoples to suspend these projects so that a full review could be undertaken to ensure that, if they were to continue, indigenous peoples' human rights would not be violated.

Review of developments: principal theme - globalization and indigenous peoples

109. The Working Group decided in the light of the high level of interest of participants on this theme to: (a) invite Mr Guissé to submit to its twenty-second session a supplementary working paper on globalization and indigenous peoples that would draw on the information provided by the present session and other sources and include an outline for a possible future study; (b) invite indigenous organizations working on this subject to cooperate with Mr Guissé in the preparation of the supplementary working paper; and (c) maintain a sub-item on "Globalization and indigenous peoples" at its twenty-second session to allow for a brief interactive discussion on follow-up to this issue.

110. The Working Group invited OHCHR, as a matter of priority, to organize a second workshop on indigenous peoples, mining companies and human rights with a view to preparing guidelines based on respect for the cultures and traditions of these communities and the principle of full, prior and informed consent that companies would be encouraged to comply with when planning activities on indigenous peoples' lands.

Standard-setting and other research activities

111. The Working Group decided that it would begin the elaboration of a legal commentary on the principle of free, prior and informed consent of indigenous peoples in relation to development affecting their lands and natural resources and invited Ms Motoc to prepare a preliminary working paper that could be the basis for a future standard-setting activity. It invited Governments and indigenous organizations working on this concept to cooperate with Ms Motoc in the preparation of the paper.

112. The Working Group decided to start as its standard-setting activity at its twenty-second session a review of the draft principles and guidelines on the heritage of indigenous people elaborated by Ms. Daes and requested OHCHR to make these available to Governments, relevant

organizations of the United Nations system, indigenous peoples and NGOs with a request for comments. It requested Mr. Yakota to prepare a working paper on possible approaches to this issue.

Cooperation with other United Nations bodies

113. The Working Group decided to recommend to its parent bodies that both the Chairperson of the Permanent Forum and the Special Rapporteur be invited to participate in its twenty-second session. It expressed appreciation to the Permanent Forum for inviting the Chairperson-Rapporteur of the Working Group to its third session and confirmed his participation, subject to approval by the parent bodies.

114. The Working Group expressed support for the recommendation by the Permanent Forum that a technical seminar on future cooperation among United Nations mechanisms be organized prior to the third session of the Permanent Forum with the participation of members of the Working Group and the Special Rapporteur.

World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance

115. The Working Group noted the comments relating to the World Conference made by participants, including the indigenous caucus, and decided at its twenty-second session to (a) maintain the sub-item on its agenda and (b) hold a discussion on possible ways and means of allowing the Working Group to follow developments relating to the implementation of relevant recommendations of the World Conference.

International Decade of the World's Indigenous People

116. The Working Group decided to recommend to the Coordinator of the International Decade that OHCHR should organize an international seminar, including substantive elements, at the end of the Decade in December 2004 which should include an evaluation of the Decade to determine to what extent the Programme of Action had been implemented, the obstacles to the achievement of any of the objectives, as well as a review of progress in indigenous issues at the national and international levels over the 10-year period.

117. The Working Group endorsed the initiative to proclaim a second Decade that in its view should focus on achieving international standards for indigenous peoples that are implemented in practice and provide the basis for rights-based development of their communities. It considered that before proclaiming a second Decade, it would be appropriate to evaluate the first Decade and ensure consultations with all interested parties.

Voluntary Funds

118. The Working Group expressed its appreciation to the Chairperson of the Voluntary Fund for Indigenous Populations for her participation and the information she provided. The Working Group called upon Governments to make a special effort in the last year of the Decade to make contributions that could benefit indigenous peoples.

States threatened with extinction

119. The Working Group expressed its appreciation to Ms Hampson for drawing attention to the human rights situation of indigenous peoples in States and territories threatened with extinction for environmental reasons and invited her to submit suggestions on possible follow-up by the Working Group on this issue.

Twenty-second session of Working Group

120. The Working Group decided that its principal theme at its twenty-second session would be "Indigenous peoples and conflict resolution". It invited the Chairperson-Rapporteur to prepare a background paper on the principal theme to orientate the discussions. The Working Group also invited Governments, indigenous peoples, the United Nations system and NGOs to provide relevant information on the principal theme.

121. The Working Group decided to include the reports on the two seminars being organized by OHCHR on administration of justice and treaties on the agenda of its twenty-second session in order to consider appropriate follow-up.

122. The Working Group decided to invite WTO, WIPO and the World Bank to make presentations of their work relevant to indigenous peoples to the Working Group at its twenty-second session, in particular to share information about how indigenous peoples could take an active part in the work of these organizations affecting indigenous rights.

123. The Working Group decided that its agenda for 2004 would be as follows:

1. Election of officers.
2. Adoption of agenda.
- 3 Organization of work.
4. Review of developments: (a) General debate; (b) Principal theme: "Indigenous peoples and dispute resolution"; (c) Globalization and indigenous peoples – discussion of supplementary working paper of Mr Guissé; (d) the draft declaration on the rights of indigenous peoples.
5. Standard-setting: (a) a legal commentary on the concept of free, prior and informed consent; (b) review of draft principles and guidelines on indigenous heritage.
6. Other matters: (a) Cooperation with other United Nations bodies; (b) World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance; (c) International Decade on the World's Indigenous People; (d) State of the Voluntary Funds; (e) States threatened with extinction for environmental reasons – discussion of working paper.

7. Adoption of report.

124. The Working Group requested OHCHR to invite the World Summit on the Information Society (WSIS) to provide information on participation of indigenous peoples in its meetings, possibly by organizing a briefing during the next session of the working group on the draft declaration. It also decided to invite the WSIS to make a presentation at its twenty-second session.

Annex I

LIST OF ATTENDANCE

The following 31 States Members of the United Nations were presented by observers: Argentina, Austria, Australia, Bangladesh, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Denmark, Ecuador, Finland, France, Germany, Guatemala, Honduras, Indonesia, Japan, Malaysia, Mexico, Morocco, New Zealand, Norway, Peru, Russian Federation, Spain, Switzerland, Syrian Arab Republic, Thailand, United Kingdom of Great Britain.

The following non-member State was represented by observer: Holy See.

The following United Nations bodies and specialized agencies were also represented by observers: Department of Economic and Social Affairs of the Secretariat, Permanent Forum on Indigenous Issues, United Nations Children's Fund (UNICEF), United Nations Information Service, United Nations Development Programme (UNDP), United Nations Population Fund (UNFPA), United Nations Non-Governmental Liaison Service (NGLS), International Labour Organization, United Nations Educational, Scientific and Cultural Organization (UNESCO), World Intellectual Property Organization (WIPO), World Bank, World Trade Organization (WTO).

The following non-governmental organizations in consultative status with the Economic and Social Council (general consultative status, special consultative status and Roster) were represented by observers: Aboriginal and Torres Strait Islander Commission, Action Aides aux Familles Démunies, American Indian Law Alliance, Conference of Non-Governmental Organizations in Consultative Relationship with the United Nations (CONGO), Coordinating Body for the Indigenous Organizations in the Amazon, Foundation for Aboriginal and Islander Research Action (FAIRA), Fundacion Intervida, Grand Council of the Crees, Indian Council of South America (CISA), Indigenous Peoples Centre for Documentation, Research and Information (DOCIP), Innu Council of Nitassinan, International Federation of Rural Adult Catholic Movements (FIMARC), International Indian Treaty Council, International League for the Rights and Liberation of Peoples, International Movement Against All Forms of Discrimination and Racism, International Organization for the Development of Freedom of Education (OIDEL), International Organization of Indigenous Resource Development, International Service for Human Rights, International Society for Threatened Peoples, International Work Group on Indigenous Affairs (IWGIA), Inuit Circumpolar Conference, Juridical Commission for Auto-Development of First Andean Peoples "Capaj", Movimiento Indio "Tupaj Amaru", Netherlands Centre for Indigenous Peoples, Pax Romana, Russian Association of Indigenous Peoples of the North (RAIPON), Sami Council, Shimin Gaikou Centre, Society for Threatened Peoples, Susila Dharma International, Syriac Universal Alliance.

The following indigenous peoples' organizations and nations, as well as other organizations and groups, were represented at the twenty-first session:

Action Chrétienne pour la Promotion des Défavorisés (RDC), Adivasi Koordination in Germany, African Indigenous Women Organization, Agir pour le Renforcement des Capacités par le Recyclage et l'Assistance Scolaire, Agro-Industrial Company Ltd., Ainu Association of Hokkaido, Ainu Resource Centre, Aiwo-Can Cameroon, Akaitcho Dene, Aktionsgruppe Indianer and Menschenrechte, Akaipa Waimakat, Alaska Federation of Natives, Alexis First Nation, Alifuru Bangsa, Alkaabneh Alnajadeh Community, Almaciga, Amity for Peace, Anenbiak Sekabai, Apache Survival Coalition, Asia Indigenous Peoples Pact, Asia Pacific Indigenous Youth Network, Asociación de Agro-Ecoturismo Indígena "Agroetour", Asociación Incacauda de Desarrollo e Información Indígena, Association of Indigenous Peoples of the North of the Chukotskiy, Asociación Mapuche-Urbanos Kaxawain, Association Covalence, Association des Chantiers Assaiss d'Échange Educatif et Culturel (A.C.A.E.E.C), Association des Pygmées

Baka, Association des Pygmées pour le Développement à Djonga, Association for Community Development Peace Movement and Human Technology, Asociación Ixacava de Desarrollo e Información Indígena, Association of Indigenous Peoples in the Ryukyus, Association of Indigenous Peoples of Chukotka, Association of Indigenous Peoples of the North of Khabarovsk Krai, Association of Norfolk Islanders, Association of the Shor People, Association pour la Promotion de la Femme Défavorisée (APDFD) (Togo), Association pour la Promotion des Batwa, Association Sahel Solidarité Action, Association Tamaynut, Association Tunfa, Attah Arts And Culture Gallery 67, Aymara Lupazas, Bangsamoro People's Consultative Assembly, Bangsa Alifuru Maluku, Bantaya Legal Aid Foundation, Borneo Resources Institute, Borok People's Human Rights Organization, Buffalo River Dene Nation, Bureau of Consultation for West Papua Indigenous Community Development, Capitania Guaraní – Zona Santa Cruz-Bolivia, Canadian Indigenous Women's Resource Institute, Cea-Cisa, Cefail-Ongd, Central de Comunidades Nativas de la Selva Central, Centre d'Accompagnement des Autochtones Pygmées et Minoritaires Vulnérables, Centre de Recherche et d'Action pour le Développement Durable en Afrique Centrale, Centre for Adivasee Studies and Peace, Centre for Organization Research and Education (Core), Centre Wamama Tuungane, Centro de Education y Desarrollo Integral Andino, Centro de Estudio Aymara, Centro de Promocion para el Desarrollo Comunal Inti, Centre de Recherche sur l'Amérique Latine, Chin Human Rights Group, Chirapaq Centro Cultural Indígena del Perú, Club Union Africane Côte d'Ivoire, Codap, Codenpe, Comité de Solidarité avec les Indiens des Amériques, Committee on Indigenous Health, Comité Suisse de Soutien aux Chagossiens, Comunidad Indígena Dos de Mayo-Perú, Concerned Women Action for Peace, Confédération Amazighe du Sud Marocain, Confederación de Nacionalidades Indígenas del Ecuador, Congreso del Estado de Hidalgo, Congreso General Kuna, Conseil International des Organizations de Festivals de Folklore et d'Arts Traditionnels, Conseil National des Droits des Peuples Autochtones, Consejo Andino, Consejo de Ayllus y Comunidades Originarias de Tayka-Bolivia, Consejo de Pueblos Nahuas del Alto Balsas, Consejo Regional Indígena de Risaralda Colombia, Consortium d'Appui aux Actions pour la Promotion et le Développement de l'Afrique, Coopérative des Femmes de l'Adaia, Cordillera Peoples Alliance Youth Commission, Corporacion Arutam Amazonico, CPNAB, Cree Nation Treaty, Cultural Survival, Davgi-Sami Youth Council, Delegation Femmes Celtes, Dewan Adat Celtes, Dodo's Egg, Ecospirituality Foundation, Ecuarunari, Emiroaf, Ethnic Conflict Research Project, European Laboratory for Particle Physics (CERN), Experimental Station Valhalla, Fédération des Organisations Amérindiennes de Guyanne (FOAG), Fédération Rhône-Alpes de Protection de la Nature (Frapna), Fenocin, Filhos da Terra, FOKISE, Forest Peoples Programme, Foundation of Papuans Consultations Education, Foundation Save the Rumanian Gypsies, Fundación Alitasia (Venezuela), Fundacion Juri Juri, Fundación para el Desarrollo Colombiano, Giriphool Shishu Sadan, Greater Sychet Indigenous Peoples Forum, Griekwa Royal House, Guisen Women's Organization, Haudenosaunee Confederacy, Hawaii Institute for Human Rights, Health and Environment Programme, Hojas de Hierba, Ideal International, Ikatán Cendekiawan Tanimbar Indonesia, Incomindios, Indian Confederation of Indigenous And Tribal Peoples, Indigenous Information Network, Indigenous Nationalist Party of Twipra, Indigenous Peoples' International Centre for Policy Research and Education, Indigenous Peoples Law and Policy Program, Indigenous Peoples of Africa Coordination Committee (Ipacc), Indigenous Project Team, Indigenous Research Center of the Americas, Information Center for People Advocacy, Institute of Problems of the Minority Peoples of the North Siberian Division, Intercultural - Servindi, International Forum for Advancement of Indian Indigenous Populations, International Indigenous Youth Conference (ILYC) 2004 Secretariat, International Technical

Secretariat of the International Alliance of Indigenous and Tribal Peoples of Tropical Forests, Inter-Peoples Exchange, IOIRD, Irish Centre for Human Rights, Jatun Pacha Producciones, Jumchab Metta Foundation, Kanaky People of New Caledonia, Katilosa-East Timor, Khabarovsk Regional Association of Indigenous Peoples of the North, Khasi Welfare Association of Bangladesh, Khoe Heritage Cultural Development Organization, Khoekhoegowab Curriculum Committee, Krimchaks Association, Kuki Indigenous People, Kwia Flemish Support Group, Land is Life, Lao Human Rights Council, Lelio Basso International Foundation, Leonard Peltier Defense Committee, Literacy Academy for Dalit of Nepal, Maasai Development Organization, Mainyoito Pastoralist Integrated Development Organization (MPIDO), Maison des Sciences de l'Homme, Mandat International, Manipur Tribal Development Society, Maori Landlords, Mapuche International Link, Marchan Council of Elders, Maya Kichin Konegel, Mbororo Social and Cultural Development Association, Mejlis of Crimean Tatar Foundation, Mena Muria Foundation on Human Rights Organization, Murkele Organization, Muscogee Creek Nation, Nacional Arci, Nación Cumanagoto, National Human Rights Group, National Khoi-San Consultive Conference, Nepal Indigenous Peoples Development and Information Service Centre, 20 National Student's Federation, Netherlands Conseil des Indigènes, Netherlands Organization for Development Cooperation, North East India Indigenous Peoples' Desk Nacional / Council of Churches in India, OCAPROCE International NGO, Ogiek Cultural Initiative Programmes, Olaji Lo Larusa, Organisation pour la promotion et l'épanouissement de la femme Nigérienne – Niger (ONG RAYOUWAN-MATA), Organisation Camerounaise de Promotion de la Coopération Économique Internationale, Olpadep Programme, Organisation d'Appui aux Initiatives de Développement et Environnement, Organizacion Aymara Lupaqas, Organizaciones Indígenas de la Cuenca Amazónica–COICA, Organización Nacional Indígena de Colombia, Organisation des Acteurs de Développement de Langue IGO, Pacific Caucus, Panamá Congreso General Kuna, Parakuiyo Community, Parbatya Chattagram Jana Samhati Samiti, Peo Meo Sa, Philippines Indigenous Peoples Link, Pitcairn Islands Community, Projets Pygmées au Sankuru, Protection des Droits des Minorités en Afrique Centrale, Public Organization of the Kumandin People, Quaker Aboriginal Affairs Committee of the Canadian Friends Service Committee, Rapa-Nui Parliament, Redes Escolares Autónomas Interculturales Bilingües, Rehab Hope Fund, Rehoboth Baster, Representative of the Buryat People, Republica Maluku, Rio Tinto, Rural Community Development Program, Saginaw Chippewa Indian Tribe, Sakha Republic Association of the Indigenous Small Peoples of the North, Samson Cree Nation, Sapedh, Servicios en Comunicación, Siocon Federation of Subanon Tribal Councils in Siocon (Zamboanga del Norte, Western Mindanao, Philippines), Solidarité avec les Peuples Autochtones d'Amérique, South African First Indigenous and Human Rights Organization, Sudanese Women's Voice for Peace, Survie Touareg-Temoust, Susila Dharma International, Taller de Difusion Andina, Taralift Center Study and Advocating of Human Rights for the Papuan People, Tebtebba Foundation, Technische Universitat Berlin, Teton Sioux Nation Tetuwan Oyate, Teton Sioux Nation Treaty Council, The Eye Opener, The Threatened Indigenous Peoples Society (Tips), Tigmi-Algeria, Tin Hinan, Touareg People, Toufat, Traditions pour Demain, Tribal Link Foundation, Tsentsak Survival Foundation, Union für Südtirol, Union pour le Développement des Minorities Ekonda, United Farmers Association, United Hmong International, United Zo Indigenous Peoples, Voceros de la Tierra, Voice of Peace for Indigenous People, Walpole Island First Nations, Working Circle Indians Today-Germany, World Adivasi Council, World Chakma Organization, World Sindhi Congress,

Yayasan Konsultasi Pendidikan Masyarakat Papua, Zabarang Kalyan Samity, Zazao
Enviromental Rights Organization.

In addition to the above-mentioned participants, a number of individual scholars and observers attended the meetings: Central Michigan University, Liverpool Law School, Prograd/Unesp, Semiotics Research Centre, Universidad Autónoma de Barcelona, Universidad Autónoma de Madrid, Université de Bourgogne, Université Laval, Université Marc Bloch-Strasbourg, C.R.I.A., Université Toulouse le Mirail, University of Hawaii, University of Minnesota, University of Tusla.

Annex II

LIST OF DOCUMENTS

The following working papers were prepared for the twenty-first session of the Working Group on Indigenous Populations:

Agenda		E/CN.4/Sub.2/AC.4/2003/1
Annotated agenda		E/CN.4/Sub.2/AC.4/2003/1/Ad
Note by the Secretariat on the Principle Theme “Indigenous Peoples and Globalization”		E/CN.4/Sub.2/AC.4/2003/2

List with commentaries on possible standard-setting activities that might be considered by the Working Group at its future sessions submitted by Ms. Antoanella-Iulia Motoc		E/CN.4/Sub.2/AC.4/2003/3
List with commentaries on possible studies to be undertaken by the members of the Working Group in the immediate and near future, submitted by Mr. Miguel Alfonso Martínez, member of the Working Group on Indigenous Populations		E/CN.4/Sub.2/AC.4/2003/4
Working paper on the possible elaboration of draft guidelines relating to transnational companies whose activities affect indigenous communities submitted by Mr. Yozo Yokota		E/CN.4/Sub.2/AC.4/2003/5
Note by the Secretariat on Standard-setting		E/CN.4/Sub.2/AC.4/2003/6
Working paper on working on possible cooperation between the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people and the Working Group, submitted by Mr. Yozo Yokota		E/CN.4/Sub.2/AC.4/2003/7
Working paper on ways and means of developing cooperation between the Working Group and the Permanent Forum on Indigenous Issues presented by Mr. Miguel Alfonso Martínez, Member of the Working Group on Indigenous Populations and its current Chairman/Rapporteur		E/CN.4/Sub.2/AC.4/2003/8
Note by the Secretariat on the follow-up to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance		E/CN.4/Sub.2/AC.4/2003/9
Note by the Secretariat on Workshop on Indigenous Peoples and Sustainable Development: Technical Follow up to the World Summit on Sustainable Development, Washington, 19 – 20 February 2003		E/CN.4/Sub.2/AC.4/2003/10
Note by the Secretariat on the Consultation and Training Workshop for Pygmy Communities on Human Rights, Development and Cultural Diversity in Cooperation with the ILO and the UNESCO, 11-15 November, Yaoundé and the Dja Biosphere Reserve, Cameroon		E/CN.4/Sub.2/AC.4/2003/11
Note by the Secretariat on the Voluntary Fund for		E/CN.4/Sub.2/AC.4/2003/12

Indigenous Populations		
Note by the Secretariat on the Voluntary Fund on the International Decade		E/CN.4/Sub.2/AC.4/2003/13
Working paper on the globalization and the economic, social and cultural rights, submitted by Mr. Guissé, member of the Working Group on Indigenous Populations		E/CN.4/Sub.2/AC.4/2003/14

Annex III

LIST OF INTERVENTIONS BY OBSERVER DELEGATION

Item 4(a): Review of developments – General debate

Ainu Resource Centre, Amity for Peace, Apache Survival Coalition, Association of the Indigenous Peoples in the Ryukyus, Bangladesh, Bangsa Alifuru Maluku, Bangsamoro Peoples'

Consultative Assembly, Canada, CEAIL-ONGD Pygmeés Dusankure en RDC, Chirapaq Centro Cultural Indígenas del Perú, Comisión Jurídica para el Autodesarrollo des los Pueblos Andinos, Comité Suisse de Soutien aux Chagossiens, Committee on Indigenous Health, CONAIE Ecuador, CONAIE Sarayaku, Confederation des Associations Amazighes du Sud Maroc, Cordillera Peoples Alliance, Ecospirituality Foundation, FENOCIN, Finland, FOAG/ COICA, Foundation For Aboriginal and Islander Research, Foundation of Papuans Consultations Education, Fundación Intercultural Alitasia, Haudenosaunee Confederacy, ILO, Indigenous Peoples' International Centre for Policy Research and Education, International Indian Treaty Council, International Organization of Indigenous Resources Development, Inuit Circumpolar Conference/ Saami Council, IPACC-Tamaynut, Katilosa East Timor, Lao Human Rights Council, Leonard Peltier Defence Committee, Mainyoito Pasporalists (MPIDO), Mena Muria Foundation Human Rights for the Moluccas, Murkele Organization, Nepal Indigenous Peoples Development and Information Service Centre, Parbatya Chattagram Jana Samhati Samiti (PCJSS), Russia, Russian Association of Indigenous Peoples of the North (RAIPON), Servicio en Comunicación Intercultural SERVINDI, Shimin Gaikou Centre, Siocon Federation of Subanon Tribal Councils in Siocom, Threatened Indigenous Peoples' Society (Manipur), World Sindhi Congress, Zabarang Kalyan Samity.

Item 4(b): Review of developments –principal theme: “Indigenous peoples and globalization”

Aboriginal and Torres Strait Islander Commission, African Indigenous Women Organisation Central Africa Network (AIWO-CAN), Akaitcho Dene, Akaupa Waimakat, Alexis First Nations, Altay Regional Public Organization of the Kumandin Peoples “ISTOK”, A.N.I.P.A.-CPNAB, Asian - Pacific Indigenous Youth Network, Asociación de Mujeres Pachamama, Asociación Incacauda de Desarrollo e Información Indígena, Association of Indigenous Peoples of the North in the Ulchidistiet, Association of Indigenous Peoples in the Ryukyus - Shimin Gaikou Center, Association of Indigenous Peoples of the North of the Chukotskiy, Association of Norfolk Islanders, Association pour la Promotion Durable de la Femme Défavorisée, Association Sahel Solidarité Action, Aymara Lupaqas, Bantaya Legal AID Foundation, Borneo Resources Institute, Borok People's Human Rights Organization, Buffalo River Dene Nation, Canada, CAPAJ, Capitania Guaraní - Zona Santa Cruz-Bolivia, Center Study and Advocation of Human Rights for the Papuan People, Centro de Estudios Aymara, Centro Educativo y Desarrollo Integral Andino, Chin Human Rights Organization, Chirapaq - Centro Culturas Indígenas del Perú, Club Union Africane Côte d'Ivoire, COICA, Comunidad Indígena Dos de Mayo-Perú, Comunidad Pivincó Asociado al Consejo de Todas las Tierras, Conaie – Ecuatorunari, Confederación Nacional de Organizaciones Campesinas Indígenas y Negras (FENOCIN), Confédération des Associations Amazighes – Maroc, Conseil National des Droits du Peuple Autochtone en Kanaky, Consejo de Ayllus y Comunidades Originarias de Tayka – Bolivia, Consejo Indio de Sud América (CISA), Cordillera Peoples Alliance, Corporación Ambientalista Hojas de Hierba, Corporación Arutam Amazonico, CRAL, Délégation Femmes Celtes, Forest Peoples Programme, Gerempong Anembiak Sekabai, Haudenosaunee Confederacy, Health and Environment Program, Huisen Women's Organization, Indigenous Caucus, Indigenous Nationalist Party of Twipra, Information Center for People Advocacy, Innu Nation, International Indian Treaty Council, International Indigenous Youth Conference 2004 Secretariat, Inter-Peoples' Exchange Inc., Inuit Circumpolar Conference - Saami Council, IOIRD, IPACC – Tamaynut, Kanaky People of New Caledonia, Khoe Heritage Cultural

Development Organization, Krimtchacs Association (Ukrania), Kuki Indigenous People (KIP), Mainyoto to Pastoralists, Maya Kichin Konegel, Mejlis of Crimean Tatar People, Movimiento Indio "Tupaj Amaru", Nación Cumanagoto de Venezuela, National Khoi-San Consultative Conference, North East India Indigenous Peoples' Desk-National - Council of Churches in India, OCAPROCE International NGO, Ong Rayouwan Mata, Organisation des Acteurs de Développement de Langue IGO, Parakuiyo Community, PCJSS, Philippine Indigenous Peoples Links, Pitcairn Island Community, Quaker Aboriginal Affairs Committee of Canadian Friends Service Committee, Research Centre for Semiotics, Rural Community Development Program, Servicios en Comunicación Intercultural SERVINDI, Siocon Federation of Subanon Tribal Councils, Spain, Susila Dharma International, Taralift, Tebtebba Foundation, Threatened Indigenous Peoples' Society (TIPS) - Manipur, Tigmi Algérie, Tin Hinan, Touareg People, Tunfa Niger, United Zo Indigenous Peoples, World Adivasi Council (WAC), World Bank, Zabarang Kalyan Samity, ZO Reunification Organization.

Item 5: Standard-setting activities

Aboriginal and Torres Strait Islander Commission, Association Indigenous Peoples of the North of Vanino-District Khabarovsk Region, Association of the Shor People, Canada, CAPAJ, Committee on Indigenous Health, Finland, Foundation for Aboriginal and Islander Research Action, Fundación Intercultural ALITASIA, Grand Council of the Crees, Indian Confederation of Indigenous and Tribal Peoples, International Indian Treaty Council, Movimiento Indio "Tupaj Amaru", Permanent Forum, Philippine Indigenous Peoples Links, Russian Association of Indigenous Peoples of the North, Tebtebba Foundation, Teton Sioux Nation Treaty Council, UNDP

Item 6(a): Other matters – Cooperation with other UN bodies in the sphere of indigenous issues

Akaitcho Dene, American Indian Law Alliance, COICA, FOKISE, Foundation for Aboriginal and Islander Research Action, Innu Nation, IOIRD, IPACC-Tamaynut, Lao Human Rights Council, Protection des Droits des Minorités en Afrique Centrale, Samson Cree Nation, Walpole Island First Nations, 20 National Student's Federation.

Item 6(b): Follow-up of to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance

Ainu Association of Hokkaido, Akaitcho Dene, Argentina, Association of Indigenous Peoples in the Rynkyus, Chirapaq-Centro de Culturas Indigenas del Perú, CODENPE Ecuador, COICA, Confederación Nacional de Organizaciones Campesinas, Indígenas y Negras, Corporación Hojas de Hierba, Délégation Femmes Celtes, Etnia Cumanagoto, Foundation for Aboriginal and Islander Research Action, Grand Council of the Crees, IPACC-Tamaynut, Mena Muria Foundation Save the Rumanian Gypsies, Movimiento Indio "Tupaj Amaru", Organizaciòn Nacional Indigena de Colombia, Zo Human Rights Global Networks.

Item 6(c): Review of the International Decade of the World's Indigenous People

Akaitcho Dene, Association of Indigenous Peoples of the North of the Khabarovsk Region, CAPAJ, Olpadep Programme, Servicios de Comunicación Intercultural, United Farmers Association Ireland, United ZO Indigenous Peoples, World Adivasi Council.

Item 6(d): State of the Voluntary Funds

IPACC-Tamaynut, Servicios en Comunicación Intercultural, World Adivasi Council.

Item 6(e): The human rights situation of indigenous peoples in States and territories threatened with extinction for environmental reasons

CONAIE-Ecuador, Foundation for Aboriginal and Islander Research Action, Pacific Caucus

Item 7: Presentation of the recommendations and conclusions

IPACC-Tamaynut, Permanent Forum, Venezuela