

Sub-Commission on the Prevention of Discrimination and Protection of Minorities

Working Group on Indigenous Populations

The Sub-Commission's Working Group (WG) on Indigenous Populations was established in 1982 with a mandate to review developments related to the promotion and protection of human rights and fundamental freedoms of indigenous peoples and the evolution of standards concerning the rights of indigenous peoples, taking account of both the similarities and differences in the situations and aspirations of indigenous peoples throughout the world. The WG meets annually just prior to the session of the Sub-Commission.

The WG's report of its July 1998 session (E/CN.4/Sub.2/1998/16) contains information on, *inter alia*: education and language, health, the evolution of standards concerning the rights of indigenous peoples, treaties and agreements between states and indigenous peoples, the relationship to land, the permanent forum, and the International Decade.

With regard to the work of the Sub-Commission's Special Rapporteur (SR) on treaties, agreements and other constructive arrangements between states and indigenous populations, the WG's report notes that the study took nine years to complete and that the SR's report was not issued as an official document for technical reasons (*viz.*, it had not been edited and was only available in English). Points raised in the oral presentation of the report, however, noted, *inter alia*, that: land rights was the core issue to indigenous peoples regardless of where they lived; very little or no progress could be made on this without tackling, solving and redressing — in a way acceptable to the indigenous peoples concerned — the question of the uninterrupted dispossession of indigenous resources (land, in particular) vital to the lives and survival of indigenous peoples; indigenous peoples, like all other peoples, had the right to self-determination, and states had the duty to promote and protect this right. The SR's report is scheduled to be formally considered at the 1999 session of the Sub-Commission, pending resolution of the technical problems.

Within the context of the Working Group's programme, several reports were prepared on diverse subjects. These included:

- ♦ human genome diversity: research and indigenous peoples (E/CN.4/Sub.2/AC.4/1998/4, prepared by the Secretariat);
- ♦ the collection, study and commercialization of human genomes (E/CN.4/Sub.2/AC.4/1998/4/Add.1), prepared by the International Indian Treaty Council;
- ♦ indigenous peoples — education and language (E/CN.4/Sub.2/AC.4/1998/3, prepared by the Secretariat);

- ♦ linguistic reform to promote indigenous languages (E/CN.4/Sub.2/AC.4/1998/2, prepared by UNESCO);
- ♦ self-determination (E/CN.4/Sub.2/AC.4/1998/9, prepared by the Tupac Amaru Movement); and
- ♦ cultural policies for development (E/CN.4/Sub.2/AC.4/1998/8, prepared by the Saami Council).

Working Paper on indigenous people and their relationship to land

Decision 1997/114 adopted at the 1997 session of the Commission on Human Rights approved the appointment of a Special Rapporteur (SR) of the Sub-Commission to prepare a working paper on indigenous people and their relationship to land. A preliminary working paper was completed (E/CN.4/Sub.2/1997/17, 20 June 1997 and Corr.1) and transmitted to governments, indigenous people, and to intergovernmental and non-governmental organizations for comments and suggestions. The Special Rapporteur was requested to prepare a final working paper on the basis of comments and information received. The report to the 1998 Sub-Commission (E/CN.4/Sub.2/1998/15) noted that few responses had been received, making it impossible to complete the work. A summary of information provided by Canada, Australia and New Zealand is included. In general, the information referred to: court decisions, progress in land claim negotiations, constitutional reform and legislation, land settlements and the issue of extinguishment of indigenous land rights. Information provided by indigenous and non-governmental organizations referred to, for example: the integral relationship that can exist between an indigenous land tenure system and indigenous culture or people, the apparent failure to recognize or acknowledge the existence of indigenous people, the absence of the rule of law in some situations in relation to lands of indigenous people and, often, the failure to demarcate indigenous lands.

Reference is also made to the first friendly settlement in the Inter-American human rights system which restored legitimate land rights to an indigenous community. The case involved Paraguay and the indigenous communities of Lamexay and Riachito. The report also notes a case before the Inter-American Court of Human Rights that concerns the failure of the government of Nicaragua to demarcate or otherwise secure the land rights of the Indian community of Awas Tingni and the granting by the government of a logging concession on Awas Tingni lands without consultation with, and without the consent of, the community. A third case followed by the SR involves the United States and two Western Shoshone Indian women and a challenge by the women of government actions to prevent them from using lands that are claimed as the aboriginal lands of the Western Shoshone Nation.