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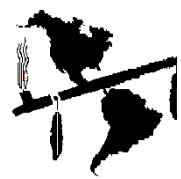
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Climate Change, Human Rights and Indigenous Peoples

**Submission to the United Nations High Commissioner on Human by the
International Indian Treaty Council (IITC), NGO in Special
Consultative Status to the UN Economic and Social Council¹**

December 26th, 2008

“Recognizing the urgent need to respect and promote the inherent rights of indigenous peoples which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies, especially their rights to their lands, territories and resources”

--- Preamble, United Nations Declaration on the Rights of Indigenous Peoples

***“Let us put our minds together and see what life we can make for our children”
– Sitting Bull***

¹ The IITC notes with appreciation the contributions of Mr. Benjamin Powless, Mohawk Nation, Canadian Youth Climate Change Coalition, and Mr. Tom Goldtooth, Dineh/Dakota, Indigenous Environmental Network, in the development of this paper. IITC also recognizes and thanks the many Indigenous Peoples, Nations, Organizations and individuals from around the world whose words have also been quoted and cited in this paper as well as those who are working in all regions and at all levels to address this profound human rights and environmental crisis.

I. Introduction

“From a traditional perspective, the health of our Peoples cannot be separated from the health of our environment, the practice of our spirituality and the expression of our inherent right to self-determination, upon which the mental, physical and social health of our communities is based.”

--- IITC Oral Intervention presented by Faith Gemmill, Gwich'in Nation Alaska
United Nations Working Group on Indigenous Populations, Geneva July 31, 1996

The International Indian Treaty Council is pleased to provide this information relevant to the Council on Human Rights' resolution 7/23 adopted on March 28th 2008, entitled “Human Rights and Climate Change”, responding to an invitation by the United Nations High Commissioner on Human Rights.

We thank the UN Human Rights Council for their very timely and appropriate interest in this critical concern impacting a wide range of human rights within its mandate. We welcome this opportunity to present some perspectives, experiences, views and concerns of Indigenous Peoples for inclusion in the “detailed analytical study of the relationship between climate change and human rights to be submitted to the Council prior to its tenth session” as called for by the HRC resolution.

We also hope that this submission will contribute to the development of a comprehensive and effective human rights framework through which the Council and the UN System as a whole can address this issue, emphasizing the inextricable link between human survival and the protection of the Natural Environment, is a fundamental underpinning of the world view of Indigenous Peoples around the world.

There is no doubt that Indigenous Peoples, together with the entire human family and the natural world, are facing a crisis of unprecedented proportions, profoundly threatening our human rights and our survival as Peoples. This threat is Global Climate Change, or as many have called it, the “Global Climate Crisis”.² Peoples around the world are experiencing its effects in increasingly severe natural disasters, negative impacts on traditional subsistence economies and food security, shifts and weather patterns, and dramatic changes in ecosystems including essential resources including water.

We expect these effects to worsen in the coming years, with devastating effects on our human rights and survival. There is no doubt that the many signs we see around the world are harbingers of catastrophic impacts yet to come if the human family, including UN member states, fails to undertake the necessary decisive collective action required to reverse the present

² “Since 1992 the ecosystems of the earth have been compounding in change. We are in crisis. We are in an accelerating spiral of climate change that will not abide unsustainable greed” (The Kimberley Declaration, International Indigenous Peoples Summit on Sustainable Development, Khoi-San Territory, Kimberley, South Africa, 20-23 August 2002).

course.

For Indigenous Peoples, the air, waters, lands, plants and animals, seas and sea ice constitute the totality of the natural environments which have traditionally sustained life since time immemorial. These natural ecosystems provide the basis for their traditional subsistence economies (farming, hunting, gathering, herding and fishing), their physical health, and collective material survival and are a requirement for the exercise of their right to development.

The sacred responsibility to maintain the health and integrity of the Natural World for future generations is also a central element of Indigenous Peoples' spirituality, traditional ceremonial practices, religious expressions and ceremonial practice.

The causes, impacts as well as many of the proposed "solutions" to Climate Change result, and in many cases combine, resulting in violations of a wide range of internationally-recognized Human Rights for Indigenous Peoples around the world. These include, inter alia, the Rights of the Child, the Rights to Health, Food Security, Development, Physical Integrity, Security, Permanent Sovereignty over Land and Natural Resources, Treaty Rights, Free Prior and Informed Consent, Self-Determination, Cultural Rights, Religious Freedom and the Right of Peoples not to be Deprived of their own Means of Subsistence. In addition, the territorial integrity of Indigenous Peoples, along with that of many states, is increasingly threatened.

It cannot be stressed enough that the Global Climate Crisis constitutes a growing threat to the right to life and survival itself. In our view this unprecedented crisis requires an urgent, significant and comprehensive response by all states, the United Nations as a whole and all of its bodies, including the Human Rights Council, ECOSOC, the UN Security Council and the General Assembly. The UN Human Rights Council has a very significant role and responsibility in this regard, based on its comprehensive mandate to protect and defend human rights.

II. Assessing the Problem and the Understanding the Threats of "Global Warming"

Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.

--- Article 29, para.1, United Nations Declaration on the Rights of Indigenous Peoples

The climate is rapidly changing. Warming trends accelerating at an alarming rate are affecting the globe in many adverse ways. A century and a half of industrialization based on burning of fossil fuels (oil, gasoline and coal) accompanied by rampant loss of forests, "the lungs of the earth", have released large amounts of "greenhouse gases" (GHG) into the Earth's atmosphere and trap the heat released by the sun. These are primarily carbon dioxide and methane.

According to the Intergovernmental Panel on Climate Change, in 2004 the carbon

dioxide emissions caused by the burning of fossil fuels accounted for 56.6% of atmospheric GHG's. Deforestation and loss of biomass account for another 17.3% of carbon dioxide emissions, and another 2.8% of carbon dioxide is contributed by other sources.³ The natural balance, exchange and absorption of carbon between the air, the oceans and land vegetation, has been upset, and atmospheric carbon dioxide is growing at an exponential and accelerated rate of 10% every 20 years.⁴

The distinguished (and Nobel Prize-winning) Intergovernmental Panel on Climate Change (IPCC) in its *Climate Change 2007: The Physical Science Basis. Summary for Policymakers* noted that even if global emissions were reduced to pre-2000 levels and atmospheric levels stop rising, the present momentum of global warming would continue to affect Earth's natural systems for "centuries" hundreds of years.⁵

The IPCC lists impacts observed as a result of global warming which include:

- Long term changes in climate, including extreme weather such as droughts, heavy precipitation, heat waves, and intensity of tropical cyclones;
- Hotter, longer periods of drought and increasing desertification in many regions, with extreme levels of flooding in other regions
- The increase of Arctic temperatures at twice the global rate in the past 100 years, leading to the loss of snow cover in the mid and high latitudes of the Northern Hemisphere. Glaciers and icecaps are melting, contributing to the rise of global sea levels averaging 1.8 mm per year between 1961 and 2003. Between 1993 the rate was greatly accelerated, to 3.1 mm per year.⁶

Even under the most optimistic scenario, the projected impacts of rising Global temperatures on human rights, food security, health and activity are grim. These impacts include: more severe storms and flooding along the world's increasingly crowded

³ Barker T., I. Bashmakov, L. Bernstein, J. E. Bogner, P. R. Bosch, R. Dave, O. R. Davidson, B. S. Fisher, S. Gupta, K. Halsnæs, G.J. Heij, S. Kahn Ribeiro, S. Kobayashi, M. D. Levine, D. L. Martino, O. Masera, B. Metz, L. A. Meyer, G.-J. Nabuurs, A. Najam, N. Nakicenovic, H. -H. Rogner, J. Roy, J. Sathaye, R. Schock, P. Shula, R. E. H. Sims, P. Smith, D. A. Tirpak, D. Urge-Vorsatz, D. Zhou, 2007: Technical Summary. In: *Climate Change 2007: Mitigation. Contribution of Working Group III to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change* [B. Metz, O. R. Davidson, P. R. Bosch, R. Dave, L. A. Meyer (eds)], Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA, <http://www.ipcc.ch/pdf/assessment-report/ar4/wg3/ar4-wg3-ts.pdf>, Chart, page 28, visited July 24, 2008.

⁴ Ibid.

⁵ *Climate Change 2007: The Physical Science Basis. Summary for Policymakers*. Contribution of Working Group I to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change, Geneva, February 2007.

⁶ Ibid

coastlines, with more powerful storms moving toward the poles; consequent changes in wind and precipitation, including greater precipitation in high latitudes and loss of precipitation in most sub-tropical regions; heat waves and the drying of vast land areas now producing the world's supply of food, such as the American mid-west and vast areas of Asia and resultant disruptions of the world's food supply; growing conflicts over diminishing water resources; salt water intrusions on freshwater supplies caused by higher ocean levels and the contamination of ground water, especially in the world's island nations; the total extinction of many of the world's endangered species of plants, coral reefs and animals, as warmer conditions alter oceans, forests, wetlands, sea ice and rangeland on which they depend; coastal and island land loss due to rising sea levels and the resulting creation of millions of "climate refugees"; destruction of northern boreal forests from invasive pests such as bark beetles; and the expansion of some highly dangerous "vector borne" diseases such as malaria, which already kills 1 million people, mostly children, annually.

Rising Temperatures and Changes in Precipitation

The Intergovernmental Panel on Climate Change in its February 2007 Assessment Report confirmed that Eleven of the previous twelve years (1995 -2006) rank among the 12 warmest years in the instrumental record of global surface temperature (since 1850).

The IPCC further confirmed that in the 100 years ending in 2005 the earth's surface temperature (over both land and ocean) rose an average of 0.74 ± 0.18 °C (1.33 ± 0.32 °F) and that these changes were "very likely" due to human activity after 1950. They further predicted that global temperatures will likely rise a further 1.1 to 6.4 °C (2.0 to 11.5 °F) during the twenty-first century, with catastrophic impacts that include rising sea levels, changes in amounts and patterns of precipitation expanding of the subtropical desert regions, increases in the intensity of extreme weather events, changes in agricultural yields, glacier retreat, species extinctions and increases in the ranges of disease vectors.⁷

Studies as well as first hand testimony from around the world, in cases far too numerous to cite here, show that many regions inhabited traditionally by Indigenous Peoples are particularly vulnerable to increasingly severe combined impacts of changing temperatures and precipitation (rain and snowfall) levels.

According to an Issues Paper released by the International Union for the Conservation of Nature (IUCN) in March, 2008 titled "Indigenous and Traditional Peoples and Climate Change":

⁷ "Summary for Policymakers" (PDF). *Climate Change 2007: The Physical Science Basis. Contribution of Working Group I to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change*. Intergovernmental Panel on Climate Change. 2007-02-05. http://ipcc-wg1.ucar.edu/wg1/Report/AR4WG1_Print_SPM.pdf

*“It is noticeable that many of the regions of greatest change in surface temperature coincide with the regions of greatest decrease in precipitation.... Hence, indigenous and traditional groups living in these areas, namely the Caribbean region, the Mediterranean region and the Middle East, southern Africa and great parts of Australia will not only have to cope with increasing water stress but also with rising surface temperatures.”*⁸

The IUCN Issues Paper also superimposed maps of predicted data of climate change with maps of the location of Indigenous Peoples which it termed “places of high cultural diversity.”

“The resulting maps show the coincidence of some areas of high concentration of indigenous and traditional peoples and areas of greatest predicted climatic change. Regions where these two conditions occur simultaneously may represent areas of particular interest or vulnerability. The particular interests and needs of indigenous and traditional peoples where change, even change which may be considered beneficial at a national or regional level (for example, increased precipitation in currently arid areas such as the Sahel) may give rise to potentially threatening changes in traditional livelihood systems, settlement patterns, land prices, etc.”⁹

Likewise, “**Climate Change, An Overview**, submitted in November, 2007 by the Secretariat of the United Nations Permanent Forum on Indigenous Issues stated:

*“In the tropical rainforests of Asia, temperatures are expected to rise 2-8 degree Celcius and further climatic variation will include decrease in rainfall, crop failures and forest fires. Tropical rainforests are the haven for biodiversity, as well as indigenous peoples’ cultural diversity and forest fires will threaten this heritage of biodiversity.”*¹⁰

Rising Coastal Seas

Coastal Indigenous Peoples face unprecedented challenges in the alteration of marine ecosystems, marine animal and plant species greatly influenced by the temperature of the oceans. The Oceans are a major carbon reservoir and “heat sink”. As more carbon is expelled into the atmosphere, the oceans acidify and impacts on their major means of subsistence. Rising sea levels threaten to submerge their lands themselves.

⁸ Lead author Mirjam Macchi, contributing authors Gonzalo Oviedo, Sara Gotheil, Katherine Cross, Agni Boedhihartono, Caterina Wolfangel, Matthew Howell, IUCN Issues Paper “Indigenous and Traditional Peoples and Climate Change”, March, 2008.

⁹ Ibid, at 23. et seq.

¹⁰ “Climate Change, An Overviews, United Nations Permanent Forum on Indigenous Issues, November 2007

The IUCN Issues Paper also underscores the threat of rising sea levels, which is not a future possibility but a current reality for growing numbers of island and Arctic coastal Indigenous Communities:

“Most pronounced change in sea level is projected to take place in the Arctic. Other areas of interest where sea level is expected to rise within a range of 0 -0.2m are situated along the Asian and African coastlines as well as parts of the South and North American Atlantic coastline. Sea level rise is expected to have especially serious impacts along the low lying coastline of the Indian states Gujarat and Kerala, the Bay of Bengal as well as around the Korean peninsula and Japan. Furthermore, island states across the world are expected to be at risk, namely low lying parts of Madagascar, Sri Lanka and the Pacific Island states. Among these, especially small island states, which contain a high proportion of the world’s linguistic and cultural diversity, are at risk.”¹¹

Examples Include:

- In “Climate Change, an Overview” the UNPFII noted that in that “Coastal indigenous communities are severely threatened by storm related erosion because of melting sea ice. Hence, up to 80% of Alaskan communities, comprised mainly of indigenous peoples, are vulnerable to either coastal or river erosion.”¹²

In fact, today in coastal Alaskan Native Villages such as Shishmaref are literally falling into the ocean as sea waters rise, creating the need for what is truly forced relocation to a new village site. Sufficient government funding may or may not be provided in order to move these villages as a whole in order preserve their cultural and political identity and their self-determination.

- Indigenous Peoples of Island Nations and Communities report similar peril to their subsistence and way of life, and even their continued existence as Peoples as the threat of forced relations looms: “*Pacific Islands such as Tuvalu are sinking and the coast is eroding. On other islands in the Pacific and the Caribbean, food security is threatened by soil erosion and an accelerated disappearance of the rain forests.*”¹³

Indigenous Peoples in Tuvalu, among others Pacific Island Nations, also report rising sea water into the fresh ground water tables, contaminating water used for both drinking and growing traditional crops, making the "choice" for what has become a

¹¹ Indigenous and Traditional Peoples and Climate Change, IUCN Issues Paper, March, 2008.

¹² “Climate Change, An Overview”, United Nations Permanent Forum on Indigenous Issues, November 2007

¹³ Oral Intervention, UN Permanent Forum on Indigenous Issues 7th session, Item 3: Special Theme: “Climate change, biocultural diversity and livelihoods: the stewardship role of indigenous peoples and new challenges”, April 2008

forced relocation an apparent necessity for them as well. What is in doubt is their ability to continue their existence as a distinct sovereign Nation and People when such relocation takes place.

- In the Pacific Northwest of North America, glacier-fed rivers and streams have permanently warmed due to the decline in winter snow packs and the retreat of high mountain glaciers. Global warming has meant that these glaciers will not reappear and the fish and wildlife that depend on clear cold water are disappearing. These fish and wildlife are necessary supplements to the diet of North American Northwest tribes and essential to the practice of their tribal cultures.¹⁴

Hydrological changes related to climate change combined with environmental degradation and non-Indigenous land use practices have caused significant declines in water supply and quantity. Scientific models developed by the Tulalip Tribe, for example, found that the level of freshwater lost to the ocean has increased from .6% to 33%. This is almost 1/3 of the freshwater that used to get into the groundwater. During the calendar year, over two months are lost to warming, so that there is less time for snow to accumulate in the mountains. It is reported that when spring comes, it happens so quickly that much of the melt water is released very quickly in large volumes. The Tribe reports this process scours and channelizes the streams, which destroys salmon habitat and stirs up sediment and toxic materials. Tribal fishermen in the Pacific Northwest report seeing more salmon with lesions associated with warm-water disease. It also leads to significant water storage loss and aquifer storage capacity as the land dries out and natural storage structures collapse. On smaller islands, extremes of drought and rainfall-variability can allow for salt water intrusion into freshwater lenses, destroying freshwater supplies and requiring expensive desalinization.¹⁵

III. The Causes of Climate Change and the Human Rights of Indigenous Peoples

“Profit to non-Natives means money. Profit to Natives means a good life derived from the land and sea, that’s what we’re all about... The land we hold in trust is our wealth. It is the only wealth we could possibly pass on to our children. Good old Mother Earth with all her bounty and rich culture we have developed from her treasures is our wealth. Without our homelands, we become true paupers.”

Antoinette Helmer, Alaska Native elder

The poorest of the world have done almost nothing to contribute to climate change but are most exposed to the effects. This is certainly the case for Indigenous Peoples around

¹⁴ Climate Change and Pacific Rim Indigenous Nations, October 2006, Northwest Indian Applied Research Institute, Evergreen State College, Olympia, Washington, Recommendations by Dr. Alan Parker.

¹⁵ Climate Change and Pacific Rim Indigenous Nations, October 2006. Impacts on Indigenous Peoples by Terry Williams and Preston Hardison, Tulalip Nation Fisheries and Natural Resources Department.

the world. In fact, Indigenous Peoples, those who rely on the Natural World for their means of subsistence, languages, traditional economic base, cultures and spiritual lives are among the most severely affected.

From the point of view of the International Indian Treaty Council, the core and ongoing causes of Climate Change can be summarized as follows:

1. The dominance of an industrialized and market-based system of “development”, which now includes globalization and free trade, promoting the privatization, commodification and appropriation of natural resources including land, water, forests, and minerals. This system is imposed in Indigenous Peoples’ territories without their free prior informed consent and in many cases in spite of their direct and vehement opposition;
2. The imposition of non-sustainable, contaminating and destructive development projects by the governments and private companies. These include mining and other extractive industries, damming, deforestation, toxic waste dumping and incineration. Of particular concern is continued energy generation based overwhelmingly on fossil (coal, oil, tar sands and natural gas).
3. The continuation of the same market-based development model that caused the problem as the basis for proposed solutions” to climate change that do little or nothing to solve the problem and in many cases further violate the rights of impacted Indigenous Peoples.
4. National policies and legal systems that allow, favor and give precedence to private and or/industrial uses of natural resources over local and traditional subsistence practices by indigenous peoples which are based on collective use, responsibility for protection and sustainable methods.
5. National laws and policies adopted by states which provide access to corporations with little regard for the rights of Indigenous Peoples to their traditional lands, territories and natural resources, often in violation of existing Treaties, Agreements and Constructive Arrangements as well as International Human Rights Obligations.
6. Lack of political will by states and large corporations to put economic profits or fossil fuel-based economies at risk in order to slow or reverse the current trends by implementing sustainable energy policies or rights-based approaches.
7. Lack of formal mechanisms to ensure the full and effective participation of Indigenous Peoples in international processes addressing climate change, its causes, impacts and solutions, as well as the failure to adopt, promote and endorse a “rights based approach” in global discussions addressing environment and development.

These factors combine and reinforce each other’s impacts to the grave detriment of both global environmental sustainability and human rights, and are at the core of what must be addresses if real changes are to occur. A few examples demonstrating the human rights impacts and concerns, though far from exhaustive, are provided below.

A. Fossil Fuel Extraction and the Human Rights of Indigenous Peoples “at the Source”

“States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of their mineral, water or other resources.

-- Article 32, para. 2, UN Declaration on the Rights of Indigenous Peoples

The continued extraction through mining and drilling, along with the unabated consumption of fossil fuels, are the primary source of GHG emissions that cause climate change.

Other key and interrelated factors which both contribute to GHG emissions and decrease the capacity of the Earth’s ecosystems to absorb them, are deforestation and industrial livestock production. All of these factors have both immediate and long-term effects of the rights and survival of Indigenous Peoples around the world.

Despite the well documented and now almost universally-accepted role of fossil fuel extraction, production and combustion in creating the emissions that are the primary cause of climate change, their extraction and use continue unabated. In some states their use is on the increase.

Indigenous Peoples have consistently stated in Declarations, interventions and formal communications to UN and regional human rights mechanisms the devastating impacts on their rights, survival and environments caused by the extraction of fossil fuels (oil, coal and natural gas) in their traditional territories.

These include extreme environmental destruction and contamination, land appropriation, severe health impacts, threats to subsistence food resources, as well as the destruction of their sacred sites and ceremonial places. Indigenous Peoples are often met with political repression, forced relocation, arbitrary detention, death threats and extrajudicial executions if they object to the unwanted encroachment of oil and mining companies into their territories. Their internationally recognized right to Free Prior and Informed Consent is consistently undermined and ignored by corporations as well as States despite their legal and moral obligations to ensure that these rights are upheld and protected.

The examples around the world are far too numerous to list here. But the impacts are similar and all too familiar to Indigenous Peoples the world around.

We present the following statements from traditional Indigenous Peoples in various countries facing the threats or consequences of fossil fuel extraction (mining and drilling) in their homelands so that their own voices can be heard. We also present these situations in order to demonstrate some of the specific human rights that are being

violated as a result, from the point of view of the affected Indigenous Peoples themselves.

The situations they describe have all been presented to the Human Rights Council or its predecessor, the Commission on Human Rights, as well as to other human rights mechanisms within the UN System. These cases and others like them are in fact very well known to the UN Human Rights system. Currently, for example 9 of the 10 cases before the UN CERD Committee under its “early warning” complaints procedure have been submitted by Indigenous Peoples from various countries opposing mining activities in their territories. What has not yet been done is to ensure that such perspectives are included in a framework addressing the relationship between Human Rights and Climate Change.

1. The Gwich'in of the Arctic, whose ancestral lands are located in Alaska, United States as well as Northwest Canada have battled a persistent effort by oil corporations and the US government to exploit oil on their traditional lands including the Caribou birthing grounds.

A statement issued in August 2002 by the Gwich'in Steering Committee, responding to renewed U.S. government threats to open the caribou calving ground in the Alaska National Wildlife Refuge to oil exploration, stated: *“Our traditional culture and way of life which is interconnected with the Porcupine Caribou Herd to meet all our essential needs such as food, clothing, tools, spirituality and social structure, is at stake.”*

The relevant human rights concerns were further expressed in a statement provided by the Gwich'in to the IITC and presented in a written intervention in 2005 to the 61st session of the UN Commission on Human Rights:

“In Northeast Alaska and Northwest Canada, the Gwich'in Nation, is once again facing destruction of their way of life, resisting new attempts by the U.S Bush Administration to open the coastal plain of the Arctic National Wildlife Refuge to oil development. Proposed oil development of the coastal plain would imperil the core birthplace and nursery of the Porcupine Caribou Herd. The Gwich'in uphold this area as a sacred place, naming it Iizhik Gwats'an Gwandaii Goodlit, translated as the *Sacred Place Where Life Begins*.

The Gwich'in way of life is interconnected with the Porcupine Caribou Herd, which provides them with their essential physical, cultural, spiritual, economic and social needs. Oil Development in the Arctic Refuge coastal plain is a direct threat to the health and well being of the Gwich'in Nation and would devastate the subsistence resource upon which the Gwich'in depend...

The Gwich'in Nation inherent fundamental human right to continue their ancestral way of life is at stake for what the US geological survey estimates as six months worth of oil to fuel the current energy consumption rate of the US. The United States has about three percent of

the world's known oil reserves, but consumes about a quarter of the world's annual oil production. Until the U.S government initiates an energy policy that maintains conservation and promotes alternative sustainable energy production, the human rights of Indigenous peoples in the U.S and the world will continue to be violated in the face of unsustainable energy projects on or near Indigenous peoples lands, threatening their right to food and means of subsistence as well as their cultural survival, as in the case of the Gwich'in and the Arctic Refuge.”¹⁶

Now, ironically and tragically, the Gwich'in, along with many Arctic Indigenous Peoples, must also cope with global warming as the rising sea levels, melting ice and drought threaten the survival of their traditional means of subsistence and basis of their culture, the Caribou. Gwich'in communities report that the Caribou are leaving their winter grounds a month early now in response to global warming, and are having trouble reaching the coastal plain of the Arctic National Wildlife Refuge in time for spring, when the most nutritious forage is available for their calves.

2. During the 59th session of the UN Commission on Human Rights, Traditional Elder Kee Watchman, Dineh (Navajo) **of Cactus Valley/Red Willow Springs Sovereign Community of Big Mountain, Arizona, USA** offered testimony about the forcible relocations, destruction of sacred areas, and the threat to Water that their Peoples continue to face as a result of coal mining. His statement was made in response to Peabody Western Coal Company and US government plan to extend the strip-mining of coal within the boundaries of Dineh ancestral lands and the use of a “slurry” hundreds of miles long to transport the crushed coal in water to a power generating plant.

“My name is Kee Watchman, a traditional Dineh (Navajo) from Big Mountain Arizona, in the United States. We are still holding on very strongly to our sacred land, our sacred water, and the herbs we use for our medicine.

We have only a small piece of our Land left with us today. This Land has a lot of very important things that are still here with us as part of our traditional way of life. This includes ceremonial herbs, the different colored stones used for ceremonial sand painting, the sacred springs used in different ceremonies and also our shrines, offering places, burial sites, petroglyphs, and the ruins of the places used by our ancestors over a thousand years ago.

Mr. Chairman, if we, the traditional Dineh, are removed from our holy ancestral homeland, we cannot practice our religion and our way of life

¹⁶ Commission on Human Rights, 61st Session, March 14 – April 22, 2005, Item 10: Economic, Social and Cultural Rights, Written Intervention by the International Indian Treaty Council

will end. Today the energy company Peabody Western Coal Company as well as the United States government and Bureau of Indian Affairs are looking to extend three decades of strip-mining to include this area, Cactus Valley/Red Willow Springs Sovereign Community, and Big Mountain, Arizona, to be strip-mined in the next 2-10 years.

We already have a big problem with our ground water. Peabody Western Coal Company has been pumping out our aquifer for over 30 years to slurry the coal over 287 miles away to Nevada (Mohave Generating Station) and Page, AZ (Navajo Generating Station) where it make the electricity to light up the big cities far from our land.

In our religion we have our songs and prayers about the rain and the water and the Mother Earth, to use in the ceremonials. We feel like our prayers and our songs have all been wasted by the strip mining and the coal slurry. Now we don't have the water anymore that we need to survive, and still they are taking more and more. They say that more than 3 million gallons of water is pumped from our homelands every day for this slurry to carry the coal they are taking. Our sacred springs are drying up now, and our sheep can't find water to drink and our corn needs the water to grow. The water is the life blood of our Mother Earth, and our Peoples and the plants and animals all need it to survive."¹⁷

3. "Oil is the blood of Mother Earth ... to take the oil is, for us, worse than killing your own mother. If you kill the earth, then no one will live."

These are the words of U'wa leader Luis Sirakubo. **The U'wa Indigenous Peoples living in what is now the country of Columbia**, have expressed on innumerable occasions their unwavering opposition to any oil operations within their sacred territory. The U'wa have stated to the world that they were willing to die to keep oil drilling off their ancestral homelands.

In 1997, the U'wa in alliance with Colombian and international non-governmental organizations launched a successful international campaign targeting US-based Occidental Petroleum (OXY) that eventually led to the company's withdrawal in 2002.

Following OXY's departure, the Colombian government transferred drilling rights to the Sirirí and Catleya oil concessions to Ecopetrol, the Colombian state-owned oil company. Currently the U'wa continued to be concerned about Ecopetrol's increasing activities around the Gibraltar platform which is located within their traditional ancestral territory as well as the company's plans to expand within the U'wa legal reserve. Over the last year there has been an influx of heavy machinery, equipment, and oil workers.

¹⁷ UN Commission on Human Rights 59th session, March 17 – April 25- 2003, Agenda Item 7: Right to Development, oral Intervention by the International Indian Treaty Council

In September 2008, Twister Technology, from the Netherlands, was selected to construct and operate a new gas processing plant at Gibraltar.

Luis Sirakubo says encroachment on his peoples' lands by Colombia's national oil company, Ecopetrol, is not a question of if, but when: *"We don't know what the Colombian government's plans are,"* says Sirakubo, *"we just know that sooner or later they are going to try come in and start extracting oil from our land."*¹⁸

4. Another glaring abuse of Indigenous Peoples rights related to fossil fuel extraction is taking place through the government of Canada's and the Province of Alberta's support for and licensing of corporations to carry out **oil extraction from "tar sands" in Northern Alberta Canada**. Tar sands extraction currently covers 4.3 million hectares (10.6 million acres). Leases sold by Alberta and Saskatchewan cover 3000 square miles, an area as large as the state of Florida. Current processing of 2.7 million barrels of oil per day is estimated to increase to 6 million barrels by 2030.

The U.S. has reorganized their long-term plans for petroleum energy by setting a goal to get up to 25 percent of their daily imported oil from Canadian tar sands operations. The U.S. Department of Energy began declaring tar sand reserves as part of their calculations of oil imported from Canada. This will include massive pipeline construction and expansions going from northern Alberta down through Minnesota to refineries in Wisconsin and Chicago and through North Dakota, South Dakota down to Oklahoma and Texas to be refined. Pipelines will also go through British Colombia to be shipped overseas.

Extracting the oil from sand and clay is a highly industrialized process which requires strip mining large areas, resulting in destruction of entire ecosystems. It requires large amounts of fresh water and produces large amounts of toxic wastes. By 2010, the industry is projected to generate 8 billion tons of waste sand and 1 billion cubic meters of waste water. Tar sands mining are a major source of greenhouse gas emissions and a major contributor to climate change and global warming. Some of the toxic-tailing ponds are located next to the Athabasca River, a major tributary in northern Alberta. In 2007, Alberta approved withdrawal of 119.5 billion gallons of water for tar sands extraction. An estimated 82% of this water comes from the Athabasca River, the source of life and subsistence for the Mikisew Cree First Nation, the Athabasca Chipewyan First Nation at Fort Chipewyan, the Fort McMurray First Nation, the Fort McKay First Nation, and to the south, the Chipewyan Prairie First Nation, and many downstream First Nations.

The tar sands development around Fort McMurray and Fort McKay are located upstream along the Athabasca River basin. Current tar sands development has completely altered the Athabasca delta and watershed landscape, impacting the health and subsistence rights of many Indigenous Peoples who live downstream. It has caused deforestation of the boreal forests, open-pit mining, drying of water systems and watersheds, toxic contamination, disruption of habitat and biodiversity, and disruption of the indigenous Dene, Cree and Métis trap line and hunting cultures.

¹⁸ NACLA Online News, Uw'a Fight New Oil Exploration, Bart Beeson, October 29th, 2008

The results are devastating for Indigenous Peoples. A recent health study commissioned by the Nunee Health Board Society of Fort Chipewyan has empirical evidence that the governments of Alberta and Canada are ignoring the toxic contamination of downstream Indigenous communities and their resultant deteriorating health. Peoples most at risk are those whose means of subsistence is based on their lands and water. Dene, Cree and Métis communities maintain a subsistence diet of fish and wild game.

The Fort Chipewyan community has an 80% subsistence diet. Its residents identify tar sands mining and water polluted by its toxins as the cause of the alarming increases in rates of death and chronic illnesses including previously unknown cancers. *"The river used to be blue. Now it's brown. Nobody can fish or drink from it. The air is bad. This has all happened so fast,"* says Elsie Fabian, 63, an elder in a Native Indian community along the Athabasca River.¹⁹

On February 22, 2008 in Calgary, Alberta, Canada a resolution was also passed by the Chiefs of Alberta representing 47 First Nations, calling for a moratorium on new approvals for tar sands expansion. It also called upon Canada to provide remediation for the damage to the environment and human health and to halt all subsidies and support of the tar sands.

This issue was submitted as a violation of Indigenous Peoples human rights and the international human rights obligations of Canada, including the right to Free Prior and Informed Consent, to the UN CERD Committee for its review of the Canada's report in 2007. It was also included in a "Civil Society" submission to the UN Human Rights Council for its upcoming Universal Periodic Review (UPR) of Canada in February 2009. A statement by Ronald Lameman, Beaver Lake Cree Nation and Executive Director, Confederacy of Treaty 6 First Nations in the Shadow Report submitted to the CERD, also confirmed this situation and its impacts on Indigenous Peoples Human Rights:

"Tar sands extraction has had and continues to have a massive destructive environmental impact which I have recently seen with my own eyes. Vast areas of traditional subsistence hunting and fishing territories have been desecrated, contaminated and destroyed, and more are being threatened. Treaty Six supports the call made earlier this year by Grand Chief Herb Norwegian of the Dehcho First Nation, for a moratorium on tar sands extraction. This call needs to be upheld and enforced by the Canadian government until the long term impacts can be fully understood and rights of the Indigenous Peoples, including their free prior informed consent and right to subsistence can be guaranteed.

The Canadian government does nothing to uphold its obligation to enforce and protect our rights under Treaty No 6, starting with the requirement to

¹⁹ Excerpted from an informational handout of the Indigenous Environmental Network-Canadian Indigenous Tar Sands Campaign, 2008 and an article written by Clayton Thomas-Muller IEN-CITSC Native campaigner.

obtain our free prior informed consent. Instead, the government of Canada gives a free rein to these corporations to extract, exploit and destroy our mineral resources, our forests, mountains, water ways, our fish and game, and the other natural resources we require to maintain our cultural practices, survival and subsistence way of life. They do this in violation of the solemn agreements and mutual understandings that were entered into by the ancestors of both parties to Sacred Treaty No. 6 and also the rights and obligations affirmed in international agreements they have entered into, including the CERD.”²⁰

5. Indigenous Peoples along the route of transport as well as the source of energy production (i.e. the refineries, pipelines, shipping routes and coal-fired power plants) are also directly impacted, often with devastating consequences. The world recalls with horror the event that occurred on March 24th 1989 when the grounding of the Exxon Valdez oil tanker spilled 11 million gallons of crude oil into the pristine waters and coastlines of Prince William Sound Alaska, impacting the traditional subsistence resources and ecosystems of scores of Native Villages.

Violet Yeaton is a lifelong resident and tribal member of the coastal Aleut village of Paluwik (Port Graham), located directly in the path of the spill and assessable only by boat or small plane. Ms. Yeaton, the Environmental Planner for the Port Graham Village Council, believes that the initial and continuing impacts were never fully assessed or understood by the various Commissions and courts (including the US Supreme Court) which put an economic value to the damage and oversaw payment of compensation which primarily settled the claims of commercial fishermen.

“As a traditional person, whose peoples have lived off the land since time immemorial, our way life has been passed down from generation to generation. This knowledge, traditional knowledge, defines who we are and where we come from. Our customs, our language, our food define who we are. The impacts of the Exxon Valdez spill is still being felt today, even though it has been 20 years. Soon after the spill our traditional lifestyle ceased to exist because we could not harvest our traditional foods from the ocean. We still do not know how the lingering effects of the spill and the contamination of our foods will impact those of us who are alive today and the 7 generations to come. There is no monetary settlement that can put a price on our traditional way of life or compensate us for its loss”.

²⁰ Submission by the International Indian Treaty Council (IITC), NGO with ECOSOC Special Consultative Status, and IITC affiliate the Confederacy of Treaty No. 6 First Nations representing 18 First Nations in Alberta Canada Re: The Report of the government of Canada to the Committee on the Elimination of Racial Discrimination, concerning Canada’s 17th and 18th Periodic Reports to the CERD (CERD/C/CAN/18) to be considered at its 70th session, 19 February – 9 March, 2007, submitted February 14, 2007

Expressing closely related concerns, this time fortunately before the fact, the Council of Haida Nation (CHN) of British Columbia Canada recently said that it has not been consulted and will reject the Canadian Government Enbridge Corporations plans to build an oil pipeline running from Northern Alberta to Kitimat. In a statement released on December 3rd, 2008 CHN spokesman Robert Davis said the Haida Nation would not accept Enbridge's plan even if it did consult, because the plan could result in drastically increased oil tanker traffic to the North Coast area, threatening their traditional subsistence land and waters.

"The Haida Nation will certainly not accept tanker traffic where we would bear the burden of risk and oil spills in our waters. Our livelihoods would be jeopardized," Davis said. He added that "Many of our neighbour nations are equally concerned about impacts on their lands and water. We are willing to stand united to protect our waters."

In a November 6th 2008 meetings coordinated by First nations Summit and attended by 6 potentially impacted First Nations Peoples, David de Wit, natural resources manager for the Wet'suwet'en First Nations, said the "Regulators are not respecting the fact that we have a responsibility to protect our ancestral territories, rights, title and interests," of risk and oil spills in our waters. Our livelihoods would be jeopardized. He added that "Many of our neighbor nations are equally concerned about impacts on their lands and water. We are willing to stand united to protect our waters."²¹

B. Deforestation

"The forest is our life and our existence. In the forest we find our food, our medicines, our housing and our knowledge. How can they think that we, the indigenous peoples, could destroy our life, destroying forest? We have used the forest for truly sustainable development, only taking what we need"

--- Kuna leader Gilberto Arias ²²

Although tropical forests cover only about 7 percent of the Earth's dry land, they probably harbor about half of all species on Earth²³. Deforestation, forest degradation and lack of appropriate legal frameworks for protecting Indigenous Peoples ancestral land and resource rights and titles are some of the major sources of human rights violations. Notably these include ongoing forcible displacement of Indigenous Peoples from their lands, territories and resources.

Deforestation is occurring at an incredible rate, often to support short term agricultural production, or long term conversion into plantations or pastures. Forest lands are cleared,

²¹ "First Nations Summit wants independent review of pipeline project", Prince Rupert Daily News
Published: Wednesday, December 03, 2008

²² Forest Indigenous Peoples and Forest Policy in Panama: an assessment of national implementation, international standards and commitments on traditional forest knowledge and forest related issues, Marcial Arias Garcia

²³ NASA Earth Observatory web page, "Tropical Deforestation" by Rebecca Lindsey, March 30, 2007

with subsequent disruption to the natural wildlife, ecosystems, cultural sites, and traditional hunting, fishing and gathering habitats that Indigenous Peoples depend upon for their food sources.

Forests are a key component of the earth's carbon and hydrological cycles and their protection is now recognized as being fundamental to efforts to stop runaway climate change. Some 18% of the world's anthropogenic Greenhouse Gas (GHC) emissions come from what is referred to as the 'land use change and forestry' sector (IPCC, 2007). Demand for timber and the agricultural commodities produced as a result of deforestation are contributing more to climate change than all the world's different forms of transport combined.²⁴

The Global Forest Coalition's (GFC) submission to the UNFCCC Secretariat in March 2007 expressed its views on deforestation and forest degradation, emphasizing that:

*"Unsustainable forest management is the main cause of forest degradation, while the conversion of forests into agricultural land is by far the main cause of deforestation. The expansion of large-scale agro-industrial monocultures for food, fiber and, increasingly, energy production is both an important direct cause of deforestation and an important underlying cause of forest loss; the expansion of monocultures on existing arable land causes cattle ranching and other forms of agriculture to move towards forest areas and other natural ecosystems."*²⁵

While Agenda 21 called for the preservation of forests and their expansion, forest area losses for the past 20 years exceed the size of India, over 16 million hectares per year. Worldwatch Institute cites illegal logging (2/3 of wood harvested in Indonesia is harvested illegally, 80% of logging in Brazil is illegal), and the over consumption of forest products by the north (77% of the world's commercial timber harvests are consumed by 22% of the world's people, in Japan, Europe, North America, and now China) as leading causes of forest loss.²⁶ Forest loss is also directly related to loss of watershed, with devastating impacts for Forest-dwelling Indigenous Peoples.

The impacts of rampant and continued deforestation, in addition to violating the human rights of Indigenous Peoples, is another significant contributor to Global Warming. Not only is the capacity of the Earth's ability to absorb greenhouse gasses being diminished, but these activities themselves are a major source of greenhouse gasses.

²⁴ Forests in a Changing Climate, Friends of the Earth (FOE) 2008.

²⁵ "Climate Change, Forest Conservation and Indigenous Peoples Rights by Estebancio Castro Diaz, Global Forest Coalition, 2008.

²⁶ Janet N. Abramovitz, Too Much Talk, Too Little Action on Forests, Worldwatch Institute, World Summit Policy Brief #3, <http://www.worldwatch.org/worldsummit/briefs/20020416.html>, visited September 9, 2002.

In the Amazon basin alone, scientists estimate that the trees contain more carbon than 10 years worth of human-produced greenhouse gases. When people clear the forests, usually with fire, carbon stored in the wood returns to the atmosphere, enhancing the greenhouse effect and global warming. Once the forest is cleared for crop or grazing land, the soils can become a large source of carbon emissions, depending on how farmers and ranchers manage the land. In places such as Indonesia, the soils of swampy lowland forests are rich in partially decayed organic matter, known as peat. During extended droughts, such as during El Niño events, the forests and the peat become flammable, especially if they have been degraded by logging or accidental fire. When they burn, they release huge volumes of carbon dioxide and other GHG's.

Wildfires and slash and burn agriculture also release carbon dioxide that would otherwise be stored in the forest biomass into the atmosphere. Forest regrowth and crops recapture some carbon, but overall, deforestation is a source of atmospheric carbon dioxide and therefore a contributor to global warming.

For example, between May 2000 and August 2006, Brazil alone lost nearly 150,000 square kilometers of forest -- an area larger than Greece -- and since 1970, over 600,000 square kilometers (232,000 square miles) of Amazon rainforest have been destroyed. Historically a large portion of deforestation in Brazil can be attributed to land clearing for pastureland by commercial and speculative interests, misguided government policies, inappropriate World Bank projects, and commercial exploitation of forest resources.²⁷ It is estimated that approximately 1,000,000 Indigenous Peoples of about 400 Nations and Communities live in the Amazon, and are exposed to a die-back or even collapse of the Amazon rain forest as a result of continued deforestation.

As deforestation around the world further contributes to Global Warming, drying and warming conditions in many areas increase the frequency of forest fires, further exacerbating the cycle of impacts on forest ecosystems.

In the Boreal forest ecosystems of the Northern Hemisphere, one immediate impact of rising temperatures causing further deforestation is the influx of bark and spruce beetles. The burrowing insects were previously kept under control by cold winter temperatures. Now that the winters are warmer, they have spread out of control, killing millions of acres and entire mountainsides of pine forests from New Mexico USA to British Columbia Canada. Spruce beetles are causing similar damage for similar reasons in the black spruce forests of Alaska. A report published in Montana in 2008 said that has lost a million acres of trees to the beetles, and in northern Colorado and southern Wyoming the situation is worse.

In the Canadian provinces of British Columbia and Alberta, where Indigenous Peoples continue to depend on hunting, fishing and gathering in the forest ecosystems, the problem is most severe. It is the largest known insect infestation in the history of North America, according to scientists. British Columbia has lost 33 million acres of lodge pole

²⁷ Mongabay.com, "[Deforestation in the Amazon](#)" by Rhett A. Butler, 2008

pine forest. Forests are cut down before they can be killed by the insects, and forest fires unprecedented in size and number burn through the acres of dead trees.

Grand Chief Ed John, Tl'azt'en Nation, the First Nations Summit of British Columbia stated in a submission to the UN Permanent Forum on Indigenous Issues in April 2008:

“Millions of acres of forest lands in British Columbia have been destroyed by mountain pine beetle with direct, immediate and serious impacts on the safety and well-being of Indigenous Peoples, communities and entire ecosystems, including salmon spawning and rearing streams and migration routes.”²⁸

As in the case of fossil fuel extraction, deforestation doubly violates the rights of the Indigenous Peoples who depend on forest ecosystems for their lives and survival. They suffer the direct and often brutal consequences of the initial activities, and then experience the long-term impacts of the resulting Global Warming in their homelands, further decimating the forests as a result.

Ironically, the search for global policy solutions to Climate Change and Global Warming has created one of the most hotly debated new issues that could affect the human rights of Indigenous Peoples in the forested lands of the tropical south. This new issue has been to address climate change by addressing the problem of deforestation and forest degradation within developing countries. Governments meeting in Bali for the 13th Conference of the Parties (COP-13) to the UN Framework Convention on Climate Change (UNFCCC) decided to focus on Reducing Emissions from Deforestation and Forests Degradation in Developing countries (REDD) as part of their efforts to mitigate climate change (UNFCCC, 2008). REDD, is the new acronym being used by forestry and human rights NGOs, conservationists, carbon traders and policy-makers around the world. In brief, it involves paying governments, companies and forest owners in developing countries to keep their forests instead of cutting them down, and rewarding them for the resulting reduction in GHG emissions and allow developed countries to benefit from “carbon credits” if they support and fund such initiatives.

In December 2007, at the 13th Conference of the Parties to the United Nations Framework Convention on Climate Change (UNFCCC) held in Bali, Indonesia, the inclusion of tropical forests in the international climate regime moved forward. Under the Bali Action Plan, governmental Parties decided that national and international actions to mitigate climate change would include, *inter alia*, consideration of:

“Policy approaches and positive incentives on issues relating to reducing emissions from deforestation and forest degradation in developing countries; and the role of conservation, sustainable management of forests and enhancement of

²⁸ Conference Room Paper (CRP) 4, Report of the North America Region Preparatory Meeting for the United Nations Permanent Forum on Indigenous Issues Seventh Session (UNPFII7), Co-Rapporteurs Celeste McKay and Andrea Carmen

forest carbon stock in developing countries”.²⁹

Indigenous Peoples and people of the forested areas have expressed serious concerns about whether the REDD initiative, now being implemented by the World Bank, would benefit them in the long run, or fully recognize their rights and legal title to traditional forest lands or resources. Issues of property rights, policies of equity, cost-benefit sharing in “carbon forests offset values” within a growing global carbon market and other concerns are increasingly being voiced by Indigenous Peoples.

At the UNFCCC COP14 in Poznan, Poland the International Indigenous Peoples Forum on Climate Change (IIPFCC) in its closing statement of the High-Level Ministerial Segment of the COP14 recalled when the UN-REDD Framework Programme was launched by the UN Secretary General at the General Assembly’s 63rd Session, it was acknowledged in its Framework Document that REDD could undermine Indigenous Peoples’ and local communities’ rights to the usage and ownership of their traditional lands and marginalize communal-use rights.

Many questions and doubts remain among Indigenous Peoples about the immediate and long-term human rights impacts of the REDD initiative. Several recent declarations and joint statements presented by Indigenous Peoples and organizations to international bodies, including at COP 13 in Bali and COP 14 in Poznan, have called for a moratorium on its implementation until these issues and questions can be fully resolved and their Free Prior and Informed Consent is ensured.

C. Industrial Livestock Production

A 2006 report by the UN Food and Agriculture Organization (FAO), “The Long Shadow of Livestock” confirmed that large scale commercial livestock production is one of the major causes of the world’s most pressing environmental problems, including global warming, land degradation, air and water pollution, and loss of biodiversity. Using a methodology that considers the entire commodity chain, FAO estimates that livestock are responsible for 18 percent of total greenhouse gas emissions, a bigger share than that of transport.³⁰ FOA also reported that livestock production produced 37 percent of all human-induced CH₄ (methane) and 65 percent of N₂O (nitrous oxide) gas.³¹

As cited above, industrial livestock production has been consistently identified in many regions as a major contributor to deforestation, as forests are cut to clear pastures, and Indigenous Peoples are relocated and their traditional lands appropriated. Cattle ranching

²⁹ (Bali Action Plan, paragraph 1(b)(iii))

³⁰ UN FAO Spotlight website, citing “[Livestock’s Long Shadow](#)”, November 2006

³¹ FAO, Sustainable Agriculture and Rural Development policy Brief #7, “SARD and Climate Change), 2007 FAO., citing “[Livestock’s Long Shadow](#)”, FAO, 2006

are the leading cause of deforestation in the Brazilian Amazon. This has been the case since at least the 1970s: government figures attributed 38 percent of deforestation from 1966-1975 to large-scale cattle ranching. It is estimated that 60-70 percent of deforestation in the Amazon results from cattle ranches clearing forests for cattle grazing land.³²

Such activities are a major contributor to greenhouse gasses. Their expansion also violates the rights of Indigenous Peoples and contaminates their environments including, most notably, their air and ground water.

The immediate impacts of large-scale livestock production are not only experienced by Indigenous Peoples in the rainforest regions of South America. One example from the United States was presented at the UN Permanent Forum on Indigenous Issues Seventh Session in April 2008:

“At this time, the Ihanktowan Dakota, known as the Yankton Sioux Tribe based in Marty, South Dakota is protesting violations of human rights and the Tribe’s sovereignty including violations of the 1851 Treaty between the U.S. Government and the Dakota Nation (Sioux). On April 15, Yankton Sioux Tribal members began a peaceful protest against the construction of a large scale corporate hog farm which will be operated by Long View Farms based in Hull, Iowa. Tribal members are calling attention to the environmental degradation the hog farm will bring to the reservation and surrounding communities. The air quality in the community will be impacted and the threat of contamination to surface and ground water due to shallow aquifers in the area, posing serious threats to community health.

The proposed hog farm site, projected to permanently house more than 3000 sows and produce 70,000 pigs each year, is located within Treaty lands recognized as belonging to the Dakota (Sioux) Nation and is surrounded by Indian reservation land. Tribal and local community members are blocking an access road to the site which is under the jurisdiction of the Yankton Sioux Tribe. The Yankton Sioux Tribe has filed a lawsuit opposing the construction of this facility which will use approximately one million gallons of water and produce over 7 million gallons of liquid hog waste a year. Its proposed location is only four miles from the Missouri River, a major source of water for many communities and home to many endangered species...US federal laws mandating an Environmental Impact Statement and public hearings before such projects can be implemented have also been violated.”³³

³² Ibid

³³ United Nation Permanent Forum on Indigenous Issues Seventh Session, New York, April 21 to May 2, 2008, Joint Oral Statement Submitted by the International Indian Treaty Council and the Indigenous Environmental Network

IV. Assessing the Human Rights Impacts of Climate Change on Indigenous Peoples: Elements for an Effective Human Rights Framework

Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard."

---Article 25, United Nations Declaration on the Rights of Indigenous Peoples

A. The Right to Development and Related Rights.³⁴

"The most destructive and prevalent abuses of Indigenous rights are the direct consequences of development strategies that fail to respect their fundamental right of self-determination."

---1990 United Nations Global Consultation on the Right to Development

Article 1 of the UN Declaration on the Right to Development states that the right to development is an inalienable human right for all peoples "in which all human rights and fundamental freedoms can be fully realized". The right to development under international law is an inalienable human right by virtue of which every human person and *all peoples* are entitled to participate in, contribute to, and enjoy.

The right to development encompasses not only economic rights but social, cultural and political rights as inherent to the right to development. The full realization of the political right of peoples to self determination, including the exercise of their inalienable right to full sovereignty over their natural wealth and resources including subsistence food resources and water, are fundamental to the right to development.

The United Nations Declaration on the Right to Development, concerned that all human rights are indivisible and interdependent, declares that the promotion and respect for, and the enjoyment of certain human rights and fundamental freedoms cannot justify the denial of other human rights and fundamental freedoms.³⁵ Any process of development

³⁴ See An Analysis of United States International Policy on Indigenous Peoples, the Human Right to Food and Food Security prepared by the International Indian Treaty Council for the First Nations Development Institute, November 15, 2002

³⁵ Declaration on the Right to Development, *Article 9*:

1. All the aspects of the right to development set forth in the present Declaration are indivisible and interdependent and each of them should be considered in the context of the whole.
2. Nothing in the present Declaration shall be construed as being contrary to the purposes and principles of the United Nations, or as implying that any State, group or person has a right to engage in any activity or to

that violates human rights, even if it improves the enjoyment of some rights, is by its very nature unsustainable and not consistent with the right to development.

The first International Conference on Human Rights also found that “the enjoyment of economic and social rights is inherently linked with any meaningful enjoyment of civil and political rights and there is a profound interconnection between the realization of human rights and economic development.” It has long been the position of Indigenous Peoples internationally that the right to development requires the recognition of the right of all peoples, including Indigenous Peoples, to define and determine for themselves the processes and forms of development appropriate to their cultures, ecosystems and circumstances, based on the principle of self-determination.

In keeping with the principles of International Human Rights, as States comply with their obligations to create conditions for the enjoyment of all human rights including the right to Development, the steps they take should actually improve conditions for the enjoyment of some human rights while not violating any other human rights.

The impacts on all aspects of the enjoyment of the Rights to Development for Indigenous Peoples have been presented throughout this paper. The ability of Indigenous Peoples to define and pursue their “Economic, Social and Cultural Development” are key components of the legally binding International Right to Self Determination as recognized for all Peoples, and affirmed for Indigenous Peoples in the UN Declaration on the Rights of Indigenous Peoples. It is, however, severely curtailed if not absolutely undermined by the current Climate Crises in all its aspects. This is an issue of grave importance which merits in depth discussion and urgent action.

B. The Right to Food, Food Security and Food Sovereignty

“...In no case may a people be deprived of its own means of subsistence.”

-- Article 1 in Common, International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights

Everyone has the right to a standard of living adequate for the health and well-being of himself & of his family...including food...”

---The Universal Declaration of Human Rights

The Right to Food and the Right of Peoples to not be deprived of their Means of Subsistence are affirmed in a variety of international standards to which states are accountable, and are closely linked to the Right to Development. The essential Right to

perform any act aimed at the violation of the rights set forth in the Universal Declaration of Human Rights and in the International Covenants on Human Rights.

Food is currently threatened, and in some cases has already been significantly diminished, by the impacts of climate change.

The UN Food Agriculture Organization agreed that Climate Change and accompanying changes in precipitation will have dramatic affects on global food production, especially agriculture.³⁶ In 2005 FAO estimated that 11 percent of arable rain fed land is expected to be lost, and 65 developing countries are expected to lose about 280 million tons of potential cereal production by 2085.³⁷

It must be also recognized that the international community's firm commitment to reduction of poverty and elimination of world hunger under the Millennium Development Goals (MDG's) will be seriously impacted as well.

Indigenous Peoples have affirmed that their right to Food and Food Security must be based on Food Sovereignty, emphasizing the interrelated physical, economic, cultural, social and spiritual elements required for the full realization of this right and affirming a rights-based approach. The "1st Indigenous Peoples' Global Consultation on the Right to Food and Food Sovereignty in 2002 was held in Sololá, Guatemala, coordinated by the IITC and attended by more than 140 Indigenous delegates from all regions of the world as well as representatives of the UN Food And Agriculture Organization (UNFAO). The **"Declaration of Atitlan"**, adopted by consensus of the participants, still stands as the definitive global statement on Indigenous Peoples' Right to Food and defines the scope of the right as follows:

*"IN AGREEMENT that the content of the Right to Food of Indigenous Peoples is a collective right based on our special spiritual relationship with Mother Earth, our lands and territories, environment, and natural resources that provide our traditional nutrition; underscoring that the means of subsistence of Indigenous Peoples nourishes our cultures, languages, social life, worldview, and especially our relationship with Mother Earth; emphasizing that the denial of the Right to Food for Indigenous Peoples not only denies us our physical survival, but also denies us our social organization, our cultures, traditions, languages, spirituality, sovereignty, and total identity; it is a denial of our collective indigenous existence"*³⁸

The Declaration further underscores in particular the "rights to land, water, and territory, as well as the right to self-determination" as essential for the full realization of our Food

³⁶ FAO, Sustainable Agriculture and Rural Development policy Brief #7, "SARD and Climate Change", 2007

³⁷ FAO. Impact of climate change, pests and diseases on food security and poverty reduction. 31st Session of the Committee on World Food Security, 23–26 May 2005. Rome.

³⁸ The "Declaration of Atitlan", 1st Indigenous Peoples' Global Consultation on the Right to Food and Food Sovereignty, Sololá Guatemala, April 2002

Security and Food Sovereignty.”³⁹

Climate change is already having severe impacts on the right to food sovereignty, food security and the inter-related rights to health and culture for Indigenous Peoples by threatening the ecosystems that are home to the plants and animals upon which they depended for their means of subsistence, physical survival and cultural strength. The means of subsistence of all Indigenous Peoples is affected

The previously-mentioned 2008 IUCN Issues Paper⁴⁰ cites the Stern Review, a study commissioned by the UK Treasury to assess the economic impacts of climate change as well as the cost of mitigating climate change. The Stern Review estimated that the overall production of Maize in the Andes and Central America could drop by 15% by 2005 as a result of global warming.

In its 2007 paper “Climate Change, An Overview”, the UN Permanent Forum on Indigenous Issues Secretariat, highlighted some of the most critical situations and regional around the world where the Right to Food for Indigenous Peoples is already being impacted by Climate Change. Some examples include:

- **South America, Amazon Region:** “In the Amazon, the effects of climate change will include deforestation and forest fragmentation and as a result there will be more carbon released into the atmosphere exacerbating and creating further changes. The droughts of 2005 resulted in fires in the western Amazon region and this is likely to occur again as rainforest is replaced by savannas thus, having a huge affect of the livelihoods of the indigenous peoples in the region”.
- **South America, Andean Region:** “In the Andes, alpine warming and deforestation will threaten Indigenous peoples’ access to plants and tuba crops for food, medicine, grazing animals and hunting”. “The warming of the earth’s surface is forcing indigenous peoples in this region to farm at higher altitudes to grow their staple crops which adds to further deforestation. Not only does this affect the water sources and leads to soil erosion, it also has a cultural impact. The displacement of Andean cultures to higher lands means the loss of the places where their culture is rooted, putting its survival at risk.”
- **Africa:** “As their traditional resource base diminishes, the traditional practices of cattle and goat farming will no longer survive. There are already areas where indigenous peoples are forced to live around government drilled bores for water and depend on government support for their survival. Food security is a major issue for indigenous peoples residing in the deserts and they are on the frontline of global climate change.”
- **Arctic Region:** “The polar regions are now experiencing some of the most rapid

³⁹ Ibid.

⁴⁰ Indigenous and Traditional Peoples and Climate Change. IUCN Issues Paper, March, 2008.

and severe climate change on earth...Indigenous peoples, their culture and the whole ecosystem that they interact with is very much dependent on the cold and the extreme physical conditions of the Arctic region. Indigenous peoples depend on hunting for polar bears, walrus, seals and caribou, herding reindeer, fishing and gathering not only for food to support the local economy, but also as the basis for their cultural and social identity”.

“In Finland, Norway and Sweden, rain and mild weather during the winter season often prevents reindeer from accessing lichen, which is a vital food source. This has caused massive loss of reindeers. For Saami communities, reindeers are vital to their culture, subsistence and economy.”⁴¹

Another recent statement by Inuit Indigenous Peoples from Alaska (August 29, 2008, Washington Post) furthered confirms the catastrophic crisis situation already being experienced by Indigenous Peoples in the region:

“Inupiaq Eskimos in Alaska are seeing fewer and fewer walruses, an important source of food and income. This year, the residents of King Island failed to capture a single walrus. That means they will go without meat for the winter and they won't be able to market goods made out of walrus parts. "This is the only way we make our living -- things are getting tougher and tougher," Hubert Kokuluk told The Washington Post. "I don't know what we'll do if we don't hunt walrus." Climate change may be to blame. Sea ice has been quickly melting in the past few years, forcing animals like the walrus to head to land, where it's harder for them to survive.”

The November 2004 Arctic Climate Impact Assessment prepared over a four-year period by more than 300 scientists from 15 countries as well as six Indigenous Peoples’ organizations concluded that:

*The Arctic is extremely vulnerable to observed and projected climate change and its impacts. The Arctic is now experiencing some of the most rapid and severe climate change on earth. Over the next 100 years, climate change is expected to accelerate, contributing to major physical, ecological, social and economic changes, many of which have already begun. Changes in arctic climate will also affect the rest of the world through increased global warming and rising sea levels.*⁴²

The ACIA also concluded that Global Warming is likely to disrupt or even destroy the Inuit Indigenous Peoples’ hunting and food-sharing culture as reduced sea ice causes the

⁴¹ “Climate Change, An Overview, United Nations Permanent Forum on Indigenous Issues, November 2007

⁴² Arctic Climate Impact Assessment available at www.acia.uaf.edu, November 2004

animals on which they depend to decline, become less accessible, and possibly become extinct.⁴³

On December 8th, 2008, at the Annual Convention of the Alaska Intertribal Council in Anchorage, Inupiat grandmother Rosemary Ahtuanguruak, of the Bueafort Sea Village of Nuiqsut confirmed this assessment through testimony based on what she has witnessed in her community over the last year. Mrs. Ahtuanguruak, a former Village Mayor whose family members have been traditional whalers and hunters since time immemorial, reported that the numbers of hunters from her village were falling through the thinning ice, endangering their subsistence activities as well s their lives, had increased dramatically in the last year alone. She reported that many of those who have fallen though the ice were elders and experienced winter hunters who had crossed the ice in that area all of their lives without any problems, indicating dramatic changes caused by increasing temperatures.

In North America, impacts on traditional subsistence farming is begin seen in many Indigenous Communities due to decreasing rainfall, increasing temperatures as well as in some areas, influxes of invasive pests which were uncommon just a few years ago.

Likewise, fish which are vital as subsistence foods as well for cultural and ceremonial practices of many Indigenous Peoples are much less plentiful. This is particularly true for salmon as an “indicator species” which is extremely sensitive to any environmental change. For example, a study cited in the 2008 North America Regional Report to the UNPFII7 from the Upper Fraser Fisheries Conservation Alliance in British Columbia [Canada] documented dramatically decreasing sockeye salmon runs in the upper Fraser River: “The report showed 700,000 fish returned in the early Stuart run in 1993, but those numbers fell to 100,000 by 2005. Scientists involved in the study report that part of the problem is due to climate change, which has pushed the temperature of the Fraser River up by about half a degree over the past 50 years.”⁴⁴

The North America Regional Report further stated that “Indigenous Nations and Peoples around North America are experiencing the impacts of climate change in their communities and traditional lands. These include the disappearance of traditional subsistence foods, including wild game, fish, berries, wild plants and traditional food crops and plant medicines. Water levels are rising in coastal areas and water tables, lakes, streams, rivers and springs are being diminished inland...”⁴⁵

Reports from Minnesota, located in the Midwest/Great Lakes region of the U.S. also

⁴³ Ibid

⁴⁴ Conference Room Paper (CRP) 4, Report of the North America Region Preparatory Meeting for the United Nations Permanent Forum on Indigenous Issues Seventh Session (UNPFII7), April 2008, Co-Rapporteurs Celeste McKay and Andrea Carmen, page 4

⁴⁵ Ibid page.

express concern about negative impacts on natural wild rice, a traditional food of the Great Lakes Indigenous Peoples that has cultural and spiritual significance. The most significant threats to this traditional food and spiritual staple, are the potential loss of genetic integrity, invasive species, and climate change. Climate change has the potential for the greatest long-term impacts on natural wild rice.⁴⁶

*“Wild rice, or manoomin, is a sacred food and medicine integral to the religion, culture, livelihood, and identity of the Anishinaabeg” says Erma Vizenor, Tribal Chairwoman, White Earth Nation, Minnesota.*⁴⁷

It must also be noted that when traditional subsistence (hunting, gathering, herding, fishing and farming) activities are no longer able to be practiced because the resources has diminished or disappeared, significant aspects of the affected Peoples’ ceremonial ways of life, traditional knowledge and identity are profoundly affected. In some cases they will disappear completely. The most effective method for “hands on” training and transmitting cultural knowledge and practices from one generation to the next is also lost, impacting a range of additional human rights.

D. The Right to Water

“Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.”

-- UN Declaration on Rights of Indigenous Peoples Article 26, para. 1

On November 27th 2006 the 2nd session of the UN Human Rights Council recognized the Right to Water as a Human Right by adopting a decision entitled “Human Rights and Access to Water” without a vote (by consensus).⁴⁸ Speaking on the floor in favor, representatives of several UN member states affirmed that the right of access to adequate, clean, safe water for drinking and sanitation is a vital human right for all which all countries are obligated to uphold without discrimination. They affirmed that this right is also necessary for the full realization of other human rights including the rights to life and health, and called upon the Office of the High Commission on Human Rights to conduct a study for the development of a detailed study on the scope and content of the relevant human rights obligations related to equitable access to safe drinking water and sanitation under international human rights instruments.

⁴⁶ Natural Wild Rice In Minnesota A Wild Rice Study document submitted to the Minnesota Legislature by the Minnesota Department of Natural Resources February 15, 2008

⁴⁷ Ibid.

⁴⁸ Human Rights Council decision 2/104, “Human Rights and Access to Water”, November 27th 2007, report of the 2nd session (resumed) of the Human Rights Council, A/HRC/2/9, 22 March 2007.

These are very closely-related and mutually reinforcing concerns that have many of the same human rights implications. Indigenous Peoples from around the world also affirmed this relationship at the 2003 at the 3rd World Water Forum in Kyoto, Japan in addressing the human rights issues pertaining to water. The “Indigenous Peoples Kyoto Water Declaration” excerpted below, addresses the interrelated issues of water, energy, climate change and Indigenous Peoples rights:

Conditions of Our Waters

4. The ecosystems of the world have been compounding in change and in crisis. In our generation we see that our waters are being polluted with chemicals, pesticides, sewage, disease, radioactive contamination and ocean dumping from mining to shipping wastes. We see our waters being depleted or converted into destructive uses through the diversion and damming of water systems, mining and mineral extraction, mining of groundwater and aquifer for industrial and commercial purposes, and unsustainable economic, resource and recreational development, as well as the transformation of excessive amounts of water into energy. In the tropical southern and northern forest regions, deforestation has resulted in soil erosion and thermal contamination of our water.
5. The burning of oil, gas, and coal, known collectively as fossil fuels is the primary source of human-induced climate change. Climate change, if not halted, will result in increased frequency and severity of storms, floods, drought and water shortage. Globally, climate change is worsening desertification. It is polluting and drying up the subterranean and water sources, and is causing the extinction of precious flora and fauna. Many countries in Africa have been suffering from unprecedented droughts. The most vulnerable communities to climate change are Indigenous Peoples and impoverished local communities occupying marginal rural and urban environments. Small island communities are threatened with becoming submerged by rising oceans.⁴⁹

It will, in the opinion of the IITC, assist the Human Rights Council in consolidating its work to consider the implications of the issues presented for the Study on Human Rights and Access to Water on the current Study, as well as to consider the information submitted for the Study on Human Rights and Climate Change in relation to the enjoyment of the Human Right to Water.

C. Treaty Rights

“Indigenous peoples have the right to the recognition, observance and enforcement of

⁴⁹ INDIGENOUS PEOPLES KYOTO WATER DECLARATION, “Conditions of our Waters”, para. 4 and 5 Third World Water Forum, Kyoto, Japan, March 2003

treaties, agreements and other constructive arrangements concluded with States or their successors and to have States honour and respect such treaties, agreements and other constructive arrangements”.

-- UN Declaration on Rights of Indigenous Peoples Article 37, para. 1

The Right to Food and traditional means of subsistence are also rights which are affirmed by the Treaties which a number of settler governments and their successors signed and ratified with Indigenous Peoples. These legally binding Nation-to-nation agreements are still in force today. Chief Wilton Littlechild, Ermineskin Cree Nation, Treaty No. 6 Territory, Canada, affirmed this relationship in his address to the United Nations World Food Summit, Rome, November 1996:

Our ancestors in some areas have secured our traditional ways and food systems in Treaties. These international agreements were signed for “so long as the grass grows the rivers flow and the sun shines”.

Two of the many examples of the Treaty-affirmed Right to Food from the United States are as follows:

“The Privilege of hunting, fishing, and gathering the wild rice upon the lands the rives and the lakes including in the territory ceded, is guaranteed to the Indians”

---1837 US Treaty with the Chippewa Nation

“The exclusive right of taking fish in all the streams, where running through or bordering said reservation, is further secured to said confederated tribes and bands of Indians” -

---1855 US Treaty with the Yakima Nation

When traditional hunting and fishing rights are impacted by Climate Change, Indigenous Peoples' Treaty Rights are therefore also violated

The Right to Health for Indigenous Peoples is also closely related to the Right to Food. It is well documented that Indigenous Peoples who are deprived of their traditional subsistence foods in many countries around the world are seriously impacted with illnesses which include diabetes, malnutrition and a range of infectious diseases. It has also been documented by many sources including the IPCC that the increase of certain types of diseases can be directly attributed to impacts of global warming.

The Right to Health is a right affirmed in Treaties as well as in a range of International Human Rights instruments. This is yet another human right being violated by the impacts of Climate Change.

E. Permanent Sovereignty over Lands and Natural Resources

"If we don't have land and we don't have anywhere to carry out our traditional lifestyles, we lose who we are as a people. So, if there's no land, then it's equivalent in our estimation to genocide of a people"

--- **George Poitras of the Mikisew Cree First Nation, Alberta Canada**

Both United Nations and Indigenous experts have stressed the far reaching and inter-related aspects of Indigenous Peoples' relationship to their lands, territories, and natural resources, which by definition includes water, and have called upon states to uphold their obligations in this regard.

For example, in the Conclusions and Recommendations from the UN Seminar on indigenous peoples' permanent sovereignty over natural resources and their relationship to land, held in Geneva from 25 to 27 January 2006 (E/CN.4/Sub.2/AC.4/2006/3),

"Experts note that the right to lands, territories and permanent sovereignty over natural resources encompasses cultural, spiritual, political, economic, environmental and social elements which are essential for the existence and survival of indigenous peoples and require recognition of indigenous peoples' own understandings of their traditional relationship to their lands, territories and natural resources, and their own definitions of development."

The Experts endorsed the similar conclusions and recommendations contained in the final reports of the Special Rapporteur Ms. Erica-Irene Daes on indigenous peoples and their relationship to their lands and indigenous peoples permanent sovereignty over natural resources (E/CN.4/Sub.2/2004/30 and E/CN.4/Sub.2/2001/21), which also strongly emphasized this relationship.

Notably for the purposes of this current study, in recommendation 2, the Experts also called upon States:

"... to address inconsistencies in their national laws, ensuring that laws recognizing indigenous peoples' rights over their lands and resources are not overridden or extinguished by other legislation, in particular in relation to extractive industries, natural resource use and the creation of "protected areas" and to "to ensure that their national laws and policies relating to Indigenous Peoples right to land and natural resources are not discriminatory or inconsistent with international human rights laws and standards."

F. The UN Declaration on the Rights of Indigenous Peoples

The United Nations Declaration on the Rights of Indigenous Peoples is the definitive

international standard expressing how the human rights of Indigenous Peoples will be understood, applied and upheld by the UN member states as well as UN bodies and agencies. It therefore is perhaps the most comprehensive overview and guideline for the Human Rights Council to use in summarizing the range of rights of Indigenous Peoples which are impacted by the causes and affects of Climate Change, as well as the relevant state obligations.

Many articles of the Declaration directly address the rights of Indigenous Peoples which are impacted, as well as state obligations to take both preventative and restorative action. These include:

- Article 3 - Right to Self-Determination
- Article 7 – the Right to Life, physical and mental integrity and the security of person; right to live as distinct Peoples
- Article 8 - Right to not be subjected to forced assimilation or destruction of culture
- Article 10 – Right to not be forcibly relocated from lands and territories
- Article 12 - the right to maintain, protect, and have access in privacy to their religious and cultural sites
- Article 19 – Free Prior and Informed Consent regarding legislative and administrative measures by states
- Article 20 - Right to be secure in subsistence and development
- Article 24 - Right to the highest attainable standard of health and the conservation of vital plants and animals
- Article 25 – Right to maintain spiritual relationships to land and resources for future generations
- Article 26 – Right to traditional lands, territories and resources
- Article 29 - Right to conservation and protection of environment and productive capacity of lands, territories and resources
- Article 31 - Right to maintain, control, protect and develop cultural heritage, traditional knowledge and cultural expressions including genetic resources, seeds and medicines
- Article 32 - Right to determine and develop priorities and strategies for development including the right to free, prior and informed consent
- Article 37 – Treaty Rights⁵⁰

Although the vast majority (144) states voted in favor of the Declaration at the UN General Assembly on September 13th, 2007, the UN Committee on Racial Discrimination (CERD) made it clear this year that even for those states which voted against it that the UN Declaration, it “should be used as a guide to interpret the State party’s obligations under the Convention relating to indigenous peoples.”

As stated above, this very significant recommendation brings implementation of the

⁵⁰ The United Nations Declaration on the Rights of Indigenous Peoples, adopted by the UN General Assembly September 13th, 2007

Declaration and the rights it affirms to the level of legally binding obligations for states vis a vis, in particular, the CERD Convention.

V. International Human Rights Conventional Instruments and Jurisprudence

Some of the most significant existing protections and affirmations of the Right to Water and related rights for Indigenous Peoples can be found in the existing Human Rights Covenants and Conventions and the conclusions of the corresponding UN Treaty monitoring bodies. For example:

1. The International Covenant on Civil and Political Rights (ICCPR)

Article 27 of the ICCPR states:

“In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with other members of the group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.”

General Comment 23 of the Human Rights Committee is meant to serve as guidance to the States in their compliance with Article 27:

“7. With regard to the exercise of the cultural rights protected under article 27, the Committee observes that culture manifests itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of Indigenous Peoples. That right may include such traditional activities as fishing or hunting, and the right to live in reserves protected by law. The enjoyment of those rights may require positive legal measures of protection and measures to ensure the effective participation of members of minority communities in decisions that affect them.”⁵¹

In formulating this General Recommendation, the Human rights Committee relied on its own jurisprudence, Bernard Ominayak and the Lubicon Lake Band v. Canada.⁵² This very early complaint, filed in 1984 under Optional Protocol 1 to the Covenant concerned the Provincial government of Alberta’s granted of leases to Japanese transnational corporations for the exploitation of oil, gas, timber and other natural resources, and the construction of a pulp mill on Lubicon Lake Band territory.. The resulting environmental degradation had a devastating effect on the environment including “bodies of water,” and as a consequence, on the health of the Lubicon Lake Band, and on their traditional subsistence practices and traditional culture and way of life.

⁵¹ General Recommendation No. 23, the rights of minorities (article 27), CCPR/C/21/Rev.1/Add.5, 08/04/1994.

⁵² Communication No. 167/1984; Canada. 10/05/90, CCPR/C/38/D/167/1984 (Jurisprudence).

Six years after the filing of a complaint, the Committee found a violation of Article 27 of the ICCPR. In reaching this conclusion the Committee recognized that control and use of traditional lands, including bodies of water, was necessary in the practice of Lubicon culture. Interference with Indigenous traditional land uses by environmental degradation is not permitted under the ICCPR Article 27.

The Human Rights Committee has also referred to other rights of the Covenant relevant to water as a natural resource in their examination of State periodic reports, as for example, their 1999 examination of Canada (CCPR/C/79/Add.105, 7 April 1999):

7. The Committee, while taking note of the concept of self-determination as applied by Canada to the aboriginal peoples, regrets that no explanation was given by the delegation concerning the elements that make up that concept, and urges the State party to report adequately on implementation of article 1 of the Covenant in its next periodic report.

8. The Committee notes that, as the State party acknowledged, the situation of the aboriginal peoples remains "the most pressing human rights issue facing Canadians". In this connection, the Committee is particularly concerned that the State party has not yet implemented the recommendations of the Royal Commission on Aboriginal Peoples (RCAP). With reference to the conclusion by RCAP that without a greater share of lands and resources institutions of aboriginal self-government will fail, the Committee emphasizes that the right to self-determination requires, *inter alia*, that all peoples must be able to freely dispose of their natural wealth and resources and that they may not be deprived of their own means of subsistence (art. 1, para. 2). The Committee recommends that decisive and urgent action be taken towards the full implementation of the RCAP recommendations on land and resource allocation. The Committee also recommends that the practice of extinguishing inherent aboriginal rights be abandoned as incompatible with article 1 of the Covenant.

With reference to Article 27, the Human Rights Committee recommended that Suriname adopt specific legislation to prevent the poisoning of Indigenous Peoples/ water.⁵³

Clearly, under the International Covenant on Civil and Political rights, particularly Articles 1 and 27, the enjoyment of the right to water is critical to the enjoyment of the right of Self Determination and the right to the practice of culture.

2. The International Convention on the Elimination of all Forms of Racial Discrimination

The clear relationship between the right to development and other human rights and fundamental freedoms for Indigenous Peoples, including the right to self-determination,

⁵³ CCPR/CO/80/SUR, 2004.

right to land, rights to culture and means of subsistence was underscored in 1997 by General Recommendation XXIII of the Committee on the Elimination of Racial Discrimination, the treaty monitoring body of the CERD Convention:

“3. The Committee is conscious of the fact that in many regions of the world indigenous peoples have been, and are still being, discriminated against and deprived of their human rights and fundamental freedoms and in particular that they have lost their land and resources to colonists, commercial companies and State enterprises. Consequently, the preservation of their culture and their historical identity has been and still is jeopardized...

“4. The Committee calls in particular upon States parties to:

(a) Recognize and respect indigenous distinct culture, history, language and way of life as an enrichment of the State's cultural identity and to promote its preservation;

(b) Ensure that members of indigenous peoples are free and equal in dignity and rights and free from any discrimination, in particular that based on indigenous origin or identity;

(c) Provide indigenous peoples with conditions allowing for a sustainable economic and social development compatible with their cultural characteristics;

(d) Ensure that members of indigenous peoples have equal rights in respect of effective participation in public life and that no decisions directly relating to their rights and interests are taken without their informed consent;

(e) Ensure that indigenous communities can exercise their rights to practise and revitalize their cultural traditions and customs and to preserve and to practise their languages.

5. The Committee especially calls upon States parties to recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources and, where they have been deprived of their lands and territories traditionally owned or otherwise inhabited or used without their free and informed consent, to take steps to return those lands and territories. Only when this is for factual reasons not possible, the right to restitution should be substituted by the right to just, fair and prompt compensation. Such compensation should as far as possible take the form of lands and territories.⁵⁴

In its examination of State Parties' periodic reports, the CERD Committee has also examined Indigenous People's access to water and other natural resources. In an examination of Guyana's, the Committee voiced concern over the State's recognition of

⁵⁴ The CERD Committee's General Recommendation XXIII, Indigenous Peoples (Fifty first Session, 1997)

rights of ownership and possession of “bodies of water and subsoil resources.”⁵⁵ In examinations of Costa Rica and Colombia, the Committee noted the lack of access to water by Indigenous Communities.⁵⁶ And in their Statement to the World Summit on Sustainable Development, the CERD Committee affirmed that State policies violate the rights of Indigenous Peoples to freedom, equality and adequate access to basic needs such as clean water.

The CERD Committee, under its Early Warning and Urgent Action Procedure, raised the issue of water and Indigenous Peoples of Peru, in a letter dated August 18, 2006. The letter requested further information in the State’s next periodic report on allegations involving the drainage of surface and underground water from the grasslands of the Altiplano, leading to the desertification and sanitization of the ancestral lands of the Aymara Indigenous Peoples. Among other information sought, the letter raised the issues of the subsistence of Indigenous Peoples and the actions of transnational mining companies in Peru.

More recently, in their 2007 examination of Canada’s Periodic report, based upon parallel reports from Indigenous Peoples and their organizations, such as the Western Shoshone in Nevada, United States, and Guatemala, concerning the poisoning and pollution of water abroad, by Canadian transnational mining corporations, the CERD Committee made the following Conclusions and Recommendations:⁵⁷

17. The Committee notes with concern the reports of adverse effects of economic activities connected with the exploitation of natural resources in countries outside Canada by transnational corporations registered in Canada on the right to land, health, living environment and the way of life of indigenous peoples living in these regions (article 2.1d), article 4 a) and article 5e).

In light of article 2.1 d) and article 4 a) and b) of the Convention and of its general recommendation 23 (1997) on the rights of indigenous peoples, the Committee encourages the State party to take appropriate legislative or administrative measures to prevent acts of transnational corporations registered in Canada which negatively impact on the enjoyment of rights of indigenous peoples in territories outside Canada. In particular, the Committee recommends to the State party that it explore ways to hold transnational corporations registered in Canada accountable. The Committee requests the State party to include in its next periodic report information on the effects of activities of transnational corporations registered in Canada on indigenous peoples abroad and on any measures taken in this regard.

⁵⁵ CERD/GUY/CO/14.4, April 2006.

⁵⁶ Costa Rica, CERD/C/60/CO/3, 2002; Colombia, CERD/C/304/Add.10, 1996.

⁵⁷ CERD/C/CAN/CO/18, 20 March 2007.

This groundbreaking finding by the CERD Committee will have a great impact on the rights of Indigenous Peoples to clean and safe water all over the world.

3. The International Covenant on Economic, Social and Cultural Rights

With regard to Indigenous Peoples, the ICESCR Committee General Comment No. 14: The right to the highest attainable standard of Health (Article 12) recognizes in paragraph 27, the importance of lands and resources to the health of Indigenous Peoples:

The Committee notes that, in indigenous communities, the health of the individual is often linked to the health of the society as a whole, and has a collective dimension. In this respect, the Committee considers that development-related activities that lead to the displacement of indigenous peoples against their will from their traditional territories and environment, denying them their sources of nutrition and breaking their symbolic relationship with their lands, has a deleterious effect on their health.

This same paragraph calls for the protection of Indigenous Peoples' "vital medicinal plants, animals and minerals necessary to the full enjoyment of health..." These elements necessary for the enjoyment of the right to health rely on the integrity of the environment, including the availability of traditional foods and clean water.

General comment No. 15: The right to water (arts. 11 and 12 of the Covenant) echo these rights and issue direct standards for Indigenous Peoples' right to water:

7. The Committee notes the importance of ensuring sustainable access to water resources for agriculture to realize the right to adequate food (see general comment No. 12 (1999)). Attention should be given to ensuring that disadvantaged and marginalized farmers, including women farmers, have equitable access to water and water management systems, including sustainable rain harvesting and irrigation technology. Taking note of the duty in article 1, paragraph 2, of the Covenant, which provides that a people may not "be deprived of its means of subsistence", States parties should ensure that there is adequate access to water for subsistence farming and for securing the livelihoods of indigenous peoples.

16. Whereas the right to water applies to everyone, States parties should give special attention to those individuals and groups who have traditionally faced difficulties in exercising this right, including women, children, minority groups, indigenous peoples, refugees, asylum-seekers, internally displaced persons, migrant workers, prisoners and detainees. In particular, States parties should take steps to ensure that:

(d) Indigenous peoples' access to water resources on their ancestral lands is protected from encroachment and unlawful pollution. States should provide resources for indigenous peoples to design deliver and control their access to water;

The ICESCR Committee has applied these norms relative to water and related rights including health, in their Concluding Observations from their examination of State Periodic reports under the Covenant. The following are examples from 2006:

- Norway, E/C.12/1/Add.109, 23/06/2005

26. The Committee urges the State party to ensure that the Finnmark Act, which is currently being considered by parliament, gives due regard to the rights of the Sami people to participate in the management and control of natural resources in the county of Finnmark. The Committee requests the State party to provide in its next periodic report updated information about the implementation of the Finnmark Act and the extent to which the opinions of representatives of the Sami people have been taken into consideration.

- Chile, E/C.12/1/Add.105 26 November 2004.3

7. The Committee welcomes measures taken to improve the situation of indigenous peoples, including the adoption of the Indigenous People Act (Act No. 19.253) of 1993, the establishment of the National Indigenous Development Corporation (CONADI) and the Indigenous Land and Water Fund, and the recently announced New Deal Policy (*Política de Nuevo Trato*) 2004-2010.

4. The Convention on the Rights of the Child

The Convention on the Rights of the Child, article 24, also recognizes the right of children to the enjoyment of the highest standard of health and mandates that state parties “shall pursue full implementation of this right.” States are required to “take appropriate measures to combat disease and malnutrition...” through the provision of adequate nutritious foods and clean drinking water, taking into consideration the dangers and risks of environmental pollution.”

As a result of their Day of Discussion on the Rights of Indigenous Children, 15 Sept. – 3 Oct. 2003, the CRC Committee recommended, under the theme of non-discrimination, that States implement fully Art. 2 of the Convention, and called for equal access to water and sanitation by Indigenous Children.

In their examination of Peru’s Periodic Report (CRC/C/PER/CO/3, 14 March 2006) the CRC Committee made the following Conclusions and Recommendations:

50. The Committee is concerned about environmental health problems arising from a lack of access to safe drinking water, inadequate sanitation and contamination by extractive industries, which mainly affect the health and livelihoods of vulnerable groups, including children.

51. The Committee reiterates the recommendation of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, that the State party carry out independent, rights-based environmental and social impact assessments prior to the setting up of all mining or other industrial

projects that may have harmful impacts on the right to health of children. The Committee further recommends that the State party strengthen its efforts to provide sanitation and safe drinking water to all the population, with special attention to rural and remote areas.

73. The Committee, while acknowledging the State party's efforts in this respect, notes with concern that indigenous communities continue to face serious difficulties in the enjoyment of their rights, especially economic, social and cultural rights. In particular, the Committee is concerned about the lack of recognition of their land rights, pillaging of their resources, inadequate access to basic services, health and education, social exclusion and discrimination.

D. Other Relevant International Standards and Jurisprudence

1. ILO Convention no. 169 Concerning Indigenous and Tribal Peoples in Independent Countries (1989)

ILO 169 is the only international convention that specifically addresses the collective human rights of Indigenous Peoples. Fundamentally, and in several Articles it expressly Recognizes “the aspirations of these peoples to exercise control over their own institutions, ways of life and economic development and to maintain and develop their identities, languages and religions...”

This recognition extends to the right to control their institutions, including those institutions that determine the use of lands and natural resources and recognize Indigenous Peoples right to exercise their free and informed consent before the State can affect them or their lands, territories and resources (Articles 5, 6 and 7).

The Convention explicitly recognizes Indigenous Peoples rights to lands and natural resources:

Article 13

1. In applying the provisions of this Part of the Convention governments shall respect the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories, or both as applicable, which they occupy or otherwise use, and in particular the collective aspects of this relationship.

2. The use of the term ***lands*** in Articles 15 and 16 shall include the concept of territories, which covers the total environment of the areas which the peoples concerned occupy or otherwise use.

Article 14

1. The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognised. In addition, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use

lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities. Particular attention shall be paid to the situation of nomadic peoples and shifting cultivators in this respect.

Article 15

1. The rights of the peoples concerned to the natural resources pertaining to their lands shall be specially safeguarded. These rights include the right of these peoples to participate in the use, management and conservation of these resources.

V. State Obligations to Uphold Relevant Human Rights Standards

Given the nature of the international system of human rights, the State is responsible for their recognition and enjoyment. In the case of climate change, those primarily responsible are North America, Western Europe and Japan, as well as the corporations that they license. But in order to seek redress for the human rights violations created by climate change a particular State must be identified and shown to be the cause. As a result, there has been impunity for both states and corporations in the gross and massive violation of human rights caused by climate change.

But recently, Indigenous Peoples have begun to address these issues and seek redress through national and international legal processes, and this impunity is now being challenged on many fronts.

For example on February 26, 2008, the Alaskan Native Village of Kivalina and the city of Kivalina, represented by the Native American Rights Fund and the Center on Race, Poverty & the Environment filed a lawsuit in Federal Court, the United States District Court of Northern California (CV 08-1138). The complaint alleges that Kivalina, an Inupiat Eskimo village of approximately 400 people, 800 miles north of the Arctic Circle, whose residents have inhabited that place since time immemorial, will cease to exist and have to be abandoned as a result of climate change and the melting of the sea ice that formerly protected the village from ocean storms. The suit names the largest emitters of greenhouse gases primarily carbon dioxide, including UK based BP p.l.c., along with Exxon Mobile Corporation, BP America, Chevron, Conocophillips, Royal Dutch Shell, Peabody Energy Corp., the AES Corporation, American Electric Power Company, DTE Energy Co., Duke Energy, Dynegy Holdings, Edison International, Midamerican Energy Holdings Co., Mirant Corp., NRG Energy, Pinnacle West Capital Corp., Reliant Energy Inc., the Sothern Company, and Xcel Energy Inc.

On December 7th 2005, Sheila Watt-Cloutier, then Chair of the Inuit Circumpolar Conference (ICC), submitted a petition to the Inter-American Commission on Human Rights seeking relief from violations of the human rights of Inuit resulting from global warming caused by greenhouse gas emissions from the United States of America.

Drawing upon the traditional knowledge of hunters and elders and wide-ranging peer reviewed science, the 163-page petition was supported by testimony from 63 named Inuit from northern Canada and Alaska. The petition documents existing, ongoing and

projected destruction of the Arctic environment and the culture and hunting-based economy of Inuit caused by global warming

The petition focuses on the United States of America because it is by far the largest emitter of greenhouse gases and it refuses to join the international effort to reduce emissions. The petition asks the Commission to hold hearings in northern Canada and Alaska to investigate the harm caused to Inuit by global warming. Specifically, the petition asks the Commission to declare the United States of America in violation of rights affirmed in the 1948 American Declaration of the Rights and Duties of Man and other instruments of international law.

The petition also requested that Commission declare that the United States of America has an obligation to work with Inuit to develop a plan to help Inuit adapt to unavoidable impacts of climate change, and to take into account the impact of its emissions on the Arctic and Inuit before approving all major government actions. "I invite the United States of America to respond positively to our petition," Ms. Watt-Cloutier said at a press conference to held announce the filing in Montreal, *"I invite governments and non-governmental organizations worldwide to support our petition and to never forget that, ultimately, climate change is a matter of human rights."*⁵⁸

In 2006 the case was rejected "without prejudice", but Mrs. Watt-Cloutier and her colleagues have continued to pursue the case and to submit information to the Commission.

Fortunately, the United Nations' assessment of the responsibility and the legally-binding international obligations of States such as, inter alia the US and Canada, with regards to both their own policies as well as corporate activities which violation human rights, is rapidly evolving. This is of directly relevance to the concerns and situations addressed in this paper and the mandate of this Study regarding assessing State obligations.

In a groundbreaking finding, in February 2007, responding to information filed by the IITC and the Confederacy of Treaty 6 First Nations regarding the activities of Canadian mining companies in and outside of Canada, the CERD Committee made the following recommendation:

"In light of article 2.1 (d) and article 4 (a) and (b) of the Convention and of its general recommendation no. 23 (1997) on the rights of indigenous peoples, the Committee encourages the State party to take appropriate legislative or administrative measures to prevent acts of transnational corporations registered in Canada which negatively impact on the enjoyment of rights of indigenous peoples in territories outside Canada. In particular, the Committee recommends that the State party explore ways to hold transnational

⁵⁸ Center for International Environmental Law (CIEL). December 7th, 2005

corporations registered in Canada accountable. The Committee requests the State party to include in its next periodic report information on the effects of activities of transnational corporations registered in Canada on indigenous peoples abroad and on any measures taken in this regard.”⁵⁹

In what we hope is one of many decisions which call upon State Parties to the Convention to ensure that corporations they license are held accountable to international human rights standards, the same recommendation was made by the CERD to the United States in 2008:⁶⁰

VI. Agenda 21, the UN Framework Convention on Climate Change and the Participation of Indigenous Peoples

In 1972, the United Nations held the World Conference on the Human Environment in Stockholm, Sweden. The resultant Declaration of the United Nations Conference on the Human Environment was the first pronouncement by the international community on the world’s environment. Calling for an environment of a quality that permits a life of dignity and well being, the Conference established the United Nations Environmental Programme (UNEP).

The Stockholm Declaration addressed the issue of the environment and development but left it up to the States to deal with the growing problem of environmental degradation as a result of development throughout the world. The Stockholm Declaration did recognize the connection between human right and the environment, but in its formulation of a right to the environment, it framed this right as an individual right even though the right to the environment, like the rights of self determination, development, and peace, are all so-called “third generation” collective rights of peoples.

The World Conference on the Environment and Development (Rio) was held twenty years later, in 1992, in Rio de Janeiro, Brazil. Popularly known as “Rio,” this conference led to an explosion of international activity, including international conventions, with regard to the environment. These include the Convention on Climate Change, the Convention on Biodiversity and the Convention on the Elimination of Persistent Organic Pollutants.

Principle 22 of the Rio Declaration recognizes that:

Indigenous Peoples and their communities... have a vital role in environmental management and development because of their knowledge and traditional practices. States should recognize and duly support their identity, culture and interests and enable their effective participation in the achievement of their

⁵⁹ Concluding observations of the Committee on the Elimination of Racial Discrimination, Canada, CERD/C/CAN/CO/18, 25 May 2007, para. 17.

⁶⁰ Concluding observations of the Committee on the Elimination of Racial Discrimination United States of America, CERD/C/USA/CO/6, February 2008, para. 30.

sustainable development.

Agenda 21, the major product of Rio, in Section 3 calls for strengthening the roles of major groups in development. Nine Major groups are identified, including Indigenous Peoples. However, some States as well as the World Trade Organization and the International Monetary Fund seem to be impervious to the perspectives and opinions of these “major groups”. They are also resistant to accepting a human rights-based framework and criteria for negotiations involving the Environment and Development, let alone accept the applicability of international legally binding human rights standards.

Indigenous Peoples have their own Chapter in Agenda 21, Chapter 26 which calls for a “full partnership” with Indigenous Peoples in the accomplishment of the goals of Agenda 21. Chapter 26.3 calls upon the States to “strengthen and facilitate” Indigenous Peoples’ participation in their own development and in external development activities that may affect them. Chapter 26 seems to recognize Indigenous Peoples’ rights as already established under International Labor Organization Convention No. 169. But it goes no further than calling upon the States to seek and incorporate the views of Indigenous Peoples and their organizations in the implementation and design, adoption and strengthening of policies to protect Indigenous Peoples intellectual and cultural property.⁶¹

Other chapters of Agenda 21 also refer to Indigenous Peoples, primarily in the areas of traditional knowledge, in the case of fisheries and the incorporation of this knowledge into domestic marine ecosystems management plans, all related to water and subsistence.⁶² Chapter 11, Combating Deforestation, also calls for Indigenous “participation” in state activities pertaining to forests. Indigenous Peoples’ ability to sustain themselves, to provide for their major means of subsistence and to continue the millennial practices in providing for their own means of subsistence in keeping with their own world view, are profoundly tied to all of these themes addressed by Agenda 21.

The UN Framework Convention on Climate Change was a major theme and accomplishment of Rio. As a framework convention, it is an “agreement to agree” based

⁶¹ Agenda 21, Chapter 26, 26.4 and 26.5. See, ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries: Article 2 (participation of Indigenous Peoples in development); Article 4 (protection of Indigenous cultures and environment); and Article 6 (consultations leading toward, but *not* requiring, consent on measures which may affect them directly). Indeed, Agenda 21 falls short of Article 27 of ILO #169, recognizing that Indigenous Peoples “shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands that they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development.” ILO Convention 169 is the only international convention on Indigenous Peoples and can be regarded as the “bottom” or basic document establishing recognition of the rights of Indigenous Peoples from which the development of international human rights standards concerning Indigenous Peoples should evolve. In no way should United Nations actions or documents reflect lesser human rights standards than those found in this basic convention.

⁶² Agenda 21, Chapter 17, 17.17.

upon the principles and guidelines established by the Convention. 170 Nations agreed at Rio to reduce voluntarily their emissions of greenhouse gasses to 1990 levels. The Kyoto Protocol on Climate Change was to secure firm commitments from State Parties to the Convention on specific greenhouse gas reductions and deadlines.

It is important to stress that Indigenous Peoples have participated in good faith at every stage of discussions at the UNFCCC sessions. They fully recognise the vital importance and critical urgency of developing global and national policies in response to climate change for all the reasons given above.

However, this Convention does not provide Indigenous Peoples with formal mechanisms for inclusion in these discussions. Indigenous Peoples have been forced to protest and voice their objections consistently throughout this process, as their rights to full and formal participation have not been respected, despite the direct impact these discussions and decisions have on their lives, human rights and very survival.

Indigenous Peoples have called upon the State parties and the UN system on many occasions to implement their Rights to Free Prior and Informed Consent, Self-Determination and full participation in this process -- rights that are now stipulated in the UN Declaration on the Rights of Indigenous Peoples and a range of other Human Rights standards as well as in Agenda 21 itself.

In their Statement to The High Level Segment of COP 13 and the 3rd Meeting of the Parties to the Kyoto Protocol of the UN Framework Convention On Climate Change in Bali, the International Forum of Indigenous Peoples On Climate Change expressed their collective disappointment and objection to what has become a situation of ongoing exclusion:

“We, Indigenous Peoples, have addressed our concerns to the UNFCCC Conference of the Parties since SBSTA 13 in Lyon, France, 2000. However, despite years of experience and efforts to participate in this process, and despite also the resounding support and approval this year of the United Nations Declaration on the Rights of Indigenous Peoples, we are profoundly disappointed that, even as the United Nations’ Second International Decade of Indigenous Peoples begins, states are still ignoring our demands and contributions and we have even been shut out of this Bali process.”

The report of the UN Permanent Forum on Indigenous Issues 7th session (April 21st – May 22nd, 2008) also took note of the urgent need for effective formal mechanisms to ensure the full and effective participation of Indigenous Peoples as well as respect for their rights in this process. The UNPFII7 called upon the UNFCCC and all involved parties to take measures to ensure that this would be achieved. The recommendations included:

10. The principles of common but differentiated responsibilities, equity, social justice and sustainable development and development with identity

should remain the key principles underpinning the negotiations, policies and programmes on climate change. The human rights-based approach to development and the ecosystem approach should guide the design and implementation of local, national, regional and global climate policies and projects....

18. The United Nations Declaration on the Rights of Indigenous Peoples should serve as a key and binding framework in the formulation of plans for development and should be considered fundamental in all processes related to climate change at the local, national, regional and global levels. The safeguard policies of the multilateral banks and the existing and future policies on indigenous peoples of United Nations bodies and other multilateral bodies should be implemented in all climate change-related projects and programmes.

30. The Permanent Forum recommends that the United Nations Framework Convention on Climate Change and relevant parties develop mechanisms for indigenous peoples' participation, as appropriate, in all aspects of the international dialogue on climate change, particularly the forthcoming negotiations for the next Kyoto Protocol commitment period, including by establishing a working group on local adaptation measures and traditional knowledge of indigenous peoples....⁶³

However, the response has continued to be disappointing. Ms. Victoria Tauli Corpuz, Chair of the UNPFII made the following statement responding to the results of the latest recently concluded the 14th Conference of Parties of the UNFCCC in Poznan Poland on what was, ironically, Human Rights Day (December 10th 2008). She addressed the continuing denial of the rights of Indigenous Peoples in the process, spearheaded by the same small group of States which voted against the UNDRIP:

“ It is with great sadness that today, the 60th Anniversary of the adoption of the UN Declaration on Human Rights, some States have denied indigenous peoples of their rights at the 14th Conference of Parties of the UNFCCC.

This morning indigenous peoples were shocked to see the final version of the Draft Conclusions on Agenda Item 5: Reducing emissions from deforestation in developing countries: approaches to stimulate action, of the 29th Session of Subsidiary Body for Scientific and Technological Advice (SBSTA). This Document (FCCC/SBSTA/2008/L.23) removed any references to rights of indigenous peoples and the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). This move was spearheaded by the same States (Australia, Canada, New Zealand and the USA) which voted against the adoption of the UNDRIP by the UN General Assembly

⁶³ E/2008/43/E/C.19/2008/13, Report of the UNPFII 7th session pages 3, 4 and 6

last 13 Sept. 2008.⁶⁴

Tom Goldtooth of the Indigenous Environmental Network presented the consensus concluding statement the International Indigenous Peoples' Forum on Climate Change (IIPFCC) to the COP 14th in Poznań on December 12th 2008. This statement also affirmed the urgent need to remedy what Indigenous Peoples see as their virtual exclusion from any real voice in a process which directly affects their rights and survival:

“The Shared Vision of this Climate Change Convention must observe and implement the UN Declaration on the Rights of Indigenous Peoples adopted by the UN General Assembly in 2007. As the UNFCCC is a process under the umbrella of the UN system, the denial of full and effective Indigenous peoples’ participation in the UNFCCC discussions is an affront to those rights granted only a year ago. It is urgent that the UNFCCC be amended as soon as possible to make its process and provisions consistent with the spirit and intent of the UN Declaration on the Rights of Indigenous Peoples and allow Indigenous peoples to express their views on all aspects of the Convention.”⁶⁵

Clearly, the lack of full, formal and effective participation of Indigenous Peoples in critical international debates, discussions and decisions regarding climate change is in and of itself a key human rights concern. This should be addressed in the current Study and its recommendations so the UNFCCC process can be consistent with commitments made by the United Nations to mainstream human rights in all of its activities and processes, including those related to development.

VII. Human Rights Impacts of “Market-Based Solutions”

“Market-based mechanisms are very limited. These just reinforce further the inequities which have been created by the unregulated market or the so-called free market instead of addressing the root causes of climate change...”

The best way to mitigate climate change is to change the unsustainable production and consumption patterns which is still the prevalent system dominating this world. The best mitigation measures involve changing lifestyles, individually and collectively, and structurally changing the development path towards a sustainable and low-carbon one....”⁶⁶

⁶⁴ INTERNATIONAL HUMAN RIGHTS DAY 2008: A SAD DAY FOR INDIGENOUS PEOPLES, Statement by Victoria Tauli-Corpuz Executive Director, TEBTEBBA (Indigenous Peoples' International Centre for Policy Research and Education), and Chair, UN Permanent Forum on Indigenous Issues DDecember 10, 2008

⁶⁵ High Level Segment, 14th Conference of the Parties, Agenda Item 8 and CMP Agenda Item 9, UN Framework Conference on Climate Change, Poznań, Poland, 12 December 2008, Closing Statement of the International Indigenous Peoples' Forum on Climate Change

⁶⁶ What are the indigenous peoples' perspectives on climate change mitigation?" From “A Guide on Climate Change and Indigenous Peoples”, Tebtebba (Indigenous Peoples' International Centre

It has been pointed out on numerous occasions that the three market-based “flexible mechanisms” promoted in the Kyoto Protocols -- Emissions Trading, Joint Implementation (JI), and Clean Development Mechanism (CDM) – do not address the primary cause of global warming: the transfer of fossil fuels from underground, where they are effectively isolated from the atmosphere, to the air.

Indigenous Peoples have consistently raised concerns that the “market-based solutions” based on carbon trading models will do little to address the actual causes of climate change. At the same time they pose serious additional threats to human rights including those of Indigenous Peoples.

These mechanisms primarily assist the countries responsible for the highest GHG emissions to continue their current practices while lowering their net “output” through the purchases of “carbon credits” from less polluting countries or corporations and investing in projects which “sequester” or “store” carbon.

“Joint Implementation” means that northern and industrial countries can finance projects aimed at mitigating climate change in other countries (usually “developing” countries in the global south) and receive “credits” accordingly. With these in place, traders and bankers have started establishing carbon exchanges in those countries where major stock exchanges are based.⁶⁷

Through these “flexible mechanisms”, carbon emissions have been converted into a commodity in a complex global economic marketing system which does little to address the actual problem or reduce emissions overall. Instead, it creates yet another imbalanced “north and south” economic dynamic in which Indigenous Peoples’ natural resources and traditional homelands can be bought, sold and traded with little regard for their rights and points of view.

In addition, these “solutions” often compound the human rights impacts of climate change for Indigenous Peoples. They can lead to further land loss, forced relocation, threats to local food security, deforestation and the undermining of local economies.

At the Montreal COP11 of the UN Conference on Climate in 2005, the Indigenous Caucus issued a statement denouncing CDMs. *“The modalities and procedures for activities under the Clean Development Mechanisms (CDM) do not respect and guarantee our right to lands, territories, and self-determination. CDM projects do not contribute to climate change mitigation and sustainable development”*.

for Policy Research and Education), 2008

⁶⁷ “Oil Palm and Other Commercial Tree Plantations, Monocropping: Impacts on Indigenous Peoples’ Land Tenure and Resource Management Systems and Livelihoods”, Victoria Tauli-Corpuz and Parshuram Tamang, UN Permanent Forum on Indigenous Issues 6th session, 2007, E/C.19/2007/CRP.6

Indigenous Peoples' concerns about the Reducing Emissions from Deforestation and Forests Degradation in Developing countries (REDD) initiative were detailed in this paper in the section on "Deforestation". However, the REDD is also viewed by many Indigenous Peoples in the larger context of the general trend by the UN, financial institutions and states to promote "solutions" to climate change that may have adverse impacts on Indigenous Peoples lands and human rights.

Focus: Bio/Agro Fuel Production and the Human Rights of Indigenous Peoples

The rapid expansion of bio/agro fuel production also has multiple negative impacts which must be taken into account in any assessment of its costs vs. and benefits to small local producers and communities. It has, for example, resulted in a 40% increase in food prices in some regions according to latest FAO (Food and Agricultural Organization) reports, partly due to the increased competition between the use of agricultural crops for food or for biofuels.⁶⁸ Local economies can be undermined, as food, water and land prices increase.

In some cases, land for large scale biofuel plantations is confiscated from Indigenous Peoples who often have no legally-recognized title. Indigenous Peoples have been turned from independent small producers into forced or low-paid plantation workers as the appropriation of communal lands and water sources, as well as changes in local markets, prices and food systems are brought about by the influx of large-scale biofuel production operations.

Human rights impacts on Indigenous Peoples have been summarized as follows:

- Indigenous peoples' lands are taken for biofuels production (oil palm, corn, sugar cane, soya, etc.), resulting in forced relocations and land loss;
- Deforestation has actually increased due to clearing of forests for biofuels production in Latin America, Asia and other regions. However these new plantations are often designated as "forests" for the purpose of carbon trading valuations.
- Introduction of GMO crops such as corn and soya, reducing bio-diversity and decreasing ability for community-based adaptation to climate and weather changes
- Water diversion from traditional subsistence use
- High-chemical farming methods (fertilizers and pesticides) which undermine Indigenous cultures, eco-systems, local economies and food security;
- Undermining local economics, land tenure systems and livelihoods

In addition, increasing numbers of reports show that production of biofuels, in particular ethanol from corn, actually consumes more energy than it saves!

⁶⁸ A Guide on Climate Change and Indigenous Peoples, Tebtebba (Indigenous Peoples' International Centre for Policy Research and Education), 2008

A paper prepared for the 6th session of the UN Permanent Forum on Indigenous Issues Sixth session (New York, 14-25 May 2007) titled by UNPFII members Victoria Tauli-Corpuz and Parshuram Tamang documented specific impacts of oil palm production for Biofuels in Asia and other regions:

“The expansion of plantations for biofuels, the development of carbon sinks, and carbon emissions trading are exacerbating the earlier problems related to plantations which indigenous peoples are facing. Converting complex ecosystems to become monoculture carbon sinks and treating CO2 emissions as a commodity which will be traded in the carbon market do not only lead to adverse social and environmental impacts, but also directly contradicts the basic worldviews and values of indigenous peoples who have used their resources and lands in a sustainable manner.

At present, however, states, multilateral funding institutions, the private sector including the private banks along with bilateral donors and the UN, support and promote the large-scale agroindustrial model, as opposed to a small-scale one.

Oil palm plantations have become one of the fastest growing monocropping plantations in the tropics not only of Africa, but also in Asia-Pacific, and Latin America and the Caribbean.

Indonesia is experiencing the biggest rate of increase in terms of forests converted into oil palm plantations. In a period of 30 years (1967-1997) oil palm plantations have increased 20 times with 12 percent average annual increases in crude palm oil (CPO).

From 106,000 hectares in 1960 this has increased to 6 million hectares although there were around 18 million hectares of forests cleared purportedly for oil palm in 2006. It appears that loggers used oil palm plantations as a justification to harvest the timber. The government announced new plans, under the Kalimantan Border Oil Palm Mega-Project (April 2006), to convert an additional 3 million hectares in Borneo, of which 2 million will be in the border of Kalimantan and Malaysia. The rapporteurs of this report understand that the area deemed suitable for oil palm includes forests used by thousands of people who depend on them for their livelihoods.”⁶⁹

As in the case of REDD, many Indigenous Peoples have called for a moratorium on the implementation of market-based “solutions” to climate change until the full

⁶⁹ Excerpts from “Oil Palm and Other Commercial Tree Plantations, Monocropping: Impacts on Indigenous Peoples’ Land Tenure and Resource Management Systems and Livelihoods”, Victoria Tauli-Corpuz and Parshuram Tamang, UN Permanent Forum on Indigenous Issues 6th session, 2007, E/C.19/2007/CRP.6

environmental and human rights impacts can be understood and addressed.

This view was strongly expressed by the International Forum of Indigenous Peoples On Climate Change at COP 13 in Bali:

*“ We demand that the Conference of the Parties recognize and take action to curb the adverse impacts of climate change on indigenous peoples; and to refrain from adaptation and mitigation schemes and projects promoted as solutions to climate change that devastate Indigenous Peoples’ lands and territories and cause more human rights violations, like market based mechanisms, carbon trading, agrofuels and especially avoided deforestation (REDD). All adaptation and mitigation plans affecting Indigenous communities must follow the principles of free prior and informed consent of Indigenous communities, especially those mostly impacted.”*⁷⁰

Indigenous Peoples’ Strategies for Mitigation and Adaption

It cannot be emphasized enough that Indigenous Peoples are working in their communities and Nations around the world to use traditional knowledge and practices regarding forestry and reforestation, farming, fisheries, water collection and irrigation as ways to adapt, mitigate and ensure the resiliency of their communities facing the impacts of Climate Change and global warming

These activities are based on a “rights based approach” to the addressing the problem, emphasizing Indigenous Peoples' ability to exercise their rights to self-determination, Free Prior and Informed consent, Treaty Rights and Permanent Sovereignty over their Natural Resources among others. Many are also based on the use and adaptation of traditional knowledge and methods handed down since time immemorial.

As has been mentioned above, Indigenous communities, tribes and Nations in many areas are continuing to oppose expansion of the fossil fuel cycle in their own homelands as the best way to prevent additional impacts, locally and globally. At the same time, many are supporting and promoting, and in some cases are actively engaged in the development of alternative, culturally and environmentally compatible forms of sustainable energy. These include the use of alternative technologies and energy sources, including small scale biofuel production, solar and wind generation, to adapt and mitigate the impacts of climate change.

Indigenous Peoples have also developed frameworks and tools to measure and assess the impacts and implement community-based solutions, which could also be applied in other local communities and regions. For example, Indigenous communities in Rio Yaqui

⁷⁰ Statement of the International Forum of Indigenous Peoples On Climate Change at The High Level Segment of the 13th Conference of the Parties and the 3rd Meeting of the Parties to the Kyoto Protocol of the UN Framework Convention On Climate Change, Bali, Indonesia December 14, 2007

Sonora Mexico and other regions are using the “*Cultural Indicators for Food Security, Food Sovereignty and Sustainable Development*” finalized at the 2nd Global Consultation on Right to Food, Food Security and Food Sovereignty for Indigenous Peoples (Bilwi Nicaragua, September 2006)⁷¹ as an effective tool for assessing the impacts of decreasing rainfall on traditional farming activities in their areas, as well as their own traditional knowledge about using seeds (corn, squash and beans) and methods which are resilient in drought conditions.

The Report of the North America Region Preparatory Meeting for the United Nations Permanent Forum on Indigenous Issues Seventh Session emphasized that “*effective solutions to climate change must take a rights-based approach, which recognizes and includes Indigenous Peoples’ traditional knowledge systems.*” The Report also affirmed that “*Indigenous Peoples and local communities have practical responses and solutions to climate change and global warming based on their traditional knowledge and practices*” and that these are “*effective mitigation, adaptation and resiliency tools that must be supported.*”⁷²

The report went on to highlight some of the best practices and “resiliency Solutions” by Indigenous Peoples from the North America Region:

- a) Efforts by Yaqui Peoples of Southern Arizona and Northern Mexico to restore their food-related biological diversity and traditional knowledge and natural ecosystem, including seeds and planting methods, mesquite forests and water ways, for adaptation to, and mitigation of, changing climate conditions.*
- b) The advances made by the Squamish Nation of British Columbia to assert jurisdiction and take control over their traditional lands, in particular through implementing management plans regarding their forests, waters and traditional game. These advances include permanently safeguarding 50,000 hectares of pristine forestlands called “wild spirit places” and asserting co-management agreements with all 16 provincial parks, significantly reducing de-forestation and environmental degradation in their territories.*
- c) Efforts by the Haida Nation in British Columbia to protect the traditional biological diversity of the wild salmon in their area and to oppose the introduction of farmed salmon which undermines the integrity of the wild salmon stock.*
- d) The work of the Haudenosaunee through the long-term effort of the*

⁷¹ “Cultural Indicators for Food Security, Food Sovereignty and Sustainable Development”, 2nd Global Consultation on Right to Food, Food Security and Food Sovereignty for Indigenous Peoples (September 2006) coordinated by the International Indian Treaty Council in conjunction with the UN Food and Agriculture Organization. Indicator area # 10 focuses on assessing the “*Capacity within Indigenous communities and Peoples for adaptability, resilience, resistance and/or restoration of traditional food use and production in response to changing economic, political and/ or environmental conditions*”.

⁷² Conference Room Paper (CRP) 4, Report of the North America Region Preparatory Meeting for the United Nations Permanent Forum on Indigenous Issues Seventh Session (UNPFII7), April 2008, Co-Rapporteurs Celeste McKay and Andrea Carmen, page 5

Haudenosaunee Environmental Task Force to study and halt environmental contamination, to call for reparation by those responsible for contamination and, most importantly, restore the health and resiliency of their sacred site, Onondaga Lake through banning the importation of toxins and the declaration of their territories as nuclear free zones.
e) The work of Indigenous Nations in British Columbia to plant fruit trees as well as to restore natural forests in previously deforested areas.
f) The Tribal Campus Climate Challenge project which works with students of 22 Tribal colleges to organize and promote renewable energy and emission reductions strategies on campuses in both the US and Canada.
g) The Navajo Nation has placed a moratorium on all uranium development on Navajo lands due to life loss caused by cancer related to mining uranium, which has been in effect for the past several years.
h) The initiatives of many Indigenous Peoples and tribal Nations to develop and to utilize wind, solar and other renewable technologies for the generation of energy needs.⁷³

Unfortunately, these types of models being developed around the work by Indigenous Peoples which could be effectively applied in other communities as well, receive very little attention or support compared to the booming “carbon trade” market promoted by the United Nations, the World Bank and other powerful interests.

A call made on many occasions and expressed below in the consensus statement of the Global Indigenous Peoples Caucus to the 7th session of the UNPFII in April 2008, is for United Nations to recognize and support the measures, solutions and proposals developed by Indigenous Peoples and communities in response to the impacts of climate change:

“As Indigenous Peoples and Nations, we look to our own Peoples’ traditional knowledge systems, our elders and traditional knowledge holders, for real and effective solutions for culturally and environmentally adaptive measures which can ensure the survival of our communities which we must begin to implement without delay. We ask the world to give full attention to the models, best practices and solutions being used and proposed by Indigenous Peoples from around the world during this session. We request that the UNPFII began to compile those which can be shared, used and applied in other communities. We continue to reiterate to the world community that if we take care of the land, it will take care of us”.⁷⁴

We reaffirm our firm conviction that only through such an inclusive, respectful and human rights-based approach will the human family be able to create real, effective and

⁷³ Ibid, page 8

⁷⁴ United Nation Permanent Forum on Indigenous Issues Seventh Session, New York, April 21 to May 2, 2008, Joint Consensus Statement by Indigenous Peoples and Nations Global Caucus, Item 3: Special Theme: “Climate change, biocultural diversity and livelihoods: the stewardship role of indigenous peoples and new challenges”

sustainable solutions to the global Climate Crisis. For the sake of our future generations and our collective survival, we must do no less.

VIII. Conclusions and Recommendations

On December 14th 2006, the torch was passed from the outgoing to the incoming UN Secretary of the United Nation in a ceremony attended by diplomats and dignitaries in the at the UN General Assembly Hall in New York. Both Mr. Kofi Annan and Mr. Ban Ki-Moon, in their speeches to participants which include the heads of the UN Security Council, the Economic and Social Council (ECOSOC), and the Trusteeship Council, stressed the indissoluble links uniting security, development and human rights as the three pillars of the United Nations, without any one of which world peace will not be achieved.⁷⁵

In July 1997, in the “Report of the Secretary-General on Renewing the United Nations: a Programme for Reform,” the Secretary General once again affirmed that “Human rights are integral to the promotion of peace and security, economic prosperity and social equity... Accordingly, the issue of human rights has been designated as cutting across each of the four substantive fields of the Secretariat's work programme (peace and security; economic and social affairs; development cooperation; and humanitarian affairs.). The report further affirmed that “A major task for the United Nations, therefore, is to enhance its human rights programme and fully integrate it into the broad range of the Organization's activities”.⁷⁶

This affirmation is at the heart of the recommendations of the International Indian Treaty Council to the UN Human Rights Council through the Office of the High Commissioner on Human Rights as it prepares its report on the results of this study for the HRC's 10th session in March 2009. We recommend:

- 1) That the Human Rights Council affirms and recognizes that climate change and its causes, impacts and solutions are critical and cross-cutting human rights concerns which impact persons and Peoples in all regions, and therefore their consideration is in keeping with the core mandate of the Council
- 2) That the Human Rights Council agrees to assume a pivotal role in addressing this critical human rights matter in all of the aspects presented in this submission as well as others which have been submitted by others interested parties.
- 3) That the Human Rights Council consider the creation of Special Rapporteur on

⁷⁵ 14 December 2006, Department of Public Information News and Media Division, UN Headquarters, New York

⁷⁶ “Human Rights in the Report of the Secretary-General on Renewing the United Nations: a Programme for Reform,” Extracts from the report of the Secretary-General to the General Assembly, A/51/950, para. 78 and 79, 14 July 1997

Human Rights and Climate Change to address this issue from a human rights perspective, in conjunction with other relevant mandate holders (Right to Food, Indigenous Peoples and others) as well as the OHCHR .

- 4) That the Human Rights Council takes action to ensure that no process, agency or activity within the United Nations system is exempt from adopting, as a core principle upon which all decisions and actions are based, a human rights approach as called for by the UN Secretary General. Further, to monitor and be vigilant to ensure that all UN process and procedures are accountable to intentional human rights standards and principles as they carry out their work,

In closing, the IITC again thanks the OHCHR for its attention to the concerns which we have presented. We also once again thank the Indigenous Peoples who have made contributions and who continue to defend these human rights in their homelands and communities as well as in the international arena.

It is clear from their statements and declarations that the material, spiritual and cultural dimensions of the impacts of Climate Change for Indigenous Peoples are not only real, but are recognized in various international human rights standards and jurisprudence. However, it is also clear that effective mechanisms to ensure the enjoyment and implementation of these rights, and the political will of states to do so, are most urgently needed.

We very much hope that all the dimensions and concerns expressed by Indigenous Peoples will be reflected in the report of the OHCHR to the Human Rights Council. The IITC will look forward to providing additional input and information, including the full text of the documents cited and additional case studies, upon request.

In conclusion IITC would like to share this final excerpt from the consensus statement of the Global Indigenous Peoples Caucus to the 7th session of the UNPFII in April 2008:

“We are clear that the increasingly devastating impacts of Climate Change are already being felt, seen and experienced by all Peoples, Nations, States and Communities of the world. We call upon the United Nations, its member States and all UN agencies and bodies including the UN Security Council to recognize, as they have not yet done, the extreme urgency and critical nature of the threat the world is facing.”

We are very sincere in both recommending and urgently requesting, with all respect and a hopeful heart, that the Office of the High Commissioner on Human Rights and the UN Human Rights Council, which we hold in great esteem and highest regard for their historic dedication to human rights of Indigenous Peoples, will heed this call.

We request that you agree to take an active and decisive role in this issue as a critical and unprecedented threat to human rights for Indigenous Peoples and all Peoples.

Thank you, for all our relations.

***“Our Grandfathers and Grandmothers are still holding a bundle to pray
for the water to return, and to bring back a good rain and a good snow for
the Land, for the people who remain on the Land, for their grandchildren
and the animals.”***

***-- Kee Watchman, Dineh Nation
Cactus Valley Red Willow Springs, Arizona***