



Peace Movement Aotearoa

PO Box 9314, Wellington 6141. Tel 04 382 8129, pma@xtra.co.nz, www.converge.org.nz/pma

9 August 2007

On the International Day of the World's Indigenous People

Today is the International Day of the World's Indigenous People (IDWIP) - a day to celebrate "the contributions that indigenous peoples make to humanity through their rich civilizations"¹ and "a time to remember those indigenous peoples who continue to suffer discrimination, marginalization, extreme poverty and conflict; who face dispossession of their traditional lands and livelihoods, displacement, destruction of their belief systems, culture, language and way of life - and even the threat of extinction."²

It is also a useful time to reflect on the NZ government's approach to indigenous peoples and their rights. With this in mind, we have put together this article which has two main parts: 1) some background information on IDWIP; and 2) a section on the government's performance with regard to indigenous peoples and their rights at the international level.

While there are many areas of government policy that impact on indigenous peoples here and overseas - their unfortunate habit of negotiating 'free' trade agreements without any involvement of indigenous peoples who are included by default in such deals, the deployment of combat troops overseas and so on - there is a focus below on three particular areas: a) international scrutiny of the government's record in relation to indigenous peoples and their rights; b) an update on recent developments around the Declaration on the Rights of Indigenous Peoples, including the government's latest statement of their deplorable position; and c) government investments in companies involved in the violation of indigenous peoples' human rights, exploitation of their resources, and destruction of their lands and territories.

There is also a section with contact details for the relevant politicians and officials if you wish to send them your views on the issues covered below, and a reference section with links to where you can find more information. This article is online at <http://www.converge.org.nz/pma/idwip07.htm>

1) Background information on IDWIP

In 1994, the UN General Assembly declared that the International Day of the World's Indigenous People would be observed on 9 August every year during the International Decade of the World's Indigenous People. The date marks the day of the first meeting of the UN Working Group on Indigenous Populations in 1982. The Day is celebrated around the world by indigenous peoples and their allies, and at the UN Headquarters in New York³.

Observance of the Day was initially tied to the International Decade of the World's Indigenous People, which ran from 1995 to 2004. However, a major objective of the Decade was the adoption of the UN Declaration on the Rights of Indigenous Peoples (the Declaration), and the lack of success in achieving that and other goals of the Decade, led to a second International Decade of the World's Indigenous People being declared in 2004 - the Second Decade runs from 2005 to 2014⁴.

2) The NZ government and indigenous peoples' rights

a) International scrutiny of the government's record

The government's performance with regard to indigenous peoples' rights, both here in Aotearoa New Zealand and overseas, has most recently been scrutinised by the UN Committee on the Elimination of Racial Discrimination (CERD) which is currently meeting in Geneva for its 71st session⁵. The Committee monitors and evaluates the performance of governments and whether or not they are meeting their obligations under the International Convention on the Elimination of All Forms of Racial Discrimination. CERD comprises 18 independent human rights experts who are appointed by state parties to the Convention.

Following the submission of written reports prior to the 71st session, on 31 July and 2 August representatives from non-governmental organisations and the government gave oral and written presentations to CERD, and were questioned by the Committee members. Many of the questions to the government, both before⁶ and during⁷ the session, were focussed on the government's approach to the Treaty of Waitangi and to Maori and their rights, and the government's opposition to the Declaration on the Rights of Indigenous Peoples was raised⁸.

The Committee's Concluding Observations on the government's performance will be released late next week. It is likely that, among other things, they will comment on the government's failure to act on CERD's recommendations regarding the foreshore and seabed legislation⁹, and will make the same recommendation as they did to Canada¹⁰ earlier this year, that is, to support the immediate adoption of the Declaration on the Rights of Indigenous Peoples.

b) Recent developments on the Declaration on the Rights of Indigenous Peoples

The decision on whether or not the UN General Assembly will adopt the Declaration will be made in the near future - possibly as early as next week, or at the latest in early September. In a joint statement to mark IDWIP 2007, the UN High Commissioner for Human Rights and the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples, emphasised the importance of the Declaration as follows:

"As we celebrate the International Day of the World's Indigenous People on 9 August this year, the focus of attention for many of these most marginalized peoples will be the decision that is due to be taken in the next days by the United Nations General Assembly in relation to the Declaration on the Rights of Indigenous Peoples.

The Declaration establishes international human rights standards for the protection of the rights of indigenous peoples and was adopted in June 2006 by the Human Rights Council, the principal human rights intergovernmental body of the United Nations. It has been 20 years in the making. Its contents are drawn from the experiences of thousands of indigenous representatives who have shared their anguish and their hopes.

As we stand at the brink of this historic decision by the General Assembly, it is the time to call upon member states of the United Nations to join as one and adopt the Declaration and thereby establish a universal framework for indigenous peoples' rights, social justice and reconciliation."¹¹

Unfortunately it is unlikely that the NZ government will be among those supporting the adoption of the Declaration, as they remain foremost among the few states intent on amending the text to a point

where it becomes essentially meaningless - if they have their way, rather being a means to recognise and protect indigenous peoples' rights, it will restrict and define them as substantially less than the rights of others.

In June we published an action alert¹² with updated information on the government's latest attempts to undermine the Declaration - at that time the President of the UN General Assembly had appointed Ambassador Davide (Permanent Representative of the Philippines to the United Nations) to undertake, on her behalf, further consultations with all concerned.

Ambassador Davide submitted his report on 13 July¹³ - the report outlines his consultations, and put forward three options for finding "middle ground" for state consensus on the text of the Declaration. The proposal put forward by Mexico and 67 co-sponsoring UN member states¹⁴ to amend the General Assembly resolution, rather than the text of the Declaration, appears to have been disregarded. None of the "middle ground" options are acceptable - the Declaration as adopted by the Human Rights Council and submitted to the General Assembly is already less than the text negotiated and drafted by representatives of indigenous peoples' organisations and states, and adopted by the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities in 1994. It would be unreasonable and unjust in the extreme, as well as discriminatory, to further weaken the Declaration.

In a letter to Ambassador Davide in anticipation of his report, the Chair of the Indigenous Peoples Caucus pointed out that:

"Indigenous peoples have always sought consensus from UN Member States in the adoption of the Declaration. Our delegations from around the world worked very hard to find the balance between development of a standard consistent with human rights of all other peoples and persons and the demands of States. Unfortunately, we found that a consensus of States was not an available option without our concession to discriminatory provisions in the Declaration ...

"Indigenous delegates have heard on a number of occasions that the Declaration is now under consideration in terms of its political effect. That is inevitable and expected by us, because in general we have only experienced relationships with States under such conditions.

"Nevertheless we continue to insist that the United Nations act in accordance with its Charter and underlying principles, especially the rights of all peoples to freedom and non-discrimination. In this regard we point out it is the United Nations, and not the Declaration, which may be under scrutiny here.

"Indigenous peoples look forward to the adoption of the Declaration on the Rights of Indigenous Peoples in the forthcoming weeks. Of course we would be most pleased if a high proportion of Member States of the United Nations voted positively on the Declaration. However we would also consider the adoption by a majority of UN Members to be sufficient. Our work can then focus upon the implementation of human rights standards and the end of widespread abuses against the First Peoples of the colonised world. "¹⁵

On 16 July, Ambassador Davide received a request for a meeting with the representatives of the group of 7 states apparently most opposed to the adoption of the Declaration - NZ, Australia, Canada, Colombia, Guyana, Russian Federation and Suriname. He subsequently submitted a supplementary report¹⁶ to the General Assembly President which stated the representatives of those governments had made it clear that they would only consider supporting the Declaration if there were amendments to the text.

On 23 July, Haya Rashed Al Khalifa, General Assembly President, sent a letter to all Permanent Representatives and Permanent Observers to the UN United Nations New York encouraging their governments to "reach a swift common understanding to allow the General Assembly to take a decision on this very important issue during the first week of September."¹⁷

It is extremely unlikely that the NZ government will be cooperating with that worthy goal¹⁸.

c) Government investments in companies involved in the violation of indigenous peoples' rights

As if the government's persistent refusal to support the Declaration isn't bad enough, there is another area in which their activities have an extremely harmful impact on indigenous peoples - their support by way of investment in companies involved in the violation of indigenous peoples' human rights, exploitation of their resources, and destruction of their lands and territories.

One example of this is the operation of the NZ Superannuation Fund (the Fund), governed by a Crown entity called the Guardians of New Zealand Superannuation and overseen by a Board selected by the Minister of Finance. The Fund has an extensive equity portfolio including investments in many overseas corporations that have well-documented records in human rights and other abuses of indigenous peoples. Such companies include:

- **Exxon Mobil Corp:** number 1 on the list of the Fund's top 10 International Equities in May 2007, investment of \$79,925,570¹⁹. Issues with its operations include destruction of land and livelihoods in Chad²⁰, and complicity in human rights violations at its liquid natural gas plant in Aceh²¹.

- **BP Plc:** investment of \$21,055,660 in June 2006²². Issues with its operations include it being implicated in human rights abuses related to the alleged impact of security arrangements on local communities in Colombia²³, and environmental and human rights concerns around its new Tangguh liquefied natural gas project in Bintuni Bay, West Papua²⁴.

- **BHP Billiton:** BHP Billiton Ltd (Australia), investment of \$9,705,391 in June 2006, and BHP Billiton Plc (Britain), investment of \$3,841,675 in June 2006. Issues with its mining operations include it being implicated in human rights abuses, forced relocation, and environmental degradation around Cerrejon Zona Norte in Colombia²⁵, and environmental degradation on Navajo land²⁶.

- **Freeport McMoRan:** investment of \$954,608 in June 2006, plus an investment of \$17,793,555 in the Rio Tinto Group (\$9,725,415 in Rio Tinto Plc, Britain, and 8,068,140 in Rio Tinto Ltd, Australia) - Rio Tinto has a 40 per cent joint venture interest²⁷ in the Freeport McMoRan Grasberg mine in West Papua. Freeport "has an unparalleled record of human rights and environmental abuse"²⁸ in relation to that mine - the destruction of the local environment is visible from space²⁹, it has created a 230 square kilometre barren wasteland of dumped mine tailings³⁰, and every day more than 200,000 tonnes of silty sludge is dumped, releasing immense quantities of sediments and heavy metals such as copper, cadmium and mercury into the river system³¹. The impact of the mine is particularly devastating for the indigenous Amungme and Kamoro people who have lost the traditional lands and aquatic resources that they rely on for survival, as well as being forcibly displaced from their homes and villages³².

In 2005, the New York Times revealed that from 1998 through 2004, Freeport gave Indonesian "military and police generals, colonels, majors and captains, and military units, nearly \$20 million (US). Individual commanders received tens of thousands of dollars, in one case up to \$150,000,

according to the documents."³³ That included payments to the Mobile Brigade who have been associated with "numerous serious human rights violations, including extrajudicial killings, torture, rape, and arbitrary detention".³⁴ And that's just Freeport, then of course there is Rio Tinto's appalling record³⁵ ... the corporation described in 2001 as "a poster child for corporate malfeasance".³⁶

The Fund also invests in a number of companies engaged in activities that have been a cause for concern³⁷ in Western Shoshone territory. These include **Lockheed Martin**, investment of \$15,806,421 in June 2006, which is involved in the US government nuclear weapons testing programme at the Nevada test site³⁸ (and of course its dominant position as a military contracting, weapons producing and weapons exporting corporation ensures it is in part responsible for gross human rights violations wherever armed forces using its products or services are engaged in military activity against indigenous peoples); and **Barrick Gold**, investment of \$2,167,276 in June 2006, which is involved in destructive mining operations on Western Shoshone land³⁹, and indigenous land elsewhere⁴⁰.

This all despite the Fund being allegedly committed to "responsible investment", and the Board of Guardians having established a Responsible Investment Committee which oversees "the Fund's mandate to avoid prejudice to New Zealand's reputation as a responsible member of the world community"⁴¹.

3) Contact details for the relevant politicians and officials

If you wish to convey your views on the issues raised above to the relevant politicians and officials, here are their contact details.

- on the government's position on the UN Declaration on the Rights of Indigenous Peoples: Helen Clark, Prime Minister, email pm@ministers.govt.nz or fax (04) 473 3579; Winston Peters, Minister of Foreign Affairs, email wpeters@ministers.govt.nz or fax (04) 471 2042; and the MP for your electorate, especially if they are in one of the governing parties - contact details for MPs are available online at <http://www.parliament.nz/en-NZ/HvYrSay/Contact/2/9/d/29d39021e8194f2bbc1f8a37ee885f6a.htm> or by phoning Parliament, tel (04) 471 9999; letters to any MP should be posted to Freepost Parliament, PO Box 18-888, Wellington.

It would be useful for you to send a copy of your communications about this to * Joan Mosley, Director of the United Nations, Human Rights and Commonwealth Division, Ministry of Foreign Affairs and Trade, Private Bag 18-901, Wellington, fax (04) 439 8511, or email Joan.Mosley@mfat.govt.nz * Caroline Beresford, Deputy Director, Human Rights Unit, Ministry of Foreign Affairs and Trade, post and fax as previous, or email Caroline.Beresford@mfat.govt.nz * Rosslyn Noonan, Chief Human Rights Commissioner, Human Rights Commission, PO Box 12-411, Thorndon, Wellington 6144, fax (04) 471 6759, or email Rosslynn@hrc.co.nz * Joris de Bres, Race Relations Commissioner, post and fax as previous, email JorisdB@hrc.co.nz You could also if you wish write separately to the Chief Human Rights and Race Relations Commissioners and urge them to do all they can to ensure the government moves from its hostile position on the Declaration.

- on the government's investments in companies involved in the violation of indigenous peoples' rights: Michael Cullen, Minister of Finance, email mcullen@ministers.govt.nz or fax (04) 495 8442, and the MP for your electorate (contact details as above). Contact details for the Guardians of the Super Fund are: Adrian Orr, Chief Executive Officer of the Guardians of New Zealand Superannuation, David May, Chairman of the Board, and Sir Douglas Graham, Deputy

Chairman - email c/o scoker@nzsuperfund.co.nz or fax (09) 300 6981, or you can write to them at New Zealand Superannuation Fund, Private Bag 106607, Auckland.

It is very helpful for our work on these topics if you can send a copy of any letter, fax, or message you send, and of any replies you receive, to: Peace Movement Aotearoa, PO Box 9314, Wellington 6141; fax (04) 382 8173; or bcc to pma@xtra.co.nz

References

¹ UN Secretary General's message for the International Day of the World's Indigenous People, 3 August 2007 - <http://www.un.org/News/Press/docs//2007/sgsm11115.doc.htm>

² As above

³ For information about what is happening this year, go to the UN Permanent Forum on Indigenous Issues web site at http://www.un.org/esa/socdev/unpfii/en/news_internationalday2007.html

⁴ More information about the First and Second Decades is available at <http://www.ohchr.org/english/issues/indigenous/decade.htm> and more detailed information on the Second Decade is available at <http://www.un.org/esa/socdev/unpfii/en/second.html>

⁵ Information about CERD, the International Convention, NGO parallel reports, the government's reports, media releases and so on is available at <http://www.converge.org.nz/pma/cerd71.htm>

⁶ Questions on the 15th to 17th Periodic Reports of New Zealand, Committee on the Elimination of Racial Discrimination - <http://www.converge.org.nz/pma/CERD71-LOI.pdf>

⁷ Committee Members' Questions to New Zealand, Aotearoa Indigenous Rights Trust, 31 July 2007 - <http://www.converge.org.nz/pma/CERD71-Q2NZ.pdf>

⁸ The five NGO Reports to CERD focused on the Treaty of Waitangi, Maori and their rights, and indigenous peoples' rights have detailed information on the government's approach, and are available in the 'NGO parallel reports to CERD' section at <http://www.converge.org.nz/pma/cerd71.htm>

⁹ Decision 1 (66): New Zealand CERD/C/DEC/NZL/1, 11 March 2005 New Zealand Foreshore and Seabed Act 2004 - <http://www.converge.org.nz/pma/fs110305.htm>

¹⁰ Concluding observations of the Committee on the Elimination of Racial Discrimination: Canada CERD/C/CAN/CO/18, 25 May 2007 - <http://www.ohchr.org/english/bodies/cerd/docs/CERD.C.CAN.CO.18.doc>

¹¹ Message of Louise Arbour, United Nations High Commissioner for Human Rights and Rodolfo Stavenhagen, Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples, on the occasion of the International Day of the World's Indigenous Peoples, 7 August 2007 - <http://www.unhchr.ch/hurricane/hurricane.nsf/view01/9C2738F5AA2703B6C12573300045A2E6?opendocument>

¹² 'Act now! United Nations Declaration on the Rights of Indigenous Peoples' - <http://www.converge.org.nz/pma/in150607.htm>

¹³ Report to the General Assembly President on the Consultation on the draft Declaration of the Rights of Indigenous Peoples, Ambassador Davide, 13 July 2007 - <http://www.un.org/ga/president/61/letters/23July07/Report-13July07.pdf> and Covering letter - <http://www.un.org/ga/president/61/letters/23July07/Letter-Davide-13July07.pdf>

¹⁴ Letter from Mexico and co-sponsors (listed in the document), with draft resolution, 14 May 2007 - <http://www.converge.org.nz/DRIPMexRes0507.pdf>

¹⁵ Letter to Ambassador Davide about his consultation on behalf of the General Assembly President, Indigenous Peoples' Caucus, 13 July 2007 - http://www.treatycouncil.org/PDFs/070713_Davide.pdf

¹⁶ Supplement to the Report to the General Assembly President on the Consultation on the draft Declaration of the Rights of Indigenous Peoples, Ambassador Davide, 20 July 2007 - <http://www.un.org/ga/president/61/letters/23July07/ReportSupplement-20July07.pdf>

- ¹⁷ Letter from the UN General Assembly President to all Permanent Representatives and Permanent Observers to the UN New York, 23 July 2007 - <http://www.un.org/president/61/letters/PGA-Letter-23July07.pdf>
- ¹⁸ Articles, statements and action alerts on the Declaration, and the government's position, are available at <http://www.converge.org.nz/pma/indig.htm>
- ¹⁹ <http://www.nzsuperfund.co.nz/files/Performance%20Update%20-%20May%202007.pdf>
- ²⁰ <http://www.corpwatch.org/article.php?id=14430>
- ²¹ See, for example, <http://www.corpwatch.org/article.php?id=11442>
- ²² <http://www.nzsuperfund.co.nz/files/Equities%2030%20June%2006%20by%20Country.pdf> - all June 2006 figures that follow are from this document
- ²³ See, for example, <http://www.iblf.org/docs/geography/extractives.pdf>
- ²⁴ See, for example, <http://dte.gn.apc.org/52BP.htm> and <http://www.minesandcommunities.org/Action/press524.htm>
- ²⁵ See, for example, <http://www.minesandcommunities.org/Company/bhp04.htm>
- ²⁶ See, for example, <http://www.corpwatch.org/article.php?id=14435>
- ²⁷ http://www.riotinto.com/ourapproach/5204_our_non_managed_operations.asp
- ²⁸ Letter to NZ Super Fund re Freeport, Indonesia Human Rights Committee, 1 December 2006 - <http://www.converge.org.nz/pma/wp011206a.htm>
- ²⁹ http://www.tewahanui.info/news/190806_wpFreeport.shtml
- ³⁰ <http://www.converge.org.nz/pma/wp011206a.htm>
- ³¹ As above
- ³² As above
- ³³ 'Below a Mountain of Wealth, a River of Waste', Jane Perlez and Raymond Bonner, 27 December 2005 - <http://www.corpwatch.org/article.php?id=12985>
- ³⁴ As above
- ³⁵ See, for example, <http://www.greenleft.org.au/2000/419/22857>
- ³⁶ 'Rio Tinto: Global Compact Violator - PT Kelian: A Case Study of Global Operations', Danny Kennedy, 13 July 2001 - <http://www.minesandcommunities.org/Company/kelian1.htm>
- ³⁷ See, for example, CERD/CUSA/DEC/I Early Warning and Urgent Action Procedure Decision 1 (68): United States of America, 11 April 2006
- ³⁸ See, for example, <http://www.lockheedmartin.com/wms/findPage.do?dsp=fec&ci=13809&rsbci=0&fti=0&ti=0&sc=400>
- ³⁹ See, for example, http://www.oxfamamerica.org/newsandpublications/news_updates/western-shoshone-push-for-answers-at-annual-meeting-of-barrick-gold/print.html
- ⁴⁰ Including Papua New Guinea, see, for example, <http://corpwatch.org/article.php?id=14381>
- ⁴¹ <http://www.nzsuperfund.co.nz/index.asp?pageID=2145844241>