

**Recognising and Protecting Indigenous Peoples' Rights
in the Commonwealth**

**Commonwealth Policy Studies Unit Memorandum to the Commonwealth
Heads of Government attending CHOGM, Coolum, Australia, 2-5th March, 2002***

Commonwealth Policy Studies Unit

*This Addendum updates the Memorandum circulated by the CPSU in September 2001, 'Recognising and Protecting Indigenous Peoples' Rights in the Commonwealth', prior to the postponed Commonwealth Heads of Government Meeting, Brisbane, Australia, October, 2001.

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1. This Memorandum is based on the research undertaken by the Indigenous Rights in the Commonwealth Project, a three year research and advocacy programme, based at the Commonwealth Policy Studies Unit (CPSU), during its first year of work, 2001/2.
2. The overall aim of the project is to shed light on the human rights situation of Indigenous groups, and to persuade the Commonwealth association -- governments and non-governmental bodies -- to give priority to its improvement. For reasons of practicality the project is focusing on 20 Commonwealth countries in which Indigenous issues seem particularly important. These are: Bangladesh, India, Pakistan and Sri Lanka (South Asia); Botswana, Cameroon, Kenya, Namibia, Nigeria, South Africa, Tanzania and Uganda (Africa); Australia, Fiji, Malaysia, New Zealand, and Papua New Guinea (Pacific and Southeast Asia); and Belize, Canada and Guyana (Caribbean and Americas).
3. This Memorandum calls on the Heads of Government meeting in Coolum, to include support for Indigenous rights in the forthcoming Commonwealth Declaration.
4. Research done during the initial stage of the project has revealed that the Commonwealth of Nations can and should do more to protect and promote Indigenous rights.
5. Commonwealth countries have a special interest in recognising and protecting the rights of Indigenous peoples, of whom approximately 150 million live in the 54 member states.
6. This is unfinished business for an association built on the national independence which replaced an empire. Indigenous peoples in these new states are today frequently disempowered and subjected to discrimination with regard to jobs, education, welfare, culture, and language, especially in relation to their land rights.
7. Many Commonwealth countries have not treated their Indigenous peoples fairly or justly. The Commonwealth association and some of its member states have been negligent in giving Indigenous rights the attention they deserve. It is time that the Commonwealth made amends.
8. This is important because in the Harare Commonwealth Declaration (1991), Governments committed themselves to take action to promote the human rights of their citizens and this includes the human rights of Indigenous peoples.

9. Commonwealth human rights policy must recognise the special situation of Indigenous peoples. It must recognise their marginalisation, their vulnerability, their lack of development, and the legitimacy of their goals of distinct group survival.
10. Initial project research suggests that Indigenous peoples, and the realisation of their economic, social and cultural rights, are a particular concern to the Commonwealth nation states, if the international development targets (IDTs), which were endorsed by Commonwealth leaders at their Edinburgh summit in 1997, are to be reached.
11. The issue of Indigenous rights has been placed firmly on the agenda of other international organisations, such as the United Nations and the European Union, as part of their commitment to the protection and promotion of human rights.
12. The Commonwealth of nations is lagging behind current international efforts to acknowledge and protect the rights of Indigenous communities.
13. Commonwealth nations are urged to support international efforts to promote and protect Indigenous peoples' rights, such as; the United Nations draft Declaration on the Rights of Indigenous Peoples, and to conclude their negotiations on the draft Declaration before 2004,¹ and adopt the draft Declaration as it is currently formulated and; the Declaration and Plan of Action from the United Nations World Conference against Racism, Durban, South Africa, September 2001, in so far as it is consistent with the draft UN Declaration on the Rights of Indigenous Peoples.
14. In the absence of a consensus or policy as such on the issue of Indigenous peoples, it is left to each Commonwealth government to deal with Indigenous people's issues in the context of their national policies.
15. Today, however, Indigenous peoples' human rights are routinely flouted around the Commonwealth and many member states' policies are not consistent with the Commonwealth's fundamental political values, nor with the emerging norms and standards being set at the international level.
16. While there are cases of good practice among the fifty-four states which give much scope for active precedent; in 1999, Canada granted one of its Indigenous communities the right of self-determination when it returned one-fifth of the country to the political control of the Inuit, bringing into being a new and unconventional political entity called Nunavut, during the past year alone, the situation of a number of Indigenous communities in Commonwealth countries has deteriorated rapidly.
17. The Basarwa (San Bushmen) of the Kalahari Desert in Botswana today face a bleak future in relocation camps as the Government forces the remaining 700 members of their tribal group off the land where their ancestors hunted more than 20,000 years ago, in the name of wildlife conservation and 'development'.

¹ The year 2004 marks the close of the International Decade of the World's Indigenous Peoples (1995-2004).

18. The Ogiek people of Kenya are currently facing eviction by the Government from the Mau mountain forest where they have lived since time immemorial, in order to open up the area for logging companies, in contravention of Kenya's Forest Act, and in defiance of international opinion and the Ogiek's rights under international law, endangering not only the survival of the Ogiek as a people, but also the environment.
19. In Belize, the Maya people are today struggling to preserve their land rights and to protect the rainforest from the depredations of logging companies.
20. Many Amerindian communities in Guyana have not had their land titles recognised and large tracts are being handed out in timber concessions.
21. In Malaysia, the Orang Asli are today struggling for control over their traditional territories and resources.
22. In India, the survival of the Jarawa of the Andaman Islands is under threat, and Adivasis across the country often suffer gross violations of their rights.
23. In Bangladesh, the Jumma people face continuing human rights violations by the security forces and Bengali settlers in the Chittagong Hill Tracts.
24. In New Zealand, the Maori continue to suffer from poverty and landlessness in their long wait for the Treaty of Waitangi to be honoured.
25. In Australia, despite the Native Title Act, 1993, only a handful of native title claims have since been recognised.
26. Unlike the official Commonwealth, the Commonwealth Non-Governmental bodies, have seen the Commonwealth as having a special potential for assisting Indigenous peoples to realise their rights.
27. In 'Put Our World to Rights' (1991), the Commonwealth Human Rights Initiative (CHRI) made protection of Indigenous rights one of its eight human rights priorities for the Commonwealth. It recommended that: *'Commonwealth human rights policy must recognise the special situation of Indigenous and tribal peoples. It must recognise their marginalisation, their vulnerability and the legitimacy of their goals of distinct group survival.'*
28. In its Millennium Report, 'Human Rights and Poverty Eradication – A Talisman for the Commonwealth', 2001, the CHRI reiterated its plea to Commonwealth member states to recognise and protect Indigenous rights. It comments: *'Wherever they live...indigenous peoples encounter discrimination, intolerance and prejudice. They must struggle for both their survival and their identity.'*

29. Paragraph 12 of the Commonwealth People's Communiqué, October 2001, refers directly to the need for the Commonwealth nations to recognise and address the rights of Indigenous peoples:

*'The Commonwealth must recognise and address the rights of its indigenous peoples. It is no longer acceptable to dismiss indigenous issues as the domain of nation states. The Commonwealth is lagging behind other international fora and needs to bring itself up to date on this issue.'*²

30. Despite the continued absence of a consensus or policy on Indigenous rights, there have recently been some welcome developments by the official Commonwealth in the field of Indigenous rights.

31. The Commonwealth Foundation, an intergovernmental organisation with a mandate from Commonwealth Heads of Government, is increasingly acknowledging that Commonwealth member states need to listen to the voices and needs of Indigenous peoples if they are to fulfill their obligation to strengthening civil society and good governance.²

32. However, it is disappointing that in many of the reports undertaken for the Commonwealth Foundation 'Citizens and Governance: Civil Society in the New Millennium' programme, Indigenous peoples are not acknowledged.

33. In a recent publication by the Commonwealth Secretariat, 'National Human Rights Institutions (NHRI): Best Practice', 2001, the Secretariat recognised that it needed to 'work to prevent their [Indigenous peoples'] social, political and economic marginalisation'.³

34. However, as this publication demonstrates, the official Commonwealth remains reluctant to acknowledge the collective rights of Indigenous peoples, despite the increasing support that the concept is receiving by UN member states at the inter-sessional Working Group on the draft UN Declaration.⁴ As such, many of the needs of Indigenous peoples living within Commonwealth member states cannot be adequately addressed.

35. The CPSU calls on the Commonwealth of nations to obtain a consensus or policy on the issue of Indigenous peoples, as part of its commitment to the promotion and protection of human rights. The research undertaken by the project reveals that it cannot be left to each Commonwealth government to deal with Indigenous people's issues in the context of their national policies.

² As part of its 'Citizens and Governance: Civil Society in the New Millennium' programme, the Commonwealth Foundation published a report on Indigenous peoples (Maori) in New Zealand, April 1999.

³ See 'Indigenous Peoples' Section 6.6 in Chapter 6, 'Significant Issues' in 'National Human Rights Institutions (NHRI): Best Practice', 2001.

⁴ At the fifty-eighth session of the inter-sessional Working Group on the draft UN Declaration on the Rights of Indigenous Peoples, 27 January – 8 February, 2002, many UN member states accepted the collective rights of Indigenous peoples.

Recommendations to CHOGM:*

This Memorandum outlines the specific recommendations emerging from Indigenous consultations coordinated by the CPSU as part of the project, for the Commonwealth Heads of Government Meeting. The Unit seeks to encourage Commonwealth member states to:

- **Recognise that Indigenous peoples have rights that need to be protected and that Indigenous rights must be an integral part of any serious programme for the realisation of human rights;**
- **Recognise Indigenous peoples as ‘peoples’ with the right to freely determine their own future themselves, a future free from discrimination on the basis of race and one where all peoples are equal. In this context, they should support the right of all peoples, including Indigenous peoples to self-determination;**
- **Acknowledge and take responsibility for the colonisation process and its impact on Indigenous peoples;**
- **Accept responsibility to take specific action to recognise and respect Indigenous peoples’ rights and to have this reflected in the forthcoming Commonwealth Declaration; such as:**
 - Establishing an Indigenous Advocacy Unit within the Commonwealth Secretariat, to channel specific enquiry, advocacy or support;
 - Establishing an Expert Working Group on Indigenous Peoples to report to future CHOGMs on current needs and possible future action;
 - Inaugurating a High Commissioner for Human Rights, who would take up the issue of Indigenous peoples’ rights in the Commonwealth;
- **A commitment to review national and international policies that adversely affect the rights of Indigenous peoples, such as:**
 - Recognising the need to protect Indigenous peoples’ land ownership rights;
 - Noting the requirements of existing international standards, particularly the ICERD General Recommendation XX111 and ILO Convention No. 169, that free, prior and informed consent of Indigenous peoples be obtained in all matters of development that affect them;
 - Supporting the principle that states and intergovernmental organisations, such as the Commonwealth, the World Bank, the IMF, regional banks, and the WTO, should together with Indigenous peoples review the impacts of their laws, policies

- and programmes with the goal of revising those that are incompatible with protection of the rights of Indigenous peoples, including the right to development;
- Supporting the principle that states provide effective remedies, recourses, redress and other measures for the loss and destruction of Indigenous lands, natural resources, and environment, resulting from exploration and exploitation and extractive activities and programmes;
 - **Support policies that assist Indigenous advancement, such as:**
 - Supporting a reference in the forthcoming Commonwealth Declaration calling on Commonwealth Governments to conclude their negotiations on the draft UN Declaration on the Rights of Indigenous Peoples before 2004 and adopt the Declaration as it is currently drafted;
 - Effectively implementing, with the necessary funding and personnel, the UN Permanent Forum on Indigenous Issues;
 - Incorporating the Declaration and Plan of Action from the United Nations World Conference against Racism, Durban, South Africa, September 2001, into the forthcoming Commonwealth Declaration, as they apply to Indigenous peoples, and in so far as they are consistent with the draft UN Declaration on the Rights of Indigenous Peoples.

It is important that this CHOGM breaks new ground with regard to Indigenous rights and that the forthcoming Commonwealth Declaration acknowledges the need to protect the rights of Indigenous peoples, and that Commonwealth leaders follow up with further commitments.

*These recommendations were endorsed at the Dialogue on Indigenous Rights in the Commonwealth, held at Emmanuel College, University of Queensland, on October 3rd, 2001, organised by the Commonwealth Policy Studies Unit (CPSU), in association with the University of Queensland; at the Forum of Indigenous Peoples in the Commonwealth, held at Brisbane City Hall, on October 4th, 2001, sponsored by the Commonwealth Association of Indigenous Peoples (CAIP), and at the South Pacific Regional Expert Meeting on Indigenous Rights in the Commonwealth, held in Nadi, Fiji Islands, on October 15th-16th, 2001, organised by the CPSU.

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