



CENTER FOR INTERNATIONAL ENVIRONMENTAL LAW

Ms. Reta Jo Lewis, Special Representative for Global Intergovernmental Affairs
S/SR Global Intergovernmental Affairs
U.S. Department of State
2201 C Street NW, Suite 1317
Washington, DC 20520

Dear Ms. Lewis,

Thank you for the opportunity to comment on the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). The Center for International Environmental Law strongly encourages the United States to endorse the United Nations Declaration on the Rights of Indigenous Peoples without qualification. To this effect, we offer the following three general comments and one particular consideration regarding deforestation:

1. UNDRIP contains important rights already endorsed by the United States

It is broadly accepted that the United Nations Declaration on the Rights of Indigenous Peoples compiles and interprets existing rights as they apply to indigenous peoples and individuals.¹ The rights referenced in UNDRIP are contained in a number of international instruments that already apply to the United States including, *inter alia*, the Universal Declaration of Human Rights, International Convention on the Elimination of All Forms of Racial Discrimination, Convention Concerning the Protection of the World Cultural and Natural Heritage and International Covenant on Civil and Political Rights.² These instruments affirm the rights contained in the UNDRIP to non-discrimination, self-determination, life and livelihood, liberty, property (including collective rights), culture, religion and sacred sites, work, access to justice and effective remedies, access to information, and participation in decision-making. These rights represent core values reflected in the United States Constitution and laws, and they provide key elements of the legal foundation necessary for a just society.

2. U.S. endorsement of UNDRIP could help improve consistency of international standards related to indigenous peoples.

U.S. endorsement of UNDRIP could mean that international development activities are more likely to be undertaken in a manner respectful of rights and consistent with a do-no-harm approach to development. If the United States integrates UNDRIP into the policies of its federal agencies engaged in international standard setting (such as the Departments of State and Treasury), it could lead to changes to international policies that are more consistent with international rights. For example, U.S. endorsement of UNDRIP could help improve the World Bank's Indigenous Peoples Policy. Article 42 of UNDRIP applies the declaration to specialized agencies of the United Nations, of which the World Bank is one. CIEL was present during discussions at the UN Permanent Forum on Indigenous Issues in 2008 when a representative of the World Bank explained that its indigenous peoples policy is inconsistent with the UNDRIP. As the United States is a major contributor to World Bank initiatives, U.S. endorsement of the Declaration could help facilitate Board-level support for an updated indigenous peoples policy more consistent with the internationally recognized rights. Moreover, endorsement of UNDRIP could help demonstrate support for the protection and recognition of human rights.

¹ See United Nations Permanent Forum on Indigenous Issues, Indigenous Peoples Indigenous Voices, Frequently Asked Questions, Declaration on the Rights of Indigenous Peoples, *available at* http://www.un.org/esa/socdev/unpfii/documents/faq_drips_en.pdf (last visited July 15, 2010).

² Additionally, by virtue of its signature, the United States is obliged to make good faith efforts to refrain from acts that would defeat the object and purpose of the following treaties, which also contain provisions relevant to UNDRIP: Convention on the Elimination of All Forms of Discrimination against Women, International Covenant on Economic, Social and Cultural Rights, American Convention on Human Rights, Convention on Biological Diversity, and Convention on the Rights of the Child.

3. U.S. application of UNDRIP to its international activities would mean that its actions are less likely to violate the laws of the countries in which the activities are undertaken.

CIEL recognizes that the United States supports activities in countries that have varying legal obligations such as those contained in human rights treaties that also form part of the basis of UNDRIP. The United States provides support for international development and other activities that may be implemented in countries that are parties to treaties related to indigenous rights that the United States has not ratified. For example, the United States is not a party to ILO Convention 169, which includes many of the rights also found in UNDRIP. While only 20 countries have ratified ILO 169, those countries represent approximately two thirds of global forest cover.³ Accordingly, when the United States provides support to international activities to reduce emissions from deforestation and forest degradation (REDD), it is highly probable that the activities will be undertaken in a country that is party to ILO Convention 169. U.S. endorsement of UNDRIP could help avoid a situation that violates national laws with respect to indigenous rights, such as when U.S.-supported activities implicate ILO 169 provisions in countries that are party to ILO 169.

4. U.S. endorsement of UNDRIP could help ensure the success of efforts to reduce global deforestation.

Recognizing that the United States is currently supporting REDD-related activities in dozens of countries, U.S. support of the UN Declaration could help ensure that REDD activities are undertaken in a rights-respectful manner that leads to better outcomes for REDD. Many of the world's remaining forests are located in areas managed, owned, and/or occupied by indigenous peoples. Globally, lands pertaining to indigenous territories are more successful at maintaining forest cover than lands designated as conservation areas.⁴ As the United Nations Permanent Forum on Indigenous Issues reported in 2008: "In order to directly benefit indigenous peoples, new proposals for avoided deforestation or reduced emissions from deforestation must address the need for global and national policy reforms and be guided by the United Nations Declaration on the Rights of Indigenous Peoples."⁵ Failure to safeguard indigenous rights, including indigenous peoples' rights to their lands, territories and resources, could compromise the success of REDD initiatives.

Thank you for carefully considering these comments.

Respectfully submitted,



Daniel Magraw
President
Center for International Environmental Law

³ See Food and Agriculture Organization of the United Nations, *State of the World's Forest 2009*, Table 2 of Annex (2009).

⁴ Andrew Nelson and Kenneth Chomitz, *Protected Area Effectiveness in Reducing Tropical Deforestation: A Global Analysis of the Impact of Protection Status*. World Bank Independent Evaluation Group Evaluation Brief 7 (October 2009), available at http://siteresources.worldbank.org/INT/OED/Resources/protected_areas_eb.pdf (last visited July 15, 2010).

⁵ See United Nations Permanent Forum on Indigenous Issues, Final Report from the 7th session (21 April-2 May 2008), Economic and Social Council Official Records Supplement No. 23 (2008).