

CONCLUSIONS AND RECOMMENDATIONS

1. **An Optional Protocol for the Genocide Convention**

The Genocide Convention, 1948, which has not been made operable by a mechanism or Optional Protocol to complement the Convention, has the potential to be a serious source of judicial recourse for indigenous peoples. Implementation of that convention limited to states' importing the articles into their own constitutions and criminal codes does not suffice. Canada, as an instance, has adopted only two of the five articles which define genocide into its criminal code, and changed a third to make prosecution on that point unrealistic. Should it prove impossible to access domestic courts on this issue, there would remain no international avenue of recourse.

2. **Inclusion of treaties with Indigenous Nations within the purview of the Vienna Convention on the Laws of Treaties**

Inclusion of indigenous nations within the purview of the Vienna Convention would prevent actions such as that by the Supreme Court of Canada which ruled that existing treaties with indigenous nations are *sui generis*, an invented and uniquely applied legal concept whose purpose is to remove the consideration of legal issues related to native nations from the purview of international law and prevent recourse to it. This legal pretext attempts to validate unilateral interpretation of treaties by one party, permitting Canada to assert the right to interpret treaty terms as suits its own interests, culture and legal system while continuing to deny the very traditional Indigenous sovereignty and legislative capacity that made it possible for Indigenous nations to sign treaties in the first place.

3. **Creation of an International Mechanism to address conflicts and grievances between states and indigenous nations**

To this end, IHRAAM asks the Special Rapporteur to assist in advancing the accepted international legal principle of *Nemo Potest Esse Simul Actor et Judex*: that a single party cannot be both suitor to the court and be the court itself, for the purpose of creating an international mechanism which might provide equal standing between the contesting parties, with a view to ensuring the right to judicial review and impartiality.

4. **Creation of a voluntary fund to support government, public and indigenous peoples' awareness of their rights, and to support indigenous legal action at the international level where rights are contravened.**

Access to justice is expensive, not only in relation to the commissioning of appropriate expertise, but also to promote the dissemination of information within states, both to indigenous peoples and to the public, related to indigenous rights, so that all parties might benefit.