

# INDIAN LAW RESOURCE CENTER

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## Using International Human Rights Mechanisms to Promote and Protect Rights of Indian Nations and Tribes in the United States: An Overview

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March 1, 2002

### **Introduction**

International law and international legal procedures offer a number of opportunities for creative advocacy for Indian rights, particularly for advocacy that aims to change existing legal doctrines and legal relationships with the federal and state governments that are perceived as unfair. In recent years, we have been reminded how much of the legal framework for the legal rights of Indian nations and tribes is decisional law of the United States Supreme Court. That body of decisional law is being rapidly changed by the Court itself, generally to reduce the rights and powers of Indian governments. At the same time, Congress and the Administrative Branch have grown less responsive to Indian needs and concerns. Naturally, Indian governments have begun to look for possible strategies that do not rely only upon the courts or upon the political branches of the federal government. International legal mechanisms and the principles of international law have evolved tremendously over the past 25 years, and they can form a useful part of long-term Indian strategies for protecting and advancing the sovereignty of Indian governments.

In contrast to a generation ago, there are now dozens of international legal processes and mechanisms that can be used and are being used by Indians to protect a broad range of interests, including human rights, self-determination, lands, resources and the environment. The purpose of this paper is to provide a summary of the more important of these processes and mechanisms and to comment on how these might be used effectively by Indian nations and tribes in the United States. This paper deals only with mechanisms available for dealing with the United States at the international level. Additional procedures and mechanisms are available for addressing human rights issues affecting Indian communities in other countries.

International work by Indian nations and tribes can be an important part of a total, multi-faceted, long-term strategy for protecting Indian governments and Indian lands and resources. It is often observed that international law is rarely enforceable in the courts of the United States, and it is true that we cannot usually expect to win domestic court decisions by relying only on international law. However, the politics of international law have palpable force that is meaningful to governments, and the normative moral value of international human rights law can be a major building block in the emerging new jurisprudence of indigenous peoples' rights. Particularly in this era, when it is common to despair about our domestic law and the trend of our courts, advocates are driven to be innovative and resourceful in finding methods to advance the legal interests of Indian communities and governments. Few Indian rights advocates any longer believe that there are easy legal remedies. Our concerns are deep, major, and long-term. Many Indian leaders today recognize the need for fundamental changes in the law and in the paternalistic aspects of the relationship between the federal government and Indian nations and tribes. International law and international mechanisms are best suited to dealing with just such fundamental issues and principles and basic political/economic relationships over the long term.

For Indian nations and tribes in the United States there are several international bodies where useful rights protection work can be done:

- 1) The United Nations itself, including the Human Rights Commission, the Sub-Commission, and the Permanent Forum on Indigenous Issues.
- 2) The treaty-created bodies, particularly the Human Rights Committee and the Committee on the Elimination of Racial Discrimination.
- 3) The Organization of American States, particularly the Inter-American Commission on Human Rights and the Working Group on the draft American Declaration on the Rights of Indigenous Peoples.
- 4) The UN Educational, Scientific and Cultural Organization (UNESCO).

Each of these major areas of possible work deserves description, because each body presents unique procedures and opportunities. There are in addition, regular conferences of the parties of the Convention on Biological Diversity (31 I.L.M. 818 (1992)) (<http://www.biodiv.org>) and the UN Framework Convention on Climate Change (31 I.L.M.849 (1992)) (<http://unfccc.int/index.html>), at which indigenous peoples' issues are regularly considered. These and many other international activities are available to interested advocates for Indian rights, but they will not be discussed in this paper.

## The United Nations System

1. Written and Oral Statements. For many years it has been possible for individuals and organizations to bring issues of human rights to the attention of the United Nations through its Commission on Human Rights and through the Sub-Commission on Promotion and Protection of Human Rights. The Human Rights Commission was created by the United Nations Charter as a subordinate body of the Economic and Social Council. The Sub-Commission is subordinate to the Commission, and it is made up of independent human rights experts elected, supposedly in their personal or individual capacity. The General Assembly, made up of all UN member states, is the highest body. Human rights issues reach the General Assembly through the Human Rights Commission and the Economic and Social Council.

Non-governmental organizations (NGOs) accredited by the Economic and Social Council, including a number of Indian organizations, are permitted to make both written and oral statements to the Commission and the Sub-Commission at their annual sessions in Geneva, Switzerland. (The participation of NGOs is governed by ECOSOC Resolution 1996/31, E/RES/1996/31.) These brief oral and written statements, called interventions, continue to be one of the most important means for bringing international attention to serious human rights issues of all kinds. Effective advocacy work at the UN always includes the use of such interventions to bring factual information to the attention of the Commission and Sub-Commission and to make recommendations and requests for UN action. For example, oral interventions were successfully used to recommend that the Sub-Commission appoint an expert to prepare a working paper on the land rights of indigenous peoples. *See, Indigenous peoples and their relationship to land, Final working paper prepared by Special Rapporteur, Mrs. Erica-Irene A. Daes, E/CN.4/Sub.2/2001/21 (11 June 2001).*

Advocacy during the Commission and Sub-Commission sessions must also include individual lobbying of Commission and Sub-Commission members and observing relevant parts of the meetings. Members are readily approached in the meetings and outside the meeting rooms. It is usually advisable to plan to spend at least five working days at the session because of the usually unpredictable schedule and the need to lobby members.

The Commission and Sub-Commission will consider virtually any serious issue of human rights under one or another of their agenda items. In recent years both bodies have agenda items focused on the rights of indigenous peoples. As a practical matter, these UN bodies, for obvious reasons, do not give attention to minor issues, isolated incidents, or matters that are being effectively addressed within the domestic legal system.

There is a practical problem that only accredited non-governmental organizations can make such written and oral statements. It can take as long as two years to gain accreditation, but no Indian rights advocate should let this be an impediment. There are now more than a dozen Indian organizations with NGO status, including the Indian Law Resource Center. These organizations and many other human rights organizations can be counted on to assist Indian advocates who wish to work in the Commission and Sub-Commission. Serious, professional contact with human rights NGOs will almost always result in gaining NGO credentials to carry on needed work.

2. Human Rights Complaints. The 1503 Procedure. The UN has created a formal procedure for considering complaints of gross violations of human rights by member states. ECOSOC Resolution 1503 (XLVIII) (1970). This is important because the Commission and Sub-Commission will not permit a direct, formal complaint, *as such*, to be made as a public statement during their sessions. Actually, complaints can sometimes be made in oral statements provided they are artfully worded and not too harsh or polemical.

A complaint under the 1503 procedure must allege a “consistent pattern of gross violations” of human rights. Such a complaint may be submitted in writing by anyone. NGO credentials are not needed. Complaints are submitted to the UN High Commissioner for Human Rights and may be as simple as a letter. It is advisable, however, to prepare a thorough statement of the facts, supported by documentary materials, showing that there is a *consistent pattern of gross violations* and that domestic remedies have been exhausted or are not effective. Detailed guidance for preparing such complaints is available, and it is usually wise to consult an experienced NGO when preparing such a complaint. An excellent and detailed description of the procedure with useful guidance for practitioners is contained in D. Weissbrodt, J. Fitzpatrick, and F. Newman, *International Human Rights: Law, Policy, and Process*, 3<sup>rd</sup> edition, Chapter 6 (2001).

Complaints under 1503 are considered confidentially, that is, in closed sessions. While this creates some problems, these are not insurmountable. Under the procedures in effect since 2000, complaints are first considered by the Working Group on Communications, made up of five members of the Sub-Commission. The Chair of the Working Group determines whether a complaint merits an answer from the accused government. ECOSOC Resolution 2000/3, UN Doc. E/RES/2000/3 (2000). Most governments respond to complaints. To be considered in a particular yearly cycle, a complaint must be received by the last week of May, at least 12 weeks prior to the meeting of the Working Group on Communications. *See*, Weissbrodt, *et al. supra*. The Working Group meets in closed sessions and decides by vote which complaints will be referred for consideration by the Working Group on Situations of the Human Rights Commission. This Working Group, made up of five Commission members, decides whether to refer a complaint to the full Commission or to hold the complaint for further

consideration the following year. The Commission considers complaints referred by the Working Group on Situations in closed or private sessions, at which the accused country has the opportunity to respond to the written materials and to answer questions posed by Commission members. The Commission, later in its session, decides whether to drop the matter, keep the matter pending for another year, or to take some other action. As one authority has noted:

[T]he Commission has developed an expanding repertoire of approaches, including posing written questions to the governments concerned, sending a member of the Commission to make direct contacts with the government, sending a U.N. staff person to the country, keeping the case under consideration, transferring the case to the public procedure, dismissing the situation, or some other approach.

Weissbrodt, *et al. supra.*, Chapter 6. As with practically all international human rights work, it is the political and moral impact of the process, the attention, the debate, and the comment by other countries that may alter states' behavior and states' policies.

The principal feature of the 1503 procedure is its confidentiality, and this feature limits its effectiveness as a political, attention-getting mechanism. On the other hand, nothing prevents the complainant from publicizing and publically discussing the complaint and the states' offending conduct. Moreover, it is now possible, as a practical matter, for advocates attending the meetings of the Human Rights Commission to learn about the status of a complaint and to speak with Commission members about it. As a result the confidentiality is less an obstacle than it appears. In any event, in the UN system, this is the only procedure available for making a formal complaint against the United States or any country, and it can be a useful part of a broader campaign involving other activities aimed at correcting a gross pattern of violations.

3. The Working Group on Indigenous Populations. This body, proposed by the Sub-Commission and authorized by ECOSOC in 1982 (E/RES./1982/34, 7 May 1982), provides a good opportunity for publically raising Indian rights issues and for recommending UN action to address or study these issues. NGO credentials are not required to participate. Any Indian or other indigenous person can attend, speak, and submit documents to the Working Group at its week-long (five-day) session at the end of July in Geneva. This body is made up of five members of the Sub-Commission, and it has a mandate to review developments affecting the human rights of indigenous "populations" and to consider possible new legal standards for protecting indigenous rights.

The Working Group, with the participation of hundreds of indigenous representatives drafted the UN Declaration on the Rights of Indigenous Peoples between 1983 and 1994. *Report of the Working Group on Indigenous Populations on its eleventh session*, Sub-Commission on the Prevention of Discrimination and Protection

of Minorities, E/CN.4/Sub.2/1993/29 (23 August 1993). The text of the draft Declaration is attached to this paper. The Working Group is now conducting various studies, including one on treaties and one on further standard setting. The Working Group is the most accessible entry point for initiating new UN activity concerning Indian rights. It might be possible, for example, to recommend that the Working Group undertake a detailed study or investigation of the particular problems relating to indigenous self-government or self-determination. The particular problems of protecting Indian governmental jurisdiction and the negative effects of the erosion of indigenous governmental jurisdiction have not yet been given detailed attention in the UN system. The outcome of a study could be the adoption of recommendations or guidelines concerning indigenous self-determination or perhaps even further legal standards beyond those now being considered in the draft UN Declaration on the Rights of Indigenous Peoples. (Articles 1, 31-34) In any event, the consideration of these issues at the international level can create a legal, political, and moral context that would be more favorable for protecting jurisdictional and other rights within the United States.

For several reasons, the Working Group on Indigenous Populations is the best opportunity for Indian rights advocates to begin working in the UN system. The agenda usually permits almost any reasonable issue to be raised. The sessions are relatively informal. And recommendations for useful studies, experts' meetings or other initiatives are generally welcomed -- though not necessarily adopted. Those wishing to participate can get guidance from a variety of sources, including the Indian Law Resource Center and the UN Office of the High Commissioner for Human Rights in Geneva. It is advisable to review the Report of the Working Group for at least the previous session. These reports and much other information are available on the UN website, <http://www.unhchr.ch/>.

4. The Working Group on the Draft Declaration. This Working Group of the Commission on Human Rights is devoted entirely to considering and debating the draft Declaration on the Rights of Indigenous Peoples. The work of debating and considering proposals for changing and adding to the Declaration is perhaps the most difficult and most important of all the activities in the UN affecting indigenous peoples. The Declaration, when it is finally approved by the Commission, then the Economic and Social Council, and is ultimately adopted by the General Assembly, will create new international law for the protection of indigenous peoples. Technically, the Declaration will be non-binding, but because it will be adopted by consensus of all the member states of the UN, it will as a practical matter be an authoritative statement of universally accepted legal norms.

Because the Declaration covers practically all aspects of indigenous rights, from self-determination to cultural rights and treaty rights, the Working Group is an opportunity to educate and persuade states about all aspects of the relationships between

indigenous peoples and countries. The focus of the meetings is the language of the Declaration, but the debate and discussion include extensive dialogue about practically all issues and many factual situations. When the Working Group, at its next session in December, 2002, considers, among other items, Article 31 on self-government, many of the issues of jurisdiction will be open for discussion.

The draft UN Declaration, along with the OAS draft American Declaration on the Rights of Indigenous Peoples, is the most important of all long-term, systematic efforts to use international human rights law to change domestic laws and policies affecting Indian nations and tribes in the United States. The creation of a comprehensive body of law and standards governing the way countries treat indigenous peoples can have an important normative impact on the policies, practices, and laws that are debated in Congress, in the courts and in the executive branch. Even now, Interior Department and Justice Department officials and lawyers are engaged along with the State Department in dealing with the UN and OAS draft Declarations. The processes of considering the drafts is already having profound effects on the policies and practices of many countries. A comprehensive Declaration accepted by practically all the countries of the world will be a very important basis for arguing for greater legal protection for Indian rights in this country.

The Working Group on the Draft Declaration meets once each year, usually in the fall, in Geneva. Special rules have been adopted to permit indigenous organizations (and tribes) to participate without full NGO accreditation. Accreditation for participation in this working group can be obtained with a relatively simple application. See Commission Resolution 1995/32, E/CN.4/RES/1995/32, and ECOSOC Resolution 1995/32, E/RES./1995/32. The Working Group meets for two weeks; the next session is scheduled for December 2-13,2002. The agenda for the coming session includes the articles of the Declaration dealing with self-determination, self-government, land rights and treaty rights. There will be, as usual, a two-day meeting in Geneva for indigenous participants just prior to the session. Additional information about accreditation and participation can be obtained through the UN website <http://www.unhchr.ch/>. The website gives the following contact for information concerning participation and accreditation for the Commission working group: eortado-rosich.hchr@unog.ch.

5. The UN Permanent Forum on Indigenous Issues. This year, the United Nations Permanent Forum on Indigenous Issues will meet in New York City for ten working days from May 13<sup>th</sup> to the 24<sup>th</sup>. The Permanent Forum is the first and only international body in the United Nations having indigenous persons as members. The Permanent Forum is made up of eight indigenous individuals appointed by the President of the Economic and Social Council and eight members nominated by governments and elected by the Economic and Social Council. See ECOSOC Resolution 2000/22, E/RES/2000/22 (July 28, 2000). The Permanent Forum has a mandate to discuss indigenous issues relating to economic and social development, culture, the

environment, education, health, and human rights. The Permanent Forum will provide expert advice and recommendations on indigenous issues to the Economic and Social Council and to the various programs, funds, and agencies of the United Nations. The Permanent Forum is also empowered to “(r)aise awareness and promote the integration and coordination of activities relating to indigenous issues within the United Nations system” and to “[p]repare and disseminate information on indigenous issues.” Economic and Social Council Resolution 2000/22, para. 2. The members of the Forum serve as independent experts in their personal capacities. They serve for three-year terms.

Indigenous organizations, including Indian nations and tribes, can attend and participate as observers. NGO credentials are not required for indigenous tribes and organizations, and it is not necessary to receive accreditation in advance. Before attending it would be advisable to check the UN website for the Permanent Forum for information about attendance. (<http://www.unhchr.ch/indigenous/forum.htm>) There will be very strict security procedures in effect for all persons entering the UN building. In addition to indigenous groups, all United Nations bodies and organs, intergovernmental organizations, and non-governmental organizations in consultative status with ECOSOC also may participate as observers.

Expectations are high for the Permanent Forum, and it is expected that hundreds of observers will participate in the upcoming first session. This is the highest level body in which indigenous leaders can speak and participate without NGO credentials, and the Permanent Forum has a broad mandate to consider the full range of issues affecting indigenous peoples, not just human rights. The Permanent Forum is empowered only to advise and make recommendations, but that is an important and potentially far-reaching function. At this time it is not known how the Permanent Forum will carry on its work or how it will organize the many issues that it might consider. Participation is likely to include the opportunity for indigenous leaders to address the Forum, to present information, and to suggest possible recommendations. However, the Forum is a work in formation, and the members have not yet made decisions about how they will proceed. In all events, it is practically a certainty that the Permanent Forum will be a very important venue for calling attention to serious issues affecting indigenous peoples and for seeking UN agency action to address those issues.

6. The Reporting Processes: CERD and HRC. The International Covenant on Civil and Political Rights (adopted 16 Dec. 1966, entered into force 23 Mar. 1976, 999 U.N.T.S. 171), the International Convention on the Elimination of All Forms of Racial Discrimination (adopted 21 Dec. 1965, entered into force Jan. 4, 1969, 660 U.N.T.S. 195), and four other major human rights treaties (the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Torture Convention), and the

Convention on the Rights of the Child) all have committees charged with monitoring compliance with the conventions. Of these, the United States has ratified the Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Racial Discrimination, and the Torture Convention. Under each of these three human rights treaties the United States is obliged to report periodically on its compliance. These reporting processes, entailing review and comment by the relevant committees, provide an important opportunity for human rights advocacy on behalf of Indian tribes. The Convention on the Elimination of All Forms of Racial Discrimination and the Covenant on Civil and Political Rights are the most useful for Indian nations and tribes in the United States. The Torture Convention, of course, principally concerns the rights of individuals and is not likely to be very useful for tribal issues. An indispensable reference for human rights advocates is H. Hannum, Ed., *Guide to International Human Rights Practice*, 3<sup>rd</sup> Edition (1999), hereinafter, *Guide to International Human Rights Practice*. Note, however, that this work is now out of date as regards the UN 1503 procedure, which was changed in 2000.

A. The Human Rights Committee. This committee is the monitoring body created by the Covenant on Civil and Political Rights. It is made up of 18 independent experts from around the world, and it meets three times per year either in Geneva or New York City. The Committee reviews the reports filed by the parties to the Covenant, makes “general comments” regarding compliance with the Covenant, and also considers formal individual complaints against state parties that have accepted the Optional Protocol to the Covenant. The United States has not accepted the Optional Protocol, and therefore individual complaints cannot be considered against the United States.

Reports on compliance with the Covenant are to be submitted by parties every five years detailing all of the legal, administrative and other measures taken by the country to protect and promote the rights set forth in the Covenant. Problems relating to the enjoyment of the rights specified are also to be discussed.

The United States ratified this Covenant in June, 1992. Therefore, the next report by the United States will be due in June of 2003. The United States (like many other countries) is often late in submitting reports. There is no sanction for delay in submitting reports. The schedule for the United States’ report is important, because it is an opportunity for tribes and Indian organizations to submit information, analysis, and comments to the Committee relating to the report. This is discussed further below.

The Covenant on Civil and Political Rights includes a very broad range of fundamental human rights. Article one of both the Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights (to which the U.S. is not a party) establishes the right of self-determination, a right of central importance to Indian nations and tribes. The Article reads as follows:

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

Other rights contained in the Covenant include rights to equality under the law, to freedom of expression and association, freedom of religion, freedom from arbitrary government action, and rights to enjoy, in community with others, one's culture and language. Obviously, the United States' compliance or non-compliance with its obligations under the Covenant could be of great importance for tribes in the United States.

When reports are submitted to the Committee, they are reviewed in sessions that are open to the public. Usually a country representative is present to make a statement about the report and to respond to questions from Committee members. Additional information may be requested by the Committee. Committee members may make comments about the report. At the conclusion of the review, the Committee prepares "concluding observations" and recommendations, which are published and which can be very influential in shaping practices and policies of countries.

In the report review process, the Human Rights Committee encourages organizations, and this would include Indian nations and tribes, to submit written reports or written information to be considered in connection with a country's report. The Committee also consults with interested organizations during breaks or outside the formal meetings. Such meetings can be requested by interested organizations, and individual members can be approached and met with as well. In this way, Indian representatives and other interested advocates can present information, make observations about the government's report, discuss problems with the government's compliance with the Covenant, and suggest inquiries by Committee members. It is not possible for observers to make oral statements during the actual meetings of the Committee, but this is relatively unimportant in view of the open access to the Committee members and the opportunity to submit written reports and information. Further detailed information about the Human Rights Committee and its procedures is

available on the UN website. *See also, Guide to International Human Rights Practice*, 177-201.

In early 2003, human rights organizations will, as they have in the past, mobilize to write a full counter-report to criticize and amplify points in the United States' report to the Human Rights Committee. This report will include a section on the rights of Indians and other Native Americans, and this will be an opportunity for Indian advocates to submit materials along with other human rights groups. Of course, Indian leaders are free to prepare submissions or reports independently. For timing's sake and for the sake of attracting media attention, these reports are usually made public at the same time as the government's report (and therefore without having seen the government's report). However, information and analysis can just as well be submitted to the Committee at any time sufficiently in advance of the Committee session when the report will be considered. The schedule of the Committee meetings and their agendas is posted on the UN website.

Another important function of the Human Rights Committee, one that can be of importance to Indian representatives, is the preparation of "General Comments." Covenant on Civil and Political Rights, Art. 40. These general comments arise from the Committee's review of the states' reports, and they constitute the Committee's formal interpretations of the Covenant's obligations. The Committee has issued 29 such general comments covering important aspects of the treaty, including for example the scope of the right of self-determination. These general comments are all available on the UN website at <http://www.unhchr.ch/tbs/doc.nsf>. The Committee announces in its annual report what new general comments it is considering, and the process of drafting a general comment usually takes several sessions. Indian governments and organizations can participate in the process of considering and drafting general comments by submitting written information and recommendations to the Committee. Of course, personal meetings to discuss general comments can be arranged outside the Committee's official meetings.

B. The Committee on the Elimination of All Forms of Racial Discrimination. This Committee, often called just CERD, obviously, monitors compliance with the Convention of the same name. It is the oldest of the treaty monitoring committees and has been very active in recent years in dealing with issues concerning indigenous peoples. *See*, for example, CERD's notable response to Aboriginal land rights issues in Australia. CERD Committee Decision on Australia, CERD/C/54/Misc. 40/Rev. 2 (18 March 1999). Like the Human Rights Committee, CERD is made of 18 members elected by the parties to the Convention. CERD meets twice each year for four weeks each session, always in Geneva. Parties to the Convention report every two years: comprehensive reports and brief updates in alternate two-year periods. The United States made a comprehensive report in 2001 and is supposed to submit an update in 2003.

CERD can consider complaints by individuals and groups alleging violations of the Convention, but only if the country concerned has formally declared that it recognizes the Committee's competence to do so. The United States has not made such a declaration. CERD can also consider communications from a party to the Convention asserting that another party is not giving effect to the provisions of the Convention. This procedure has never been used. As a result, CERD's principal role in regard to the United States is limited to reviewing the bi-yearly reports and to making general recommendations based on that review.

The Convention on the Elimination of All Forms of Racial Discrimination is potentially very important for Indian individuals and governments in the United States, particularly in those areas where federal "plenary power" and federal trusteeship constitute in fact a denial of fundamental human rights to individuals and tribes. The Convention is broad and noble in its provisions. "Racial discrimination" is defined in Article 1 to mean:

any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

The parties to the Convention undertake to eliminate racial discrimination in all its forms, to ensure the right of everyone to equality before the law, and, among other things, to ensure that there are effective legal remedies against racial discrimination and that effective measures are taken in the fields of education, culture and information to combat prejudices that lead to racial discrimination.

CERD reviews country reports in a manner much like the Human Rights Committee. CERD appoints one of its members as special rapporteur to report on each country, and that member has lead responsibility for reviewing materials and preparing questions. The meetings to review the reports are open, but observers are not permitted to speak in the meetings. CERD welcomes reports and information from indigenous representatives and organizations concerning reports that are under consideration. Members of CERD are also quite open to having briefing sessions sponsored by indigenous advocates and to meeting individually with indigenous representatives to discuss issues relating to a country report.

When the United States' report was reviewed at the session in August of 2001, a number of Indian representatives were there with their lawyers, including representatives of two tribes. These representatives were effective in presenting materials to CERD and in discussing particular factual and legal issues with CERD members. The issues related to discriminatory laws and practices that deny or limit

Indian rights to tribal lands. Months before the session, several Indian groups, including the Indian Law Resource Center, prepared and submitted extensive materials to CERD on this matter. Along with a number of other human rights organizations, the Indian Law Resource Center and other Indian groups prepared a report to CERD aimed at exposing the inadequacy of the United States' report in relation to Indian issues, especially land rights and plenary power. The result of this work, thus far, has been that CERD, in its Concluding Observations, under the heading "Concerns and recommendations," made the following pointed observations:

400. The Committee notes with concern that treaties signed by the Government and Indian tribes, described as "domestic dependent nations" under national law, can be abrogated unilaterally by Congress and that the land they possess or use can be taken without compensation by a decision of the Government. It further expresses concern with regard to information on plans for expanding mining and nuclear waste storage on Western Shoshone ancestral land, placing their land up for auction for private sale, and other actions affecting the rights of indigenous peoples. The Committee recommends that the State party ensure effective participation by indigenous communities in decisions affecting them, including those on their land rights, as required under article 5 (c) of the Convention, and draws the attention of the State party to general recommendation XXIII on indigenous peoples which stresses the importance of securing the "informed consent" of indigenous communities and calls, *inter alia*, for recognition and compensation for loss. The State party is also encouraged to use as guidance the ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries.

Concluding observations of the Committee on the Elimination of Racial Discrimination: United States of America. 14/08/2001. A/56/18, paras.380-407. It is clear from these comments that CERD is calling into question some of the adverse United States law and policy that has long been upheld by the federal courts.

As a result of pointed questioning by CERD on these Indian issues, the United States representatives promised to provide further information. This promise provides yet another opportunity for Indian advocates to inform CERD about the facts and to challenge the United States' assertions if they are incorrect.

The willingness of CERD to consider information from indigenous peoples was dramatically demonstrated on another occasion a few years ago when it considered the report of Australia. Aboriginal representatives from the Aboriginal and Torres Strait Islanders Commission undertook a major campaign to stop and discredit the reactionary legislation that had recently been put in place to restrict and undermine Aboriginal land rights. A massive compilation of legal and historical materials was prepared, showing in detail the racially discriminatory legal treatment of Aboriginal land rights. These materials were submitted to CERD. Aboriginal and Torres Strait Islander Peoples and Australia's Obligations under the UN Convention on the Elimination of All Forms of

Racial Discrimination: Report Submitted by the Aboriginal and Torres Strait Islander Commission (1998). The report is available on the website [www.atsic.gov.au](http://www.atsic.gov.au). Many Aboriginal representatives and their lawyers attended the CERD meeting when Australia's report was reviewed. These representatives met extensively and repeatedly with CERD members to press their case. The result was a strong condemnation of Australia's action on Aboriginal land rights -- a condemnation that had a powerful political impact through the public media in Australia. *See*, Report of the Committee on the Elimination of Racial Discrimination: 29/09/99, A/54/18.

At the time, no such campaign to use the CERD review process had been attempted, at least not on such a scale. The episode illustrates the many opportunities that exist at the international level for innovative, ground-breaking, and effective advocacy.

Analogous to the Human Rights Committee's "General Comments," CERD prepares "General Recommendations" based upon its review of state reports. These recommendations are reported and form an important body of authoritative interpretations of the Convention. *See, for example*, General Recommendation XXI on self-determination, CERD/48/Misc. 7/Rev. 3 (1996), and General Recommendation XXIII (51) concerning Indigenous Peoples, CERD/C/51/Misc. 13/Rev. 4 (1997). The UN website contains complete texts and citations for the General Recommendations. Indigenous and other human rights advocates can participate in the consideration of future general recommendations.

7. Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People. In 2001, the UN Commission on Human Rights decided to appoint a "Special Rapporteur" who would gather information and prepare studies for the Commission on an on-going basis. Commission Resolution 2001/57, E/CN.4/Res./2001/57 (24 April 2001). The Commission has a number of such "thematic" special rapporteurs covering such topics as torture, violence against women, and internally displaced persons. Mexican academic Rodolfo Stavenhagen was appointed to this position, and he was allocated a part-time staff person to assist him. The Special Rapporteur has an extremely broad mandate, limited mainly by his time, staff, and budget. He is authorized to gather information and prepare recommendations on practically any topic concerning the human rights of indigenous peoples. Within the scope of the Special Rapporteur's mandate, indigenous representatives are entirely free to speak and submit information to him. Suggestions for future studies are welcome, as well as information, materials and recommendations relevant to current studies.

### **Organization of American States (OAS) System**

In some respects, the OAS presents the most important opportunities for advocacy on behalf of indigenous peoples in the United States. The OAS has an

effective, formal process for considering and reporting on complaints of human rights violations. The OAS is also actively considering adoption of a draft American Declaration on the Rights of Indigenous Peoples, a process that is easily accessible to participation by indigenous representatives. Perhaps most important for United States nations and tribes, most OAS activities take place in Washington, D.C. The OAS is much smaller and less complex than the United Nations. There are 35 member countries, all of the countries of the Americas, and most or all of them have missions or embassies in Washington, D.C.

1. The Inter-American Commission on Human Rights (IACHR). The IACHR is an organization of the OAS, and its principal function is to promote the observance and protection of human rights and to serve as a consultative organ of the OAS in human rights matters. See, OAS, Inter-American Commission on Human Rights, Inter-American Court of Human Rights, *Basic Documents Pertaining to Human Rights in the Inter-American System* (May, 2001) (OEA/Ser. L/V/1.4 rev. 8), hereinafter, *Basic Documents*. This is available online at <http://www.cidh.org>. This is an indispensable reference for all human rights work in the Inter-American system.

The Inter-American Commission on Human Rights is of signal importance, because it is empowered to consider individual complaints alleging that a member country (including the United States) has violated or is violating human rights. The IACHR has considered many such complaints concerning indigenous peoples over the past 23 years, and has developed a significant body of jurisprudence on the human rights of indigenous peoples. See, OAS, Inter-American Commission on Human Rights, *The Human Rights Situation of Indigenous People in the Americas* (2000). Thus far, the IACHR has considered only one case brought on behalf of Indians in the United States. *Carrie and Mary Dann and the Dann band of Western Shoshone Indians v. United States* (IACHR, No. 11.140). The Commission has recently issued a preliminary report in that case finding that the United States violated at least some human rights relating to Western Shoshone lands. At this time, the report is confidential and will not be published until late Spring or early Summer. The Indian Law Resource Center, counsel in that case, will make the report available as soon as possible.

The Commission is composed of seven members, who are elected in their personal capacity by the General Assembly to serve four-year terms. The Commission meets in regular sessions at least two times per year in Washington, D.C., where it has a permanent staff or secretariat.

The rules for the submission and consideration of complaints or “communications” are contained in the Commission’s Rules of Procedure adopted December, 2000. *Basic Documents, supra*. Earlier descriptions of the Commission’s procedure must be read with caution. Cases are begun by submitting a petition. The Commission’s rules, Article 23, provide:

Any person or group of persons or nongovernmental entity legally recognized in one or more of the member states of the OAS may submit petitions to the Commission, on their own behalf or on behalf of third persons, concerning alleged violations of a human right recognized in, as the case may be, the American Declaration of the Rights and Duties of Man, ... [and other Inter-American human rights instruments] in accordance with their respective provisions, the Statute of the Commission, and these Rules of Procedure. The petitioner may designate an attorney or other person to represent him or her before the Commission, either in the petition itself or in another writing.

The American Declaration of the Rights and Duties of Man sets forth a comprehensive array of civil and political rights along with various economic, social and cultural rights. American Declaration on the Rights and Duties of Man, adopted by the Ninth International Conference of American States (March 30 - May 2, 1948), OAS Res. 30, OAS Doc. OEA/Ser.L./V./I.4, rev. (1965). The Inter-American Court of Human Rights has determined that the Declaration states human rights obligations that are binding on all members of the OAS by reason of their ratification of the OAS Charter. *See*, Inter-American Court of Human Rights, Advisory Opinion OC-10/89, Interpretation of the American Declaration of the Rights and Duties of Man Within the Framework of Article 64 of the American Convention on Human Rights, July 14, 1989, Ser. A. No. 10 (1989), paragraphs 35-45; IACHR, James Terry Roach and Jay Pinkerton v. United States, Case 9647, Res. 3/87, September 22, 1987, Annual Report 1986-1987, paragraphs 46-49, Rafael Ferrer-Mazorra et al. v. United States, Report N° 51/01, Case 9903, April 4, 2001. *Basic Documents, supra*, at 5. The United States has not become a party to the later American Convention on Human Rights (adopted 22 Nov. 1969, entered into force 18 July 1978, OAS Treaty Ser. No. 36, 1144 U.N.T.S. 123) and is therefore not strictly bound by it. It is nevertheless bound by the Inter-American Declaration, by customary international law, and by the general international human rights treaties it has ratified, namely, the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Racial Discrimination, and the Torture Convention.

The Commission's Rules spell out in detail the requirements for petitions (Article 28) and the requirements for admissibility (Articles 31-34). In summary, domestic legal remedies must first be exhausted, petitions must be filed within six months of the exhaustion of domestic remedies (with some exceptions), petitions must not be merely duplicative of other proceedings, and the petition must properly allege a violation of rights enunciated (in the case of the United States) in the American Declaration of the Rights and Duties of Man. After requesting and considering information from the accused government and from the petitioner, the Commission will make a determination on admissibility and, if the petition is found admissible, proceed to consideration of the merits.

The Commission has evolved to function increasingly like a court. The Commission, on request, will conduct hearings in Washington, DC, to receive evidence, hear witnesses, and to hear argument from the petitioner, the country, and their attorneys. Proceedings are somewhat less formal than typical federal court proceedings and are conducted in either English or Spanish, or occasionally in French or Portuguese.

In some important respects, the Commission is not like a court. The Commission has a “friendly settlement procedure” that may be initiated either by the Commission or by one of the parties. Rules, Article 41. The aim is to secure a negotiated or amicable resolution of the problem, and there have been some notable successes. The Commission may also conduct an on-site investigation, usually with the consent of the state concerned. *See*, Rules, Article 40. Obviously, a visit can have a powerful hygienic impact on state policies and practices. The Commission has, for example, visited Maya Indian communities in Belize to examine land rights and environmental issues and has visited Indian communities in Brazil to examine conditions there.

When the Commission concludes that it cannot achieve a friendly settlement or otherwise resolve the case, it makes a decision on the merits and prepares a written report. Where the Commission finds a violation of a human right, a preliminary report with proposals and recommendations is forwarded confidentially to the country. If the matter still is not resolved after three months, the Commission may decide to issue and publish a final report. These reports are then made public and provided to the petitioner. The Commission may sometimes follow-up a published report with hearings or requests for information about compliance with its recommendations. The publication of a critical report by the Commission and the attendant political embarrassment can be serious matters for most countries.

Where the country is a party to the American Convention on Human Rights and has accepted the jurisdiction of the Court, the case may be referred to the Inter-American Court of Human Rights. The United States is not a party to the Convention, and therefore this procedure cannot be used in cases against the United States. However, it is useful to know that the Court has recently issued a major, precedent-setting decision on Indian land rights in a case arising in Nicaragua. Inter-American Court of Human Rights, *The Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Judgment of August 31, 2001. The decision is available in English translation on the Indian Law Resource Center website, [www.indianlaw.org](http://www.indianlaw.org).

In addition to considering petitions concerning human rights violations, the IACHR also prepares reports and recommendations concerning the status of human rights in particular countries. Statute of the Inter-American Commission on Human Rights, Article 18. These reports can be either general or specific, and they may involve the holding of hearings. This function of the Commission can provide opportunities to

investigate and report on broad situations involving important human rights issues. There is no formal role provided for organizations or other human rights advocates, but nothing restricts the right to submit information and reports to the Commission through its secretariat. Each country is assigned to a particular staff attorney in the secretariat, and it is advisable to contact that individual to learn what activities the Commission may be undertaking in regard to any particular country. *See, Guide to International Human Rights Practice* at 133.

2. Human Rights Standard-Setting: the Draft American Declaration on the Rights of Indigenous Peoples. The OAS work to develop and adopt an American Declaration on the Rights of Indigenous Peoples may well have the greatest practical and long-term impact of all the international activities relating to Indian nations and tribes in the United States. The text of the draft American Declaration is attached. The declaration will be especially relevant, because it will be limited in its scope to indigenous peoples in the Americas, and it will come with an accessible and already-existing monitoring and complaint mechanism, namely the Inter-American Commission. The work of developing the draft declaration is proceeding on a relatively fast track in Washington, DC, and a number of Indian governments and organizations from the United States are deeply involved in this work.

The General Assembly of the OAS requested the Inter-American Commission on Human Rights to prepare a draft declaration on the rights of indigenous peoples in 1989. Resolution AG/RES. 1022 (XIX-)/89. The Commission submitted its draft in 1997, and the draft is now under review by the Working Group to Prepare the Draft American Declaration on the Rights of Indigenous Peoples. *See, Report of the Chair, Special Meeting of the Working Group to Prepare the Draft American Declaration on the Rights of Indigenous Peoples*, OAS GT/DADIN/doc.23/01 (11 May 2001). The last meeting of the working group was in April of 2001, and this year's meeting will take place in Washington, DC, March 11-15, 2002. One hundred or more indigenous representatives are expected to participate from the United States and other countries of the Americas.

The draft American Declaration is much like the draft UN Declaration, though there are significant differences. The draft American Declaration contains no explicit right of self-determination, but does include strong provisions for "self-government" and for recognizing indigenous law and indigenous legal systems. (Article XV.) The draft includes important provisions for recognizing the collective rights of indigenous peoples and tribes, including rights to land, cultural rights, and rights under treaties made with them. (Articles VII, XIV, XVIII, XXII) Most indigenous observers agree that the draft needs improvement, but with improvement it would be a great advance in the position of indigenous peoples in the Americas.

Participation in the OAS process is entirely open to indigenous representatives without restriction. There is a strong commitment on the part of the OAS to full and direct participation by indigenous representatives, and at last year's meeting, indigenous participants literally sat at the same table with the representatives of member countries to debate and discuss the provisions of the draft. The comments and recommendations of indigenous participants are included in the reports, and there is little doubt that they are having a very favorable effect on the consideration of the draft. *See, Report of the Chair, Special Meeting of the Working Group to Prepare the Draft American Declaration on the Rights of Indigenous Peoples*, OAS GT/DADIN/doc.23/01 (11 May 2001). Documents relating to the review of the draft are on the internet at [www.oas.org](http://www.oas.org). An important reference for all work relating to the draft American Declaration is OAS, Inter-American Commission on Human Rights, *Authorities and Precedents in International and Domestic Law for the Proposed American Declaration on the Rights of Indigenous Peoples* (2001).

The United States is very much involved in the OAS process, with the State Department, Interior Department and Justice Department all considering the positions that are taken by the government. The United States conducts official consultations with tribes and Indian organizations concerning its participation in the OAS and UN human rights standard-setting work. This means that the OAS process provides significant opportunities to debate federal policy and law and to seek international norms that could reform federal policies and law. Just as important, the process is an opportunity to bring international attention and political pressure to bear on serious Indian rights issues. It is likely that the OAS draft Declaration will continue under consideration for at least another year or two, but it is the debate and education about Indian issues that contributes most to the improvement of government policy and law. Active and informed participation by Indian governments in the process of debating the draft American Declaration can be an important part of a total strategy for Indian rights protection and for change in federal law and policy.

### **The Human Rights Complaint Procedure of UNESCO**

The United Nations Educational, Scientific and Cultural Organization (UNESCO), based in Paris, has long had a formal process for receiving and considering complaints of human rights violations within UNESCO's fields of competence, from any individual or group, and concerning any country. While this procedure is little used, it may prove useful in particular situations and therefore should not be overlooked. The procedure is described in a 1978 decision of the Executive Board of UNESCO, 104 EX/Decision 3.3. The text of the decision and a brief discussion of the procedure is on the UNESCO website: [http://www.unesco.org/human\\_rights/hrda.htm](http://www.unesco.org/human_rights/hrda.htm).

The procedure is essentially confidential, except that the complainant will eventually receive notification of the action taken on the complaint. Complaints must concern violations of human rights in UNESCO's fields of competence: education, science, culture, and information. Complaints may be submitted in any form, even as a simple letter, by any person or group, whether a victim of the violation or merely having reliable knowledge of the alleged violation.

The rights falling under UNESCO's competence are essentially the following (each article mentioned hereunder refers to the Universal Declaration of Human Rights):

1. The right to education (Article 26);
2. The right to share in scientific advancement (Article 27);
3. The right to participate freely in cultural life (Article 27);
4. The right to information, including freedom of opinion and expression (Article 9).
5. The right to freedom of thought, conscience and religion (Article 18)
6. The right to seek, receive and impart information and ideas through any media and regardless of frontiers (Article 19);
7. The right to the protection of the moral and material interests resulting from any scientific, literary or artistic production (Article 27);
8. The right to freedom of assembly and association (Article 20) for the purposes of activities connected with education, science, culture and information.

Complaints are to be addressed to the Director-General of UNESCO. Unless the complainant objects, the complaint will be forwarded to the government concerned advising the government that the complaint will be referred to the Committee on Conventions and Recommendations along with any information the government may wish to submit. The Committee then considers the complaint confidentially, and the government concerned may attend meetings of the Committee to provide information and answer questions about the complaint. Efforts may be made to reach a negotiated resolution, but failing that, the Committee reports to the Executive Board on its activities related to the complaint. The complainant eventually receives notice of the actions taken.

This procedure has been criticized as antiquated and obscure. *Guide to International Human Rights Practice* at 103-118. Nevertheless, the issues of culture and intellectual property, especially, are sometimes of extraordinary importance to Indian nations and tribes. These are issues very much within UNESCO's particular fields of competence, and this may suggest that this procedure could be used to good effect in certain situations. It would be essential to consult the UNESCO website and perhaps the *Guide to International Human Rights Practice* to evaluate whether to use this procedure.

## **Concluding Observations**

The international mechanisms and activities reviewed here are the principal means for advocating Indian rights on behalf of nations and tribes in the United States at the international level at the present time. As mentioned above, there are many other international-level activities that play a role in indigenous rights advocacy as well, but they are more specialized or limited in their usefulness. These include the indigenous working group dealing with traditional and indigenous knowledge and practices under the Convention on Biological Diversity, work with the Conferences of the Parties to the Framework Convention on Climate Change, the policy review processes of the World Bank and other multilateral development banks, the periodic Summits of the Americas, various meetings relating to intellectual property and the World Intellectual Property Organization ([www.wipo.org](http://www.wipo.org)), follow-up to the World Conference Against Racism, and preparations for the World Summit on Sustainable Development (2002). Still other procedures for complaints and other forms of human rights advocacy are available when dealing with situations in other countries. In this respect, mention must be made of the International Labour Organization Convention No. 169 on Indigenous and Tribal Peoples in Independent Countries (entered into force Sept. 5, 1991). It does not apply to the United States, but it is an international treaty creating human rights standards applicable to indigenous peoples and binding on the countries that have ratified it. These other mechanisms and processes are mentioned in order to demonstrate that this is an emerging and rapidly growing field of legal practice that offers a great number of opportunities for innovative advocacy.

Whether international-level advocacy will be useful or effective in a given case or situation will depend on the particular facts of the situation and the interests of the Indian nation or tribe concerned. There can be little doubt, however, that in certain situations, these forms of legal advocacy can be an effective part of a broader legal strategy, especially where long-term objectives and fundamental issues are at stake. Indian governments and their lawyers that have not already done so may wish to explore some of these possibilities in order to make decisions about long-term strategies for protecting the rights and resources of Indian nations and tribes.

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OAS, Inter-American Commission on Human Rights, *The Human Rights Situation of Indigenous People in the Americas* (2000)

United Nations, Office of the High Commissioner for Human Rights, *Guide for Indigenous Peoples*, available in printed format and available on line at [www.unhchr.ch](http://www.unhchr.ch).

### **Internet Resources**

United Nations, Office of the High Commissioner for Human Rights: [www.unhchr.ch](http://www.unhchr.ch).

Organization of American States: [www.oas.org](http://www.oas.org)

OAS, Inter-American Commission on Human Rights: [www.iachr.org](http://www.iachr.org)

World Intellectual Property Organization: [www.wipo.org](http://www.wipo.org)

Convention on Biological Diversity, Secretariat: [www.biodiv.org](http://www.biodiv.org)

Framework Convention on Climate Change: [unfccc.int/index.html](http://unfccc.int/index.html)

Indian Law Resource Center: [www.indianlaw.org](http://www.indianlaw.org)

DoCip (Geneva-based organization providing support and services for indigenous peoples working at the UN and other international agencies.): [www.doCip.org](http://www.doCip.org)

University of Minnesota Human Rights Library: [www1.umn.edu/humanrts/](http://www1.umn.edu/humanrts/)

# UN DRAFT DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

As Agreed Upon By The Members Of The Working Group On Indigenous Populations  
At Its Eleventh Session - 1993

**Affirming** that indigenous peoples are equal in dignity and rights to all other peoples, while recognizing the right of all peoples to be different, to consider themselves different, and to be respected as such,

**Affirming also** that all peoples contribute to the diversity and richness of civilizations and cultures, which constitute the common heritage of humankind,

**Affirming further** that all doctrines, policies and practices based on or advocating superiority of peoples or individuals on the basis of national origin, racial, religious, ethnic or cultural differences are racist, scientifically false, legally invalid, morally condemnable and socially unjust,

**Reaffirming** also that indigenous peoples, in the exercise of their rights, should be free from discrimination of any kind,

**Concerned** that indigenous peoples have been deprived of their human rights and fundamental freedoms, resulting, *inter alia*, in their colonization and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests,

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

**Welcoming** the fact that indigenous peoples are organizing themselves for political, economic, social and cultural enhancement and in order to bring an end to all forms of discrimination and oppression wherever they occur,

**Convinced** that control by indigenous peoples over developments affecting them and their lands, territories and resources will enable them to maintain and strengthen

their institutions, cultures and traditions, and to promote their development in accordance with their institutions, cultures and traditions, and to promote their development in accordance with their aspirations and needs,

**Recognizing also** that respect for indigenous knowledge, cultures and traditional practices contributes to sustainable and equitable development and proper management of the environment,

**Emphasizing** the need for demilitarization of the lands and territories of indigenous peoples, which will contribute to peace, economic and social progress and development, understanding and friendly relations among nations and peoples of the world,

**Recognizing** in particular the right of indigenous families and communities to retain shared responsibility for the upbringing, training, education and well-being of their children,

**Recognizing also** that indigenous peoples have the right freely to determine their relationships with States in a spirit of coexistence, mutual benefit and full respect,

**Considering** that treaties, agreements and other arrangements between States and indigenous peoples are properly matters of international concern and responsibility,

**Acknowledging** that the Charter of the United Nations, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights affirm the fundamental importance of the right of self-determination of all peoples, by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development,

**Bearing in mind** that nothing in this Declaration may be used to deny any peoples their right of self-determination,

**Encouraging** States to comply with and effectively implement all international instruments, in particular those related to human rights, as they apply to indigenous peoples, in consultation and cooperation with the peoples concerned,

**Emphasizing** that the United Nations has an important and continuing role to play in promoting and protecting the rights of indigenous peoples,

**Believing** that this Declaration is a further important step forward for the recognition, promotion and protection of the rights and freedoms of indigenous peoples United Nations system in this field,

**Solemnly proclaims** the following United Nations Declaration on the Rights of Indigenous Peoples:

## ARTICLES

### PART I

1. Indigenous peoples have the right to the full and effective enjoyment of all human rights and fundamental freedoms recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law.

2. Indigenous individuals and peoples are free and equal to all other individuals and peoples in dignity and rights, and have the right to be free from any kind of adverse discrimination, in particular that based on their indigenous origin or identity.

3. Indigenous peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

4. Indigenous peoples have the right to maintain and strengthen their distinct political, economic, social and cultural characteristics, as well as their legal systems, while retaining their rights to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

5. Every indigenous individual has the right to a nationality.

### PART II

6. Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and to full guarantees against genocide or any other act of violence, including the removal of indigenous children from their families and communities under any pretext.

In addition, they have the individual rights to life, physical and mental integrity, liberty and security of person.

7. Indigenous peoples have the collective and individual right not to be subjected to ethnocide and cultural genocide, including prevention of and redress for:

(a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;

(b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;

(c) Any form of population transfer which has the aim or effect of violating or undermining any of their rights;

(d) Any form of assimilation or integration by other cultures or ways of life imposed on them by legislative, administrative or other measures;

(e) Any form of propaganda directed against them.

8. Indigenous peoples have the collective and individual right to maintain and develop their distinct identities and characteristics, including the right to identify themselves as indigenous and to be recognized as such.

9. Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No disadvantage of any kind may arise from the exercise of such a right.

10. Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

11. Indigenous peoples have the right to special protection and security in periods of armed conflict.

States shall observe international standards, in particular the Fourth Geneva Convention of 1949, for the protection of civilian populations in circumstances of emergency and armed conflict, and shall not:

(a) Recruit indigenous individuals against their will into the armed forces and, in particular, for use against other indigenous peoples;

(b) Recruit indigenous children into the armed forces under any circumstances;

(c) Force indigenous individuals to abandon their lands, territories or means of subsistence, or relocate them in special centres for military purposes;

(d) Force indigenous individuals to work for military purposes under any discriminatory conditions.

### **PART III**

12. Indigenous peoples have the right to practice and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artifacts, designs, ceremonies, technologies and visual and performing arts and literature, as well as the right to the restitution of cultural, intellectual, religious and spiritual property taken without their free and informed consent or in violation of their laws, traditions and customs.

13. Indigenous peoples have the right to manifest, practice, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of ceremonial objects; and the right to the repatriation of human remains.

States shall take effective measures, in conjunction with the indigenous peoples concerned, to ensure that indigenous sacred places, including burial sites, be preserved, respected and protected.

14. Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons.

States shall take effective measures, whenever any right of indigenous peoples may be threatened, to ensure this right is protected and also to ensure that they can

understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means.

### **PART IV**

15. Indigenous children have the right to all levels and forms of education of the State. All indigenous peoples also have this right and the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.

Indigenous children living outside their communities have the right to be provided access to education in their own culture and language.

States shall take effective measures to provide appropriate resources for these purposes.

16. Indigenous peoples have the right to have the dignity and diversity of their cultures, traditions, histories and aspirations appropriately reflected in all forms of education and public information.

States shall take effective measures, in consultation with the indigenous peoples concerned, to eliminate prejudice and discrimination and to promote tolerance, understanding and good relations among indigenous peoples and all segments of society.

17. Indigenous peoples have the right to establish their own media in their own languages. They also have the right to equal access to all forms of non-indigenous media.

States shall take effective measures to ensure that State-owned media duly reflect indigenous cultural diversity.

18. Indigenous peoples have the right to enjoy fully all rights established under international labour law and national labour legislation.

Indigenous individuals have the right not to be subjected to any discriminatory conditions of labour, employment or salary.

### **PART V**

19. Indigenous peoples have the right to participate fully, if they so choose, at all levels of decision-making in matters which may affect their rights, lives and destinies

through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

20. Indigenous peoples have the right to participate fully, if they so choose, through procedures determined by them, in devising legislative or administrative measures that may affect them.

States shall obtain the free and informed consent of the peoples concerned before adopting and implementing such measures.

21. Indigenous peoples have the right to maintain and develop their political, economic and social systems, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities. Indigenous peoples who have been deprived of their means of subsistence and development are entitled to just and fair compensation.

22. Indigenous peoples have the right to special measures for the immediate, effective and continuing improvement of their economic and social conditions, including in the areas of employment, vocational training and retraining, housing, sanitation, health and social security.

Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and disabled persons.

23. Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to determine and develop all health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.

24. Indigenous peoples have the right to their traditional medicines and health practices, including the right to the protection of vital medicinal plants, animals and minerals.

They also have the right to access, without any discrimination, to all medical institutions, health services and medical care.

## **PART VI**

25. Indigenous peoples have the right to maintain and strengthen their distinctive spiritual and material relationship with the lands, territories, waters and coastal seas and other resources which they have traditionally owned

or otherwise occupied or used, and to uphold their responsibilities to future generations in this regard.

26. Indigenous peoples have the right to own, develop, control and use the lands and territories, including the total environment of the lands, air, waters, coastal seas, sea-ice, flora and fauna and other resources which they have traditionally owned or otherwise occupied or used. This includes the right to the full recognition of their laws, traditions and customs, land-tenure systems and institutions for the development and management of resources, and the right to effective measures by States to prevent any interference with, alienation of or encroachment upon these rights.

27. Indigenous peoples have the right to the restitution of the lands, territories and resources which they have traditionally owned or otherwise occupied or used; and which have been confiscated, occupied, used or damaged without their free and informed consent. Where this is not possible, they have the right to just and fair compensation. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status.

28. Indigenous peoples have the right to the conservation, restoration and protection of the total environment and the productive capacity of their lands, territories and resources, as well as to assistance for this purpose from States and through international cooperation. Military activities shall not take place in the lands and territories of indigenous peoples, unless otherwise freely agreed upon by the peoples concerned.

States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands and territories of indigenous peoples.

States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented.

29. Indigenous peoples are entitled to the recognition of the full ownership, control and protection of their cultural and intellectual property.

They have the right to special measures to control, develop and protect their sciences, technologies and cultural manifestations, including human and other genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs and visual and performing arts.

30. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands, territories and other resources, including the right to require that States obtain their free and informed consent prior to the approval of any project affecting their lands, territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources. Pursuant to agreement with the indigenous peoples concerned, just and fair compensation shall be provided for any such activities and measures taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

#### **PART VII**

31. Indigenous peoples, as a specific form of exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, including culture, religion, education, information, media, health, housing, employment, social welfare, economic activities, land and resources management, environment and entry by non-members, as well as ways and means for financing these autonomous functions.

32. Indigenous peoples have the collective right to determine their own citizenship in accordance with their customs and traditions. Indigenous citizenship does not impair the right of indigenous individuals to obtain citizenship of the States in which they live.

Indigenous peoples have the right to determine the structures and to select the membership of their institutions in accordance with their own procedures.

33. Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive juridical customs, traditions, procedures and practices, in accordance with internationally recognized human rights standards.

34. Indigenous peoples have the collective right to determine the responsibilities of individuals to their communities.

35. Indigenous peoples, in particular those divided by international borders, have the right to maintain and develop contacts, relations and cooperation, including activities for spiritual, cultural, political, economic and social purposes, with other peoples across borders.

States shall take effective measures to ensure the exercise and implementation of this right.

36. Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors, according to their original spirit and intent, and to have States honour and respect such treaties, agreements and other constructive arrangements. Conflicts and disputes which cannot otherwise be settled should be submitted to competent international bodies agreed to by all parties concerned.

#### **PART VIII**

37. States shall take effective and appropriate measures, in consultation with the indigenous peoples concerned, to give full effect to the provisions of this Declaration. The rights recognized herein shall be adopted and included in national legislation in such a manner that indigenous peoples can avail themselves of such rights in practice.

38. Indigenous peoples have the right to have access to adequate financial and technical assistance, from States and through international cooperation, to pursue freely their political, economic, social, cultural and spiritual development and for the enjoyment of the rights and freedoms recognized in this Declaration.

39. Indigenous peoples have the right to have access to and prompt decision through mutually acceptable and fair procedures for the resolution of conflicts and disputes with States, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall take into consideration the customs, traditions, rules and legal systems of the indigenous peoples concerned.

40. The organs and specialized agencies of the United Nations system and other intergovernmental organizations shall contribute to the full realization of the provisions of this Declaration through the mobilization, *inter alia*, of financial cooperation and technical assistance. Ways and means of ensuring participation of indigenous peoples on issues affecting them shall be established.

41. The United Nations shall take the necessary steps to ensure the implementation of this Declaration including the creation of a body at the highest level with special competence in this field and with the direct participation of indigenous peoples. All United Nations bodies shall promote respect for and full application of the provisions of this Declaration.

#### **PART IX**

42. The rights recognized herein constitute the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world.

43. All the rights and freedoms recognized herein are equally guaranteed to male and female indigenous individuals.

44. Nothing in this Declaration may be construed as diminishing or extinguishing existing or future rights indigenous peoples may have or acquire.

45. Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations.

**PROPOSED AMERICAN DECLARATION ON THE  
RIGHTS OF INDIGENOUS PEOPLES**

(Approved by the Inter-American Commission on Human Rights on February 26, 1997)

**PREAMBLE**

**1. Indigenous institutions and the strengthening of nations**

The member states of the OAS (hereafter the states),

Recalling that the indigenous peoples of the Americas constitute an organized, distinctive and integral segment of their population and are entitled to be part of the national identities of the countries of the Americas, and have a special role to play in strengthening the institutions of the state and in establishing national unity based on democratic principles; and,

Further recalling that some of the democratic institutions and concepts embodied in the constitutions of American states originate from institutions of the indigenous peoples, and that in many instances their present participatory systems for decision-making and for authority contribute to improving democracies in the Americas.

Recalling the need to develop their national juridical systems to consolidate the pluricultural nature of our societies.

**2. Eradication of poverty and the right to development**

Concerned about the frequent deprivation afflicting indigenous peoples of their human rights and fundamental freedoms; within and outside their communities, as well as the dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own traditions, needs and interests.

Recognizing the severe impoverishment afflicting indigenous peoples in several regions of the Hemisphere and that their living conditions are generally deplorable.

And recalling that in the Declaration of Principles issued by the Summit of the Americas in December 1994, the heads of state and governments declared that in observance of the International Decade of the World's Indigenous People, they will focus their energies on improving the exercise of democratic rights and the access to social services by indigenous peoples and their communities.

**3. Indigenous culture and ecology**

Recognizing the respect for the environment accorded by the cultures of indigenous peoples of the Americas, and considering the special relationship between the indigenous peoples and the environment, lands, resources and territories on which they live and their natural resources.

**4. Harmonious Relations, Respect and the Absence of Discrimination**

Reaffirming the responsibility of all states and peoples of the Americas to end racism and racial discrimination, with a view to establishing harmonious relations and respect among all peoples.

**5. Territories and Indigenous Survival**

Recognizing that in many indigenous cultures, traditional collective systems for control and use of land, territory and resources, including bodies of water and coastal areas, are a necessary condition for their survival, social organization, development and their individual and collective well-being; and that the form of such control and ownership is varied and distinctive and does not necessarily coincide with the systems protected by the domestic laws of the states in which they live.

**6. Security and indigenous areas**

Reaffirming that the armed forces in indigenous areas shall restrict themselves to the performance of their functions and shall not be the cause of abuses or violations of the rights of indigenous peoples.

**7. Human Rights instruments and other advances in international law**

Recognizing the paramouncy and applicability to the states and peoples of the Americas of the American Declaration of the Rights and Duties of Man, the American Convention on Human Rights and other human rights instruments of inter-American and international law; and

Recognizing that indigenous peoples are a subject of international law, and mindful of the progress achieved by the states and indigenous organizations, especially in the sphere of the United Nations and the International Labor Organization, in several international instruments, particularly in the ILO Convention 169.

Affirming the principle of the universality and indivisibility of human rights, and the application of international human rights to all individuals.

**8. Enjoyment of Collective Rights**

Recalling the international recognition of rights that can only be enjoyed when exercised collectively.

9. Advances in the provisions of national instruments

Noting the constitutional, legislative and jurisprudential advances achieved in the Americas in guaranteeing the rights and institutions of indigenous peoples.

DECLARE:

**SECTION ONE. INDIGENOUS PEOPLES**

Article I. Scope and definitions

1. This Declaration applies to indigenous peoples as well as peoples whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations.
2. Self identification as indigenous shall be regarded as a fundamental criterion for determining the peoples to which the provisions of this Declaration apply.
3. The use of the term "peoples" in this Instrument shall not be construed as having any implication with respect to any other rights that might be attached to that term in international law.

**SECTION TWO. HUMAN RIGHTS**

Article II. Full observance of human rights

1. Indigenous peoples have the right to the full and effective enjoyment of the human rights and fundamental freedoms recognized in the Charter of the OAS, the American Declaration of the Rights and Duties of Man, the American Convention on Human Rights, and other international human rights law; and nothing in this Declaration shall be construed as in any way limiting or denying those rights or authorizing any action not in accordance with the instruments of international law including human rights law.
2. Indigenous peoples have the collective rights that are indispensable to the enjoyment of the individual human rights of their members. Accordingly the states recognize inter alia the right of the indigenous peoples to collective action, to their cultures, to profess and practice their spiritual beliefs, and to use their languages.
3. The states shall ensure for indigenous peoples the full exercise of all rights, and shall adopt in accordance with their constitutional processes such legislative or other measures as may be necessary to give effect to the rights recognized in this Declaration.

Article III. Right to belong to indigenous peoples

Indigenous peoples and communities have the right to belong to indigenous peoples, in accordance with the traditions and customs of the peoples or nation concerned.

Article IV. Legal status of communities

Indigenous peoples have the right to have their legal personality fully recognized by the states within their systems.

Article V. No forced assimilation

1. Indigenous peoples have the right to freely preserve, express and develop their cultural identity in all its aspects, free of any attempt at assimilation.
2. The states shall not undertake, support or favour any policy of artificial or enforced assimilation of indigenous peoples, destruction of a culture or the possibility of the extermination of any indigenous peoples.

Article VI. Special guarantees against discrimination

1. Indigenous peoples have the right to special guarantees against discrimination that may have to be instituted to fully enjoy internationally and nationally-recognized human rights; as well as measures necessary to enable indigenous women, men and children to exercise, without any discrimination, civil, political, economic, social, cultural and spiritual rights. The states recognize that violence exerted against persons because of their gender and age prevents and nullifies the exercise of those rights.
2. Indigenous peoples have the right to fully participate in the prescription of such guarantees.

**SECTION THREE. CULTURAL DEVELOPMENT**

Article VII. Right to Cultural integrity

1. Indigenous peoples have the right to their cultural integrity, and their historical and archeological heritage, which are important both for their survival as well as for the identity of their members.
2. Indigenous peoples are entitled to restitution in respect of the property of which they have been dispossessed, and where that is not possible, compensation on a basis not less favorable than the standard of international law.
3. The states shall recognize and respect indigenous ways of life, customs, traditions, forms of social, economic and political organization, institutions, practices, beliefs and values, use of dress, and languages.

Article VIII. Philosophy, outlook and language

1. Indigenous peoples have the right to indigenous languages, philosophy and outlook as a component of national and universal culture, and as such, shall respect them and facilitate their dissemination.
2. The states shall take measures and ensure that broadcast radio and television programs are broadcast in the indigenous languages in the regions where there is a strong indigenous presence, and to support the creation of indigenous radio stations and other media.
3. The states shall take effective measures to enable indigenous peoples to understand administrative, legal and political rules and procedures, and to be understood in relation to these matters. In areas where indigenous languages are predominant, states shall endeavor to establish the pertinent languages as official languages and to give them the same status that is given to non-indigenous official languages.
4. Indigenous peoples have the right to use their indigenous names, and to have the states recognize them as such.

#### Article IX. Education

1. Indigenous peoples shall be entitled: a) to establish and set in motion their own educational programs, institutions and facilities; b) to prepare and implement their own educational plans, programs, curricula and materials; c) to train, educate and accredit their teachers and administrators. The states shall endeavor to ensure that such systems guarantee equal educational and teaching opportunities for the entire population and complementarity with national educational systems.
2. When indigenous peoples so decide, educational systems shall be conducted in the indigenous languages and incorporate indigenous content, and they shall also be provided with the necessary training and means for complete mastery of the official language or languages.
3. The states shall ensure that those educational systems are equal in quality, efficiency, accessibility and in all other ways to that provided to the general population.
4. The states shall take measures to guarantee to the members of indigenous peoples the possibility to obtain education at all levels, at least of equal quality with the general population.
5. The states shall include in their general educational systems, content reflecting the pluricultural nature of their societies.
6. The states shall provide financial and any other type of assistance needed for the implementation of the provisions of this article.

#### Article X. Spiritual and religious freedom

1. Indigenous peoples have the right to freedom of conscience, freedom of religion and spiritual practice, and to exercise them both publicly and privately.
2. The states shall take necessary measures to prohibit attempts to forcibly convert indigenous peoples or to impose on them beliefs against their will.
3. In collaboration with the indigenous peoples concerned, the states shall adopt effective measures to ensure that their sacred sites, including burial sites, are preserved, respected and protected. When sacred graves and relics have been appropriated by state institutions, they shall be returned.
4. The states shall encourage respect by all people for the integrity of indigenous spiritual symbols, practices, sacred ceremonies, expressions and protocols.

#### Article XI. Family relations and family ties

1. The family is the natural and basic unit of societies and must be respected and protected by the state. Consequently the state shall recognize and respect the various forms of indigenous family, marriage, family name and filiation.
2. In determining the child's best interest in matters relating to the protection and adoption of children of members of indigenous peoples, and in matters of breaking of ties and other similar circumstances, consideration shall be given by courts and other relevant institutions to the views of the peoples, including individual, family and community views.

#### Article XII. Health and well-being

1. Indigenous peoples have the right to legal recognition and practice of their traditional medicine, treatment, pharmacology, health practices and promotion, including preventive and rehabilitative practices.
2. Indigenous peoples have the right to the protection of vital medicinal plants, animal and mineral in their traditional territories.
3. Indigenous peoples shall be entitled to use, maintain, develop and manage their own health services, and they shall also have access, on an equal basis, to all health institutions and services and medical care accessible to the general population.

4. The states shall provide the necessary means to enable the indigenous peoples to eliminate such health conditions in their communities which fall below international accepted standards for the general population.

**Article XIII. Right to environmental protection**

1. Indigenous peoples have the right to a safe and healthy environment, which is an essential condition for the enjoyment of the right to life and collective well-being.

2. Indigenous peoples have the right to be informed of measures which will affect their environment, including information that ensures their effective participation in actions and policies that might affect it.

3. Indigenous peoples shall have the right to conserve, restore and protect their environment, and the productive capacity of their lands, territories and resources.

4. Indigenous peoples have the right to participate fully in formulating, planning, managing and applying governmental programmes of conservation of their lands, territories and resources.

5. Indigenous peoples have the right to assistance from their states for purposes of environmental protection, and may receive assistance from international organizations.

6. The states shall prohibit and punish, and shall impede jointly with the indigenous peoples, the introduction, abandonment, or deposit of radioactive materials or residues, toxic substances and garbage in contravention of legal provisions; as well as the production, introduction, transportation, possession or use of chemical, biological and nuclear weapons in indigenous areas.

7. When a State declares an indigenous territory as protected area, any lands, territories and resources under potential or actual claim by indigenous peoples, conservation areas shall not be subject to any natural resource development without the informed consent and participation of the peoples concerned.

**SECTION FOUR. ORGANIZATIONAL AND POLITICAL RIGHTS**

**Article XIV. Rights of association, assembly, freedom of expression and freedom of thought**

1. Indigenous peoples have the right of association, assembly and expression in accordance with their values, usages, customs, ancestral traditions, beliefs and religions.

2. Indigenous peoples have the right of assembly and to the use of their sacred and ceremonial areas, as well as the right to full contact and common activities with their members living in the territory of neighboring states.

**Article XV. Right to self government**

1. Indigenous peoples have the right to freely determine their political status and freely pursue their economic, social, spiritual and cultural development, and accordingly, they have the right to autonomy or self-government with regard to inter alia culture, religion, education, information, media, health, housing, employment, social welfare, economic activities, land and resource management, the environment and entry by nonmembers; and to determine ways and means for financing these autonomous functions.

2. Indigenous peoples have the right to participate without discrimination, if they so decide, in all decision-making, at all levels, with regard to matters that might affect their rights, lives and destiny. They may do so directly or through representatives chosen by them in accordance with their own procedures. They shall also have the right to maintain and develop their own indigenous decision-making institutions, as well as equal opportunities to access and participate in all state institutions and fora.

**Article XVI. Indigenous Law**

1. Indigenous law shall be recognized as a part of the states' legal system and of the framework in which the social and economic development of the states takes place.

2. Indigenous peoples have the right to maintain and reinforce their indigenous legal systems and also to apply them to matters within their communities, including systems related to such matters as conflict resolution, crime prevention and maintenance of peace and harmony.

3. In the jurisdiction of any state, procedures concerning indigenous peoples or their interests shall be conducted in such a way as to ensure the right of indigenous peoples to full representation with dignity and equality before the law. This shall include observance of indigenous law and custom and, where necessary, use of their language.

**Article XVII. National incorporation of indigenous legal and organizational systems**

1. The states shall facilitate the inclusion in their organizational structures, the institutions and traditional practices of indigenous peoples, and in consultation and with consent of the peoples concerned.

2. State institutions relevant to and serving indigenous peoples shall be designed in consultation and with the participation of the peoples concerned so as to reinforce and promote the identity, cultures, traditions, organization and values of those peoples.

## **SECTION FIVE. SOCIAL, ECONOMIC AND PROPERTY RIGHTS**

### Article XVIII. Traditional forms of ownership and cultural survival. Rights to land, territories and resources

1. Indigenous peoples have the right to the legal recognition of their varied and specific forms and modalities of their control, ownership, use and enjoyment of territories and property.
2. Indigenous peoples have the right to the recognition of their property and ownership rights with respect to lands, territories and resources they have historically occupied, as well as to the use of those to which they have historically had access for their traditional activities and livelihood.
3. i) Subject to 3.ii.), where property and user rights of indigenous peoples arise from rights existing prior to the creation of those states, the states shall recognize the titles of indigenous peoples relative thereto as permanent, exclusive, inalienable, imprescriptible and indefeasible.  
ii) Such titles may only be changed by mutual consent between the state and respective indigenous peoples when they have full knowledge and appreciation of the nature or attributes of such property.  
iii) Nothing in 3.i.) shall be construed as limiting the right of indigenous peoples to attribute ownership within the community in accordance with their customs, traditions, uses and traditional practices, nor shall it affect any collective community rights over them.
4. Indigenous peoples have the right to an effective legal framework for the protection of their rights with respect to the natural resources on their lands, including the ability to use, manage, and conserve such resources; and with respect to traditional uses of their lands, interests in lands, and resources, such as subsistence.
5. In the event that ownership of the minerals or resources of the subsoil pertains to the state or that the state has rights over other resources on the lands, the governments must establish or maintain procedures for the participation of the peoples concerned in determining whether the interests of these people would be adversely affected and to what extent, before undertaking or authorizing any program for planning, prospecting or exploiting existing resources on their lands. The peoples concerned shall participate in the benefits of such activities, and shall receive compensation, on a basis not less favorable than the standard of international law for any loss which they may sustain as a result of such activities.
6. Unless exceptional and justified circumstances so warrant in the public interest, the states shall not transfer or relocate indigenous peoples without the free, genuine, public and informed consent of those peoples, but in all cases with prior compensation and prompt replacement of lands taken, which must be of similar or better quality and which must have the same legal status; and with guarantee of the right to return if the causes that gave rise to the displacement cease to exist.
7. Indigenous peoples have the right to the restitution of the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, occupied, used or damaged, or when restitution is not possible, the right to compensation on a basis not less favorable than the standard of international law .
8. The states shall take all measures, including the use of law enforcement mechanisms, to avert, prevent and punish, if applicable, any intrusion or use of those lands by unauthorized persons to take possession or make use of them. The states shall give maximum priority to the demarcation and recognition of properties and areas of indigenous use.

### Article XIX. Workers rights

1. Indigenous peoples shall have the right to full enjoyment of the rights and guarantees recognized under international labor law and domestic labor law; they shall also have the right to special measures to correct, redress and prevent the discrimination to which they have historically been subject.
2. To the extent that they are not effectively protected by laws applicable to workers in general, the states shall take such special measures as may be necessary to:
  - a. effectively protect the workers and employees who are members of indigenous communities in respect of fair and equal hiring and terms of employment;
  - b. to improve the labor inspection and enforcement service in regions, companies or paid activities involving indigenous workers or employees;
  - c. ensure that indigenous workers:
    - i) enjoy equal opportunity and treatment as regards all conditions of employment, job promotion and advancement; and other conditions as stipulated under international law;
    - ii) enjoy the right to association and freedom for all lawful trade union activities, and the right to conclude collective agreements with employers or employers' organizations;

- iii) are not subjected to racial, sexual or other forms of harassment;
- iv) are not subjected to coercive hiring practices, including servitude for debts or any other form of servitude, even if they have their origin in law, custom or a personal or collective arrangement, which shall be deemed absolutely null and void in each instance;
- v) are not subjected to working conditions that endanger their health and safety;
- vi) receive special protection when they serve as seasonal, casual or migrant workers and also when they are hired by labor contractors in order that they benefit from national legislation and practice which must itself be in accordance with established international human rights standards in respect of this type of workers, and,
- vii) as well as their employers are made fully aware of the rights of indigenous workers, under such national legislation and international standards, and of the resources available to them in order to protect those rights.

Article XX. Intellectual property rights

1. Indigenous peoples have the right to the recognition and the full ownership, control and protection of their cultural, artistic, spiritual, technological and scientific heritage, and legal protection for their intellectual property through trademarks, patents, copyright and other such procedures as established under domestic law; as well as to special measures to ensure them legal status and institutional capacity to develop, use, share, market and bequeath that heritage to future generations.
2. Indigenous peoples have the right to control, develop and protect their sciences and technologies, including their human and genetic resources in general, seed, medicine, knowledge of plant and animal life, original designs and procedure.
3. The states shall take appropriate measures to ensure participation of the indigenous peoples in the determination of the conditions for the utilization, both public and private, of the rights listed in the previous paragraphs 1. and 2.

Article XXI. Right to development

1. The states recognize the right of indigenous peoples to decide democratically what values, objectives, priorities and strategies will govern and steer their development course, even where they are different from those adopted by the national government or by other segments of society. Indigenous peoples shall be entitled to obtain on a non-discriminatory basis appropriate means for their own development according to their preferences and values, and to contribute by their own means, as distinct societies, to national development and international cooperation.
2. Unless exceptional circumstances so warrant in the public interest, the states shall take necessary measures to ensure that decisions regarding any plan, program or proposal affecting the rights or living conditions of indigenous peoples are not made without the free and informed consent and participation of those peoples, that their preferences are recognized and that no such plan, program or proposal that could have harmful effects on those peoples is adopted.
3. Indigenous peoples have the right to restitution or compensation no less favorable than the standards of international law, for any loss which, despite the foregoing precautions, the execution of those plans or proposals may have caused them; and measures taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

**SECTION SIX. GENERAL PROVISIONS**

Article XXII. Treaties, Acts, agreements and constructive arrangements

Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and constructive arrangements, that may have been concluded with states or their successors, as well as historical Acts in that respect, according to their spirit and intent, and to have states honor and respect such treaties, agreements and constructive arrangements as well as the rights emanating from those historical instruments. Conflicts and disputes which cannot otherwise be settled should be submitted to competent bodies.

Article XXIII.

Nothing in this instrument shall be construed as diminishing or extinguishing existing or future rights indigenous peoples may have or acquire.

Article XXIV.

The rights recognized herein constitute the minimum standards for the survival, dignity and well-being of the indigenous peoples of the Americas.

Article XXV.

Nothing in this instrument shall be construed as granting any rights to ignore boundaries between states.

Article XXVI.

Nothing in this Declaration may be construed as permitting any activity contrary to the purposes and principles of the OAS, including sovereign equality, territorial integrity and political independence of states.

Article XXVII. Implementation

The Organization of American States and its organs, organisms and entities, in particular the Inter-American Indian Institute, the Inter-American Commission of Human Rights shall promote respect for and full application of the provisions in this Declaration.