

Appendix 2: ***UN Draft Declaration on Rights of Indigenous Peoples***

I PREAMBULAR AND OPERATIVE PARAGRAPHS TO THE DRAFT DECLARATION AS SUBMITTED BY THE MEMBERS OF THE WORKING GROUP AT FIRST READING

1st Preambular Paragraph

Affirming that all indigenous peoples are free and equal in dignity and rights in accordance with international standards, while recognising the right of all individuals and peoples to be different, to consider themselves different, and to be respected as such,

2nd Preambular Paragraph

Considering that all peoples contribute to the diversity and richness of civilisations and cultures, which constitute the common heritage of humankind,

3rd Preambular Paragraph

Convinced that all doctrines, policies and practices of racial, religious, ethnic or cultural superiority are scientifically false, legally invalid, morally condemnable and socially unjust,

4th Preambular Paragraph

Concerned that indigenous peoples have often been deprived of their human rights and fundamental freedoms, resulting in the dispossession of lands, territories and resources, as well as in poverty and marginalisation,

5th Preambular Paragraph

Welcoming the fact that indigenous peoples are organising themselves in order to bring an end to all forms of discrimination and oppression wherever they occur,

6th Preambular Paragraph

Recognising the urgent need to promote and respect the rights and characteristics of indigenous peoples which stem from their history, philosophy, cultures, spiritual and other traditions, as well as from their political, economic and social structures, especially their rights to lands, territories and resources,

7th Preambular Paragraph

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

8th Preambular Paragraph

Endorsing efforts to consolidate and strengthen the societies, cultures and traditions of indigenous peoples, through their control over development affecting them or their lands, territories and resources,

9th Preambular Paragraph

Emphasising the need for demilitarisation of the lands and territories of indigenous peoples, which will contribute to peace, understanding and friendly relations among all peoples of the world,

10th Preambular Paragraph

Emphasising the importance of giving special attention to the rights and needs of indigenous women, youth and children,

11th Preambular Paragraph

Recognising in particular that it is in the best interest of indigenous children for their family and community to retain shared responsibility for the upbringing of the children,

12th Preambular Paragraph

Believing that indigenous peoples have the right freely to determine their relationships with the States in which they live, in a spirit of co-existence with other citizens,

13th Preambular Paragraph

Noting that the International Covenants on Human Rights affirm the fundamental importance of the right to self-determination, as well as the right of all human beings to pursue their material, cultural and spiritual development in conditions of freedom and dignity,

14th Preambular Paragraph

Bearing in mind that nothing in this Declaration may be used as an excuse for denying to any people its right to self-determination,

15th Preambular Paragraph

Calling upon States to comply with and effectively implement all international instruments as they apply to indigenous peoples,

16th Preambular Paragraph

Solemnly proclaims the following Declaration of the Rights of Indigenous Peoples:

*Part I**Operative paragraph 1*

Indigenous peoples have the right to self-determination, in accordance with international law. By virtue of this right, they freely determine their relationship with the States in which they live, in a spirit of co-existence with other citizens, and freely pursue their economic, social, cultural and spiritual development in conditions of freedom and dignity.

Operative paragraph 2

Indigenous peoples have the right to the full and effective enjoyment of all of the human rights and fundamental freedoms which are recognised in the Charter of the United Nations and other international human rights instruments.

Operative paragraph 3

Indigenous peoples have the right to be free and equal to all other human beings and peoples in dignity and rights, and to be free from adverse distinction or discrimination of any kind based on their indigenous identity.

*Part II**Operative paragraph 4*

Indigenous peoples have the collective right to exist in peace and security as distinct peoples and to be protected against genocide, as well as the individual rights to life, physical and mental integrity, liberty and security of person.

Operative paragraph 5

Indigenous peoples have the collective and individual right to maintain and develop their distinct ethnic and cultural characteristics and identities, including the right to self-identification.

Operative paragraph 6

Indigenous peoples have the collective and individual right to be protected from cultural genocide, including the prevention of and redress for:

- (a) any act which has the aim or effect of depriving them of their integrity as distinct societies, or of their cultural or ethnic characteristics or identities;
- (b) any form of forced assimilation or integration;
- (c) dispossession of their lands, territories or resources;
- (d) imposition of other cultures or ways of life; and
- (e) any propaganda directed against them.

Operative paragraph 7

Indigenous peoples have the right to revive and practise their cultural identity and traditions, including the right to maintain, develop and protect the past, present and future manifestations of their cultures, such as archaeological and historical sites and structures, artifacts, designs, ceremonies, technology and works of art, as well as the right to the restitution of cultural, religious and spiritual property taken from them without their free and informed consent or in violation of their own laws.

Operative paragraph 8

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

Operative paragraph 9

Indigenous peoples have the right to revive, use, develop, promote and transmit to future generations their own languages, writing systems and literature, and to designate and maintain the original names of communities, places and persons. States shall take measures to ensure that indigenous peoples can understand and be understood in political, legal and administrative proceedings, where necessary, through the provision of interpretation or by other effective means.

Operative paragraph 10

Indigenous peoples have the right to all forms of education, including access to education in their own languages, and the right to establish and control their own educational systems and institutions. Resources shall be provided by the State for these purposes.

Operative paragraph 11

Indigenous peoples have the right to have the dignity and diversity of their cultures, histories, traditions and aspirations reflected in all forms of education and public information. States shall take effective measures to eliminate prejudices and to foster tolerance, understanding and good relations.

Operative paragraph 12

Indigenous peoples have the right to the use of and access to all forms of mass media in their own languages. States shall take effective measures to this end.

Operative paragraph 13

Indigenous peoples have the right to adequate financial and technical assistance, from States and through international co-operation, to pursue freely their own economic, social and cultural development, and for the enjoyment of the rights contained in this Declaration.

Operative paragraph (to be numbered)

Nothing in this Declaration may be interpreted as implying for any State, group or individual any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or to the Declaration of Principles of International Law on Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations.

*Part III**Operative paragraph 14*

Indigenous peoples have the right to maintain their distinctive and profound relationship with their lands, territories and resources, which include the total environment of the land, waters, air and sea, which they have traditionally occupied or otherwise used.

Operative paragraph 15

Indigenous peoples have the collective and individual right to own, control and use the lands and territories they have traditionally occupied or otherwise used. This includes the right to the full recognition of their own laws and customs, land-tenure systems and institutions for the management of resources, and the right to effective State measures to prevent any interference with or encroachment upon these rights.

Operative paragraph 16

Indigenous peoples have the right to the restitution or, to the extent this is not possible, to just and fair compensation for lands and territories which have been confiscated, occupied, used or damaged without their free and informed consent. Unless otherwise freely agreed upon by the peoples concerned, compensation shall preferably take the form of lands and territories of quality, quantity and legal status at least equal to those which were lost.

Operative paragraph 17

Indigenous peoples have the right to the protection of their environment and productivity of their lands and territories, and the right to adequate assistance including international co-operation to this end. Unless otherwise freely agreed upon by the peoples concerned, military activities and the storage or disposal of hazardous materials shall not take place in their lands and territories.

Operative paragraph 18

Indigenous peoples have the right to special measures for protection, as intellectual property, of their traditional cultural manifestations, such as literature, designs, visual and performing arts, cultigens, medicines and knowledge of the useful properties of fauna and flora.

Operative paragraph (to be numbered)

In no case may any of the indigenous peoples be deprived of their means of subsistence.

B OPERATIVE PARAGRAPHS AS REVISED BY THE CHAIR-PERSON/RAPPORTEUR PURSUANT TO SUB-COMMISSION RESOLUTION 1990/26

*Draft operative paragraph 18**Part IV*

The right to maintain and develop within their areas of lands and other territories their traditional economic structures, institutions and ways of life, to be secure in the traditional economic structures and ways of life, to be secure in the enjoyment of their own traditional means of subsistence, and to engage freely in their traditional and other economic activities, including hunting, fresh and salt water fishing, herding, gathering, lumbering and cultivation, without adverse discrimination. In no case may an indigenous people be deprived of its means of subsistence. The right to just and fair compensation if they have been so deprived.

Draft operative paragraph 19

The right to special State measures for the immediate, effective and continuing improvement of their social and economic conditions, with their consent, that reflect their own priorities.

Draft operative paragraph 20

The right to determine, plan and implement all health, housing and other social and economic programmes affecting them, and as far as possible to develop, plan and implement such programmes through their own institutions.

*Draft operative paragraph 21**Part V*

The right to participate on an equal footing with all the other citizens and without adverse discrimination in the political, economic, social and cultural life of the State and to have their specific character duly reflected in the legal system and in political and socio-economic and cultural institutions, including in particular proper regard to and recognition of indigenous laws and customs.

Draft operative paragraph 22

- (a) The right to participate fully at the State level, through representatives chosen by themselves, in decision-making about and implementation of all national and international matters which may affect their rights, life and destiny."

- (b) The right of indigenous peoples to be involved, through appropriate procedures, determined in conjunction with them, in devising any laws or administrative measures that may affect them directly, and to obtain their free and informed consent through implementing such measures. States have the duty to guarantee the full exercise of these rights.

Draft operative paragraph 23

The collective right to autonomy in matters relating to their own internal and local affairs, including education, information, mass media, culture, religion, health, housing, social welfare, traditional and other economic and management activities, land and resources administration and the environment, as well as internal taxation for financing these autonomous functions.

Draft operative paragraph 24

The right to decide upon the structures of their autonomous institutions, to select the membership of such institutions according to their own procedures, and to determine the membership of the indigenous people concerned for these purposes; States have the duty, where the peoples concerned so desire, to recognise such institutions and their memberships through the legal systems and political institutions of the State.

Draft operative paragraph 25

The right to determine the responsibilities of individuals to their own community, consistent with universally recognised human rights and fundamental freedoms.

Draft operative paragraph 26

The right to maintain and develop traditional contacts, relations and co-operation, including cultural and social exchanges and trade, with their own kith and kin across State boundaries and the obligation of the State to adopt measures to facilitate such contacts.

Draft operative paragraph 27

The right to claim that States honour treaties and other agreements concluded with indigenous peoples, and to submit any disputes that may arise in this matter to competent national or international bodies.

Draft operative paragraph 28

Part VI

The individual and collective right to access to and prompt decision by mutually acceptable and fair procedures for resolving conflicts or disputes and any infringement, public or private, between States and indigenous peoples, groups or individuals. These procedures should include, as appropriate, negotiations, mediation, arbitration, national courts and international and regional human rights review and complaints mechanisms.

*Draft operative paragraph 29**Part VII*

These rights constitute the minimum standards for the survival and the well-being of the indigenous peoples of the world.

Draft operative paragraph 30

Nothing in this Declaration may be interpreted as implying for any State, group or individual any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.