

WGIP DRAFT UNIVERSAL DECLARATION

Principal Concepts and Issues

In striving to achieve a comprehensive and effective draft Universal Declaration on the Rights of Indigenous Peoples, it may be useful to make reference to a listing of principal concepts and issues for possible inclusion in the draft Declaration.

These principal concepts and issues include the following:

1. General style of drafting. Each article of the draft Declaration should be composed of full sentences and not simply phrases. For example, the Universal Declaration on Human Rights uses complete sentences.
2. Collective and individual rights. The central importance of collective rights of indigenous peoples should be emphasized. Unless the meaning of a provision dictates otherwise, all of the rights in the draft Declaration should be understood to include both collective and individual dimensions.
3. Rights of indigenous peoples and duties of States. Indigenous rights in the draft Declaration should be reinforced by specifying the corresponding duties or obligations of States. This practice of specifying duties is recommended in the guidelines contained in U.N. General Assembly resolution 41/120 of December 4, 1986, entitled "Setting international standards in the field of human rights."
4. No unilateral State action. In any matter that may directly affect indigenous peoples, it is important to ensure that actions by States are not undertaken unilaterally. In regard to State obligations or duties, it should be indicated in the draft Declaration that such duties be carried out "in conjunction" or in "collaboration" with indigenous peoples.
5. Right to Self-determination. Explicit recognition of the right to self-determination would serve to ensure the broadest possible capacity for indigenous peoples to control their own affairs. If explicit recognition of this fundamental right is not included in the draft Declaration, it is important to ensure that the right to self-determination may be implied from an overall assessment of the draft Declaration.
6. Consent of indigenous peoples. When development or any other actions are undertaken by States or other third parties, it is essential that these actions be subjected to indigenous "consent". Past experiences have shown that mere "consultation" is clearly not enough.
7. Indigenous participation at national and international levels. In order to positively influence the policy- and decision-making of States, it is important that indigenous peoples have the right to participate in relevant forums and processes affecting them at the national and international levels. Indigenous issues, such as human rights, environment, and development, are increasingly being addressed at the international level. Therefore, indigenous involvement within a State is simply no longer adequate.

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8. Processes to resolve disputes and complaint mechanisms. In order to resolve disputes or conflicts between States and indigenous peoples on a wide range of matters, it is important to ensure that effective and fair processes for the peaceful resolution of such disputes exist. In addition, there must be established appropriate mechanisms to review complaints about human rights violations and other matters, in the event that existing disputes are not able to be resolved.

9. Territorial, land and resource rights. In order to enhance the security of present and future generations of indigenous peoples, it is essential to attain adequate legal recognition for indigenous territorial, land and resource rights. The notion of "territorial" rights or rights to "territories" is used to connote rights over a traditional territory as a whole. It would include the whole environment (e.g., air space, subsoil resources, etc.) and not merely the land itself.

10. Control over development. Indigenous peoples must be recognized as having powers to control development in or affecting their traditional territories. Too often, the current practice of States is to unilaterally impose development projects on indigenous peoples (e.g., James Bay II hydroelectric project.).

Participations of indigenous peoples in all stages of development projects, as well as in the benefits of these projects, must be ensured.

In addition, the "right to development" of indigenous peoples must be recognized in a comprehensive manner that includes economic, social, cultural and political dimensions.

11. Environmental protection. The integrity of the environment in or affecting indigenous territories must be safeguarded. Provisions in this regard should include the right to a safe and healthy environment, to full participation in environmental and social impact assessment procedures, and to obtain compensation for environmental damage.

12. Cultural development. Indigenous languages and cultures must be protected in all their aspects and their further development must be facilitated.

13. Economic development. The traditional and other economies of indigenous peoples must be recognized and protected. Provisions are also required to enhance economic development in indigenous territories.

14. Treaty rights and treaty-making. Principal aspects of treaties and treaty-making should be elaborated in the draft Declaration. The relevant duties of states should include the following: to respect treaties and guarantee their inviolability; to engage in a treaty-making process for fundamental matters (e.g., self-government); to establish mechanisms to resolve problems in existing treaties; to recognize treaties according to international law principles; to ensure the significance of treaties in national legal systems; and to interpret treaties in accordance with their spirit and intent.

15. General duty of State to provide resources. Without financial resources, many of the rights in the draft Declaration would be exceedingly difficult to realize. Therefore, it is important to include a general provision that requires States to provide to indigenous peoples opportunities and resources for the full development of their own institutions and initiatives and for the full enjoyment of the human rights and fundamental freedoms referred to in the draft Declaration.

### Conclusion

The above listing of principal concepts and issues provides a brief outline of some of the concerns of indigenous peoples that should be accommodated in the draft Declaration.

A practical test of the effectiveness of any proposed draft Universal Declaration would be to determine whether its provisions would adequately address the widerange of issues facing indigenous peoples both now and in the future.