



ABORIGINAL LAW CENTRE

FACULTY OF LAW · THE UNIVERSITY OF NEW SOUTH WALES
P.O. BOX 1 · KENSINGTON · NEW SOUTH WALES · AUSTRALIA · 2033

PLEASE QUOTE

DRAFT UNIVERSAL DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

[Key: PP Preambular Paragraph
OP Operative Paragraph
DOP Draft Operative Paragraph]

Preambular and Operative
Paragraphs to the Draft Declaration
as Submitted by the Members of the
Working Group at First Reading

Aboriginal Law Centre suggested
amendments (prepared by *Tony
Simpson* and *Howard Berman*)
together with suggestions from
Ministerial Consultation, 23-24 May
1992.

(Insertions marked in Boldtype)
(Deletions marked with the symbol **)

PP1. Affirming that all indigenous
peoples are free and equal in dignity and
rights in accordance with international
standards, while recognizing the right of
all individuals and peoples to be
different, to consider themselves
different, and to be respected as such,

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

PP2. Considering that all peoples
contribute to the diversity and richness
of civilizations and cultures, which
constitute the common heritage of
humankind,

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

PP3. Convinced that all doctrines,
policies and practices of racial, religious,
ethnic or cultural and superiority are
scientifically false, legally invalid,
morally condemnable and socially
unjust,

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

PP4. 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 marginalization,

Deeply concerned that many indigenous
peoples have ** been deprived of their
human rights and fundamental freedoms,
resulting in the dispossession of lands,
territories and resources, **poverty and
deprivation**, and social and cultural
disintegration,

W6/P/OC. AUG/16

PP5. Welcoming the fact that indigenous peoples are organizing themselves in order to bring an end to all forms of discrimination and oppression wherever they occur

PP6. Recognizing 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,

PP7. Reaffirming that indigenous peoples, in the exercise of their rights, should be free from adverse discrimination of any kind,

PP8. 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,

PP9. Emphasizing the need for demilitarization of the lands and territories of indigenous peoples, which will contribute to peace, understanding and friendly relations among all peoples of the world,

PP10. Emphasizing the importance of giving special attention to the rights and needs of indigenous women, youth and children,

PP11. Recognizing 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,

PP12. Believing that indigenous peoples have the right freely to determine their relationships with the States in which they live, in a spirit of coexistence with other citizens,

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

[New] Calling upon States in good faith to recognize indigenous peoples located within their territories;

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

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

Endorsing calls for the revitalization and strengthening of indigenous societies and their institutions, cultures, and traditions through respect for their right to self-determination,

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

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

Recognizing in particular that it is in the best interest of indigenous children for their family and community to retain ** control over their upbringing,

[New] Recognizing that indigenous peoples have the right to determine their own affairs and their relationships with the political, economic, social and cultural life of States,

PP13. 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,

PP14. Bearing in mind that nothing in this Declaration may be used as an excuse for denying to any people its right to self-determination,

PP15. Calling upon States to comply with and effectively implement all international instruments as they apply to indigenous peoples,

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

PART 1

OP1. Indigenous peoples have the right to self-determination, in accordance with international law. By virtue of this rights, they freely determine their relationship with the States in which they live, in a spirit of coexistence with other citizens, and freely pursue their economic, social, cultural and spiritual development in conditions of freedom and dignity.

OP2. Indigenous peoples have the right to the full and effective enjoyment of all of the human rights and fundamental freedoms which are recognized in the Charter of the United Nations and other international human rights instruments.

OP3. 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

OP4 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.

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

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

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

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

PART I

1. Indigenous peoples have the right to self-determination in accordance with international law. By virtue of this right, they freely determine their political status and relationship with the States where they are located, in a spirit of coexistence **, and freely pursue their economic, social, cultural and spiritual development in conditions of freedom and dignity.

2. 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 and other ** human rights instruments.

3. Indigenous peoples ** are free and equal ** in dignity and rights, and have the right to be free from adverse distinction or discrimination of any kind **.

PART II

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.

OP5. 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.

OP6. 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.

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

6. Indigenous peoples have the collective and individual right to be protected against 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 or induced assimilation or integration;

(b1) [New] removal of indigenous children from their parents, extended family or community into the custody of non-indigenous peoples or institutions;

(c) dispossession of their lands, territories or resources;

(d) imposition of other cultures or ways of life; and

(e) any propaganda directed against them.

7.[New] Indigenous peoples and individuals have the right to be free from slavery, debt bondage, and other forms of forced labor, and from the exploitation of women and children.

OP7. 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.

8. Indigenous peoples have the right to revitalise 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.

9. *Indigenous peoples have the right to ** recognition and protection of their ownership including, as intellectual property, of their ** cultural manifestations such as oral traditions, literatures, designs, visual and performing arts, cultigens, medicines and knowledge, whenever acquired, of the useful properties of fauna and flora*

[See also OP18 below]

OP8. 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.

10. Indigenous peoples have the right to manifest, practise and teach and transmit to future generations 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 and control of human remains.

OP9. 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.

11. Indigenous peoples have the right to revive, use, develop, promote and transmit to future generations their own languages, oral traditions, writing systems and literature, and to designate and maintain their own names for communities, places and persons. States shall take measures to ensure that indigenous peoples and individuals can understand and be understood in political, legal and administrative proceedings, and in the provision of essential services, where necessary, through the provision of interpretation
**.

OP10. 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.

OP11. 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.

OP12. 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.

OP13. Indigenous peoples have the right to adequate financial and technical assistance, from States and through international cooperation, to pursue freely their own economic, social and cultural development, and for the enjoyment of the rights contained in this Declaration.

OP13(a)? 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 Cooperation among States in Accordance with the Charter of the United Nations.

PART III

OP14. 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.

12. 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. Appropriate resources shall be provided by the State for these purposes.

13. 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 in a culturally appropriate manner. States shall take effective measures to achieve these ends, in cooperation with indigenous peoples and to eliminate prejudices and to foster tolerance, understanding and good relations.

14. 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.

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

43. Nothing in this Declaration may be interpreted as implying for any State, group, corporation 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 Cooperation among States in Accordance with the Charter of the United Nations.

PART III

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

OP15. 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.

OP16. 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.

OP17. 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 cooperation 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.

16. Indigenous peoples have the collective ** right to own, control and use the lands and territories they have traditionally occupied or otherwise used including the right to own and control renewable and non-renewable resources pertaining to these lands and territories, inter alia, flora and fauna, waters, and sea ice.

17. Indigenous peoples have the right to recognition of and respect for their own self-defined land tenure systems.

18.[New] States have the duty to cooperate with indigenous peoples in effectively protecting their lands and territories from alienation, disturbance, damage and encroachment.

19.[New] Indigenous peoples' lands, territories and resources may only be ceded or alienated with their informed consent freely expressed through their own institutions, as memorialized in a treaty or other formal agreement.

20. 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 or damaged.

21. Indigenous peoples have the right to the protection of their environment and of the productivity of their lands and territories, including air, waters, flora and fauna and sea ice, and the right to adequate assistance including international cooperation to this end. Unless otherwise freely agreed upon by the peoples concerned, military activities and the introduction and storage or disposal of hazardous materials shall not take place in their lands and territories.

OP18. 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.

OP18(a)? In no case may any of the indigenous peoples be deprived of their means of subsistence.

9. *Indigenous peoples have the right to ** recognition and protection of their ownership including, as intellectual property, of their ** cultural manifestations such as oral traditions, literatures, design, visual and performing arts, cultigens, medicines and knowledge, whenever acquired, of the useful properties of fauna and flora*

24(end). In no case may an ** indigenous people be deprived of its means of subsistence. **

22.[New] States have the duty to obtain the consent of the people concerned, through their own institutions, before undertaking or permitting any programs for the exploration or exploitation of mineral and other resources pertaining to their lands and territories. Pursuant to agreement with the peoples concerned, just and fair compensation shall be provided for any such activity undertaken.

23.[New] States have the duty to obtain the consent of the people concerned before initiating or permitting any programs for the exploration or exploitation of resources in other areas of sacred or ceremonial significance.

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

PART IV

DOP18. 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;

DOP19. 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;

DOP20. 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;

24. Indigenous peoples have the right to maintain and develop within their areas of lands and ** territories, including seasonal migration routes, their ** economic structures, institutions and traditions, to be secure in their ** economic structures institutions and traditions, to be secure in the enjoyment of their own ** means of subsistence, and to engage freely in their traditional and other economic activities, including hunting, ** fishing, herding, gathering, lumbering and cultivation. **. In no case may an ** indigenous people be deprived of its means of subsistence. **

[See also OP18(a)? above

39. Indigenous peoples have the right to special State measures for the immediate, effective and continuing improvement of their social and economic conditions, with their free and informed consent, that reflect their own priorities;

37. Indigenous peoples have the right to determine, plan and implement through their own institutions ** health, housing, legal and other social and economic programmes affecting them, **

PART V

DOP21. 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.

DOP22. 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;

29. Indigenous peoples have the right to full recognition of and respect for indigenous laws, customs, and practices in the legal systems and political institutions of States.

35. *Indigenous individuals have the right to participate fully in the political, economic, social and cultural life of the State. The exercise of these rights shall in no way adversely affect the rights of the people concerned as a whole.*

38 Indigenous peoples have the right to have their specific character duly reflected in the legal system and in political and socio-economic and cultural institutions.

34(a). Indigenous peoples have the right to participate fully at **** all levels of government**, through representatives chosen by themselves **through their own institutions**, in decision-making about and implementation of all national and international matters which may affect their rights, lives and destinies.

(b). Indigenous peoples have the right to be involved, through **** procedures determined in conjunction with them**, in devising any laws or administrative measures that may affect them directly. **States have the duty to obtain their free and informed consent before implementing such measures. ****

PART IV

DOP23. 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 environment, as well as internal taxation for financing these autonomous functions;

DOP24. 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 recognize such institutions and their memberships through the legal systems and political institutions of the State;

DOP25. The right to determine the responsibilities of individuals to their own community, consistent with universally recognized human rights and fundamental freedoms;

25. Indigenous peoples have the right to govern themselves, including control over lands, territories and resources, social and political relations, dispute resolution, criminal jurisdiction, environmental administration, economic activities, employment, education, culture, religion, health, taxation and entry by non-members.

26. Indigenous peoples have the right to determine the membership of their societies.

27. Indigenous peoples have the right to determine the nature and structure of their institutions, and to freely select the membership of such institutions according to their own procedures. States have the duty ** to recognize and respect the integrity of these institutions and procedures.

28. Indigenous peoples have the right to determine the responsibilities of individuals to their own community, consistent with universally recognized human rights and fundamental freedoms; and the corresponding right to determine procedures for addressing disputes and other internal matters involving the rights and obligations of members.

29. Indigenous peoples have the right to full recognition of and respect for indigenous laws, customs, and practices in the legal systems and political institutions of States.

[See also DOP21 above]

30.[New] States shall ensure that indigenous peoples and their members have access to mutually acceptable and fair procedures for settling disputes between indigenous peoples and their members, on the one hand, and non-indigenous individuals, groups, corporations, and entities on the other hand.

These procedures should include, as appropriate, negotiations, mediation, conciliation, arbitration, domestic courts and tribunals.

DOP26. The right to maintain and develop traditional contacts, relations and cooperation, 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;

DOP27. 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;

31. Indigenous peoples divided by international and internal borders have the right to maintain ** relations and commerce, including travel for cultural, ** social, and spiritual purposes, herding and trade, ** across State boundaries. States have the duty to adopt measures to facilitate the exercise of this right.

32.[New] Indigenous peoples have the right to be free from involuntary military and para-military conscription.

33. States and their successors have the duty to honor treaties and other agreements concluded with indigenous peoples according to their original intent, pursuant to the principle of *pacta sunt servanda*. ** Disputes that may arise in these matters may be submitted to competent national and international bodies.

34(a). *Indigenous peoples have the right to participate fully at all levels of government, through representatives chosen by themselves through their own institutions, in decision-making about and implementation of all national and international matters which may affect their rights, lives and destinies.*

(b). *Indigenous peoples have the right to be involved, through ** procedures determined in conjunction with them, in devising any laws or administrative measures that may affect them directly. States have the duty to obtain their free and informed consent before implementing such measures. ***

[See also DOP22 above]

35. *Indigenous individuals have the right to participate fully in the political, economic, social and cultural life of the State. The exercise of these rights shall in no way adversely affect the rights of the people concerned as a whole.*

[See also DOP21 above]

PART V

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

[See also OP13 above]

37. *Indigenous peoples have the right through their own institutions to determine, plan and implement ** health, housing, legal and other social and economic programmes affecting them, ***

[See also DOP20 above]

38. **Indigenous peoples have the right to have their specific character duly reflected in the legal system and in political and socio-economic and cultural institutions.**

[See also DOP 21 above]

39. *Indigenous peoples have the right to special State measures for the immediate, effective and continuing improvement of their social and economic conditions, with their free and informed consent, that reflect their own priorities;*

[See also DOP19 above]

PART VI

DOP28. 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;

PART VII

DOP. 29 These rights constitute the minimum standards for the survival and the well-being of the indigenous peoples of the world;

DOP30. 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;

PART VI

40. Indigenous peoples have the ** right to access to and prompt decision by mutually acceptable and fair procedures for resolving conflicts or disputes with States. ** These procedures may include, as appropriate, negotiations, mediation, conciliation, or arbitration, ** under international supervision. The Secretary-general shall provide technical assistance for this purpose.

PART VII

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

42. Nothing in this Declaration may be interpreted as implying for any State, group, corporation 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.

43. *Nothing in this Declaration may be interpreted as implying for any State, group, corporation 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 Cooperation among States in Accordance with the Charter of the United Nations.*

[See also OP13 above]