

Leaflet No. 5: The draft United Nations Declaration on the Rights of Indigenous Peoples

Key Words and Ideas

**Draft United Nations Declaration on the Rights of Indigenous Peoples
Open-ended working group on the draft declaration**

**Sub-Commission on the Promotion and Protection of Human Rights
Commission on Human Rights**

***Summary:** The Working Group on Indigenous Populations began drafting a declaration on the rights of indigenous peoples in 1985. It completed the draft in 1993 and, in 1995, the Commission on Human Rights set up its own working group to review the draft adopted by the human rights experts of the Working Group and Sub-Commission. More than 100 indigenous organizations participate in that working group. The declaration is still under discussion. When adopted, it will likely be the most comprehensive statement of the rights of indigenous peoples ever developed: the draft declaration establishes collective rights to a degree unprecedented in international human rights law.*

The draft United Nations Declaration on the Rights of Indigenous Peoples: A Major New Instrument

One of the United Nations' most important initiatives for indigenous peoples is the development of a United Nations Declaration on the Rights of Indigenous Peoples.¹ Adoption of this instrument will give the clearest indication yet that the international community is committing itself to the protection of the individual and collective rights of indigenous peoples. While this Declaration would not be legally binding on States, and would not, therefore, impose legal obligations on governments, the declaration would carry considerable moral force.

Since existing international human rights instruments do not cover the full range of indigenous peoples' human rights concerns, indigenous representatives have argued that their aspirations should be enshrined in a new instrument. The draft Declaration breaks new ground by addressing collective rights to a degree unprecedented in international human rights law. The rights cited in the draft are those generally taken for granted in dominant societies: rights to survival, political and cultural identity, and control over resources. While some governments support the draft Declaration, others are opposed to many of its provisions or, at least, to many of the details those provisions contain.

The contents of the draft Declaration

The draft UN Declaration on the Rights of Indigenous Peoples consists of 19 preambular, or introductory, paragraphs and 45 articles, or provisions, which are divided into nine sections. These sections cover a wide range of human rights and fundamental freedoms related to indigenous peoples, including the right to

¹ The draft declaration does not have an official name yet. However, it is known by indigenous peoples as the "draft United Nations declaration on the rights of indigenous peoples" - with an "s" - and that is how it is referred to in this guide.

preserve and develop their cultural characteristics and distinct identities, ownership and use of traditional lands and natural resources, and protection against genocide. The draft Declaration also covers rights related to religion, language and education, and the right to participate in the political, economic and social life of the society in which indigenous peoples live. The draft Declaration recognizes the right to self-determination, to self-government in matters related to indigenous affairs and the honouring of treaties and agreements concluded with indigenous peoples.

The nine sections of the draft Declaration in its current form address:

- rights to self-determination, participation in the life of the State, nationality and freedom from discrimination
- threats to the survival of indigenous peoples as distinct peoples
- the spiritual, linguistic and cultural identity of indigenous peoples
- education, information and labour rights
- participatory rights, development and other economic and social rights
- land and resource rights
- the exercise of self-determination, indigenous institutions
- the effective implementation of the Declaration and general concluding provisions (two parts)

The draft Declaration provides that the rights set forth represent the minimum standards of protection for the rights and well-being of indigenous peoples worldwide. It also promotes fair and just procedures for resolving disputes between indigenous peoples and governments, such as mediation, negotiation, and international and regional human rights review and complaints mechanisms. The text of the draft Declaration on the Rights of Indigenous Peoples is included in this information set.

Steps toward adoption

In 1985, the **Working Group on Indigenous Populations** decided, after considering various options, that it should aim to produce "a draft Declaration on indigenous rights" for eventual adoption and proclamation by the General Assembly. In 1989, a revised draft "Universal Declaration on the Rights of Indigenous Peoples" was published for discussion. Four years later, after difficulties in establishing an effective working method for considering the draft, the Working Group agreed upon a text of the draft Declaration. Many thousands of indigenous representatives, the majority not affiliated with ECOSOC or recognized NGOs, were able to contribute their proposals.

In 1993, the Working Group submitted the text to the **Sub-Commission on the Promotion and Protection of Human Rights**. The Sub-Commission adopted the draft declaration in 1994 and submitted the text to the Commission on Human Rights.

The **Commission on Human Rights** plays the central role in drafting new human rights instruments. It is common practice for the Commission to set up an "open-ended" drafting group, composed of all interested governments and NGOs that have been granted UN consultative status, to elaborate an instrument. Drafting a text at the Commission level often takes several years, sometimes many years. When it has completed its work, the drafting group submits its draft to the Commission, which, if satisfied, submits the approved draft to the General Assembly for final adoption and proclamation.

In 1995, the Commission set up an open-ended inter-sessional working group to consider the draft Declaration submitted by the Sub-Commission. The working group is known as the **working group on the draft Declaration**. The Commission also set up a procedure that made it possible for indigenous

peoples' organizations to participate actively in the drafting work at the Commission level: indigenous peoples' organizations that did not have consultative status with the Economic and Social Council were allowed to help draft the Declaration. More than 100 organizations representing indigenous peoples received approval to participate in the drafting process.

The Commission working group meets annually for two weeks, usually in November. In 1997, two Articles were adopted (Articles 5 and 43). While these two Articles are relatively uncontroversial, it was an important step for the working group to have begun agreeing on the text. Much work remains; and there are significant disagreements over substantial issues. Most governments agree that indigenous peoples' support for the declaration is crucial. However, there have been disagreements about how much power indigenous peoples should have in determining the final wording of the draft. Indigenous peoples argue that as subjects and beneficiaries of the Declaration, they should have control over what it says. Governments say that, while indigenous views must be taken into account, it is only governments at the UN that have decision-making authority.

In UN terms, the draft Declaration is still at an early stage of consideration. The Commission has set the end of the International Decade of the World's Indigenous Peoples, 2004, as a target for adopting the Declaration. The General Assembly has affirmed that adopting a declaration is a major objective of the Decade. Deliberations will inevitably be difficult. The challenge will be to produce a Declaration that is substantive and responsive to the aspirations of those whom it is intended to benefit, while respecting the views of governments around the world.

The draft Declaration as an awareness-raising process

While it is important that human rights standards be elaborated and acknowledged, genuine improvements in human rights observance depend ultimately on changes in community attitudes, on greater tolerance, and on a better understanding of the views of others. Discussing the concepts in the draft Declaration over the coming years at the international level will help change attitudes.

It is critical that indigenous peoples continue to participate in the drafting of the Declaration. Indigenous peoples' participation in the open-ended working group will ensure that the final text of the Declaration reflects their human rights, their aspirations and their needs on both an individual and collective level.