

AG/RES. 2888 (XLVI-O/16)

AMERICAN DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

(Adopted at the third plenary session, held on June 15, 2016)

THE GENERAL ASSEMBLY,

RECALLING the contents of resolution AG/RES. 2867 (XLIV-O/14), “Draft American Declaration on the Rights of Indigenous Peoples,” as well as all previous resolutions on this issue;

RECALLING ALSO the declaration “Rights of the Indigenous Peoples of the Americas” [AG/DEC. 79 (XLIV-O/14)], which reaffirms that progress in promoting and effectively protecting the rights of the indigenous peoples of the Americas is a priority for the Organization of American States;

RECOGNIZING the valuable support provided by the member states, observer states, and the organs, agencies, and entities of the Organization of American States for the process in the Working Group to Prepare the Draft American Declaration on the Rights of Indigenous Peoples;

RECOGNIZING ALSO the important participation of indigenous peoples of the Americas in the process of preparing this Declaration; and

TAKING INTO ACCOUNT the significant contribution that the indigenous peoples of the Americas have made to humanity,

RESOLVES:

To adopt the following Draft American Declaration on the Rights of Indigenous Peoples:^{1/2/}

-
1. The United States remains committed to addressing the urgent issues of concern to indigenous peoples across the Americas, including combating societal discrimination against indigenous peoples and...
 2. Canada reiterates its commitment to a renewed relationship with its indigenous peoples, based on recognition of rights, respect, cooperation and partnership. Canada is now fully engaged, ...

FOOTNOTES

1. ... individuals, increasing indigenous participation in national political processes, addressing lack of infrastructure and poor living conditions in indigenous areas, combating violence against indigenous women and girls, promoting the repatriation of ancestral remains and ceremonial objects, and collaborating on issues of land rights and self-governance, among many other issues. The multitude of ongoing initiatives with respect to these topics provides avenues for addressing some of the consequences of past actions. The United States has, however, persistently objected to the text of this American Declaration, which is not itself legally binding, does not, therefore, create new law, and is not a statement of Organization of American States (OAS) member states' obligations under treaty or customary international law.

The United States reiterates its longstanding belief that implementation of the United Nations Declaration on the Rights of Indigenous Peoples ("UN Declaration") should remain the focus of the OAS and its member states. OAS member states joined other UN Member States in renewing their political commitments with respect to the UN Declaration at the World Conference on Indigenous Peoples in September 2014. The important and challenging initiatives underway at the global level to realize the respective commitments in the UN Declaration and the outcome document of the World Conference are appropriately the focus of the attention and resources of States, indigenous peoples, civil society, and international organizations, including in the Americas. In that regard, the United States intends to continue its diligent and proactive efforts, which it has undertaken in close collaboration with indigenous peoples in the United States and many of its fellow OAS member states, to promote achievement of the ends of the UN Declaration, and to promote fulfillment of the commitments in the World Conference outcome document. Of final note, the United States reiterates its solidarity with the concerns expressed by indigenous peoples concerning their lack of full and effective participation in these negotiations.

2. ... in full partnership with indigenous peoples in Canada, to move forward with the implementation of the United Nations Declaration on the Rights of Indigenous Peoples in accordance with Canada's Constitution. As Canada has not participated substantively in recent years in negotiations on the American Declaration on the Rights of Indigenous Peoples, it is not able at this time to take a position on the proposed text of the Declaration. Canada is committed to continue working with its partners in the OAS on advancing indigenous issues across the Americas.

AMERICAN DECLARATION
ON THE RIGHTS OF INDIGENOUS PEOPLES

PREAMBLE

The member states of the Organization of American States (hereinafter the States),

RECOGNIZING:

That the rights of indigenous peoples are both essential and of historical significance to the present and future of the Americas;

The important presence in the Americas of indigenous peoples and their immense contribution to development, plurality, and cultural diversity, and reiterating our commitment to their economic and social well-being, as well as the obligation to respect their rights and cultural identity; and

That the existence of the indigenous cultures and peoples of the Americas is important to humanity;

REAFFIRMING that indigenous peoples are original, diverse societies with their own identities that constitute an integral part of the Americas;

CONCERNED that indigenous peoples have suffered from historic injustices as a result of, *inter alia*, their colonization and the 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 of indigenous peoples, which derive from their political, economic, and social structures and from their cultures, spiritual traditions, histories, and philosophies, especially their rights to their lands, territories, and resources;

RECOGNIZING ALSO that respect for indigenous knowledge, cultures, and traditional practices contributes to sustainable and equitable development and proper management of the environment;

BEARING IN MIND the progress achieved at the international level in recognizing the rights of indigenous peoples, especially Convention No. 169 of the International Labour Organization and the United Nations Declaration on the Rights of Indigenous Peoples;

BEARING IN MIND ALSO the progress made in nations of the Americas at the constitutional, legislative, and jurisprudential levels to safeguard, promote, and protect the rights of indigenous peoples, as well as the political will of states to continue their progress toward recognition of the rights of indigenous peoples in the Americas;

RECALLING the commitments undertaken by the member states to guarantee, promote, and protect the rights and institutions of indigenous peoples, including those undertaken at the Third and Fourth Summits of the Americas;

RECALLING ALSO the universality, inseparability, and interdependence of human rights recognized under international law;

CONVINCED that recognition of the rights of indigenous peoples in this Declaration will foster harmonious and cooperative relations among States and indigenous peoples, based on the principles of justice, democracy, respect for human rights, nondiscrimination, and good faith;

CONSIDERING the importance of eliminating all forms of discrimination that may affect indigenous peoples, and taking into account the responsibility of States to combat them; and

ENCOURAGING states to respect and comply with, as well as effectively implement, all their obligations as they apply to indigenous peoples under international instruments, in particular those related to human rights, in consultation and cooperation with the peoples concerned,

DECLARE:

SECTION ONE: Indigenous peoples. Scope of application

Article I.

1. The American Declaration on the Rights of Indigenous Peoples applies to the indigenous peoples of the Americas.

2. Self-identification as indigenous peoples will be a fundamental criterion for determining to whom this Declaration applies. States shall respect the right to such self-identification as indigenous, whether individually or collectively, in keeping with the practices and institutions of each indigenous people.

Article II.

States recognize and respect the multicultural and multilingual character of indigenous peoples, who are an integral part of their societies.

Article III.

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

Article IV.

Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the Organization of American States or the Charter of the United Nations or construed as authorizing or

encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent states.

SECTION TWO: Human rights and collective rights

Article V. Full effect and observance of human rights

Indigenous peoples and individuals have the right to the full enjoyment of all human rights and fundamental freedoms, as recognized in the Charter of the United Nations, the Charter of the Organization of American States, and international human rights law.

Article VI. Collective rights

Indigenous peoples have collective rights that are indispensable for their existence, well-being, and integral development as peoples. In that regard, States recognize and respect the right of indigenous peoples to their collective action; to their juridical, social, political, and economic systems or institutions; to their own cultures; to profess and practice their spiritual beliefs; to use their own tongues and languages; and to their lands, territories and resources. States shall promote, with the full and effective participation of indigenous peoples, the harmonious coexistence of the rights and systems of different population groups and cultures.

Article VII. Gender equality

1. Indigenous women have the right to the recognition, protection, and enjoyment of all human rights and fundamental freedoms provided for in international law, free from discrimination of any kind.

2. States recognize that violence against indigenous peoples and individuals, particularly women, hinders or nullifies the enjoyment of all human rights and fundamental freedoms.

3. States shall adopt, in conjunction with indigenous peoples, the necessary measures to prevent and eradicate all forms of violence and discrimination, particularly against indigenous women and children.

Article VIII. Right to belong to indigenous peoples

Indigenous individuals and communities have the right to belong to one or more indigenous peoples, in accordance with the identity, traditions, customs, and systems of belonging of each people. No discrimination of any kind may arise from the exercise of such a right.

Article IX. Juridical personality

States shall recognize fully the juridical personality of indigenous peoples, respecting indigenous forms of organization and promoting the full exercise of the rights recognized in this Declaration.

Article X. Rejection of assimilation

1. Indigenous peoples have the right to maintain, express, and freely develop their cultural identity in all respects, free from any external attempt at assimilation.

2. States shall not carry out, adopt, support, or favor any policy of assimilation of indigenous peoples or of destruction of their cultures.

Article XI. Protection against genocide

Indigenous peoples have the right not to be the object of any form of genocide or attempts to exterminate them.

Article XII. Guarantees against racism, racial discrimination, xenophobia, and related intolerance

Indigenous peoples have the right not to be the object of racism, racial discrimination, xenophobia, or related intolerance. States shall adopt the preventive and corrective measures necessary for the full and effective protection of that right.

SECTION THREE: Cultural identity

Article XIII. Right to cultural identity and integrity

1. Indigenous peoples have the right to their own cultural identity and integrity and to their cultural heritage, whether tangible or intangible, including historic and ancestral heritage; and to the protection, preservation, maintenance, and development of that cultural heritage for their collective continuity and that of their members and so as to transmit that heritage to future generations.

2. States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious, and spiritual property taken without their free, prior, and informed consent or in violation of their laws, traditions, and customs.

3. Indigenous people have the right to recognition and respect for all their ways of life, cosmovisions, spirituality, uses, customs, norms, traditions, forms of social, economic, and political organization; forms of transmission of knowledge, institutions, practices, beliefs, values, dress, and languages, recognizing their inter-relationship as established in this Declaration.

Article XIV. Systems of knowledge, language, and communication

1. Indigenous peoples have the right to preserve, use, develop, revitalize, and transmit to future generations their own histories, languages, oral traditions, philosophies, systems of knowledge, writing, and literature, and to designate and retain their own names for their communities, individuals, and places.

2. States shall adopt adequate and effective measures to protect the exercise of this right with the full and effective participation of indigenous peoples.

3. Indigenous peoples have the right to promote and develop all their systems and media of communication, including their own radio and television programs, and to have equal access to all other means of communication and information. States shall take measures to promote the broadcast of radio and television programs in indigenous languages, particularly in areas with an indigenous presence. States shall support and facilitate the creation of indigenous radio and television stations, as well as other means of information and communication.

4. States, in conjunction with indigenous peoples, shall make efforts to ensure that those peoples can understand and be understood in their own languages in administrative, political, and judicial proceedings, if necessary through the provision of interpretation or by other effective means.

Article XV. Education

1. Indigenous peoples and individuals, particularly indigenous children, have the right to all levels and forms of education, without discrimination.

2. States and indigenous peoples, in keeping with the principle of equality of opportunity, shall promote the reduction of disparities in education between indigenous and non-indigenous peoples.

3. Indigenous peoples have 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.

4. States, in conjunction with indigenous peoples, shall take effective measures to enable indigenous individuals living outside their communities, particularly children, to have access to education in their own languages and cultures.

5. States shall promote harmonious intercultural relations, ensuring that the curricula of state educational systems reflect the pluricultural and multilingual nature of their societies and encourage respect for, and knowledge of, the different indigenous cultures. States, in conjunction with indigenous peoples, shall promote intercultural education that reflects the cosmovision, histories, languages, knowledge, values, cultures, practices, and ways of life of those peoples.

6. States, in conjunction with indigenous peoples, shall adopt necessary and effective measures to ensure the exercise and observance of those rights.

Article XVI. Indigenous spirituality

1. Indigenous peoples have the right freely to exercise their own spirituality and beliefs and, by virtue of that right, to practice, develop, transmit, and teach their traditions, customs, and ceremonies, and to carry them out in public and in private, whether individually or collectively.

2. No indigenous people or individual shall be subjected to pressures or impositions, or any other type of coercive measures that might impair or limit their right freely to exercise their indigenous spirituality and beliefs.

3. Indigenous peoples have the right to preserve, protect, and access their sacred sites, including their burial grounds, to use and control their sacred objects and relics, and to recover their human remains.

4. States, in conjunction with indigenous peoples, shall adopt effective measures, to promote respect for indigenous spirituality and beliefs, and to protect the integrity of the symbols, practices, ceremonies, expressions, and spiritual protocols of indigenous peoples, in accordance with international law.

Article XVII. Indigenous family

1. The family is the natural and fundamental group unit of society. Indigenous peoples have the right to preserve, maintain, and promote their own family systems. States shall recognize, respect, and protect the various indigenous forms of family, in particular, the extended family, as well as their forms of matrimonial union, filiation, descent, and family name. In all cases, gender and generational equity shall be recognized and respected.

2. In matters relating to custody, adoption, severance of family ties, and related matters, the best interests of the child shall be a primary consideration. In determining the best interests of the child, courts and other relevant institutions shall take into account the right of every indigenous child, in community with members of his or her people, to enjoy his or her own culture, to profess and practice his or her own religion, and to use his or her own language, and, in that regard, shall take into account the indigenous law of the people concerned and their points of view, rights and interests, including the positions of the individuals, the family, and the community.

Article XVIII. Health

1. Indigenous peoples have the collective and individual right to the enjoyment of the highest attainable standard of physical, mental, and spiritual health.

2. Indigenous peoples have the right to their own health systems and practices, as well as to the use and protection of their vital medicinal plants, animals and minerals, and other natural resources for medicinal use in their ancestral lands and territories.

3. States shall take measures to prevent and prohibit indigenous peoples and individuals from being subjects of research programs, biological or medical experimentation, or sterilization without their free, prior and informed consent. Likewise, indigenous peoples and individuals have the right, as appropriate, to access to their data, medical records, and documentation of research conducted by individuals and institutions, whether public or private.

4. Indigenous peoples have the right to use, without discrimination of any kind, all the health and medical care institutions and services accessible to the general population. States, in consultation and coordination with indigenous peoples, shall promote intercultural systems and practices in the medical and health services provided in indigenous communities, including training of indigenous technical and professional health care personnel.

5. States shall ensure the effective exercise of the rights contained in this article.

Article XIX. Right to protection of a healthy environment

1. Indigenous peoples have the right to live in harmony with nature and to a healthy, safe, and sustainable environment, essential conditions for the full enjoyment of the rights to life and to their spirituality, cosmovision, and collective well-being.

2. Indigenous peoples have the right to conserve, restore, and protect the environment and to manage their lands, territories and resources in a sustainable way.

3. Indigenous peoples have the right to be protected against the introduction, abandonment, dispersion, transit, indiscriminate use, or deposit of any harmful substance that could adversely affect indigenous communities, lands, territories and resources.

4. Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programs for indigenous peoples for such conservation and protection, without discrimination.

SECTION FOUR: Organizational and political rights

Article XX. Rights of association, assembly, and freedom of expression and thought

1. Indigenous peoples have the rights of association, assembly, organization and expression, and are entitled to exercise them without interference and in accordance, *inter alia*, with their cosmovision, values, uses, customs, ancestral traditions, beliefs, spirituality, and other cultural practices.

2. Indigenous peoples have the right to assemble on their sacred and ceremonial sites and areas. For that purpose they shall have free access to, and use of, such sites and areas.

3. Indigenous peoples, in particular those who are divided by international borders, have the right to travel and to maintain and develop contacts, relations, and direct cooperation, including activities for spiritual, cultural, political, economic, and social purposes, with their members and other peoples.

4. States, in consultation and cooperation with indigenous peoples, shall adopt effective measures to ensure the exercise and enforcement of these rights.

Article XXI. Right to autonomy or self-government

1. Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

2. Indigenous peoples have the right to maintain and develop their own decision-making institutions. They also have the right to participate in decision-making in matters which would affect their rights. They may do so directly or through their representatives, and in accordance with their

own norms, procedures, and traditions. They also have the right to equal opportunities in accessing and participating fully and effectively as peoples in all national institutions and forums, including deliberative bodies.

Article XXII. Indigenous law and jurisdiction

1. Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

2. Indigenous law and legal systems shall be recognized and respected by national, regional and international-legal systems.

3. Matters concerning indigenous individuals or their rights or interests in the jurisdiction of each State shall be conducted in such a way as to afford indigenous individuals the right to full representation with dignity and equality before the law. Consequently, they are entitled, without discrimination, to equal protection and benefit of the law, including the use of linguistic and cultural interpreters.

4. States shall take effective measures in conjunction with indigenous peoples to ensure the implementation of this article.

Article XXIII. Participation of indigenous peoples and contributions of indigenous legal and organizational systems

1. Indigenous peoples have the right to full and effective participation in decision-making, through representatives chosen by themselves in accordance with their own institutions, in matters which affect their rights, and which are related to the development and execution of laws, public policies, programs, plans, and actions related to indigenous matters.

2. States shall consult and cooperate in good faith with the indigenous peoples concerned, through their own representative institutions, in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.^{1/}

1. The State of Colombia breaks with consensus on Article XXIII, paragraph 2, of the American Declaration on the Rights of Indigenous Peoples, which deals with consultations for obtaining ...

Article XXIV. Treaties, agreements, and other constructive arrangements

1. Indigenous peoples have the right to the recognition, observance, and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors, in accordance with their true spirit and intent in good faith and to have States honor and respect same. States shall give due consideration to the understanding of the indigenous peoples as regards to treaties, agreements and other constructive arrangements.

2. When disputes in relation to such treaties, agreements and other constructive arrangements cannot be resolved between the parties, they shall be submitted to competent bodies, including regional and international bodies, by the states or indigenous peoples concerned.

3. Nothing in this Declaration may be interpreted as diminishing or eliminating the rights of indigenous peoples contained in treaties, agreements and other constructive arrangements.

SECTION FIVE: Social, economic, and property rights

Article XXV. Traditional forms of property and cultural survival. Right to land, territory, and resources

1. Indigenous peoples have the right to maintain and strengthen their distinctive spiritual, cultural, and material relationship with their lands, territories, and resources and to uphold their responsibilities to preserve them for themselves and for future generations.

2. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.

3. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.

4. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

5. Indigenous peoples have the right to legal recognition of the various and particular modalities and forms of property, possession and ownership of their lands, territories, and resources, in accordance with the legal system of each State and the relevant international instruments. States shall establish special regimes appropriate for such recognition and for their effective demarcation or titling.

Article XXVI. Indigenous peoples in voluntary isolation or initial contact

1. Indigenous peoples in voluntary isolation or initial contact have the right to remain in that condition and to live freely and in accordance with their cultures.

2. States shall, with the knowledge and participation of indigenous peoples and organizations, adopt appropriate policies and measures to recognize, respect, and protect the lands, territories, environment, and cultures of these peoples as well as their life, and individual and collective integrity.

Article XXVII. Labor rights

1. Indigenous peoples and individuals have the rights and guarantees recognized in national and international labor law. States shall take all special measures necessary to prevent, punish and remedy any discrimination against indigenous peoples and individuals.

2. States, in conjunction with indigenous peoples, shall adopt immediate and effective measures to eliminate exploitative labor practices with regard to indigenous peoples, in particular, indigenous children, women and elderly persons.

3. Where indigenous peoples are not effectively protected by the laws applicable to workers in general, States, in conjunction with indigenous peoples, shall adopt all necessary measures to:

- a. protect indigenous workers and employees in relation to hiring under fair and equal conditions in both formal and informal employment;
- b. establish, apply, or improve labor inspection and the enforcement of rules with particular attention to, *inter alia*, regions, companies, and labor activities in which indigenous workers or employees participate;
- c. establish, apply, or enforce laws so that both female and male indigenous workers:
 - i. enjoy equal opportunities and treatment in all terms, conditions, and benefits of employment, including training and capacity building, under national and international law;
 - ii. enjoy the right of association, the right to form trade unions and participate in trade union activities, and the right to collective bargaining with employers through representatives of their own choosing or through workers' organizations, including traditional authorities;
 - iii. are not subject to discrimination or harassment on the basis of, *inter alia*, race, sex, origin, or indigenous identity;
 - iv. are not subject to coercive hiring systems, including debt servitude or any other form of forced or compulsory labor, regardless of whether the labor arrangement arises from law, custom, or an individual or collective arrangement, in which case the labor arrangement shall be deemed absolutely null and void;

- v. are not forced to work in conditions that endanger their health and personal safety; and are protected from work that does not conform to occupational health and safety standards;
 - vi. receive full and effective legal protection, without discrimination, when they provide their services as seasonal, occasional, or migrant workers, as well as when they are hired by employers, such that they receive the benefits of national laws and practices, which shall be in accordance with international human rights laws and standards for this category of workers;
- d. ensure that indigenous workers and their employers are informed of the rights of indigenous workers under national law and international and indigenous standards, and of the remedies and actions available to them to protect those rights.
4. States shall take measures to promote employment of indigenous individuals.

Article XXVIII. Protection of cultural heritage and intellectual property

1. Indigenous peoples have the right to full recognition and respect for the ownership, dominion, possession, control, development, and protection of their tangible and intangible cultural heritage and intellectual property, including its collective nature, transmitted over millennia from generation to generation.

2. The collective intellectual property of indigenous peoples includes, *inter alia*, traditional knowledge and traditional cultural expressions, including traditional knowledge associated with genetic resources, ancestral designs and procedures, cultural, artistic, spiritual, technological, and scientific expressions, tangible and intangible cultural heritage, as well as knowledge and developments of their own related to biodiversity and the utility and qualities of seeds, medicinal plants, flora, and fauna.

3. States, with the full and effective participation of indigenous peoples, shall adopt measures necessary to ensure that national and international agreements and regimes provide recognition and adequate protection for the cultural heritage of indigenous peoples and intellectual property associated with that heritage. In adopting such measures, consultations shall be held to obtain the free, prior and informed consent of indigenous peoples.

Article XXIX. Right to development

1. Indigenous peoples have the right to maintain and determine their own priorities with respect to their political, economic, social, and cultural development in conformity with their own cosmovision. They also have the right to be guaranteed the enjoyment of their own means of subsistence and development, and to engage freely in all their economic activities.

2. This right includes the development of policies, plans, programs, and strategies in the exercise of their right to development and to implement them in accordance with their political and social organization, norms and procedures, own cosmovisions, and institutions.

3. Indigenous peoples have the right to be actively involved in developing and determining development programs that affect them and, to the extent possible, to administer such programs through their own institutions.

4. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water, or other resources.^{2/}

5. Indigenous peoples have the right to effective measures to mitigate adverse ecological, economic, social, cultural, or spiritual impacts of the implementation of development projects that affect their rights. Indigenous peoples who have been deprived of their means of subsistence and development have the right to restitution and, where this is not possible, to fair and equitable compensation. This includes the right to compensation for any harm caused to them by the implementation of plans, programs, or projects of the State, international financial institutions, or private business.

Article XXX. Right to peace, security, and protection

1. Indigenous peoples have the right to peace and security.

2. Indigenous peoples have the right to recognition and respect for their institutions for the maintenance of their organization and control of their communities and peoples.

3. Indigenous peoples have the right to protection and security in situations or periods of internal or international armed conflict, in accordance with international humanitarian law.

4. States, in compliance with international agreements to which they are party, in particular those of international humanitarian law and international human rights law, including the Geneva Convention relative to the Protection of Civilian Persons in Time of War and Protocol II thereof relating to the protection of victims of non-international armed conflicts, shall, in the event of armed conflicts, take adequate measures to protect the human rights, institutions, lands, territories, and resources of indigenous peoples and their communities. Likewise, States:

- a. Shall not recruit indigenous children and adolescents into the armed forces under any circumstances;
- b. Shall adopt effective reparation measures and provide adequate resources for said reparation, in conjunction with the indigenous peoples concerned, for the damages or harm caused by an armed conflict.
- c. Shall take special and effective measures in collaboration with indigenous peoples to guarantee that indigenous women and children live free from all

2. The State of Colombia breaks with consensus on Article XXIX, paragraph 4, of the American Declaration on the Rights of Indigenous Peoples, which deals with consultations for obtaining ...

forms of violence, especially sexual violence, and shall guarantee the right of access to justice, protection, and effective reparation for harm caused to the victims.

5. Military activities shall not take place in the lands or territories of indigenous peoples, unless justified by a relevant public interest or otherwise freely agreed to or requested by the indigenous peoples concerned.^{3/}

SECTION SIX: General provisions

Article XXXI

1. States shall ensure the full enjoyment of civil, political, economic, social, and cultural rights by indigenous peoples; their right to maintain their cultural and spiritual identity, religious traditions, cosmovision, and values; the protection of their sacred sites and places of worship, and all the human rights contained in this Declaration.

2. States shall promote, with the full and effective participation of indigenous peoples, the adoption of such legislative and other measures as may be necessary to give effect to the rights recognized in this Declaration.

Article XXXII

All the rights and freedoms recognized in the present Declaration are guaranteed equally to indigenous women and men.

Article XXXIII

Indigenous peoples and individuals have the right to effective and suitable remedies, including prompt judicial remedies, for the reparation of any violation of their collective and individual rights. States, with the full and effective participation of indigenous peoples, shall provide the necessary mechanisms for the exercise of this right.

Article XXXIV

In the event of conflicts or disputes with indigenous peoples, States shall provide, with the full and effective participation of those peoples, just, equitable and effective mechanisms and procedures for their prompt resolution. For that purpose, due consideration and recognition shall be accorded to the customs, traditions, norms and legal systems of the indigenous peoples concerned.

3. The State of Colombia breaks with consensus as regards Article XXX, paragraph 5, of the OAS Declaration on Indigenous Peoples since, according to the mandate contained in the

Article XXXV

Nothing in this Declaration may be interpreted as limiting, restricting, or denying human rights in any way, or as authorizing any action that is not in keeping with international human rights law.

Article XXXVI

In the exercise of the rights enunciated in the present Declaration, the human rights and fundamental freedoms of all shall be respected. The exercise of the rights set forth in this Declaration shall be subject only to such limitations as are determined by law and in accordance with international human rights obligations. Any such limitations shall be non-discriminatory and strictly as required for the purpose of securing due recognition and respect for the rights and freedoms of others and for meeting the just and most compelling needs of a democratic society.

The provisions set forth in this Declaration shall be interpreted in accordance with the principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance, and good faith.

Article XXXVII

Indigenous peoples have the right to have access to financial and technical assistance from States and through international cooperation, for the enjoyment of the rights contained in this Declaration.

Article XXXVIII

The Organization of American States, its organs, agencies, and entities, shall adopt all necessary measures to promote the full observance, protection, and application of the provisions contained in this Declaration, and shall endeavor to ensure their efficacy.

Article XXXIX

The nature and scope of the measures that shall be adopted to implement this Declaration shall be determined in accordance with the spirit and purpose of said Declaration.

Article XL

Nothing in this Declaration shall be construed as diminishing or extinguishing rights that indigenous peoples now have or may acquire in the future.

Article XLI

The rights recognized in this Declaration and the United Nations Declaration on the Rights of Indigenous Peoples constitute the minimum standards for the survival, dignity, and well-being of the indigenous peoples of the Americas.

FOOTNOTES

1. ... indigenous communities' free, prior and informed consent before adopting and enforcing legislative or administrative measures that could affect them.

This is because Colombian law defines such communities' right to prior consultation in accordance with Convention No. 169 of the International Labour Organization. Thus, the Colombian Constitutional Court has ruled that the consultation process must be pursued "with the aim of reaching an agreement or securing the consent of indigenous communities regarding the proposed legislative measures." It must be noted that this does not translate into the ethnic communities having the power of veto over measures affecting them directly whereby such measures cannot proceed without their consent; instead, it means that following a disagreement "formulas for consensus-building or agreement with the community" must be presented.

Moreover, the Committee of Experts of the ILO has established that prior consultation does not imply the right to veto State decisions, but is, rather, a suitable mechanism for indigenous and tribal peoples to enjoy the right of expression and of influencing the decision-making process.

Accordingly, on the understanding that this Declaration's approach to prior consent is different and could amount to a possible veto, in the absence of an agreement, which could bring processes of general interest to a halt, the contents of this article are unacceptable to Colombia.

2. ... indigenous communities' free, prior and informed consent before approving projects that could affect their lands or territories and other resources.

This is because, although the Colombian State has included in its legal order a wide range of rights intended to recognize, guarantee, and uphold the constitutional rights and principles of pluralism and ethnic and cultural diversity in the nation within the framework of the Constitution, the recognition of the collective rights of indigenous peoples is governed by legal and administrative provisions, in line with the objectives of the State and with principles such as the social and ecological function of property as well as State ownership of the subsoil and nonrenewable natural resources.

Accordingly, in those territories indigenous peoples exercise their own political, social, and judicial organization. By constitutional mandate, their authorities are recognized as public State authorities with special status and, as regards judicial matters, recognition is given to the special indigenous jurisdiction, a significant advance compared to other countries of the region.

In the international context, Colombia has led the way in enforcing the rules governing prior consultation set out in Convention No. 169 of the International Labour Organization (ILO), to which our State is a party.

On the understanding that this Declaration's approach to prior consent is different and could amount to the possibility of vetoing the exploitation of natural resources found in indigenous territories, in the absence of an agreement, which could halt processes of general interest, the contents of this article are unacceptable to Colombia.

In addition, it is important to note that the constitutions of many States, including Colombia's, stipulate that the subsoil and nonrenewable natural resources are the property of the State to preserve and ensure their public usefulness for the benefit of the entire nation. For that reason, the provisions contained in this article are contrary to the domestic legal order of Colombia, based on the national interest.

3. ... Constitution of Colombia, the security forces are obliged to be present in any part of the nation's territory to provide and ensure for all inhabitants protection and respect for their lives, honor, and

property, whether individual or collective. The protection of the rights and integrity of indigenous communities depends largely on the security of their territories.

Thus, in Colombia the security forces have been given instructions to observe the obligation of protecting indigenous peoples. Accordingly, the above provision of the American Declaration on the Rights of Indigenous Peoples would be in breach of the principle of need and effectiveness of the security forces, preventing them from fulfilling their institutional mission, which renders it unacceptable to Colombia.

NOTES OF INTERPRETATION OF THE DELEGATION OF COLOMBIA

INTERPRETATIVE NOTE No. 1

OF THE STATE OF COLOMBIA WITH RESPECT TO ARTICLE VIII OF THE AMERICAN DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

As regards Article VIII, on the right to belong to indigenous peoples, Colombia expressly declares that the right to belong to one or more indigenous peoples is to be governed by the autonomy of each indigenous people.

The foregoing is in accordance with Article 8, paragraph 2 of Convention No. 169 of the International Labour Organization (ILO): “These peoples shall have the right to retain their own customs and institutions, where these are not incompatible with fundamental rights defined by the national legal system and with internationally recognised human rights. Procedures shall be established, whenever necessary, to resolve conflicts which may arise in the application of this principle.”

It is important to specify that when a person shares different indigenous origins—in other words, when, for instance, his or her mother belongs to one ethnic group and his or her father belongs to another—his or her belonging to one or another of those indigenous peoples may only be defined according to the traditions involved. In other words, to determine an individual’s belonging to a given indigenous people, the cultural patterns that determine family ties, authority, and ethnic attachment must be examined on a case-by-case basis.

A case of contact between two matrilineal traditions is not the same as a contact between a matrilineal tradition and a patrilineal one. Similarly, the jurisdiction within which the individual lives, the obligations arising from the regime of rights contained in that jurisdiction, and the socio-geographical context in which he or she specifically carries out his or her everyday cultural and political activities must be established.

The paragraph to which this note refers is transcribed below:

ARTICLE VIII RIGHT TO BELONG TO INDIGENOUS PEOPLES

“Indigenous individuals and communities have the right to belong to one or more indigenous peoples, in accordance with the identity, traditions, customs, and systems of belonging of each people. No discrimination of any kind may arise from the exercise of such a right.”

INTERPRETATIVE NOTE No. 2
OF THE STATE OF COLOMBIA WITH RESPECT TO ARTICLE XIII, PARAGRAPH 2; ARTICLE
XVI, PARAGRAPH 3; ARTICLE XX, PARAGRAPH 2; AND ARTICLE XXXI, PARAGRAPH 1, OF
THE AMERICAN DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

As regards the idea of sacred sites and objects referred to in Article XIII, paragraph 2; Article XVI, paragraph 3; Article XX, paragraph 2; and Article XXXI, paragraph 1, of the American Declaration on the Rights of Indigenous Peoples, the Colombian State expressly declares that the determination and regulation of indigenous peoples' sacred sites and objects is to be governed by developments attained at the national level. This is because there is no internationally accepted definition and neither ILO Convention No. 169 nor the United Nations Declaration on the Rights of Indigenous Peoples makes reference to or defines those terms.

Colombia has been making progress with the regulation of the issue, which has involved and will continue to involve the participation of the indigenous peoples, and it will continue to advance toward that goal in accordance with Colombian law and, where appropriate, the applicable international instruments.

The paragraphs to which this note refers are transcribed below:

ARTICLE XIII
RIGHT TO CULTURAL IDENTITY AND INTEGRITY

2. "States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious, and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs."

ARTICLE XVI
INDIGENOUS SPIRITUALITY

3. "Indigenous peoples have the right to preserve, protect, and access their sacred sites, including their burial grounds, to use and control their sacred objects and relics, and to recover their human remains."

ARTICLE XX
RIGHTS OF ASSOCIATION, ASSEMBLY, AND FREEDOM OF EXPRESSION AND
THOUGHT

2. "Indigenous peoples have the right to assemble on their sacred and ceremonial sites and areas. For that purpose they shall have free access to, and use of, such sites and areas."

ARTICLE XXXI

1. "States shall ensure the full enjoyment of civil, political, economic, social, and cultural rights by indigenous peoples; their right to maintain their cultural and spiritual identity, religious traditions, cosmovision, and values; the protection of their sacred sites and places of worship, and all the human rights contained in this Declaration."

INTERPRETATIVE NOTE No. 3

OF THE STATE OF COLOMBIA WITH RESPECT TO ARTICLE XIII, PARAGRAPH 2, OF THE OAS DECLARATION ON INDIGENOUS PEOPLES:

The State of Colombia expressly declares that the right of indigenous peoples to promote and develop all their systems and media of communication is subject to the requirements and procedures established in the domestic regulations in force.

The paragraph to which this note refers is transcribed below:

ARTICLE XIV
SYSTEMS OF KNOWLEDGE, LANGUAGE, AND COMMUNICATION

3. “Indigenous peoples have the right to promote and develop all their systems and media of communication, including their own radio and television programs, and to have equal access to all other means of communication and information. States shall take measures to promote the broadcast of radio and television programs in indigenous languages, particularly in areas with an indigenous presence. States shall support and facilitate the creation of indigenous radio and television stations, as well as other means of information and communication.”