

OAS Drafts Inter-American Declaration on the Rights of Indigenous Peoples

Recently, the Organization of American States (OAS) distributed a rough draft of a Declaration on the Rights of Indigenous Peoples. On February 27-28, 1996, the IACHR (see below) of the OAS organized a reunion in Guatemala in which Indigenous leaders critiqued the declaration. The initial May deadline for receiving the input of Indigenous people has been indefinitely postponed, so there is time to unify Indigenous voices into one to modify the Declaration. For this, Indigenous peoples must come together in inter-regional meetings. SALLC encourages the OAS to go further, as the Draft Declaration falls short of meeting the aspirations of Indigenous peoples for their collective rights. Despite addressing key problems faced by Indian communities, the paternalistic dominance of national ideology pervades the document, leaving Indigenous peoples in a subaltern position of entities somehow "protected" by nation-states. In what follows, we present excerpts from the Draft Declaration.

The present draft has been approved by the Inter-American Commission on Human Rights (IACHR) of the OAS for consultation about its text with Governments, indigenous organizations, other interested institutions and experts. On the basis of their answers and comments, the IACHR will prepare its final proposal to be presented to the General Assembly of the OAS.

Section One. 'Indigenous Peoples'

Art. 1. Definition.

3. The use of the term "peoples" in this Instrument shall not be construed as having any implication with respect to any other rights that might be attached to that term in international law.

Section Two. 'Human Rights'

Art. II. Full observance of human rights

3. The States also recognize that the indigenous peoples are entitled to collective rights insofar as they are indispensable to the enjoyment of the individual human rights of their members. Accordingly they recognize the right of the indigenous peoples to collective action, to their cultures, to profess and practice their spiritual beliefs and to use their languages.

Art. V. No forced assimilation.

The States shall not take any action which forces indigenous peoples to assimilate and shall not endorse any theory, or engage in any practice, that imports discrimination, destruction of a culture or the possibility of the extermination of any ethnic group.

Section Three. Cultural Development

Art. XVI. Indigenous Law.

1. Indigenous law is an integral part of the States' legal system and of the framework in which their social and economic development takes place.

2. Indigenous peoples are entitled to maintain and reinforce their indigenous legal systems and also to apply them to matters within their communities, including systems pertain-

ing to ownership of real property and natural resources, resolution of conflicts within and between indigenous communities, crime prevention and law enforcement, and maintenance of internal peace and harmony.

Section Five. Social, Economic, and Property Rights

5. In the event that ownership of the minerals or resources of the subsoil pertains to the State or that the State has rights over other resources on the lands, the governments must establish or maintain procedures for the participation of the peoples concerned in determining whether the interests of these people would be adversely affected and to what extent, before undertaking or authorizing any program for tapping or exploiting existing resources on their lands. The peoples concerned shall participate in the benefits of such activities, and shall receive compensation in accordance with international law, for any damages which they may sustain as a result of such activities.

Art. XX. Intellectual property rights.

1. Indigenous peoples shall be entitled to recognition of the full ownership, control and protection of such intellectual property rights as they have in their cultural and artistic heritage, as well as special measures to ensure for them legal status and institutional capacity to develop, use, share, market and bequeath, that heritage on to future generations.

2. Where circumstances so warrant, indigenous peoples have the right to special measures to control, develop and protect, and full compensation for the use of their sciences and technologies, including their human and genetic resources in general, seeds, medicine, knowledge of plant and animal life, original designs and procedures.

Section Six. General Provisions

Art. XXIV.

Nothing in this instrument shall be construed as granting any rights to ignore boundaries between States.

September 19, 1995.