



UNITED NATIONS DECLARATION
ON THE
RIGHTS OF INDIGENOUS PEOPLES





INDIAN LAW RESOURCE CENTER
CENTRO DE RECURSOS JURÍDICOS PARA LOS PUEBLOS INDÍGENAS

JUSTICE FOR INDIGENOUS PEOPLES

The Indian Law Resource Center is a non-profit organization established and directed by American Indians. We provide legal assistance without charge to Indian and Alaska Native nations that are working to protect their lands, resources, human rights, environment, and cultural heritage. Our principal goal is the preservation and well-being of indigenous nations and tribes in North, Central, and South America. For more information, please visit us online at **www.indianlaw.org** or **www.facebook.com/indianlawresourcecenter**.

“The UN Declaration on the Rights of Indigenous Peoples represents a definite change in the direction of history. As incredible as it may seem, the Declaration is the first time in human history that indigenous peoples’ right to exist has been legally recognized.

INDIGENOUS PEOPLES
ARE NOW **ACCEPTED**

AS A PERMANENT PART
OF THE
WORLD COMMUNITY.”

— Robert T. Coulter

TABLE OF CONTENTS

A Powerful Affirmation of Our Rights, <i>Robert T. Coulter</i>	1–2
A Critical Moment in Indigenous Human Rights History, <i>Armstrong A. Wiggins</i>	3–4
United Nations Declaration on the Rights of Indigenous Peoples	6–24
Draft General Principles of Law Relating to Native Lands and Natural Resources	26–33

A POWERFUL AFFIRMATION OF OUR RIGHTS

The UN Declaration on the Rights of Indigenous Peoples is one of the most significant developments in international human rights law in decades. It recognizes that indigenous peoples throughout the world have a permanent right to exist as peoples, nations, cultures, and societies, and to exercise attendant rights of self-determination, property, and culture.

The UN Declaration was adopted by the UN General Assembly on September 13, 2007. Only four countries opposed the Declaration — the United States, Canada, Australia, and New Zealand. Since then, each of these countries has reversed its position and endorsed the Declaration. The United States was the last to do so, on December 16, 2010.

The endorsement by the United States marks the culmination of decades of work by indigenous peoples and other members of the international human rights community. In 1976, when the Haudenosaunee (Six Nations Confederacy) and I began drafting and proposing a declaration to the UN, we did so on the premise that domestic law was terribly inadequate to protect indigenous peoples' rights. We turned to the international arena primarily because of the need to overcome and improve national laws and practices and because of the desire to regain a place for indigenous peoples in the international community.

Our work to ensure justice for indigenous peoples in the U.S. begins in earnest with the United States' endorsement of the UN Declaration. To see the promise of the Declaration become a reality, we must continue to fight for laws, policies, and relationships that take into account the permanent presence of indigenous nations in the U.S., and throughout the world.

POWERFUL AF

Indigenous peoples can and should use the Declaration as a powerful affirmation of our rights. Only through continued use will its provisions become a reality. One example of how to put the Declaration into action is the “Draft General Principles of Law Relating to Native Lands and Natural Resources” included in this booklet. These seventeen principles are intended to reform the most discriminatory and unjust elements of federal Indian law. Specifically, the Principles propose a basic framework of law about Native lands that would be fair, workable, and in keeping with American concepts of justice and the rule of law, while incorporating the rights recognized in the Declaration. We hope the Principles provide a starting point for discussion and debate about how federal Indian law should be changed in order to be consistent with the U.S. Constitution and international standards like the UN Declaration.

Megwetch,

Robert “Tim” Coulter

Robert “Tim” Coulter (Potawatomi) is the founder and executive director of the Indian Law Resource Center in Helena, MT and Washington, D.C. He has practiced federal Indian law and human rights law for more than thirty-five years.

A CRITICAL MOMENT IN INDIGENOUS HUMAN RIGHTS HISTORY

In December, 2010, the United States at last gave its support to the UN Declaration on the Rights of Indigenous Peoples. This, on the heels of endorsements by New Zealand and Canada earlier in the year, means there is now worldwide acceptance of indigenous peoples and our governments as a permanent part of the world community and the countries where we live. We worked on the Declaration for more than 30 years, and we are eager to see the promise of the Declaration become a reality.

Many perceive the human rights era as a new phenomenon, a modern movement, of indigenous peoples petitioning the United Nations for justice that states failed to provide us. However, this type of international advocacy is recorded as early as 1923, when Deskaheh (Levi General), of the Cayuga Nation of the Haudenosaunee Confederacy, traveled to the League of Nations in Geneva to request international action against Canada, which was violating the inherent right of self-government of the Haudenosaunee. And it was in 1976 that indigenous leaders from throughout the Americas and the world traveled to Geneva and began to demand that the international community hold countries accountable for taking our lands, resources, children, and languages, and for violating rights of self-government and self-determination. It was during this period that the UN Declaration was born. I, as a Miskito Indian leader, was among the many indigenous leaders who met in Geneva in 1976; my people were facing serious human rights violations and Nicaragua was hiding this from the international community.

CRITICAL MOM

Our extensive collaboration with indigenous leaders, advocates, and others to win acceptance of the Declaration leads us to believe the time is right to tackle some of the big legal and political issues that have hindered indigenous nations for generations. With worldwide acceptance of the rights in the Declaration, indigenous peoples have been provided a tremendous opportunity to push for recognition of our rights and demand that colonial governments respect our existence.

Let me close by thanking the many indigenous leaders and our colleagues in the Americas and throughout the world for all of your work and sacrifices to achieve acceptance of the Declaration. Your efforts on the Declaration have advanced indigenous rights in a historic way, and will enable future generations to survive and thrive well into the future. This is a critical moment in human rights history for the world's indigenous peoples. The next step is to implement the Declaration everywhere.

Yamni sut ra,
Armstrong A. Wiggins

Armstrong A. Wiggins (Miskito) is the Director of the Washington, D.C. Office of the Indian Law Resource Center. He was a political prisoner in Nicaragua during the Somoza and Sandinista regimes, and was later exiled because of his leadership in promoting human rights in Nicaragua. Armstrong has more than thirty-five years experience working in the field of human rights.

“The aspirations the Declaration affirms—including the respect for the institutions and rich cultures of Native peoples—are one we must always seek to fulfill. But I want to be clear:

WHAT MATTERS FAR
MORE THAN WORDS

—what matters far more than
any resolution or declaration—

ARE **ACTIONS** TO
MATCH THOSE WORDS.”

—U.S. President Barack Obama

UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

Adopted by General Assembly Resolution 61/295 on 13 September 2007

THE GENERAL ASSEMBLY,

GUIDED by the purposes and principles of the Charter of the United Nations, and good faith in the fulfilment of the obligations assumed by States in accordance with the Charter,

AFFIRMING that indigenous peoples are equal to all other peoples, while recognizing the right of all peoples to be different, to consider themselves different, and to be respected as such,

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

AFFIRMING further that all doctrines, policies and practices based on or advocating superiority of peoples or individuals on the basis of national origin or racial, religious, ethnic or cultural differences are racist, scientifically false, legally invalid, morally condemnable and socially unjust,

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

CONCERNED that indigenous peoples have suffered from historic injustices as a result of, inter alia, their colonization and 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 the urgent need to respect and promote the rights of indigenous peoples affirmed in treaties, agreements and other constructive arrangements with States,

WELCOMING the fact that indigenous peoples are organizing themselves for political, economic, social and cultural enhancement and in order to bring to an end all forms of discrimination and oppression wherever they occur,

CONVINCED that control by indigenous peoples over developments affecting them and their lands, territories and resources will enable them to maintain and strengthen their institutions, cultures and traditions, and to promote their development in accordance with their aspirations and needs,

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

EMPHASIZING the contribution of the demilitarization of the lands and territories of indigenous peoples to peace, economic and social progress and development, understanding and friendly relations among nations and peoples of the world,

AFFIRMATION

RECOGNIZING in particular the right of indigenous families and communities to retain shared responsibility for the upbringing, training, education and well-being of their children, consistent with the rights of the child,

CONSIDERING that the rights affirmed in treaties, agreements and other constructive arrangements between States and indigenous peoples are, in some situations, matters of international concern, interest, responsibility and character,

CONSIDERING also that treaties, agreements and other constructive arrangements, and the relationship they represent, are the basis for a strengthened partnership between indigenous peoples and States,

ACKNOWLEDGING that the Charter of the United Nations, the International Covenant on Economic, Social and Cultural Rights¹ and the International Covenant on Civil and Political Rights,² as well as the Vienna Declaration and Programme of Action,³ affirm the fundamental importance of the right to self-determination of all peoples, by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development,

BEARING in mind that nothing in this Declaration may be used to deny any peoples their right to self-determination, exercised in conformity with international law,

CONVINCED that the recognition of the rights of indigenous peoples in this Declaration will enhance harmonious and cooperative relations between the State and indigenous peoples, based on principles of justice, democracy, respect for human rights, non-discrimination and good faith,

ENCOURAGING States to comply with and 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,

EMPHASIZING that the United Nations has an important and continuing role to play in promoting and protecting the rights of indigenous peoples,

BELIEVING that this Declaration is a further important step forward for the recognition, promotion and protection of the rights and freedoms of indigenous peoples and in the development of relevant activities of the United Nations system in this field,

RECOGNIZING and reaffirming that indigenous individuals are entitled without discrimination to all human rights recognized in international law, and that indigenous peoples possess collective rights which are indispensable for their existence, well-being and integral development as peoples,

RECOGNIZING that the situation of indigenous peoples varies from region to region and from country to country and that the significance of national and regional particularities and various historical and cultural backgrounds should be taken into consideration,

SOLEMNLY PROCLAIMS the following United Nations Declaration on the Rights of Indigenous Peoples as a standard of achievement to be pursued in a spirit of partnership and mutual respect:

RECOGNIZING

ARTICLE 1

Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights⁴ and international human rights law.

ARTICLE 2

Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.

ARTICLE 3

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 4

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.

ARTICLE 5

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

ARTICLE 6

Every indigenous individual has the right to a nationality.

ARTICLE 7

1. Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person.
2. Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.

ARTICLE 8

1. Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.
2. States shall provide effective mechanisms for prevention of, and redress for:
 - (a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;
 - (b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;
 - (c) Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights;
 - (d) Any form of forced assimilation or integration;
 - (e) Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them.

EMPOWERME

ARTICLE 9

Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No discrimination of any kind may arise from the exercise of such a right.

ARTICLE 10

Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

ARTICLE 11

1. Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.
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 12

1. Indigenous peoples have the right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.
2. States shall seek to enable the access and/or repatriation of ceremonial objects and human remains in their possession through fair, transparent and effective mechanisms developed in conjunction with indigenous peoples concerned.

ARTICLE 13

1. Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons.
2. States shall take effective measures to ensure that this right is protected and also 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 appropriate means.

PROTECT

ARTICLE 14

1. 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.
2. Indigenous individuals, particularly children, have the right to all levels and forms of education of the State without discrimination.
3. States shall, in conjunction with indigenous peoples, take effective measures, in order for indigenous individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language.

ARTICLE 15

1. Indigenous peoples have the right to the dignity and diversity of their cultures, traditions, histories and aspirations which shall be appropriately reflected in education and public information.
2. States shall take effective measures, in consultation and cooperation with the indigenous peoples concerned, to combat prejudice and eliminate discrimination and to promote tolerance, understanding and good relations among indigenous peoples and all other segments of society.

ARTICLE 16

1. Indigenous peoples have the right to establish their own media in their own languages and to have access to all forms of non-indigenous media without discrimination.
2. States shall take effective measures to ensure that State-owned media duly reflect indigenous cultural diversity. States, without prejudice to ensuring full freedom of expression, should encourage privately owned media to adequately reflect indigenous cultural diversity.

ARTICLE 17

1. Indigenous individuals and peoples have the right to enjoy fully all rights established under applicable international and domestic labour law.
2. States shall in consultation and cooperation with indigenous peoples take specific measures to protect indigenous children from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development, taking into account their special vulnerability and the importance of education for their empowerment.
3. Indigenous individuals have the right not to be subjected to any discriminatory conditions of labour and, inter alia, employment or salary.

ARTICLE 18

Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

ARTICLE 19

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.

CULTURES

ARTICLE 20

1. Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.
2. Indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress.

ARTICLE 21

1. Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security.
2. States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities.

ARTICLE 22

1. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities in the implementation of this Declaration.
2. States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.

ARTICLE 23

Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.

ARTICLE 24

1. Indigenous peoples have the right to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, animals and minerals. Indigenous individuals also have the right to access, without any discrimination, to all social and health services.
2. Indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health. States shall take the necessary steps with a view to achieving progressively the full realization of this right.

ARTICLE 25

Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.

ASPIRATIONS

ARTICLE 26

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.
2. 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.
3. 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.

ARTICLE 27

States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.

ARTICLE 28

1. Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.
2. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.

ARTICLE 29

1. 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 programmes for indigenous peoples for such conservation and protection, without discrimination.
2. States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.
3. States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented.

PROMOTE

ARTICLE 30

1. 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 with or requested by the indigenous peoples concerned.
2. States shall undertake effective consultations with the indigenous peoples concerned, through appropriate procedures and in particular through their representative institutions, prior to using their lands or territories for military activities.

ARTICLE 31

1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.
2. In conjunction with indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.

ARTICLE 32

1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.
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 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.
3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

ARTICLE 33

1. Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of indigenous individuals to obtain citizenship of the States in which they live.
2. Indigenous peoples have the right to determine the structures and to select the membership of their institutions in accordance with their own procedures.

ARTICLE 34

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.

TERRITORIES

ARTICLE 35

Indigenous peoples have the right to determine the responsibilities of individuals to their communities.

ARTICLE 36

1. Indigenous peoples, in particular those divided by international borders, have the right to maintain and develop contacts, relations and cooperation, including activities for spiritual, cultural, political, economic and social purposes, with their own members as well as other peoples across borders.
2. States, in consultation and cooperation with indigenous peoples, shall take effective measures to facilitate the exercise and ensure the implementation of this right.

ARTICLE 37

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 and to have States honour and respect such treaties, agreements and other constructive arrangements.
2. Nothing in this Declaration may be interpreted as diminishing or eliminating the rights of indigenous peoples contained in treaties, agreements and other constructive arrangements.

ARTICLE 38

States, in consultation and cooperation with indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration.

ARTICLE 39

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 40

Indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.

ARTICLE 41

The organs and specialized agencies of the United Nations system and other intergovernmental organizations shall contribute to the full realization of the provisions of this Declaration through the mobilization, inter alia, of financial cooperation and technical assistance. Ways and means of ensuring participation of indigenous peoples on issues affecting them shall be established.

ARTICLE 42

The United Nations, its bodies, including the Permanent Forum on Indigenous Issues, and specialized agencies, including at the country level, and States shall promote respect for and full application of the provisions of this Declaration and follow up the effectiveness of this Declaration.

ARTICLE 43

The rights recognized herein constitute the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world.

ARTICLE 44

All the rights and freedoms recognized herein are equally guaranteed to male and female indigenous individuals.

ACKNOWLEDG

ARTICLE 45

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

ARTICLE 46

1. 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 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.
2. In the exercise of the rights enunciated in the present Declaration, 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 necessary solely for the purpose of securing due recognition and respect for the rights and freedoms of others and for meeting the just and most compelling requirements of a democratic society.
3. 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.

¹ See Resolution 2200 A (XXI), annex.

² *Id.*

³ A/CONF.157/24 (Part I), chap. III.

⁴ Resolution 217 A (III).

“The current legal framework, more than any other factor, is responsible for the longstanding poverty, political marginalization, and social ills that are so common in Indian Country.

**CHANGING,
CLARIFYING,
AND IMPROVING**

the laws affecting Native lands and resources is necessary if Native nations are to

GAIN EFFECTIVE CONTROL OF
THEIR **HOMELANDS**

AND IMPROVE THEIR
ECONOMIC AND SOCIAL
WELL-BEING.”

—Draft General Principles of Law: Introduction

DRAFT GENERAL PRINCIPLES OF LAW RELATING TO NATIVE LANDS AND NATURAL RESOURCES



INDIAN LAW RESOURCE CENTER
CENTRO DE RECURSOS JURÍDICOS PARA LOS PUEBLOS INDÍGENAS

JUSTICE FOR INDIGENOUS PEOPLES



Indian Land Tenure
FOUNDATION®

Present federal Indian law in the United States is inconsistent, unworkable, unjust, and often in violation of the Constitution and international human rights standards, specifically the UN Declaration on the Rights of Indigenous Peoples. The following Principles provide a starting point for discussion and debate about reforming federal Indian law governing Native lands, in seeking to create a legal framework that ensures justice for Native nations in the United States.

**A plain language version of each Principle appears in italics.*

PRINCIPLE 1

The legal rights of Indian or Alaska Native nations to the lands and resources they own by reason of aboriginal ownership, use and occupancy are the full rights of ownership, management, control, and disposition recognized in law without any diminishment or discrimination based on the aboriginal origin of these rights.

*Native nations have complete ownership of their aboriginal lands
— not some limited or partial right.*

PRINCIPLE 2

The doctrine of discovery gave the “discovering” nation particular rights under international law as against other European or colonizing nations, namely the exclusive right to acquire land and resources from the Native or indigenous nations. The “doctrine of discovery” gave the “discovering” nation no legal right as against the Native nations or peoples.

“Discovery” did not give the discovering country any ownership of Native lands. It only gave the discovering country the exclusive right to buy the land from the Native owners.

PRINCIPLE 3

Legal doctrines such as terra nullius, the doctrine of discovery, and other such doctrines are inconsistent with the United States Constitution to the extent that they are mistakenly applied to diminish or impair the rights that Indian and Alaska Native nations hold with respect to their lands and resources.

Legal rules that deny, take away, or reduce Native ownership of their lands and resources are invalid, because they violate the United States Constitution.

RESPECT

PRINCIPLE 4

The ownership of land and natural resources, including rights of use and occupancy, of Indian and Alaska Native nations and individuals, including interests in lands and resources held by aboriginal title, is entitled to the same constitutional protections as the ownership and other interests of others in their respective lands and resources, and, in addition, Indian and Alaska Native nations and individuals may have other rights and legal protections arising from treaties, statutes, and other sources of law.

Native lands of all kinds are protected against taking and other harm by the government — just the same as all property is protected. And, in addition, some Native land is protected by other legal rules that have been created by specific treaties, acts of Congress, or common law. In other words, Native lands and resources have at least as much legal protection against taking or other harm as other lands, and sometimes will have additional legal protections as well.

PRINCIPLE 5

Congress, by reason of the Fifth Amendment to the Constitution, may not take the property of Indian or Alaska Native nations and individuals, including aboriginal property, except for a public purpose, with due process of law, and fair market compensation with interest.

Congress cannot take any Native lands or resources, including aboriginal title lands, unless it is done with fair compensation, for a public purpose, and in accordance with law.

PRINCIPLE 6

The United States has trust title to land owned or beneficially owned by a Native nation or individual only if the United States has acquired that title through a valid legal process, such as a treaty, agreement, or statute, and only if that trust title had or has the consent of all the Native nations or individuals concerned.

The United States holds trust title to Native land and resources only where the United States has gotten that trust title through some genuine legal process and only where the Native owner consents to the United States holding trust title. In other words, trust lands exist only where the United States has become trustee in a lawful way and only where the Native nation agrees to this.

PRINCIPLE 7

The federal government has no power as a putative or supposed trustee to control or dispose of lands owned by an Indian or Alaska Native nation or individual unless the United States acts with the express, free, prior, and informed consent of the Indian or Alaska Native nation or individual concerned.

Unless the United States has genuine trust title, the federal government has no authority as “trustee” to sell, lease, or do anything with Native lands without the consent and authorization of the Native owner.

IMPLEMENTATION

PRINCIPLE 8

Where the United States holds property in trust for an Indian or Alaska Native nation or individual, or where the United States has, by reason of events or circumstances of whatever nature, assumed control or possession of lands or resources belonging to or beneficially owned by an Indian or Alaska Native nation, or individual, the United States has all the responsibilities of a trustee as prescribed by law generally applicable to trustees or constructive trustees: including but not limited to the obligation to conserve the trust assets, to manage the assets for the benefit of the beneficiary, the obligation to account to the beneficiary, the obligation to avoid every conflict of interest, and the obligation to end the trusteeship and return the trust asset to the beneficiary when so required by the beneficiary.

Where the United States holds land or other property in trust for a Native nation, no matter how that came about, the United States has all the responsibilities and duties of a trustee that are required by law generally, without exceptions or limitations that reduce the government's responsibilities or duties.

PRINCIPLE 9

A treaty with an Indian nation is a treaty within the meaning of the United States Constitution, the violation of which gives rise to liability and the right to redress.

The United States cannot freely violate treaties without providing full redress for the Indian parties, including compensation, restitution, or other appropriate, just remedy.

PRINCIPLE 10

Congress has only such powers in the field of Indian affairs — particularly with respect to Indian and Alaska Native lands and resources — as are conferred by the United States Constitution. The Constitution does not accord Congress “plenary power” — in the sense of additional or unlimited powers — over Indian and Alaska Native nations and their property.

The United States Congress does not have “plenary” or unlimited power to enact laws dealing with Native nations and their property. Instead, Congress has only those powers that are stated in the Constitution, and those powers must be used within the limits set out in the Constitution — especially those in the Bill of Rights.

PRINCIPLE 11

Indian and Alaska Native nations have the inherent right to form, maintain, and change their own governments and to create, maintain, and alter their own laws and legal institutions for the purpose, among others, of governing their own affairs and particularly for controlling, using, and managing their own lands and resources.

Native nations have the inherent or sovereign power to create their own governments and laws for all purposes, including for the purpose of using and controlling their lands and resources.

NATIONS

PRINCIPLE 12

Native governments have the right to freely use, exploit, manage, and regulate lands and resources owned or beneficially owned by the nation, and they have governmental authority over allotted lands owned by Indian or Native persons within the reservation or subject to the jurisdiction of the Native government.

Native nations have the right to use, control, and benefit from their lands and resources without interference by the federal government that is not authorized by the Constitution or by the Native government itself.

PRINCIPLE 13

Congress has no power under the Constitution or otherwise, with respect to any Indian or Alaska Native nation, to terminate its legal existence or to terminate its legal rights and status as a nation without the free, prior, and informed consent of that nation.

Congress cannot terminate any Native nation.

PRINCIPLE 14

Land and other property owned by an Indian or Alaska Native nation in its sovereign capacity as a government is not taxable by any state or local government, whether or not that land is held in trust, in fee, or in any other form of tenure.

Native lands and resources cannot be taxed by any government, no matter whether the land is held in trust or otherwise.

PRINCIPLE 15

The United States is bound by international law to respect the human rights and other rights of Indians and Alaska Natives both as individuals and peoples.

The United States must respect and abide by international law, especially international human rights law concerning indigenous peoples.

PRINCIPLE 16

The United States must provide prompt and effective judicial remedies for the violation of the rights of Indian and Alaska Native nations and individuals in relation to their lands and resources. Such remedies must be non-discriminatory and otherwise consistent with the United States Constitution, applicable treaties, and generally accepted principles of fairness and due process of law.

The United States must make it possible for Native nations and individuals to go to court and get relief, or some kind of corrective action or compensation, whenever they suffer harm concerning their lands and resources or any other violation of their rights. These court remedies must be fair and effective.

PRINCIPLE 17

The United States has a legal obligation to prevent abuses, fraud, and other wrongs against Indian and Alaska Native nations and individuals in relation to their lands and resources through the enactment and enforcement of reasonable legislation. This obligation of the federal government must be discharged in conformity with applicable treaties, the United States Constitution, international human rights principles, and these General Principles.

The United States has the duty to protect Native lands and resources by preventing abuses, fraud, and other wrongs against Indian and Alaska Native nations and individuals.



For further information about the rights affirmed in the UN Declaration and how you can support its implementation, contact the Indian Law Resource Center.

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