The OAS Proposed Draft American Declaration on the Rights of Indigenous Peoples

Background: Indigenous Rights within the OAS

The Organization of American States was formed in 1948, at about the same time as the United Nations, and it consists of 35 member countries of the Americas that have come together to defend common interests and face regional challenges since 1948. In recent decades, indigenous peoples have urged the member countries (or “states”) of the OAS to the last 30 years, recognizing the human rights of indigenous peoples as distinct and collective entities—has been one of the most pressing issues facing American States, and one that has shown a great deal of change. Within the OAS, the development of an American Declaration on the Rights of Indigenous Peoples has been at the core of this struggle, and remains one of the principal forums for discussing indigenous rights in the Americas.

In the 1980s, indigenous communities in Latin America that were threatened by war and genocide brought their human rights claims to the Inter-American Commission on Human Rights, a special branch of the OAS.

In 1989, the OAS leadership General Assembly adopted Resolution 1022, which requested that the Inter-American Commission of Human Rights prepare a juridical directed the Inter-American Commission to draft a document instrument related to the human rights of indigenous peoples. Thus, OAS Member States began the long-awaited process of developing an American Declaration on the Rights of Indigenous Peoples. If all the member states of the OAS agree, which would recognize the rights of the indigenous peoples of the Americas. Once States have reached consensus on this declaration, it would be adopted by the General Assembly of the OAS, and incorporated into the body of developing international standards within the American Inter-American legal system. The adoption of such a declaration would not only represent an important recognition of indigenous rights in the Americas, but could also serve as the foundation for establishing a more binding legal instrument, such as a convention or treaty on Indigenous rights.

Negotiation of the Draft Proposed American Declaration

Similar to other international declarations, the current draft American Declaration on the Rights of Indigenous Peoples consists of a preambular section containing statements of fact, and an operative section containing 37 articles detailing deals with economic, cultural, and political rights. The declaration affirms the right to self determination, education, health, self government, cultural heritage, and the right to lands, territories and natural resources, among others.

In 1999, the OAS established a Working Group to review and make changes to the Declaration. The Working Group is open to all member states of the OAS, although some countries participate more than others. The Working Group, over the years, the draft American Declaration has been developed by different organisms of the OAS, first by the Inter-American Commission of Human Rights, and currently, by a working group of interested States Member delegations. This Working Group was established in 1999 as a subsidiary of the
Permanent Council, and meets several times a year—in conjunction with indigenous representatives—to discuss the declaration and to try to reach agreement about its text.

From the very beginning, indigenous representatives insisted that these Working Group meetings be open to them, as well. Many OAS member states strongly opposed this kind of openness. By demanding that they have a say in discussions about their rights, however, indigenous peoples became the first non-state group to participate in high-level OAS meetings like those of the Working Group. Over just a few years, indigenous peoples established their right to take part in these activities.

Currently, indigenous and NGO representatives continue to attend the negotiation sessions of the Working Group to debate the articles and ensure that the Declaration accurately reflects the interests of indigenous peoples. Nevertheless, general awareness of the Declaration and its implications remain relatively low, and increasing indigenous participation remains as important as ever. There is also a need to increase the involvement of indigenous governments as they are representative entities with unique status and influence.

The Working Group negotiation sessions are usually convened at OAS headquarters in Washington D.C., but are sometimes hosted by other OAS countries. Until now, there have been nearly a dozen meetings on the OAS Declaration since 1999, including nine Negotiation Sessions in the Quest for Points of Consensus, the most recent of which was held January 22nd-26th 2007 in Washington DC. Each negotiation session consists of a week of discussions regarding the form and content of the articles of the declaration, with the objective of reaching consensus between State delegations and indigenous representatives. These sessions are not only important for resolving differences regarding the text of the declaration, but also in advancing international thought and collaboration surrounding these fundamental rights.

The next negotiation session is the 10th Negotiation Session and is scheduled for April 23rd – 27th in La Paz, Bolivia. The session is scheduled to focus on the third and fourth sections of the proposed Declaration which deal with Cultural Identity, and Organizational and Political Rights, respectively. The last day of the session, the Working Group is scheduled to take up Section Five on Social, Economic, and Property Rights.

The Importance of Indigenous Participation

From the very beginning, indigenous representatives have played a crucial role in opening up the declaration process to civil society participation, demanding transparency, and ensuring that the American Declaration adequately and effectively addresses their concerns. When the OAS General Assembly issued its first Resolution on the Declaration in 1989 many States were opposed to having indigenous participation in the process, and it was only after years of political log-jam that indigenous representatives were able to secure themselves a place at the negotiation table. Currently, indigenous and NGO representatives continue to attend the negotiation sessions of the Working Group to debate the articles and ensure that the Declaration accurately reflects the interests of indigenous peoples. Nevertheless, general awareness of the Declaration and its implications remain relatively low, and increasing indigenous participation remains as important as ever. There is also a need to increase the involvement of indigenous governments as they are representative entities with unique status and influence.

Getting Involved

Continued participation of indigenous representatives in the draft—proposed American Declaration process is fundamental to developing adequate international standards regarding
the rights of indigenous peoples. Indigenous representatives are welcome to participate in all Working Group meetings on the draft proposed American Declaration on the Rights of Indigenous Peoples without having to previously register with OAS, and can find information regarding the upcoming sessions on the OAS website: http://www.oas.org/consejo/cajp/working%20groups.asp#indigenous.

Indigenous representatives can also participate in the meetings convened by the Indigenous Caucus, which is an ad-hoc gathering of indigenous participants that usually convene two or three days prior to the official Working Group meetings in order to consult with each other and, where possible, develop common strategies and proposals for the negotiation sessions. These meetings are loosely organized and completely open to the public.

Also, a special fund administered by the OAS is since June 5th, 2001, the Specific Fund of voluntary contributions has been available to facilitate indigenous participation in the Working Group meetings. Indigenous representatives may seek economic support from this “Specific Fund” for travel and per diem expenses related to their participation in the meetings. The criteria for receiving this support are available at http://www.oas.org/consejo/resolutions/res873.asp. Indigenous representatives who wish to apply should contact Jorge Sanin at the OAS Summit of the Americas Office via the information shown below:

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