

INDIAN LAW
RESOURCE CENTER
JUSTICE FOR INDIGENOUS PEOPLES

Benefit Sharing:

A Human Rights Approach to
Indigenous Knowledge

Article 31 of the U.N. Declaration on the Rights of Indigenous Peoples

- What does it say?
- What does it mean?
- What can you do?



Article 31: What it Says

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 31: What it Means

- The Historical Context
- The Core Rights Sought by Indigenous Peoples
- The Nature of the Rights of Indigenous Peoples
- The Force of the Declaration
- The Value of the Declaration
- Implementation of the Declaration
- The Present Context



The Historical Context

- Indigenous Peoples as a “vanishing race”
- Appeal to the U.N. by the Six Nations
- Inadequacy of existing international human rights framework to address collective rights



The Core Rights Sought

- The right to preserve, practice and revitalize their cultures and customs
- The right to exist as peoples and as groups (i.e., collective rights)
- The right of self-determination
- The right to recognition of their ownership of land and natural resources
- The right to the protection of the environment



The Nature of These Rights

- Interrelated
- Interdependent
- Indivisible



Examples of Interrelated Rights

Articles in the Declaration

- Article 2: The right to non-discrimination
- Article 3: The right of self-determination
- Article 5: The right to distinct institutions
- Article 7: The right to exist PERMANENTLY
- Article 8: The right to cultural preservation
- Article 26: A right to the lands and resources they have traditionally owned, occupied or otherwise used or acquired

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.”



Actual Force of the Declaration

- Expresses consensus by the U.N. Member States that these rights exist in international law
- Possesses moral and political force
- Marks a first step in law reform
- Is non-binding as a stand-alone document
- Contains aspects that are binding through customary international law, treaties, and principles of law



The Value of the Declaration

- A baseline for the rights of indigenous peoples
- A guide for procedures and processes for engaging with indigenous peoples
- A shield to defend against proposals and actions that violate the rights of indigenous peoples
- A guide for public policy, constitutional law, and statutory law reform and development
- A device for regional courts to use in interpreting treaties



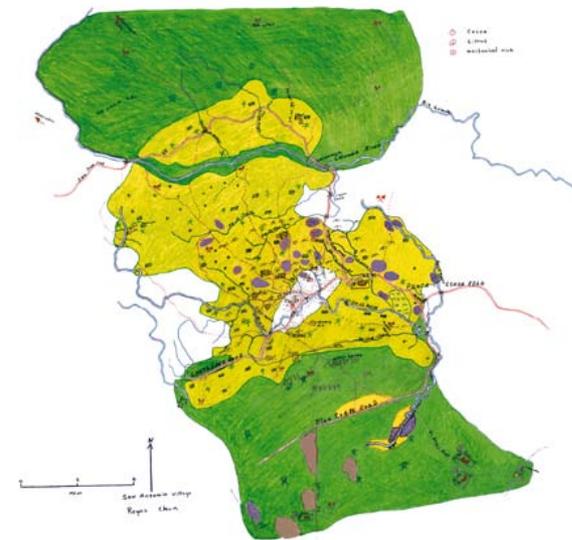
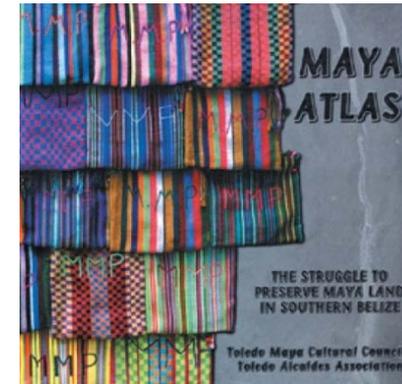
Implementation

- United States: Embraced by President Obama
“What matters far more than words—what matters far more than any resolution or declaration—are actions to match those words.”
- Organization of American States: Developed a Draft American Declaration on the Rights of Indigenous Peoples
- Bolivia: Incorporated into their constitution
- Belize: Relied on by the Belize Supreme Court to protect the land rights of indigenous peoples



Implementation: Maya of Belize

- 1996—Center staff and UC/Berkely geographers assisted Maya Indians of Belize to complete the first indigenous-produced atlas in the world to document Maya rights to their traditional lands
- 2004—IACHR issued report that found that Belize violated the Maya Indians' rights to property, equality, and a fair trial (based on the Draft Declaration)
- 2007—Maya communities of Santa Cruz and Conejo filed and litigated a lawsuit that resulted in a judgment of the Supreme Court of Belize affirming their customary land rights based on the IACHR's 2004 Report
 - Ordered demarcation of all traditional lands, not just reserve or village lands
 - Recognized collective property rights of communities
 - Found that development of Maya land without informed consent of the community is a violation of Maya property rights
- 2010—Supreme Court of Belize made 2007 judgment applicable to all 38 Maya villages in Southern Belize



Not a Vanishing Race

- There are between 43 to 28 million indigenous peoples in Latin America (roughly 10 percent of the population)
- Indigenous peoples are a significant share of the population in Ecuador (25%), Mexico (30%), and Peru (45%)
- Indigenous peoples are the majority in Bolivia (80-90%) and Guatemala (60%)



Present Context: Rapa Nui

- Harm:
 - Misappropriation of land
 - Destruction of *moai*
 - Destruction of *ahus*
 - Denial of access to *orongo*
 - Mining in and around sacred sites
 - Clearing of sacred sites for parking lots, bathrooms, hotels, etc.
 - Armed and forcible eviction of Rapa Nui people (2010)
- Indigenous Rights Violations:
 - Human rights of the Rapa Nui Nation
 - Equality (anti-discrimination)
 - Cultural rights
 - Religious rights
 - Land rights
 - Right of self-determination
 - Right to protection of the environment
- Action:
 - Precautionary Measures Filing before IACHR to demilitarize situation (February 2011)
 - Seeking additional legal means under international law to preserve well-being and safety of Rapa Nui Nation



Present Context: Agua Caliente

- Harm:
 - Grant of mining permit on Agua Caliente land by Guatemalan government
 - Violent efforts to evict community members from land by a Guatemalan local governor and mine security forces
- Indigenous Rights Violations:
 - Human rights of the collective
 - Equality (anti-discrimination)
 - Cultural rights
 - Land and natural resource rights
 - Right of self-determination
 - Right to protection of the environment
- Action:
 - Guatemala Civil Appellate Court failed to recognize land and natural resource rights of Agua Caliente (February 2010)
 - Filed request for Precautionary Measures before the IACHR (November 2010)
 - Highest court of Guatemala issued a favorable decision upon appeal (February 2011)
 - Guatemalan government ignored high court ruling
 - Filed petition regarding above human rights violations with the IACHR (August 2011)



What Can You Do?

- Secure the “free, prior and informed consent” of indigenous peoples for use of their land, territories, natural resources, cultural resources, intellectual property, or religious property
- Assist in projects that will help advance the collective body of Indigenous Rights
- Acknowledge the validity of traditional science and traditional ecological knowledge (*cosmovision indigena*)

