

PERMANENT COUNCIL OF THE
ORGANIZATION OF AMERICAN STATES
COMMITTEE ON JURIDICAL AND POLITICAL AFFAIRS

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Working Group to Prepare the
Draft American Declaration on the
Rights of Indigenous Peoples

**NINETEENTH MEETING OF NEGOTIATIONS IN
THE QUEST FOR POINTS OF CONSENSUS**

(Washington, D.C. – May 17 - 19, 2016)

DRAFT AMERICAN DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

(Outcome of the Nineteen Meetings of Negotiations in the Quest for Points
of Consensus, held by the Working Group)

[Updated upon the conclusion of the Nineteenth Meeting of Negotiations]

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PREAMBLE

The member states of the Organization of American States (hereinafter the states), (**Approved** on April 24, 2015 – Seventeenth Meeting of Negotiations in the Quest for Points of Consensus)

RECOGNIZING:

That the rights of indigenous peoples are both essential and of historic significance to the present and future of the Americas; (**Approved** on April 24, 2015 – Seventeenth Meeting of Negotiations in the Quest for Points of Consensus)

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 (**Approved** on May 13, 2015 – Eighteenth Meeting of Negotiations in the Quest for Points of Consensus)

That the existence of indigenous cultures and peoples of the Americas is important to humanity; and (**Approved** on May 13, 2015 – Eighteenth Meeting of Negotiations in the Quest for Points of Consensus)

REAFFIRMING that indigenous peoples are original, diverse societies with their own identities that form an integral part of the Americas; (**Approved** on May 13, 2015 – Eighteenth Meeting of Negotiations in the Quest for Points of Consensus)

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; (**Approved** on May 13, 2015 – Eighteenth Meeting of Negotiations in the Quest for Points of Consensus)

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; (**Approved** on May 13, 2015 – Eighteenth Meeting of Negotiations in the Quest for Points of Consensus)

RECOGNIZING FURTHER that respect for indigenous knowledge, cultures and traditional practices contributes to sustainable and equitable development and proper management of the environment; (**Approved** on May 13, 2015 – Eighteenth Meeting of Negotiations in the Quest for Points of Consensus)

BEARING IN MIND the progress achieved at the international level in recognizing the rights of indigenous peoples, especially the 169 ILO Convention and the United Nations Declaration on the Rights of Indigenous Peoples; (**Approved** on May 13, 2015 – Eighteenth Meeting of Negotiations in the Quest for Points of Consensus)

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; (**Approved** on May 13, 2015 – Eighteenth Meeting of Negotiations in the Quest for Points of Consensus)

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; (**Approved** on May 13, 2015 – Eighteenth Meeting of Negotiations in the Quest for Points of Consensus)

RECALLING AS WELL the universality, inseparability, and interdependence of human rights recognized under international law; (**Approved** on May 13, 2015 – Eighteenth Meeting of Negotiations in the Quest for Points of Consensus)

CONVINCED that recognition of the rights of indigenous peoples in this Declaration will foster among states and indigenous peoples harmonious and cooperative relations based on the principles of justice, democracy, respect for human rights, nondiscrimination, and good faith; (**Approved** on May 13, 2015 – Eighteenth Meeting of Negotiations in the Quest for Points of Consensus)

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; (**Approved** on May 13, 2015 – Eighteenth Meeting of Negotiations in the Quest for Points of Consensus)

ENCOURAGING States to respect and 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; (**Approved** on May 13, 2015 – Eighteenth Meeting of Negotiations in the Quest for Points of Consensus)

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. (**Agreed** upon by consensus on March 25, 2006 – Seventh Meeting of Negotiations in the Quest for Points of Consensus)

2. Self-identification as indigenous peoples will be a fundamental criteria for determining to whom this Declaration applies. The states shall respect the right to such self-identification as indigenous, individually or collectively, in keeping with the practices and institutions of each indigenous people. (**Agreed** upon by consensus on March 25, 2006 – Seventh Meeting of Negotiations in the Quest for Points of Consensus)

Article II.

The states recognize and respect the multicultural and multilingual character of the indigenous peoples, who are an integral part of their societies. (**Adopted** on April 16, 2008 – Eleventh Meeting of Negotiations in the Quest for Points of Consensus)

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. (**Approved** on February 10, 2015 - Fifteenth Meeting of Negotiations in the Quest for Points of Consensus and on May 17 and 18, 2016 - Nineteenth Meeting of Negotiations in the Quest for Points of Consensus)

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 and 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. (**Approved** on May 18, 2016 - Nineteenth Meeting of Negotiations in the Quest for Points of Consensus)

SECTION TWO: Human Rights and Collective Rights

Article V. Full effect and observance of human rights

Indigenous peoples and persons 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. (**Approved** on April 16, 2008 – Eleventh Meeting of Negotiations in the Quest for Points of Consensus)

Article VI. Collective rights

Indigenous peoples have collective rights that are indispensable for their existence, well-being, and integral development as peoples. In this regard, the states recognize and respect, the right of the 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 the indigenous peoples the harmonious coexistence of rights and systems of the different population, groups, and cultures. (Paragraphs 1 and 2 merged. Paragraph 1: **Approved** on December 2, 2009 – Twelfth Meeting of Negotiations in the Quest for Points of Consensus / Paragraph 2: **Approved** on May 15, 2015 – Eighteenth Meeting of Negotiations in the Quest for Points of Consensus and on May 17 and 18, 2016 - Nineteenth Meeting of Negotiations in the Quest for Points of Consensus)

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 of all forms of discrimination. (**Agreed upon by consensus** in March 25, 2006 – Seventh Meeting of Negotiations in the Quest for Points of Consensus)

2. States recognize that violence against indigenous peoples and persons, particularly women, hinders or nullifies the enjoyment of all human rights and fundamental freedoms. (**Agreed upon by consensus** in March 25, 2006 – Seventh Meeting of Negotiations in the Quest for Points of Consensus)

3. States shall adopt the necessary measures, in conjunction with indigenous peoples, to prevent and eradicate all forms of violence and discrimination, particularly against indigenous women and children. (**Agreed upon by consensus** in March 25, 2006 – Seventh Meeting of Negotiations in the Quest for Points of Consensus)

Article VIII. Right to belong to the indigenous peoples

Indigenous persons 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. (**Approved** on November 30, 2009 – Twelfth Meeting of Negotiations in the Quest for Points of Consensus)

Article IX. Juridical personality

The states shall recognize fully the juridical personality of the indigenous peoples, respecting indigenous forms of organization and promoting the full exercise of the rights recognized in this Declaration. (**Agreed upon by consensus** on December 7, 2006 – Eighth Meeting of Negotiations in the Quest for Points of Consensus)

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. (**Agreed upon by consensus** on November 11, 2003 – First Meeting of Negotiations in the Quest for Points of Consensus)

2. The States shall not carry out, adopt, support, or favor any policy to assimilate the indigenous peoples or to destroy their cultures. (**Agreed upon by consensus** on November 11, 2003 – First Meeting of Negotiations in the Quest for Points of Consensus)

Article X. bis. Protection against genocide

Indigenous peoples have the right to not be subjected to any form of genocide or attempts to exterminate them. (**Agreed upon by consensus** on November 11, 2003 – First Meeting of Negotiations in the Quest for Points of Consensus)

Article XI. Guarantees against racism, racial discrimination, xenophobia, and other related forms of intolerance

Indigenous peoples have the right not to be subject to racism, racial discrimination, xenophobia, and other related forms of intolerance. The states shall adopt the preventive and corrective measures necessary for the full and effective protection of this right. (**Approved** on April 18, 2008 – Eleventh Meeting of Negotiations in the Quest for Points of Consensus)

SECTION THREE: Cultural identity

Article XII. Right to cultural identity and integrity

1. Indigenous peoples have the right to their own cultural identity and integrity and to their cultural heritage, both tangible and 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. (**Approved** on January 20, 2011 – Thirteenth Meeting of Negotiations in the Quest for Points of Consensus)

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. (**Approved.** March.9.15 - Sixteenth Meeting of Negotiations in the Quest for Points of Consensus)

3. Indigenous people have the right to the recognition and respect for all their ways of life, world views, spirituality, uses and customs, norms and 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 elaborated in this Declaration. (**Agreed upon by consensus** on January 26, 2007 – Ninth Meeting of Negotiations in the Quest for Points of Consensus)

Article XIII. 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 maintain their own names for their communities, individuals, and places. (**Agreed upon by consensus** on January 24, 2007 – Ninth Meeting of Negotiations in the Quest for Points of Consensus)

1.bis The states shall adopt adequate and effective measures to protect the exercise of this right with the full and effective participation of indigenous peoples. (**Approved** on November 30, 2009 – Twelfth Meeting of Negotiations in the Quest for Points of Consensus)

2. 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. The states shall take measures to promote the broadcast of radio and television programs in indigenous languages, particularly in areas with an indigenous presence. The states shall support and facilitate the creation of indigenous radio and television stations, as well as other means of information and communication. (**Approved** on November 30, 2009 – Twelfth Meeting of Negotiations in the Quest for Points of Consensus)

3. The states, in conjunction with indigenous peoples, shall make efforts to ensure that those peoples can understand and be understood in their languages in administrative, political, and judicial proceedings, where necessary through the provision of interpretation or by other effective means. (**Agreed upon by consensus** on January 26, 2007 – Ninth Meeting of Negotiations in the Quest for Points of Consensus)

Article XIV. Education

1. Indigenous peoples and individuals, particularly indigenous children, have the right to all levels and forms of education, without discrimination. (**Approved** on November 30, 2009 – Twelfth Meeting of Negotiations in the Quest for Points of Consensus)

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. (**Approved** on April 27, 2007 – Tenth Meeting of Negotiations in the Quest for Points of Consensus, La Paz, Bolivia)

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. (**Approved** on December 1, 2009 - Twelfth Meeting of Negotiations in the Quest for Points of Consensus)

4. In conjunction with indigenous peoples, the states shall take effective measures to ensure that indigenous persons living outside their communities, particularly children, may have access to education in their own languages and cultures. (**Approved** on December 1, 2009 - Twelfth Meeting of Negotiations in the Quest for Points of Consensus)

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 shall, in conjunction with indigenous peoples, promote intercultural education that reflects the worldview, histories, languages, knowledge, values, cultures, practices, and ways of life of those peoples. (**Approved** on April 27, 2007 - Tenth Meeting of Negotiations in the Quest for Points of Consensus)

6. States, in conjunction with indigenous peoples, shall adopt necessary and effective measures to ensure the exercise and observance of these rights. (**Approved** on December 1, 2009 - Twelfth Meeting of Negotiations in the Quest for Points of Consensus)

Article XV. Indigenous spirituality

1. Indigenous peoples have the right to freely 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, individually and collectively. (**Approved** on April 24, 2007 – Tenth Meeting of Negotiations in the Quest for Points of Consensus)

2. No indigenous people or person shall be subject to pressures or impositions, or any other type of coercive measures that impair or limit their right to freely exercise their indigenous spirituality and beliefs. (**Approved** on April 18, 2012 – Fourteenth Meeting of Negotiations in the Quest for Points of Consensus)

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 relics, and to recover their human remains. (**Approved** on April 24, 2015 – Seventeenth Meeting of Negotiations in the Quest for Points of Consensus)

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. (**Approved** on April 24, 2015 – Seventeenth Meeting of Negotiations in the Quest for Points of Consensus and on May 15, 2015 – Eighteenth Meeting of Negotiations in the Quest for Points of Consensus) -

Article XVI. Indigenous family

1. The family is a 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 the forms of matrimonial union, filiations, descent, and family name. In all cases, gender and generational equity shall be recognized and respected. (**Approved** on November 30, 2009 - Twelfth Meeting of Negotiations in the Quest for Points of Consensus)

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 member of his or her people, to enjoy his or her own culture, to profess and practice his or her own religion or to use his or her own language and in that regard shall look to the indigenous law of the peoples concerned and shall consider their points of view, rights and interest, including the positions of individuals, the family, and the community. (**Approved** on May 15, 2015 – Eighteenth Meeting of Negotiations in the Quest for Points of Consensus)

Article XVII. Health

1. Indigenous peoples have the collective and individual right to the enjoyment of the highest attainable standard of physical, mental, and spiritual health. (**Approved** on April 18, 2008 – Eleventh Meeting of Negotiations in the Quest for Points of Consensus).

2. Indigenous peoples have the right to their own health systems and practices, as well as to the use and protection of the plants, animals, minerals of vital interests, and other natural resources for medicinal use in their ancestral lands and territories. (**Approved** on January 19, 2011 – Thirteenth Meeting of Negotiations in the Quest for Points of Consensus)

3. States shall take measures to prevent and prohibit indigenous peoples and individuals from being subject to research programs, biological or medical experimentation, as well as sterilization without their prior, free, and informed consent. Likewise, indigenous peoples and persons have the right, as appropriate, to access to their data, medical records, and documentation of research conducted by individuals and public and private institutions. (**Approved** on April 25, 2007 – Tenth Meeting of Negotiations in the Quest for Points of Consensus)

4. Indigenous peoples have the right to use, without any discrimination whatsoever, 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 or practices in the medical and health services provided in indigenous communities, including training of indigenous technical and professional health care personnel. (**Approved** on April 26, 2007 – Tenth Meeting of Negotiations in the Quest for Points of Consensus)

5. States shall guarantee the effective exercise of the rights contained in this article. (**Approved** on January 18, 2011 – Thirteenth Meeting of Negotiations in the Quest for Points of Consensus)

Article XVIII. 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 right to life, to their spirituality, worldview and to collective well-being. (**Approved** on April 16, 2008 – Eleventh Meeting of Negotiations in the Quest for Points of Consensus)

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. (**Approved** on April 24, 2015 – Seventeenth Meeting of Negotiations in the Quest for Points of Consensus)

3. [Deleted] (**Approved** on May 15, 2015 – Eighteenth Meeting of Negotiations in the Quest for Points of Consensus)

4. [Deleted] (**Approved** on May 19, 2016 - Nineteenth Meeting of Negotiations in the Quest for Points of Consensus)

5. [Deleted] (**Approved** on April 24, 2015 – Seventeenth Meeting of Negotiations in the Quest for Points of Consensus)

6. Indigenous peoples are entitled to be protected against the introduction of, abandonment, dispersion, transit, indiscriminate use or deposit of any harmful substance that could negatively affect indigenous communities, lands, territories and resources. (**Approved** on April 24, 2015 – Seventeenth Meeting of Negotiations in the Quest for Points of Consensus)

7. 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. (**Approved** on May 15, 2015 – Eighteenth Meeting of Negotiations in the Quest for Points of Consensus)

SECTION FOUR: Organizational and Political Rights

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

1. Indigenous peoples have the rights of association, assembly, organization and expression, and to exercise them without interference and in accordance with their worldview, *inter alia*, values, usages, customs, ancestral traditions, beliefs, spirituality, and other cultural practices. (**Approved** on January 18, 2011 – Thirteenth Meeting of Negotiations in the Quest for Points of Consensus)

2. Indigenous peoples have the right to assemble on their sacred and ceremonial sites and areas. For this purpose they shall have free access and use to these sites and areas. (**Approved** on January 18, 2011 – Thirteenth Meeting of Negotiations in the Quest for Points of Consensus)

3. Indigenous peoples, in particular those who are divided by international borders, shall 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. (**Approved** on January 20, 2011 – Thirteenth Meeting of Negotiations in the Quest for Points of Consensus)

4. These states shall adopt, in consultation and cooperation with the indigenous peoples, effective measures to ensure the exercise and application of these rights. (**Approved** on January 18, 2011 – Thirteenth Meeting of Negotiations in the Quest for Points of Consensus)

Article XX. 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. [**Approved**. March.9.15 - Sixteenth Meeting of Negotiations in the Quest for Points of Consensus]

2. Indigenous peoples have the right to maintain and develop their own decision-making institutions. They also have the right to participate in the decision making in matters which would affect their rights. They may do so directly or through their representatives, and accordance with their own norms, procedures, and traditions. They also have the right to equal opportunities to access and to participate fully and effectively as peoples in all national institutions and fora, including deliberative bodies. [**Approved**. February.11.15 - Fifteenth Meeting of Negotiations in the Quest for Points of Consensus]

Article XXI. 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. (**Approved** on April 24, 2015 – Seventeenth Meeting of Negotiations in the Quest for Points of Consensus)

2. The indigenous law and legal systems shall be recognized and respected by the national, regional and international–legal systems. (**Approved** on January 18, 2011 – Thirteenth Meeting of Negotiations in the Quest for Points of Consensus)

3. The matters referring to indigenous persons or to their rights or interests in the jurisdiction of each state shall be conducted so as to provide for the right of the indigenous people 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. (**Agreed upon by consensus** on November, 2004 – Fourth Meeting of Negotiations in the Quest for Points of Consensus)

4. The States shall take effective measures in conjunction with indigenous peoples to ensure the implementation of this article. (**Approved** on January 18, 2011 – Thirteenth Meeting of Negotiations in the Quest for Points of Consensus)

Article XXII. Contributions of the 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. **(Approved** on March 11, 2015 - Sixteenth Meeting of Negotiations in the Quest for Points of Consensus)

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. **(Approved** on March 10, 2015 - Sixteenth Meeting of Negotiations in the Quest for Points of Consensus)^{1/}

3. [Deleted] **(Approved** on April 24, 2015 – Seventeenth Meeting of Negotiations in the Quest for Points of Consensus)

Article XXIII. Treaties, agreements, and other constructive arrangements

1. Indigenous peoples have the right to the recognition, observance, and enforcement of the treaties, agreements and other constructive arrangements concluded with states and their successors, in accordance with their true spirit and intent in good faith and to have the same be respected and honored by the States. States shall give due consideration to the understanding of the indigenous peoples as regards to treaties, agreements and other constructive arrangements. **(Approved** on April 20, 2012 – Fourteenth Meeting of Negotiations in the Quest for Points of Consensus)

2. When disputes cannot be resolved between the parties in relation to such treaties, agreements and other constructive arrangements, these shall be submitted to competent bodies, including regional and international bodies, by the States or indigenous peoples concerned. **(Approved** on January 19, 2011 – Thirteenth Meeting of Negotiations in the Quest for Points of Consensus)

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. **(Approved** on January 19, 2011 – Thirteenth Meeting of Negotiations in the Quest for Points of Consensus)

SECTION FIVE: Social, Economic, and Property Rights

Article XXIV. 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 to their lands, territories, and resources and to assume their responsibilities to preserve them for themselves and for future generations.- **(Approved** on April 19, 2012 – Fourteenth Meeting of Negotiations in the Quest for Points of Consensus)

1. During the Nineteenth Meeting of Negotiations in the Quest for Points of Consensus, the Delegation of Colombia announced the inclusion of a footnote to this article.

2. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired. (**Approved** on April 24, 2015 – Seventeenth Meeting of Negotiations in the Quest for Points of Consensus)

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. (**Approved** on April 24, 2015 – Seventeenth Meeting of Negotiations in the Quest for Points of Consensus)

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. (**Approved** on April 24, 2015 – Seventeenth Meeting of Negotiations in the Quest for Points of Consensus)

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. The states shall establish the special regimes appropriate for such recognition, and for their effective demarcation or titling (**Approved** on May 19, 2016 - Nineteenth Meeting of Negotiations in the Quest for Points of Consensus)

Article XXV. [Deleted] (**Approved** on May 15, 2015 – Eighteenth Meeting of Negotiations in the Quest for Points of Consensus and on May 19, 2016 - Nineteenth Meeting of Negotiations in the Quest for Points of Consensus)

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. (**Agreed upon by consensus** in October, 2005 – Sixth Meeting of Negotiations in the Quest for Points of Consensus)

2. The states shall adopt adequate policies and measures with the knowledge and participation of indigenous peoples and organizations to recognize, respect, and protect the lands, territories, environment, and cultures of these peoples as well as their life, and individual and collective integrity. (**Agreed upon by consensus** in October, 2005 – Sixth Meeting of Negotiations in the Quest for Points of Consensus)

Article XXVII. Labor Rights

1. Indigenous peoples and persons have the rights and guarantees recognized in national and international labor law. States shall take all special measures to prevent, punish and remedy the discrimination to which indigenous peoples and persons are subjected. (**Approved** on January 20, 2011 – Thirteenth Meeting of Negotiations in the Quest for Points of Consensus)

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 elders. (**Agreed upon by consensus** in October 2005 – Sixth Meeting of Negotiations in the Quest for Points of Consensus)

3. In case indigenous peoples are not effectively protected by the laws applicable to workers in general, states, in conjunction with indigenous peoples, shall take all measures that may be necessary in order to:

- a. protect indigenous workers and employees in relation to contracting 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 join trade union activities, and the right to bargain collectively with employers through representatives of their own choosing or workers' organizations, including traditional authorities;
 - iii. are not subject to discrimination or harassment on the basis of, *inter alia*, race, sex, indigenous origin or 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 comport with occupational health and safety standards; and
 - 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 contracted by employers such that they receive the benefits of the national legislation and practices, which shall be in accordance with the international human rights laws and standards for this category of workers;
- d. ensure that the 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.

(Approved on January 19, 2011 – Thirteenth Meeting of Negotiations in the Quest for Consensus)

4. States shall take measures to promote employment of indigenous individuals. (**Approved** on January 19, 2011 in the Thirteenth Meeting of Negotiations in the Quest for Points of Consensus)

5. [Deleted] (**Approved** on May 15, 2015 – Eighteenth Meeting of Negotiations in the Quest for Points of Consensus)

Article XXVIII. Protection of Cultural Heritage and Intellectual Property

1. Indigenous peoples have the right to the full recognition and respect for their property, ownership, possession, control, development, and protection of their tangible and intangible cultural heritage and intellectual property, including its collective nature, transmitted through millennia, from generation to generation. (**Approved** on April 20, 2012– Fourteenth Meeting of Negotiations in the Quest for Points of Consensus, on March 10, 2015 - Sixteenth Meeting of Negotiations in the Quest for Points of Consensus, on April 23, 2015 – Seventeenth Meeting of Negotiations in the Quest for Points of Consensus, and on May 17, 2016 - Nineteenth Meeting of Negotiations in the Quest for Points of Consensus)

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 the knowledge and developments of their own related to biodiversity and the utility and qualities of seeds and medicinal plants, flora and fauna. (**Approved.** March.10.15 - Sixteenth Meeting of Negotiations in the Quest for Points of Consensus and on April 24, 2015 – Seventeenth Meeting of Negotiations in the Quest for Points of Consensus)

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 these measures, consultations shall be effective intended to obtain the free, prior, and informed consent of indigenous peoples. (**Approved** on April 20, 2012 – Fourteenth Meeting of Negotiations in the Quest for Points of Consensus)

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 world view. 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 [**Approved.** February.10.15 - Fifteenth Meeting of Negotiations in the Quest for Points of Consensus, on May 15, 2015 – Eighteenth Meeting of Negotiations in the Quest for Points of Consensus, and on May 18, 2016 - Nineteenth Meeting of Negotiations in the Quest for Points of Consensus]

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, their own world views and institutions. [**Approved.** February.10.15 - Fifteenth Meeting of Negotiations in the Quest for Points of Consensus]

3. [Deleted] (**Approved** on April 24, 2015 – Seventeenth Meeting of Negotiations in the Quest for Points of Consensus)

4. Indigenous peoples have the right to be actively involved in developing and determining development programmes affecting them and, as far as possible, to administer such programmes through their own institutions [Approved. February.11.15 - Fifteenth Meeting of Negotiations in the Quest for Points of Consensus]

5. 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. (Approved. February.10.15 - Fifteenth Meeting of Negotiations in the Quest for Points of Consensus)^{2/}

6. Indigenous peoples have the right to effective measures to mitigate adverse ecological, economic, social, cultural, or spiritual impacts for the implementation of development projects that affect their rights. Indigenous peoples who have been deprived of their own 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 damage caused to them by the implementation of state, international financial institutions or private business plans, programs, or projects. (Approved on May 14, 2015 – Eighteenth Meeting of Negotiations in the Quest for Points of Consensus on May 17 and 19, 2016 - Nineteenth Meeting of Negotiations in the Quest for Points of Consensus)

Article XXX. Right to peace, security, and protection

1. Indigenous peoples have the right to peace and security. (Approved. March.10.15 - Sixteenth Meeting of Negotiations in the Quest for Points of Consensus)

2. Indigenous peoples have the right to recognition and respect for their institutions for the maintenance of their organization and control of its communities and peoples (Approved on May 15, 2015 – Eighteenth Meeting of Negotiations in the Quest for Points of Consensus)

3. Indigenous peoples have the right to protection and security in situations or periods of internal or international armed conflict pursuant to international humanitarian law. (Approved on April 24, 2015 – Seventeenth Meeting of Negotiations in the Quest for Points of Consensus)

4. States, in compliance with international agreements to which they are party, in particular international humanitarian law and international human rights law, including the Fourth Geneva Convention of 1949 relative to the protection of civilian persons in time of war, and Protocol II of 1977 relating to the protection of victims of non-international armed conflicts, in the event of armed conflicts shall take adequate measures to protect the human rights, institutions, lands, territories, and resources of the indigenous peoples and their communities. Likewise, States: (Approved on April 24, 2015 – Seventeenth Meeting of Negotiations in the Quest for Points of Consensus)

a. [Deleted] (Approved on May 15, 2015 – Eighteenth Meeting of Negotiations in the Quest for Points of Consensus)

2. During the Nineteenth Meeting of Negotiations in the Quest for Points of Consensus, the Delegation of Colombia announced the inclusion of a footnote to this article.

- b. Shall not recruit indigenous children and adolescents into the armed forces under any circumstances; (**Approved** on April 24, 2015 – Seventeenth Meeting of Negotiations in the Quest for Points of Consensus)
- c. [Deleted] (**Approved** on April 24, 2015 – Seventeenth Meeting of Negotiations in the Quest for Points of Consensus)
- d. [Deleted] (**Approved** on April 24, 2015 – Seventeenth Meeting of Negotiations in the Quest for Points of Consensus)
- e. [Deleted] (**Approved** on May 15, 2015 – Eighteenth Meeting of Negotiations in the Quest for Points of Consensus)
- f. Shall take measures of effective reparation and provide adequate resources for the same, in jointly with the indigenous peoples affected, for the damages incurred caused by an armed conflict. (**Approved** on May 15, 2015 – Eighteenth Meeting of Negotiations in the Quest for Points of Consensus)
- g. Shall take special and effective measures in collaboration with indigenous peoples to guarantee that indigenous women, children live free from all forms of violence, especially sexual violence, and shall guarantee the right to access to justice, protection, and effective reparation for damages incurred to the victims (**Approved** on April 24 , 2015 – Seventeenth Meeting of Negotiations in the Quest for Points of Consensus and on May 15, 2015 – Eighteenth Meeting of Negotiations in the Quest for Points of Consensus)

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 with or requested by the indigenous peoples concerned. (**Approved** on April 24, 2015 – Seventeenth Meeting of Negotiations in the Quest for Points of Consensus)^{3/}

SECTION SIX: General provisions

Article XXXI.

1. The states shall ensure the full enjoyment of the civil, political, economic, social, and cultural rights of indigenous peoples, as well as their right to maintain their cultural identity, spiritual and religious traditions, worldview, values and the protection of their religious and cultural sites, and human rights contained in this Declaration. [**Approved**. February. 11.15 - Fifteenth Meeting of Negotiations in the Quest for Points of Consensus]

2. The states shall promote, with the full and effective participation of the indigenous peoples, the adoption of the legislative and other measures that may be necessary to give effect to the rights included in this Declaration. (**Agreed upon by consensus** in April 2006 – Seventh Meeting of Negotiations in the Quest for Points of Consensus)

3. During the Nineteenth Meeting of Negotiations in the Quest for Points of Consensus, the Delegation of Colombia announced the inclusion of a footnote to this article.

Article XXXII.

All the rights and freedoms recognized in the present Declaration are guaranteed equally to indigenous women and men. (**Agreed upon by consensus** in November 2003 – First Meeting of Negotiations in the Quest for Points of Consensus. Relocated to this section in March 2006 – Seventh Meeting of Negotiations in the Quest for Points of Consensus)

Article XXXIII.

Indigenous peoples and persons have the right to effective and appropriate remedies, including prompt judicial remedies, for the reparation of all violations of their collective and individual rights. The states, with full and effective participation of indigenous peoples, shall provide the necessary mechanisms for the exercise of this right. (**Approved** on April 16, 2008 – Eleventh Meeting of Negotiations in the Quest for Points of Consensus)

Article XXXIV

In case of conflicts and 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 this purpose, due consideration and recognition shall be given to the customs, traditions, norms or legal systems of the indigenous peoples concerned. (**Approved** on January 19, 2011 – Thirteenth Meeting of Negotiations in the Quest for Points of Consensus)

Article XXXIV bis

Nothing in this Declaration may be interpreted so as to limit, restrict, or deny human rights in any way, or so as to authorize any action that is not in keeping with international human rights law. (**Agreed upon by consensus** on December 8, 2006 – Eighth Meeting of Negotiations in the Quest for Points of Consensus)

Article XXXIV ter

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.

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.

[**Approved** on May 17, 2016 - Nineteenth Meeting of Negotiations in the Quest for Points of Consensus]

Article XXXIV quat

[Deleted] (**Approved** on May 14, 2015 – Eighteenth Meeting of Negotiations in the Quest for Points of Consensus)

Article XXXIV quint

[Deleted] (**Approved** on April 24, 2015 – Seventeenth Meeting of Negotiations in the Quest for Points of Consensus)

Article XXXIV sext

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. (**Approved** on April 24, 2015 – Seventeenth Meeting of Negotiations in the Quest for Points of Consensus)

Article XXXV

The Organization of American States, its organs, agencies, and entities, shall take all necessary measures to promote the full respect, protection, and application of the rights of indigenous peoples contained in this Declaration and shall endeavor to ensure their efficacy. (**Approved** on December 1, 2009 - Twelfth Meeting of Negotiations in the Quest for Points of Consensus)

Article XXXVI

The nature and scope of the measures that shall be taken to implement this Declaration shall be determined in accordance with the spirit and purpose of said Declaration. (**Approved** on April 16, 2008 – Eleventh Meeting of Negotiations in the Quest for Points of Consensus)

Article XXXVII

[Deleted] (**Approved** on May 14, 2015 – Eighteenth Meeting of Negotiations in the Quest for Points of Consensus)

Article XXXVIII

Nothing in this declaration shall be construed as diminishing or extinguishing rights that indigenous peoples now have or may acquire in the future. (**Agreed upon by consensus** in March 2006 – Seventh Meeting of Negotiations in the Quest for Points of Consensus)

Article XXXIX

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. (**Approved** on April 16, 2008 – Eleventh Meeting of Negotiations in the Quest for Points of Consensus, and on May 19, 2016 - Nineteenth Meeting of Negotiations in the Quest for Points of Consensus)

STATEMENTS PRESENTED BY THE DELEGATIONS
DURING OF THE NINETEENTH MEETING OF NEGOTIATIONS

STATEMENT BY THE DELEGATION OF THE UNITED STATES

(May 17, 2016)

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 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 many ongoing initiatives with respect to these topics provide avenues for addressing some of the consequences of past actions. The United States has, however, persistently expressed objections to the text of this American Declaration.

The United States believes implementation of the United Nations Declaration on the Rights of Indigenous Peoples should remain the focus of the Organization of American States 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 many important and challenging initiatives underway at the global level to realize the 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 this regard, the United States intends to continue its diligent and proactive efforts, which it has undertaken in close collaboration with many of its fellow OAS Member States, to promote achievement of the ends of the UN Declaration and 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.

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STATEMENT BY THE DELEGATION OF CANADA

(May 17, 2016)

- Canada has committed to renewing its relationship with its Indigenous peoples, based on respect, partnership and recognition of rights.
- Canada has pledged to implement the UN Declaration on the Rights of Indigenous Peoples. At the UN last week, Canada's Minister of Indigenous and Northern Affairs, said that, "We intend nothing less than to adopt and implement the Declaration in accordance with the Canadian Constitution."
- Over the summer, we will be engaging inside Canada, in full partnership with Indigenous peoples, on how to move forward with adoption and implementation of the UN Declaration.
- We look forward to working with our partners in the OAS on advancing Indigenous issues across the Americas.
- We recognize the hard work within the OAS, over many years, in drafting an American Declaration on the Rights of Indigenous Peoples, and are pleased today to re-engage with this work.
- Before taking a position on the American Declaration, we will need to consult fully within Canada, in particular with our Indigenous peoples.
- Some Canadian Indigenous organizations have expressed concerns to us about the role of Indigenous people in the negotiating process for the American Declaration. We will need to explore this and other issues with our Indigenous partners.

STATEMENT BY THE DELEGATION OF COLOMBIA

(May 19, 2016)

My delegation is enthusiastic in welcoming the fact that the Declaration has been adopted at long last – a very importance step forward for Indigenous peoples of the Americas. We also welcome the presence and active participation of indigenous representatives in the process of negotiation as well as the diversity and importance they brought to the discussions.

While this Declaration is not a legally-binding norm for the state, and in no way constitutes the establishment of conventional or customary provisions that are binding on Colombia, my delegation finds certain aspects of the Declaration to be at variance with Colombia's current legal system; the Government of Colombia is therefore breaking from the consensus with respect to articles XXII.2, XXIX.5, and XXX.5, and will furnish the Secretariat with the relevant explanatory notes.

As these articles are inspired by articles 19, 30, and 32 of the United Nations Declaration on the Rights of Indigenous Peoples, in light of which Colombia abstained from voting, as these articles were incompatible with the domestic legal system still in place, my delegation abides by its position and the respective notes in this document.

In any event, the Colombian State reserves the right to do a thorough review of the text and to enter explanatory notes on other articles, should it deem that necessary.

This statement should be entered into the appendix to the document arising from this meeting and the respective explanatory notes should be included as part of the American Declaration on the Rights of Indigenous Peoples.

STATEMENT BY THE DELEGATION OF BRAZIL

(May 19, 2016)

Madam Chair:

We have waited nearly twenty years to hear this round of applause, and to that end we have had your able leadership of the process. We greatly appreciate your efforts and contribution. It is very important that we conclude this process under your chairmanship.

We wanted to thank all the delegations that participated in producing a document that we believe to be an important step forward in protecting and promoting the rights of indigenous peoples.

I wanted to thank the indigenous peoples' representatives. As our distinguished Chair is well aware, Brazil has always put emphasis on involving indigenous peoples' representatives in these negotiations. This was always our position during this process because it would make no sense to craft a declaration on their rights without their involvement and contribution.

My delegation joins the consensus we've built on this historic occasion as our Working Group approves this Declaration.

The Brazilian delegation, however, reserves the right to do a thorough review of the text with a view to submitting, if necessary, any explanatory notes that may become necessary.

Thank you very much.