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United States Reviewing Its Policy on the UN Declaration on the Rights of Indigenous Peoples

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On April 20, 2010, U.S. Ambassador to the United Nations Susan Rice [announced](#) that the United States would formally review its policy on the UN Declaration on the Rights of Indigenous Peoples. The United States was one of only four countries to vote against the Declaration when the UN General Assembly adopted it on September 13, 2007.

"We seek to continue to work together with our partners in indigenous communities to provide security, prosperity, equality, and opportunity for all. There is no American history without Native American history," said Rice.

The Declaration is the culmination of over 30 years of work by indigenous advocates, including many Indian nations from the United States. The Declaration, for the first time, gives international recognition to the collective and individual rights of over 370 million Native peoples worldwide. Among the most important of these rights for Indian and Alaska Native nations within the United States are the right of self-determination, land rights, and treaty rights. The Declaration recognizes a right of self-determination that goes well beyond self-determination under the Indian Self Determination and Education Assistance Act. The Declaration also calls for the maintenance and protection of Native cultures, languages, and identities; the fulfillment of treaty obligations by States; the equal treatment of and the end to discrimination against Indigenous peoples; and the full and effective participation of Native peoples in all matters that concern them.

While non-binding, the UN Declaration is an official statement by member countries of the United Nations that these are the legal rights of indigenous peoples in international law, and it has considerable moral and political force. Indian and Alaska Native nations can use the Declaration as the standard to which the federal government must live up, and can point to the rights in the Declaration when lobbying and negotiating with the federal government.

The Declaration is the first step toward the development of binding international law protecting indigenous rights. It will help inform judges, legislatures, and government officials that the rights of Indian and Alaska Native nations and other Indigenous peoples must be respected. The Declaration could help to bring about much needed change in areas like trust management, tribal property rights, and treaty implementation – areas where the U.S. has a reputation of treating Indian nations poorly.

The United States' formal review of the Declaration is a top priority of the Obama Administration and the State Department. It responds to the National Congress of American Indians and tribal leaders' requests at the Tribal Nations Conference with President Obama on November 5, 2009 in Washington, D.C. At the Tribal Nations Conference, President Obama pledged his commitment to forging a better relationship with tribes. "It's a commitment that's deeper than our unique nation-to-nation relationship," said President Barack Obama "It's a commitment to getting this relationship right, so that you can be full partners in the American economy and so your children and your grandchildren can have a equal shot at pursuing the American dream."

Fifteen government agencies are participating in the review process and have been directed to assess how the UN Declaration on the Rights of Indigenous Peoples is currently or could in the future be reflected in agency laws and policies. The State Department is holding several consultations with Indian and Alaska Native nations and non-governmental organizations and accepting comments from Indian and Alaska Native nations, non-governmental organizations, and the general public.

The State Department has held three consultations with tribes and two consultations with non-governmental organizations. State Department officials, along with many other federal officials and agency representatives, met with Indian leaders on June 21, July 7 and October 14, and with non-governmental organizations on July 8 and October 15. At these consultations, the National Congress of American Indians and several tribes, among them the Quinault Nation, the San Carlos Apache Tribe, the Iroquois Confederacy, the Lummi Nation, and the Navajo Nation, encouraged the United States to endorse the UN Declaration. Chief Darwin Hill of the Tonawanda Seneca Nation, who attended the July 7 and October 14 consultations, stated, "We believe that the United States is on the verge of endorsing the UN Declaration."

The U.S. State Department asked Indian and Alaska Native leaders and governments to send in written comments by October 31, 2010, if possible, for review by appropriate government agencies. Harold Koh, Legal Advisor to the State Department, urged tribes and tribal members to write letters about what the Declaration means to their tribe. Draft letters that many Indian and Alaska Native governments, non-governmental organizations, and individuals sent to the State Department in support of the UN Declaration can be found on the Indian Law Resource Center's website at www.indianlaw.org.

In the October consultations, the State Department asked tribes and NGOs to respond to the following questions:

- U.S. law treats federally recognized tribes differently from other indigenous groups in the United States. Is this practice consistent with the Declaration?
- Is self-determination as discussed in the Declaration consistent with tribal self-determination in U.S. law and practice?
- What additional mechanisms, if any, are necessary for the United States to act consistently with the lands, territories, natural resources, sacred sites, and redress provisions of the Declaration?
- What is your understanding of the meaning of "free, prior and informed consent" in the Declaration?

- As many countries have stressed in their statements in support of the Declaration, the Declaration as a non-binding aspirational document whose force is moral/political rather than legal. Is that your view of the nature of the Declaration?

Some responses to these questions can be found on the Indian Law Resource Center's website at www.indianlaw.org.

The State Department has not announced a timeline for completion of the review and mentioned the possibility of additional consultations at the October 14 consultation. However, it set October 31 as the deadline for submitting additional written testimony regarding the UN Declaration. The White House has pledged a speedy process.

More information on the United States' Review of its policy on the UN Declaration, including draft letters to send to the State Department and White House, can be found at www.indianlaw.org and www.state.gov/s/tribalconsultation/declaration or by contacting the Indian Law Resource Center at mtlaw@indianlaw.org. A full copy of the UN Declaration can be found at www.indianlaw.org/sites/indianlaw.org/files/DRIPS_en.pdf.