



聯合國原住民族權利宣言

United Nations Declaration on the Rights of Indigenous Peoples



行政院原住民族委員會
Council of Indigenous Peoples, Executive Yuan

中華民國96年11月5日

壹、通過歷程.....1

貳、中英對照版.....12

壹、《聯合國原住民族權利宣言》通過歷程

《聯合國原住民族權利宣言》(*United Nations Declaration on the Rights of Indigenous Peoples*) (以下簡稱《宣言》) 乃第一個「聯合國國際原住民族十年」(UN Decade for World's Indigenous Peoples, 1995-2004) 期間重要的發展與目標。回溯於 1982 年時，聯合國大會 (General Assembly 或 GA) 依據經濟社會理事會 (Economic and Social Council 或 ECOSOC) 第 1982/34 號決議文，於隸屬於人權委員會 (Commission on Human Rights 或 CHR) 之防止歧視和保護弱勢族群次委員會 (Sub-Commission on Prevention of Discrimination and Protection of Minorities)¹ 底下，成立「原住民人口工作小組」(Working Group on Indigenous Populations 或 WGIP)，該小組有雙重使命：一、檢視提升與保護原住民族人權及基本自由權的發展；二、關注有關原住民族權益的國際規範及其演進。

工作小組成立後，成員間便有聲音支持草擬一份屬於原住民族人權及基本自由的宣言，而正式起草工作則於 1985 年間開始²，共有超過 400 位原住民代表與 5 位法學專家參與草擬會議並共同完成原始草案。原草案內容包含 19 段前言與 45 條條文，45 條條文又分為九大部分：

- 一、(第 1-5 條) 自治、參與國家事務、國籍並反歧視的權利；
- 二、(第 6-11 條) 原住民族作為異文化族群的生存權，並對生存權之威脅；
- 三、(第 12-14 條) 原住民族信仰、語言並文化認同的權利；
- 四、(第 15-18 條) 教育、資訊與勞動權；
- 五、(第 19-24 條) 參與、發展與其他社經權利；
- 六、(第 25-30 條) 土地與資源權；
- 七、(第 31-36 條) 執行自決、組織的權利；
- 八、(第 37-41 條) 《宣言草案》的有效執行；
- 九、(第 42-45 條) 一般性條款。

¹ 即保障提升人權次委員會 (Sub-Commission on Promotion and Protection of Human Rights) 前身。

² 「1985 年」引自 Jeff Corntassel, Mililani Trask 等人文章及相關網站；亦有長期關注聯合國原住民族相關會議的人士表示，應將時間提前至 1980 年，及「原住民人口工作小組」成立以前。

工作小組完成草擬後，於 1993 年送交草案至防止歧視和保護弱勢次委員會；次委員會於 1994 年 8 月 26 日沒有修改任何一字，以第 1994/45 號決議通過全文。而後，《宣言》草案便以第 1994/45 號版呈送至人權委員會（CHR），繼續於聯合國體系內闖關，尋求各國支持通過。

隔年 1995 年 3 月 3 日，人權委員會（CHR）依據第 1995/32 號決議，建議經濟及社會理事會（ECOSOC）成立一個於閉會期間召開，且不限制成員身分與名額的開放性協調工作小組（open-ended intercessional working group），其任務為解釋次委員會於第 1994/45 號決議中通過的《宣言》草案，並將最後協商成果送交聯合國大會（GA）討論並通過，以完成在第一個國際原住民族十年間通過《宣言》的目標。

然而，當時經過多次協商，依舊只有兩條條文被眾會員國無異議接受，分別是：

第 5 條：每名原住民個人均有權選擇國籍。（國籍權）

第 43 條：原住民族不分男女，均平等享有本《宣言》承認之所有權利及自由。（性別平等）³

其他的條文尚因其文字或內容所影射的爭議而無法通過，包括字面上的爭議（例有些國家認為第 12 條中的 “restitution” 或「回復」一字不妥當）、與國家法律衝突的爭議（例第 11 條中原住民族於國家武裝衝突期間的和平權）、或涉及土地、領域與資源權爭議（例第 25~31 條）等等。

工作小組運作多年後，第 1994/45 號決議中的《宣言》草案也在各國要求及建議下增刪數回，終於 2006 年 2 月由工作小組主席恰斐茲先生（Luis Enrique Chavez Basagoitia，秘魯籍）整理後，成為《宣言》草案主席建議版（E/CN.4/2006/79）⁴。經過超過十年的努力後，《宣言》草案雖已依據各國建議更改，卻依舊難獲得所有聯合國會員國認同，而遲遲無法通過，尤其關於自決權、土地、領土或自然資源分配與利用、或原住民族同意權…等等，更是各國辯論的主要戰場。康塔索教

³ 本條文為大會通過版第 46 條。

⁴ 有關此《宣言》草案主席建議版（E/CN.4/2006/79）與次委員會於第 1994/45 號決議通過的《宣言》版的差異，已詳列於本人 2006 年第五屆聯合國原住民族議題常設論壇會議報告，不於此贅述。

授 (Jeff Corntassel) 於《邁向新關係？第一個國際原住民族十年間的 (1995-2004) 原住民族政治動員與選舉》⁵ 中引用法學家羅素·巴斯 (Russel Barsh) 在 1995 年的觀察，指出當時日本與美國等均認為《宣言》草案並非合理的人權發展結果；其內容也過度介入國家法律系統。加拿大不僅於原則上反對《宣言》草案中的自決權，亦夥同澳洲於 2003 年建議，表示原住民族土地與自然資源的基本權利應訂於國家與原住民族之間的協商機制，而不必明載於聯合國《宣言》草案中。因此，太平洋地區原住民族代表崔斯克 (Mililani Trask) 不得不在《檢視聯合國世界原住民族十年》中直言：

「自此〔自開放性調解工作小組成立以來〕，《宣言》即不斷受到協調工作小組蹂躪。每一年，CANSUZ 等國（加拿大、澳洲、紐西蘭和美國）一直反對他們以為不合格的原住民族自決權。這些國家，包括其他，堅持應改寫《宣言》。」(Since this time, the Declaration has languished in the Intercessional Working Group. Every year the CANSUZ States [Canada, Australia, New Zealand and the US] have acted as a block objecting to the unqualified right of self-determination for Indigenous Peoples. These states, and a few others, have insisted on redrafting the document.)⁶

儘管推動《宣言》草案通過的工作受阻，原住民族代表深感受挫，並擔憂無法於第一個國際原住民族十年間完成由聯合國通過《宣言》草案的目標，然而值得欣慰的是，在各方要求及推動下，另一項第一個國際原住民族十年的目標終於在 2000 年間達成，即成立常設的、且位階提升至直屬經濟及社會理事會 (ECOSOC) 的「聯合國原住民議題常設論壇」(United Nations Permanent Forum on Indigenous Issues 或 UNPFII)。該論壇專責全球原住民族人權及基本自由事務，並於聯合國體系內，擔任其他機構針對原住民族事務的諮詢單位。至此，每年 5 月於紐約聯合國總部召開的原住民議題論壇 (PFII) 以及 7 月於日內瓦歐洲總部召開的原住民人口工作小組 (WGIP) 年度會議中，均可見到全球原住民族團體進行遊說，致力推動《宣言》草案於聯合國體制內早日闖關成功。

⁵ Jeff Corntassel, "Towards a New Partnership? Indigenous Political Mobilization and Cooptation During the First UN Indigenous Decade (1995-2004)" 2005. 此文已於 2005 年三月在夏威夷國際學術研討會中發表。

⁶ Mililani Trask, "Review of the UN Decade for the World's Indigenous Peoples" 2003. See <http://www.nciv.net/engels/Reviewmililani.htm>.

近幾年，聯合國體系內除原住民族事務專責機構有所變動外，人權專責機構亦有一番變動。聯合國大會於第 60 屆大會期間，依據第 60/251 號決議⁷，正式成立與經社理事會同位階、直屬大會底下的「人權理事會」(Human Rights Council 或 HRC)，成為大會的附屬機構。原隸屬經濟及社會理事會 (ECOSOC)、自 1946 年便成立的人權委員會 (CHR) 便於第 62 屆委員會議後，於 2006 年 6 月 16 日廢除，其功能與相關職責均由新成立的人權理事會 (HRC) 取代。全球原住民族所關心的《宣言》草案主席建議版亦於此時由人權委員會 (CHR) 轉交給新人權理事會 (HRC) 討論通過。

新人權理事會 (HRC) 成立兩個月後，許多參與 2006 年 5 月間第五屆聯合國原住民常設論壇的代表均發言祝賀，期待全球人權，特別是原住民人權，能因此贏得更多關注及保障；論壇成員因此特別促請新人權理事會 (HRC) 儘速通過《宣言》草案，作為理事會成立後第一項振奮人心的成績。

原住民族非政府組織代表於第五屆聯合國原住民常設論壇會議中強烈要求論壇推動通過《宣言》草案。他們認為《宣言》草案宣示的是原住民族基本人權，已於長期協調中取得大部分原住民族的共識，內容不僅保護原住民族相關權益，更使政府機關於處理國內原住民族相關事務時，有可依循的原則，因此均不約而同發言要求儘速通過。當時 16 位論壇成員（包括中國大陸代表）亦表支持。除此之外，部分與會的國家代表也樂觀其成，例如墨西哥代表於 2006 年 5 月 22 日上午發言表示，《宣言》草案已經二十餘年協商，應儘速由人權理事會宣布通過，成為世界認識原住民族權益的最佳工具；同日，芬蘭法務部代表及委內瑞拉代表也發言支持立即通過。

雖然各代表都呼籲通過，澳洲、紐西蘭與美國仍兩度發言（2006 年 5 月 17 日及 5 月 22 日）⁸，提出聯合聲明要求暫緩通過。三國認為《宣言》草案內容多有含糊不清之處，尚未取得諸會員國共識，倘若貿然通過，恐怕將流於口號罷了，對原住民族沒有實質幫助。

⁷ 人權理事會背景詳見 http://www.ohchr.org/english/bodies/hrcouncil/docs/A.RES.60.251_En.pdf。

⁸ 5 月 17 日聲明稿見 http://www.docip.org/Permanent%20Forum/pfii5_67.PDF。

三國聯合發言代表克里夫·皮爾森 (Clive Pearson) 於 5 月 17 日發言，質疑《宣言》草案第 3 條、第 20 條、第 26 條與第 34 條內容。他們認為第 3 條中的自決權容易被解釋成單邊的自決權利，因而可能造成分裂主義，對現有的政治一統、領土完整性有很大的威脅；第 20 條彷彿授權一個少數民族高於民主法律的否決權 (a power of veto)，使此少數民族凌駕社會其他族群之上，此概念絕不為民主社會接受；第 26 條關於土地與資源的內容更不可行，完全忽略現實社會中已有非原住民族人士合法取得原住民族土地的事實，要如何承認原住民族於他人合法所有地的權利，此舉實在不可思議；第 34 條亦不合理，因為該條文內容將個人權屈居於集體權之下，於其他國際法理不合。⁹綜合以上，三國希望於仔細評估並修正內容以後，再談通過事宜。三國首次發言便針對《宣言》草案中最重要、也最懸而未決的議題，包括原住民族自決權、同意權、土地與資源分配與原住民族集體權概念，直指條文內容不符現實，亦尚無共識，實無通過的基礎。

澳洲、紐西蘭與美國另於 2006 年 5 月 22 日由彼得·范 (Peter Von) 再度提出聯合聲明，此篇以《宣言》草案中的「自主、事先與被告知後的同意」(free, prior, and informed consent) 為辯論重點。「自主、事先與被告知後的同意」於《宣言》初擬版及次委員會通過的第 1994/45 號版裡都是「自主與被告知後同意」(free and informed consent)，經過協調工作小組解釋之後，才於 2006 年 2 月出爐的主席建議版中增為「自主、事先與被告知後的同意」。

三國聯合發言代表提到論壇於 2005 年為解釋「自主、事先與被告知後的同意」舉辦工作坊，協助各國代表探討如何解釋及應用此「同意權」，而類似的研討會也還正由聯合國其他部門（如世界智慧財產權組織 World Intellectual Property Organization 或 WIPO）持續召開中，顯示各國對此種同意權根本尚未建立基本的共識。彼得·范 (Peter Von) 指出 2005 年工作坊的結論建議認為上述同意權並非強制性的。依據該結論建議，所謂徵詢原住民族同意之過程中，原住民族同意權「得」包括拒絕或保留同意的選項，而非「必要」包括，因此並非絕對的同意權。除此之外，工作坊結論強調的是「協商」與「參與」，而非某一族群超然於其他族群以外的同意權。

⁹ 第 20 條即大會通過版《宣言》第 19 條；第 34 條即大會通過版第 35 條。

三國強烈否認某一族群擁有超越現實以及社會其他族群之上的絕對權力（absolute power）或否決權（veto），並認為民主社會強調的其實是不同的權益的妥協。然而，若無適當限制解釋《宣言》草案多次提及的「自主、事先與被告知後的同意」，此權利將很容易被濫用，使原住民族誤以為可自由反對政府與立法院的任何政策或決定。三國聯合發言代表最後強調：

「但是，最基本重點在原住民族與非原住民族都沒有不考量現實環境，超越或絕對的自主、事先、知情的同意權。澳洲、紐西蘭、和美國的共同立場認為針對原住民族參與決策機制的討論，勢必應考量在不同的情形之下，得適用不同的策略。同時，必應平衡所有被影響族群之權利與利益，包括政府必須為大眾利益而行動的責任。」（But the fundamental point is that neither indigenous nor non-indigenous peoples enjoy an overarching or exclusive right of free, prior, informed consent, regardless of circumstance. Australia, New Zealand, and the United States of America's position is that discussions about indigenous participation in decision-making must recognize that difference approaches may be necessary in different circumstances, and must balance the rights and interests of all those affected, including the responsibility of governments to act in the interests of the common good.）

澳洲、紐西蘭與美國重申他們支持提升原住民族參與決策過程，但為了國家安全，也為了不影響國內其他族群之權利自由，三國均認為應適當限制《宣言》中屬於原住民族的「自主的、事先的與被告知的同意」，在此動作完成以前，應不得貿然通過《宣言》草案。

雖然澳、紐、美三國力陳不宜貿然通過《宣言》草案，新人權理事會仍將《宣言》草案主席建議版列入2006年6月19~30日的第二週理事會年度大會議程中進行討論。這個修訂版將取代1994年次委員會通過的草案原稿，成為新人權理事會（HRC）於2006年6月27日（禮拜二）討論是否可以通過的《宣言》草案版本。會中，以秘魯為首超過二十餘的國家均支持立即通過《宣言》草案，包括墨西哥、菲律賓、巴西、俄羅斯、歐盟國…等，但是，加拿大、紐西蘭、澳洲與美國還是反對；日本則提出程序問題，建議不應立即通過。

2006年6月人權理事會（HRC）會議中，加拿大代表認為開放性協調工作小組主席恰斐茲先生（秘魯籍）基本上是在工作小組議期結束以後，才將新《宣言》草案版本整理完畢。之後，主席沒有再將整理過後的版本交由工作小組其他成員閱讀討論，連人權理事會會員國也沒有足

夠的時間充分閱讀及討論，實在不應該就此草率決定是否通過，反而應該再延後幾個月或幾年時間，給予各國充分討論、研究與取得共識的時間。日本代表也提出類似的程序問題。紐西蘭、澳洲與美國則一再強調共識未達成，關於自決權、第 20 條、第 26 條、第 34 條等都還有討論空間。¹⁰

身為人權理事會（HRC）首次大會觀察員，國際人權服務（International Service for Human Rights）向理事會提出真切的呼籲。國際人權服務並不支持加拿大的要求，因為時間根本不是重點。人權理事會（HRC）面對的不是決定「現在」或「幾個月以後」才通過《宣言》，而是「根本要」或「不要」這個《宣言》（*The choice for the Council therefore is not a choice between a declaration now or in a few short months. It is a choice between a declaration now or never*）。

綜合上述，不難看出各國代表與原住民族代表不僅在自決權、土地、領土與資源、條約權、補償權、其他議題上爭論僵持不下，甚至對《宣言》草案的文字也是錙銖必較。人權理事會（HRC）最後採取投票方式，於 2007 年 6 月 27 日以 30 國贊成對 2 國反對通過世界原住民族引頸期盼的《宣言》草案；投票結果如下：

贊成（30）：

亞塞拜然、巴西、喀麥隆、中國、古巴、捷克共和國、厄瓜多爾、芬蘭、法國、德國、瓜地馬拉、印度、印尼、日本、馬來西亞、模里西斯、墨西哥、荷蘭、巴基斯坦、秘魯、波蘭、韓國、羅馬尼亞、沙烏地阿拉伯、南非、斯里蘭卡、瑞士、英國、烏拉圭、尚比亞

反對（2）：

加拿大、俄羅斯聯邦

棄權（12）：

阿爾及利亞、阿根廷、巴林、孟加拉、迦納、約旦、摩洛哥、奈及利亞、菲律賓、塞內加爾、突尼西亞、烏克蘭

¹⁰ 各國於人權理事會發言內容詳見

<http://www.docip.org/Human%20Rights%20Council/First%20session.html>。第 20 條即大會通過版第 19 條、第 34 即大會通過版第 35 條。

缺席 (3):

吉布地、加彭、馬利¹¹

投票結果顯示，加拿大反對；紐西蘭、澳洲與美國不投票；摩洛哥、菲律賓等國雖在原住民議題常設論壇中有原住民族代表，卻仍選擇棄權。《宣言》能通過顯然是民主投票機制中「多數贏少數」的勝利而已。多數反對、棄權以及贊成的國家表示希望是以達成「共識」(consensus)來通過《宣言》草案，而非依據投票結果。

少數贊成國於投票聲明中支持保護原住民族人權的普遍原則，卻對國內少數或原住民族是否享有《宣言》權利有不同的解讀，例如德國便認為其境內的少數民族雖享有基本的人權與自由，卻不為《宣言》的適用對象。許多國家更是強調《宣言》中的自決權或其他權利絕不能危及政府主權或國家領土完整性，例如摩洛哥、模里西斯、烏克蘭、阿根廷…等等。人權理事會甚至在決議文中建議聯合國大會盡快通過「不具約束力」的宣言。種種過程與各國表態的語言均顯示，即使人權理事會通過了，《宣言》引起的問題、立場的爭議矛盾都未消失。

《宣言》草案原計於人權理事會 (HRC) 通過同一年 (2006 年) 送交聯合國大會 (GA) 討論通過，卻臨時遭非洲國家 (如東非的波紫那 Botswana 及西南非的那米比亞 Namibia) 疑似受美國等反對國鼓動，基於原住民族定義未清等理由，串連要求聯合國大會 (GA) 暫緩通過《宣言》草案¹²。因此，參與 2007 年 5 月第六屆聯合國原住民議題常設論壇會議的各國原住民代表，仍無法享受《宣言》通過及原住民族權利受肯定的歡愉，持續激動發言鼓勵、要求並期盼聯合國儘速通過《宣言》。

從 1985 年至 2007 年，數以萬計的原住民代表經過長達二十餘年的草擬、協商、遊說及推動後，《宣言》草案從原來的防止歧視及保護弱勢族群次委員會於第 1994/45 號決議中通過的 19 段前言及 45 條條文，最後被修訂成為 2006 年 6 月人權理事會 (HRC) 通過的 24 段前言及 46 條條文，並以此版本終於在 2007 年 9 月 13 日第 61 屆聯合國大會中，

¹¹ 詳見

[http://www.unog.ch/unog/website/news_media.nsf/\(httpNewsByYear_en\)/BE82C77003776B9EC125719C005D5994?OpenDocument](http://www.unog.ch/unog/website/news_media.nsf/(httpNewsByYear_en)/BE82C77003776B9EC125719C005D5994?OpenDocument)。

¹² 詳見 http://www.wretch.cc/blog/iamyedda&article_id=9455610 及 http://www.wretch.cc/blog/iamyedda&article_id=9505856

以 143 國贊成、4 國反對、11 國棄權及 34 國缺席的投票結果獲得通過，成為正式文件。投票結果如下：

贊成 (143)：

阿富汗、阿爾巴尼亞、阿爾及利亞、安道爾、安哥拉、安地卡及巴布達、阿根廷、亞美尼亞、奧地利、巴哈馬、巴林、巴貝多、白俄羅斯、比利時、貝里斯、貝南、波利維亞、波士尼亞與赫塞哥維納、波紫那、巴西、汶萊、保加利亞、布吉納法索、柬埔寨、喀麥隆、維德角、中非共和國、智利、中國、科摩洛、剛果、哥斯大黎加、克羅埃西亞、古巴、賽普勒斯、捷克共和國、朝鮮民主主義人民共和國（北韓）、剛果、丹麥、吉布地、多米尼克、多明尼加共和國、厄瓜多爾、埃及、薩爾瓦多、愛沙尼亞、芬蘭、法國、加彭、德國、迦納、希臘、瓜地馬拉、幾內亞、蓋亞那、海地、宏都拉斯、匈牙利、冰島、印度、印尼、伊朗、伊拉克、愛爾蘭、義大利、雅買加、日本、約旦、哈薩克、科威特、寮國、拉脫維亞、黎巴嫩、賴所托、賴比瑞亞、利比亞、列支敦斯登、立陶宛、盧森堡、馬達加斯加、馬拉威、馬來西亞、馬爾地夫、馬利、馬爾他、模里西斯、墨西哥、密克羅尼西亞、摩爾達維雅、摩納哥、蒙古、莫三比克、緬甸、那米比亞、尼泊爾、荷蘭、尼加拉瓜、尼日、挪威、阿曼、巴基斯坦、巴拿馬、巴拉圭、秘魯、菲律賓、波蘭、葡萄牙、卡達、韓國、聖露西亞、聖文森與格拉那達、聖馬利諾、沙烏地阿拉伯、塞內加爾、塞爾維亞、獅子山、新加坡、斯洛伐克、斯洛文尼亞、南非、西班牙、斯里蘭卡、蘇丹、蘇利南、史瓦濟蘭、瑞典、瑞士、敘利亞、泰國、馬其頓共和國、東帝汶民主共和國、千里達托貝哥、突尼西亞、土耳其、阿拉伯聯合大公國、英國、坦尚尼亞、烏拉圭、委內瑞拉、越南、葉門、尚比亞、辛巴威

反對 (4)：

澳洲、加拿大、紐西蘭、美國

棄權 (11)：

亞塞拜然、孟加拉、不丹、蒲隆地、哥倫比亞、喬治亞、肯亞、奈吉利亞、俄羅斯聯邦、薩摩亞、烏克蘭

缺席 (34)：

查德、象牙海岸、赤道幾內亞共和國、厄立特里亞、伊索比亞、斐濟、甘比亞、格瑞納達、幾內亞比紹、以色列、吉里巴斯、吉爾吉斯斯坦、馬紹爾群島、茅利塔尼亞、黑山國、摩洛哥、諾魯、帛琉、巴布亞新幾內亞、羅馬尼亞、盧安達、聖克里斯多福及尼維斯、聖多美普林西比、塞席爾群島、所羅門群島、索馬利亞、塔吉克、多哥、東加、土庫曼、烏干達、烏茲別克斯坦、萬那杜¹³

其中，境內擁有為數不少的原住民族，並且為世界公認原住民族權益相當進步的國家（如澳、加、紐、美）仍維持一貫反對態度；而國內人口以南島民族為多數的南太平洋島國，且多為中華民國邦交國者（如斐、吉、馬、諾、帛、所、東、萬等）則於投票會議中幾乎全數缺席。

¹³ 詳見聯合國大會新聞稿 <http://www.un.org/News/Press/docs//2007/ga10612.doc.htm>。

反對的國家中，澳、加、紐、美四國反對的立場一如從工作小組、常設論壇、到人權理事會中幾國代表所力陳之言論，例《宣言》條文過於空泛、恐危及國家政治與領土完整性、整個版本沒有取得共識、難以（甚至幾乎不可能）執行、對自決權的定義影射給予原住民族高於國家立法及行政之上的否決權（veto）、或部分內容已違反國內行之有年的機制…等等。這些國家都表示不是為反對原住民族權利而反對《宣言》，反而是因為《宣言》本身有諸多遺憾，根本無法實際保障原住民族權利，因而無法投下贊成票。

棄權的國家中，俄羅斯聯盟亦認為宣言沒有取得共識是遺憾，同時質疑《宣言》草案協調會議的公正及公開性，認為某些國家被排除於協商大門之外，於如此前提下，該國無法投下贊成票。哥倫比亞則以《宣言》通過版本第 19 條、第 30 條、第 32 條與其國內法律體系衝突為由棄權，但表明仍繼續以國內對原住民族有益的法律持續推動原住民族權益。奈吉利亞則遺憾《宣言》通過版本涉及自決權、土地、領土及資源、與國家領土及政治完整性的爭議一直沒有解決，因為這些權利直接影響奈國國內使用 300 種不同語言的 300 支民族，因此不得不棄權。

贊成的國家中，亦不少國家代表在投票後發言表示雖贊成通過《宣言》為世界人權的一大進展，卻都依據不同理由各自加上但書，如不可危及國家領土及政治的完整性及統一性（如日本、墨西哥、巴西、蘇利南、埃及等）。《宣言》沒有定義原住民族的缺憾恐於日後造成適用對象的問題（如孟加拉、印度、印尼、巴基斯坦）；印尼更以假設《宣言》的原住民族定義若等於《國際勞工組織公約》中的原住民族定義時，該《宣言》便不適用印尼境內的情況；英國也以《宣言》無法律追溯效力為由，表示英國因此不需遵守第 12 及 13 條歸還所謂的祭典用物或人類遺骨，而其境內之少數族群或其他民族亦不適用《宣言》內容；而伊朗甚至表明境內沒有所謂的原住民族。少數國家亦認為其國內法便已有依據國際人權標準、足以保護原住民族的機制（如哥倫比亞、智利、法國、挪威），《宣言》乃錦上添花。甚至還少部分國家不接受《宣言》內所謂的集體權概念（如英國、斯洛伐克）。

由以上分析得知，不論是贊成、反對或棄權的國家，對《宣言》都持有諸多疑慮及限制。等待人權理事會或聯合國大會通過《宣言》實在並非爭取原住民族權利的終點，反而是起點。沒有法律拘束力

(non-binding) 的《宣言》是否能就此發揮其道德約束力及政治影響力，使各國就此從依循《宣言》精神並保護原住民族權利的角度修正或擬定國內相關法令，仍有待觀察。《宣言》能確立保護原則，固然可喜重要，然而訂定監督各國有效執行 (effective implementation) 的標準、準則與機制才更能彰顯《宣言》的價值，在原住民社區中落實《宣言》內容也才對弱勢的原住民族族群真正有利。

貳、《聯合國原住民族權利宣言》中英對照版

United Nations Declaration on the Rights of Indigenous Peoples

(Document A/61/L.67 聯合國大會 2007 年 9 月 13 日通過版本)

條文	英文	中文
前言	<p><i>The General Assembly,</i></p> <p><i>Guided by</i> the purposes and principles of the Charter of the United Nations, and good faith in the fulfillment of the obligations assumed by States in accordance with the Charter,</p> <p><i>Affirming</i> 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,</p> <p><i>Affirming also</i> that all peoples contribute to the diversity and richness of civilizations and cultures, which constitute the common heritage of humankind,</p> <p><i>Affirming further</i> 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,</p> <p><i>Reaffirming</i> that indigenous peoples, in the exercise of their rights, should be free from discrimination of any kind,</p> <p><i>Concerned</i> 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</p>	<p>大會</p> <p>秉承聯合國憲章的宗旨、原則，以及國家依據該憲章履行義務的善意，</p> <p>確認原住民族與其他民族一律平等，並承認所有民族均有權與其他民族不同，有權自認為與其他民族不同，並有權因而被尊重，</p> <p>亦確認所有民族對構成全人類共同資產的各種文明及文化的多元性、豐富性，均有其貢獻，</p> <p>更確認基於民族或個人因國族起源、種族、宗教、族群或文化差異，而有高下優劣之別的學說、政策及作為，或者鼓吹這種想法的學說、政策及作為，均為種族主義；它們於科學無據、於法律無效、於道德應受遣責，於社會不公，</p> <p>再確認原住民族行使其權利時，應免於任何形式的歧視，</p> <p>關注原住民族過去由於殖民統治及其土地、領域與資源被剝奪等原因，而遭受的歷史不正義，使得他們無法依照其自身需求及利益行使其權利，尤其是發展權，</p>

<p>them from exercising, in particular, their right to development in accordance with their own needs and interests,</p>	
<p><i>Recognizing</i> 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,</p>	<p>承認亟需尊重並促進原住民族源於其政治、經濟、社會結構、文化、精神傳統、歷史及哲學的固有權利，特別是原住民族對其土地、領域與資源的權利；</p>
<p><i>Recognizing also</i> the urgent need to respect and promote the rights of indigenous peoples affirmed in treaties, agreements and other constructive arrangements with States,</p>	<p>亦承認亟需尊重並促進在原住民族與國家簽訂的條約、協定與其他建設性安排中所肯認的權利，</p>
<p><i>Welcoming</i> 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,</p>	<p>樂見原住民族為提高其政治、經濟、社會及文化地位、以及為終結各地所發生的各種歧視及壓迫而自我組織，</p>
<p><i>Convinced</i> 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,</p>	<p>深信由原住民族控制影響其自身及其土地、領域、資源的發展，將有助原住民族維持與強化其制度、文化、傳統，並促進符合其期望及需要之發展；</p>
<p><i>Recognizing</i> that respect for indigenous knowledge, cultures and traditional practices contributes to sustainable and equitable development and proper management of the environment,</p>	<p>承認尊重原住民知識、文化及傳統習俗有助於環境的永續且公平的發展、以及適當管理，</p>
<p><i>Emphasizing</i> the contribution of the demilitarization of the lands and territories of indigenous peoples to peace, economic and social progress and development, understanding and friendly</p>	<p>強調原住民族土地及領域的去軍事化有助於各民族與人民之間的和平、經濟與社會進步、發展、相互理解與友好關係，</p>

relations among nations and peoples of the world,	
<i>Recognizing in particular</i> 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,	尤其承認原住民家庭及社群有權在符合兒童人權的情況下，保留扶養、訓練、教育及為子女謀福祉的共同責任，
<i>Considering</i> 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,	認為在國家及原住民族簽訂的條約、協議與其他建設性安排中所肯認的權利，於某些情況下，係屬國際事務、國際利益、國際責任以及具有國際性質，
<i>Considering also</i> that treaties, agreements and other constructive arrangements, and the relationship they represent, are the basis for a strengthened partnership between indigenous peoples and States,	亦認為前述條約、協議與其他建設性安排，及其呈現的關係，乃為強化原住民族與國家間夥伴關係的基礎，
<i>Acknowledging</i> that the Charter of the United Nations, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights as well as the Vienna Declaration and Programme of Action, 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,	認知聯合國憲章、經濟社會與文化國際公約、公民及政治權利國際公約、維也納宣言和行動綱領中肯認所有民族享有自決權的根本重要性；各民族得依此自決權自由決定其政治地位，並自由追求其經濟、社會及文化的發展，
<i>Bearing in mind</i> that nothing in this Declaration may be used to deny any peoples their right to self-determination, exercised in conformity with international law,	銘記本宣言內容不得被援用於否定任何民族依據國際法行使的自決權，
<i>Convinced</i> that the recognition of the rights of indigenous peoples in this Declaration will enhance harmonious and cooperative relations between the State and	深信本宣言所承認的原住民族權利，將加強國家與原住民族間基於公正、民主、尊重人權、非歧視及善意等原則下的和諧及合作

<p>indigenous peoples, based on principles of justice, democracy, respect for human rights, non-discrimination and good faith,</p>	<p>關係，</p>
<p><i>Encouraging</i> 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,</p>	<p>鼓勵國家應諮詢相關民族並與其合作，以遵守並確實履行於國際機制上對原住民族的義務，尤其是涉及人權的國際機制，</p>
<p><i>Emphasizing</i> that the United Nations has an important and continuing role to play in promoting and protecting the rights of indigenous peoples,</p>	<p>強調聯合國在促進及保障原住民族權利上，扮演重要且持續發揮影響力的角色；</p>
<p><i>Believing</i> 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,</p>	<p>相信本宣言對承認、促進與保障原住民族的權利與自由，以及對聯合國體系中此領域相關行動的發展，是重要的一大步，</p>
<p><i>Recognizing and reaffirming</i> 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,</p>	<p>承認並再確認原住民個人有權且不受歧視地享有國際法上肯認的所有人權；原住民族享有與其民族生存、福祉及整體發展不可或缺的集體權利，</p>
<p><i>Recognizing also</i> 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,</p>	<p>亦承認各原住民族的處境因區域或國家而異；這些國家與區域的特殊性，以及不同歷史與文化背景的差异，皆應納入考量，</p>
<p><i>Solemnly proclaims</i> the following United Nations Declaration on the Rights of Indigenous Peoples as a standard of achievement to be pursued in a spirit of</p>	<p>莊嚴地宣布，以下聯合國原住民族權利宣言，為基於夥伴關係與相互尊重的精神，所追求的標準：</p>

	partnership and mutual respect:	
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 Rights and international human rights law.	原住民族，無論是集體或個人，均有權充分享有聯合國憲章、世界人權宣言及國際人權法上承認的所有人權與基本自由。
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.	原住民族及原住民個人與其他所有民族及個人一律自由、平等，並有權於行使其權利時，免於任何形式的歧視，尤其是行使他們基於其原住民出身或認同的權利。
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.	原住民族享有自決權。依此權利，原住民族可自由決定其政治地位，並自由追求其經濟、社會及文化的發展。
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.	原住民族行使自決權時，於其內政、當地事務，及自治運作之財政，享有自主或自治權。
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.	原住民族即使保有充分參與國家的政治、經濟、社會與文化生活之權利，仍有權維持及加強其獨特的政治、法律、經濟、社會與文化制度
6.	Every indigenous individual has the right to a nationality.	每個原住民個人均有享有國籍的權利。
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.	1. 原住民個人均享有生命、身心健全、人身自由以及人身安全的權利。 2. 原住民族享有在自由、和平及安全狀態下作為獨特民族的集體權，且不應遭受任何種族滅絕或其他暴力行為的侵害，包括強行將兒童從所屬群體遷離至另一群體。

	<p>1. Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.</p>	<p>1. 原住民族與原住民個人享有不被強行同化、文化不被破壞的權利。</p>
8.	<p>2. States shall provide effective mechanism for prevention of, and redress for:</p> <p>(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;</p> <p>(b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;</p> <p>(c) Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights;</p> <p>(d) Any form of forced assimilation or integration;</p> <p>(e) Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them.</p>	<p>2. 國家應採取有效機制，以防止並糾正：</p> <p>(a) 任何意圖或實際剝奪其作為獨特民族的完整性、剝奪其文化價值或族群認同的行為；</p> <p>(b) 任何意圖或實際剝奪其土地、領域與資源的行動；</p> <p>(c) 任何意圖或實際違反或損害原住民族權利的人口強制遷移行為；</p> <p>(d) 任何形式的強制同化或融合；</p> <p>(e) 任何旨在鼓勵或煽動針對原住民族的種族歧視或族群歧視的宣傳活動。</p>
9.	<p>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.</p>	<p>原住民族與原住民個人有權依據相關社群或民族的傳統及習俗，隸屬該原住民社群或民族。本項權利的行使，不得產生任何形式之歧視。</p>
10.	<p>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.</p>	<p>原住民族不應被強行遷離其土地或領域。未取得相關原住民族自由意志與資訊完整下的事前同意，或未事先達成公平、公正的賠償協議，以及在可能遷回的情形下，未提供遷回原址之選擇前，不得逕行遷移。</p>
11.	<p>1. Indigenous peoples have the right to practice and revitalize their cultural traditions and customs. This includes the</p>	<p>1. 原住民族有權從事及振興其文化傳統與習俗，此權利包括維持、保護及發展其文化的過</p>

	<p>right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artifacts, designs, ceremonies, technologies and visual and performing arts and literature.</p> <p>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.</p>	<p>去、現在與未來的表現形式，例如：考古與歷史遺址、手工藝品、設計、典禮祭儀、技術、視覺與表演藝術、文學等。</p> <p>2. 國家應與原住民族共同建立有效的機制，以糾正未經原住民族自由意志與資訊完整下的事前同意，或違反其法律、傳統及習俗而取得原住民族文化、知識、宗教及精神財產的行為，糾正的方式包含回復原狀。</p>
12.	<p>1. Indigenous peoples have the right to manifest, practice, 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.</p> <p>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.</p>	<p>1. 原住民族有權展示、從事、發展及傳授其精神與宗教傳統、習俗及典禮祭儀；有權維持、保護及不受干擾地使用其宗教性與文化性場所；有權使用及控制典禮祭儀物品；並有權要求返還遺骸。</p> <p>2. 國家應透過其與相關原住民族共同形成之公平、透明及有效機制，確保原住民族得使用目前為國家所持有的典禮祭儀物品、遺骸，或將該典禮祭儀物品、遺骸返還。</p>
13.	<p>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.</p> <p>2. States shall take effective measures to ensure that this right is protected and</p>	<p>1. 原住民族有權振興、使用、發展及傳授後代其歷史、語言、口述傳統、哲學、書寫系統及文學，並有權命名及保留其社群名稱、地名及人名。</p> <p>2. 國家應採取有效措施確保前項權利受到保障，並於必要時提</p>

	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.	供翻譯或其他適當方法，確保原住民族於政治、法律及行政程序中能理解他人並且被別人理解。
14.	<p>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.</p> <p>2. Indigenous individuals, particularly children, have the right to all levels and forms of education of the State without discrimination.</p> <p>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.</p>	<p>1. 原住民族有權建立及控制他們自己的教育體系和機構，而得以其語言提供教育，並採用適合自己文化的教學及學習方式。</p> <p>2. 原住民個人，尤其是兒童，有權不受歧視地享有各種階段及形式的國家教育。</p> <p>3. 國家應與原住民族共同採取有效措施，使原住民個人，尤其是兒童，包括居住於其社群外之原住民兒童，於可能的情形下，接受自己文化的教育以及以其語言授課之教育。</p>
15.	<p>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.</p> <p>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.</p>	<p>1. 原住民族有權維護其文化、傳統、歷史及期望的尊嚴與多元性。這樣的尊嚴和多元性應該適當地呈現在教育和公共資訊上。</p> <p>2. 國家應諮詢相關原住民族並與其合作，採取有效措施摒除偏見、消除歧視，並促進原住民族與社會其他群體間之包容、理解及友好關係。</p>
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.	1. 原住民族有權以其語言建立自己的媒體，並有權不受歧視地使用各種形式的非原住民媒體。

	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.	2. 國家應採取有效措施確保國營媒體確實呈現原住民族文化多元性。國家於不傷害言論自由的情形下，應鼓勵私營媒體充分呈現原住民族文化多元性。
17.	<p>1. Indigenous individuals and peoples have the right to enjoy fully all rights established under applicable international and domestic labor law.</p> <p>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.</p> <p>3. Indigenous individuals have the right not to be subjected to any discriminatory conditions of labor and, inter alia, employment or salary.</p>	<p>1. 原住民個人與原住民族有權充分享有有效的國際和國內勞工法所確立的所有權利。</p> <p>2. 考量原住民兒童的特殊脆弱性及透過教育進行培力的重要性，國家應諮詢原住民族並與其合作，採取具體措施，使原住民兒童免於經濟剝削，免於從事任何具危險性、妨礙其受教育的工作，以及免於從事有害其健康、身體、心理、精神、道德或社會發展的工作。</p> <p>3. 原住民個人享有在勞動條件、就業或薪資等方面，免受任何歧視的權利。</p>
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.	原住民族有權依照自己的程序選任自己的代表，參與影響其權利之事務的決策過程，並有權維持及發展原住民族自己的決策制度。
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.	國家在通過及落實可能影響原住民族的立法或行政措施前，應以善意諮詢相關原住民族並與其合作，並透過原住民族自己的代表機構，取得其自由意志與資訊完整下的事前同意。

20.	<p>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.</p> <p>2. Indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress.</p>	<p>1. 原住民族有權維持與發展其政治、經濟與社會體系或制度，有權確保享有自己的維生與發展方式，並自由從事傳統及其他形式的經濟活動。</p> <p>2. 原住民族遭受剝奪其維生及發展方式時，有權獲得公正公平的糾正。</p>
21.	<p>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.</p> <p>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.</p>	<p>1. 原住民族享有在不受歧視的情形下，改善其經濟與社會條件的權利，包括教育、就業、職業訓練與在職訓練、住宅、衛生、醫療及社會安全等。</p> <p>2. 國家應採取有效措施，適當時以特別措施，確保原住民族經濟及社會條件的持續改善。並應特別關注原住民老人、婦女、青年、兒童及身心障礙者的權利以及特殊需求。</p>
22.	<p>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.</p> <p>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.</p>	<p>1. 本宣言之落實，應特別關注原住民老人、婦女、青年、兒童及身心障礙者的權利以及特殊需求。</p> <p>2. 國家應與原住民族共同採取措施，以確保原住民婦女及兒童享有充分的保護與保障，免於一切形式的暴力及歧視。</p>
23.	<p>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</p>	<p>原住民族於行使其發展權時，有權決定及形成發展的優先順序及策略。尤其是，原住民族有權積極涉入那些影響他們的健康、住宅及其他經濟性、社會性計畫的</p>

	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.	形成與決定；只要可能，原住民族也有權透過自己的機構進行上述計畫的管理。
24.	<p>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.</p> <p>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.</p>	<p>1. 原住民族有使用其傳統醫藥及維持其醫療方法的權利，包括保存其重要的藥用植物、動物及礦物。原住民個人有不受歧視地享有一切社會及醫療服務的權利。</p> <p>2. 原住民個人有享有最高標準之身心健康的平等權利。國家應採取必要措施，以逐步地充分落實本項權利。</p>
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.	原住民族有權維持及強化其與傳統上擁有、占有、使用的土地、領域、水域、海域及其他資源間的獨特精神上關係，並有權維護他們在此事務上對於後代的責任。
26.	<p>1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.</p> <p>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.</p> <p>3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be</p>	<p>1. 原住民族對其傳統上擁有、占有、使用或取得的土地、領域與資源享有權利。</p> <p>2. 原住民族有權擁有、使用、發展及控制其傳統上所有、占有、使用或以其他方式取得的土地、領域與資源。</p> <p>3. 國家應於法律上承認與保護前項土地、領域與資源。此一承認應充分尊重相關原住民族的</p>

	conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.	習俗、傳統及土地權利制度。
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.	國家應與相關原住民族合作，建立並落實一套公平、獨立、公正、公開與透明之程序，且充分承認原住民族之法律、傳統、習俗與土地權利制度，以認定及裁決原住民族於其土地、領域與資源之權利，包括其傳統上擁有、占有或使用的土地、領域與資源。原住民族應有權參與上述程序。
28.	<p>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.</p> <p>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.</p>	<p>1. 原住民族有權糾正未取得其自由意志與資訊完整下的事前同意，而徵收、奪取、占有、使用或破壞其傳統上擁有、占有或使用的土地、領域與資源的情況。糾正的方式包括回復原狀，或者在無法回復原狀時，得請求公正、公平及合理的賠償。</p> <p>2. 除非相關原住民族另為自願同意，前項賠償應給付品質、數量、面積及法律狀況相當之土地、領域與資源，或以貨幣或其他適當方式糾正之。</p>
29.	<p>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 programs for indigenous peoples for such conservation and protection, without discrimination.</p> <p>2. States shall take effective measures to ensure that no storage or disposal of</p>	<p>1. 原住民族有權保育及保護環境及其土地、領域與資源的生產力。國家應於不歧視的情形下，對於原住民族上述保育與保護行為，建立並落實協助計畫。</p> <p>2. 國家應採取有效措施，以確保在未取得原住民族自由意志與</p>

	<p>hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.</p> <p>3. States shall also take effective measures to ensure, as needed, that programs for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented.</p>	<p>資訊完整下的事前同意之前，不得於原住民族土地或領域上存放或棄置有害物質。</p> <p>3. 國家亦應採取有效措施，以確保由受有害物質影響的原住民族所建立的監測、維護及恢復原住民族健康之計畫，被充分落實。</p>
30.	<p>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.</p> <p>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.</p>	<p>1. 除非涉及公眾利益，或經相關原住民族自願同意或要求，國家不得於原住民族土地或領域內進行軍事活動。</p> <p>2. 國家應於使用原住民族土地或領域進行軍事活動前，以適當程序，尤其是透過原住民族自己的代表機構，實質地諮詢相關原住民族意見。</p>
31.	<p>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.</p>	<p>1. 原住民族有權維持、控制、保護及發展其文化資產、傳知識、傳統文化表現，及其科學、技術與文化呈現，包括人類與基因資源、種子、醫藥、動植物群特性知識、口述傳統、文學、設計、體育及傳統競技與視覺及表演藝術；亦有權維持、控制、保護及發展對其文化資產、傳統知識與傳統文化表現之知識財產。</p>

	2. In conjunction with indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.	2. 國家應與原住民族共同採取有效措施，承認並保護前項權利之行使。
32.	<p>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.</p> <p>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.</p> <p>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.</p>	<p>1. 原住民族有權決定及形成對其土地、領域與其他資源之發展或使用的優先順序與策略。</p> <p>2. 國家在批准任何影響原住民族土地、領域與其他資源的計畫前，尤其是涉及發展、利用或開採礦物、水或其他資源，應以善意諮詢相關原住民族並與其合作，並透過原住民族自己的代表機構，取得其自由意志與資訊完整下的事前同意。</p> <p>3. 國家應採取有效機制，公正公平地糾正前項影響原住民族土地、領域及其他資源的活動，並應採取適當措施，減輕其對環境、經濟、社會、文化或精神的負面影響。</p>
33.	<p>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.</p> <p>2. Indigenous peoples have the right to determine the structures and to select the membership of their institutions in accordance with their own procedures.</p>	<p>1. 原住民族有依其習俗與傳統決定其自我認同與成員身分的權利。上述權利無礙原住民個人取得居住國公民身分之權利。</p> <p>2. 原住民族有權依照自己的程序，決定自己的組織架構及選出組織成員。</p>
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	原住民族有權促進、發展及維持其組織架構、獨特習俗、精神文化、傳統、程序與慣例，倘若存在司法體系或司法習俗，也有權依據國際人權標準予以促進、發展及維持。

	systems or customs, in accordance with international human rights standards.	
35.	Indigenous peoples have the right to determine the responsibilities of individuals to their communities.	原住民族有權決定個別成員對其社群應負的責任。
36.	<p>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.</p> <p>2. States, in consultation and cooperation with indigenous peoples, shall take effective measures to facilitate the exercise and ensure the implementation of this right.</p>	<p>1. 原住民族，尤其是被國家間疆界分隔的原住民族，有權跨疆界與族人或其他民族維持及發展各種聯繫、關係與合作，包括為精神、文化、政治、經濟及社會等目的展開的活動。</p> <p>2. 國家應諮詢原住民族並與其合作，以採取有效措施，協助行使以及確保落實前項權利。</p>
37.	<p>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.</p> <p>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.</p>	<p>1. 原住民族有權要求承認、遵守及執行與國家或其繼承政權所訂立的條約、協議與其他建設性安排。並有權要求國家實踐並尊重該條約、協議與其他建設性安排。</p> <p>2. 本宣言內容不得解釋為減損或排除條約、協議與其他建設性安排中的原住民族權利。</p>
38.	States in consultation and cooperation with indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration.	國家應諮詢原住民族並與其合作，採取包括立法的適當措施，以達成本宣言的目標。
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.	為享有本宣言中揭示的權利，原住民族有權從國家及國際合作中獲得財務及技術協助。

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.	原住民族有權透過公平公正的程序，迅速取得解決其與國家或其他當事人衝突或爭端的裁決，也有權在個人或集體權受到侵犯時，獲得有效賠償。上述裁決應充分考量相關原住民族的習俗、傳統、規則及法律體系，以及國際人權。
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.	聯合國各機關與專責單位及其他政府間組織，應透過推動財務合作與技術協助等方式，以全面落實本宣言條文。且應建立管道確保原住民族得參與影響其自身的議題。
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.	聯合國、含原住民族常設論壇在內的聯合國各機構、(包括設於國家之內的聯合國)各專責單位以及國家，皆應促進對本宣言條文的尊重與全面適用，並應持續本宣言的效力。
43.	The rights recognized herein constitute the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world.	本宣言所承認的權利，僅構成全世界原住民族爭取生存、維護尊嚴與謀求福祉的最低標準。
44.	All the rights and freedoms recognized herein are equally guaranteed to male and female indigenous individuals.	原住民個人不分男女，均平等享有本宣言所承認的所有權利與自由。
45.	Nothing in this Declaration may be construed as diminishing or extinguishing the rights indigenous peoples have now or may acquire in the future.	本宣言內容不得解釋為減損或消滅原住民族現在享有或未來將取得的各種權利。
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	1. 本宣言內容不得解釋為任何國家、民族、團體或個人有權參與或從事任何違背聯合國憲章的活動或行為，也不得解釋為授權或鼓勵任何可能造成完全或局部分割、完全或局部破壞主權獨立國家的領土完整或政

	<p>dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States.</p> <p>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.</p> <p>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.</p>	<p>治統一的行為。</p> <p>2. 行使本宣言中所揭示的權利時，所有人的人權及基本自由皆應被尊重。行使本宣言權利時，僅受法律規定的限制，並應符合國際人權義務。但任何上述限制應為非歧視性，且嚴格限於為確保承認與尊重他人權利與自由所必要、或為滿足民主社會中公正及最重大需求所必要。</p> <p>3. 本宣言條文應依據公正、民主、尊重人權、平等、不歧視、良好治理與善意等原則解釋之。</p>
--	--	--

譯者：王 雅 萍
tjuku palemeq (行政院原住民族委員會外文編譯)
曾 興 中
tzama palatsasaw (行政院原住民族委員會法規會科員)

審稿：林淑雅 (台灣人權促進會)、官大偉 (夏威夷大學博士班)
鄭川如 (華盛頓大學博士班)

《聯合國原住民族權利宣言》英文版取自

<http://daccessdds.un.org/doc/UNDOC/LTD/N07/498/30/PDF/N0749830.pdf?OpenElement>



行政院原住民族委員會
Council of Indigenous Peoples, Executive Yuan

