

**Protecting Knowledge**  
Traditional Resource Rights in the New Millennium

# CONFERENCE PRIMER

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**PART 1 - THE UNITED NATIONS SYSTEM FLOW CHART**

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# The UNITED NATIONS system

## PRINCIPAL ORGANS OF THE UNITED NATIONS

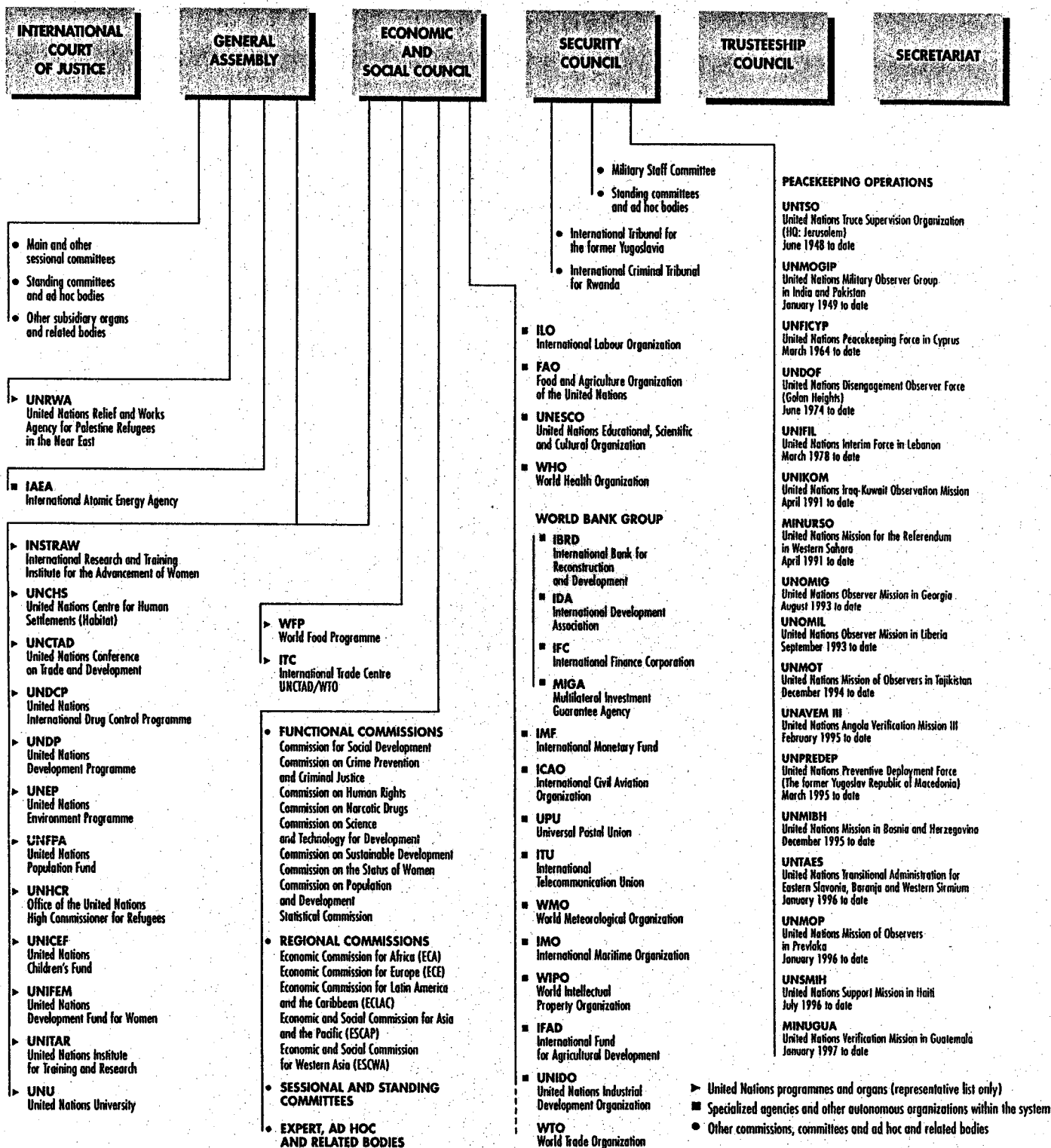


Fig. 2.1. The United Nations System. Source: United Nations, Department of Public Information CDPI/1857/Rev. 1, (February 1997). Reproduced by permission of the United Nations.



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## PART 2 - GLOSSARY

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<u>Agenda 21</u>	Agenda 21 is a comprehensive plan adopted at the Earth Summit in Rio de Janeiro in 1992. The Plan sets out ways in which governments and national and international organizations can adopt plans and priorities which promote sustainable development while protecting the environment.
<u>Biological Diversity</u>	The term biological diversity is used to describe all living species which depend on each other as part of a healthy environment.
<u>Copyright</u>	Copyright is the right held by the creator of an original literary, musical or artistic work which is recognized by national laws as well as international law. Copyright law protects against unauthorized use of the work.
<u>Economic and Social Council</u>	The Economic and Social Council ("ECOSOC") is made up of 54 member countries (including Canada) that are elected by the General Assembly, with a mandate to address international social, cultural and educational issues and formulate policy for consideration by the United Nations, as well as to promote international social development.
<u>ILO</u>	The International Labour Organization is an agency of the United Nation, first established in 1946, with a mandate to promote social justice and human rights. The ILO, which is made up of representatives of workers, employers and government, makes recommendations on labour and employment standards and provides advisory services and technical assistance in the field of employment, training, and labour relations
<u>IMF</u>	The International Monetary Fund is an organization made up of 182 countries, established to promote international monetary cooperation and stability, to assist and encourage the orderly exchange of currencies, and to promote global economic growth and stability. The IMF provides financial and technical assistance to countries experiencing problems with their monetary systems.
<u>In Situ</u>	Latin term meaning "in their original habitats".
<u>Intellectual Property Rights</u>	Intellectual property rights are those rights which are recognized as belonging to creators of original creative works and designs and protected under legislation for a period of time. These rights include copyright in the case of creative works, industrial design in the case of technological inventions and trademarks in the case of distinctive signs.
<u>Patent</u>	Patent is the right held by an inventor to make, use or sell an invention, which is recognized by national laws as well as international law. This right is for a limited amount of time.
<u>Repatriation</u>	Repatriation means the return of objects or artifacts to the place of origin. The Native American Graves Protection and Repatriation Act of 1990 is an example of repatriation through legislation.
<u>Sui Generis Rights</u>	Rights which are unique and which cannot be defined or categorized by western law. Aboriginal rights and title are defined as "sui generis" in nature.

<u>Trademark</u>	A trademark is a symbol, name or word used by a manufacturer or merchant to identify her goods. It is usually registered with the government to assure its exclusive use.
<u>Traditional Ecological Knowledge</u>	Indigenous peoples' knowledge of the way their environment works. This knowledge, which is passed down from generation to generation, is being recognized as playing an important role in environmental protection.
<u>TRIPs Agreement</u>	Trade-Related Aspects of Intellectual Property Rights Agreement is an international agreement on intellectual property rights, including copyrighting of literary and artistic works as well as sound recordings, trademarks, industrial design and patents. The Agreement which came into effect on January 1, 1995, defines minimum standards of protection of artistic works and inventions, sets out an enforcement mechanism to enable holders of these rights to protect their works and provides for disputes to be resolved using the World Trade Organization dispute resolution process.
<u>UNCED</u>	The United Nations Conference on Environment and Development, or the "Earth Summit", held in Rio de Janeiro, Brazil in 1992. Over 150 countries in attendance adopted a plan to encourage sustainable development, including the Convention on Biological Diversity, the Rio Declaration, the Forest Principles and Agenda 21.
<u>UNEP</u>	The United Nations Environment Programme is an organization of national and regional government and non government organizations, which advocates protection of the environment. The UNEP concept of sustainable and environmentally sound development of natural resources is now reflected in United Nations policies and an action plan called Agenda 21.
<u>UNESCO</u>	The United Nations Educational, Scientific and Cultural Organization is an organization made up of 188 member countries, which promotes human rights and freedoms by encouraging cooperation among Nations on education, science, culture and communication. UNESCO conducts research as well as provides technical assistance and advice in these areas.
<u>WTO</u>	The World Trade Organization is an international organization which promotes secure and free movement of goods and services by establishing rules for world wide trading. The WTO defines rules which are set out in agreements which are then ratified by various countries parliaments. When necessary the WTO also assists in resolving trade disputes between countries.

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### PART 3 - LIST OF KEY INTERNATIONAL LEGAL INSTRUMENTS

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This part provides an initial listing of some international legal instruments pertinent to the area of indigenous rights and the protection of indigenous knowledge. Some of the documents do not refer directly to indigenous peoples but may be relevant when considering methods of protecting knowledge (for example: the Berne, Paris and Madrid Conventions).

The full text of most of these documents are available via the internet.

<http://www.un.org>

<http://www.unesco.org>

<http://www.unesco.org/mab>

<http://www.unesco.org/whc>

<http://www.unep.org>

<http://www.biodiv.org>

<http://www.wipo.org>

Please note that the citations below are those presented by the original researchers. No attempt has been made to standardize citations or systematize citations.

GATT - Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs Agreement) 1994

International Labour Organization (ILO)

Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries. Seventy-Sixth Session (Geneva) 1989

Inter-American Commission on Human Rights

Proposed American Declaration on the Rights of Indigenous Peoples

(OAS Doc. OEA/Ser/L/VII.95Doc.6 (1997))

Mataatua Declaration on Cultural and Intellectual Property Rights of Indigenous People - June 1993

Organization of African Unity (OAU)

Community Rights and the Control of Access to Biological Resources (model legislation)

United Nations General Assembly

Universal Declaration of Human Rights

G.A. Res.217A(III), U.N. Doc.A/810 (1948)

International Convention on the Elimination of All Forms of Racial Discrimination. 19 December 1966. U.N. Doc. A/RES/2106 A(XX)

Committee on the Elimination of Racial Discrimination

General Recommendation XXIII(51) on the rights of indigenous peoples, adopted at the Committee's 1235th meeting on 18 August 1997. U.N. Doc. A/52/18

International Covenant on Civil and Political Rights

G.A. Res.2200A(XXI), U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171,

6 I.L.M. 368 (1967)

United Nations Economic and Social Council

Draft Declaration on the Rights of Indigenous Peoples

E/CN.4/Sub.2/1994/2/Add.1 (1994)

Human Rights Committee

General Comment 23, Article 27. A/49/40

United Nations Conference on Environment and Development (UNCED)

Convention on Biological Diversity

Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992

Agenda 21, Chapter 26

A/CONF.151/26/Rev.1(93.I.8)

United Nations Conference on Trade and Development (UNCTAD)

Biotrade Initiative

United Nations Educational, Scientific and Cultural Organization (UNESCO)

Convention on the Protection of Cultural Property in the Event of Armed Conflict. The Hague, 14 May, 1954

Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. Paris, November 14th, 1970. 823 U.N.T.S. 231, 10 I.L.M. 289.

Convention Concerning the Protection of the World Cultural and Natural Heritage. Paris, November 16th, 1972. UNESCO Doc. 17C/18

Man in the Biosphere Programme

Declaration of the Principles of International Cultural Cooperation, 1966. UNESCO Doc. 14 C/Resolutions.

World Intellectual Property Organization (WIPO)

Paris Convention for the Protection of Industrial Property of March 20, 1883 (as revised at Brussels on December 14, 1900; Washington on June 2, 1911; The Hague on November 6, 1925; London on June 2, 1934; Lisbon on October 31, 1958; Stockholm on July 14, 1967 and as amended on October 2, 1979)

Berne Convention for the Protection of Literary and Artistic Works Paris Act of July 24, 1971 (as amended on September 28, 1979)

Madrid Convention Concerning the International Registration of Marks of April 14, 1891 (as revised at Brussels on December 14, 1900; Washington on June 2, 1911; The Hague on November 6, 1925; London on June 2, 1934; Nice on June 15, 1957 and at Stockholm on July 14, 1967)

Model Provisions for National Laws on the Protection of Expressions of Folklore against Illicit Exploitation and Other Prejudicial Action

(U.N. Doc. UNESCO/WIPO/FOLK/GEI.1/2(1984))

World Bank

Operational Directive 4.20 (September 1991)

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## PART 4 – EXCERPTS OF KEY INTERNATIONAL LEGAL INSTRUMENTS

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This part provides excerpts of some of the international legal instruments pertinent to the area of indigenous rights and the protection of indigenous knowledge.

There are four sections in this part:

Section 1 – Assorted Excerpts – this section is taken directly from the Second Progress Report on the Working Paper, “Human Rights of Indigenous Peoples – Indigenous People and their Relationship to Land” prepared by Mrs. Erica-Irene A. Daes, Special Rapporteur (E/CN.4/Sub.2/1999/18).

Section 2 – Mataatua Declaration on Cultural and Intellectual Property Rights of Indigenous People – June 1993.

Section 3 – Convention on Biological Diversity

Section 4 – Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs Agreement) 1994.



**UNIVERSAL DECLARATION OF HUMAN RIGHTS**

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**ARTICLE 7**

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

**ARTICLE 17**

1. Everyone has the right to own property alone as well as in association with others.
  2. No one shall be arbitrarily deprived of his property.
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**INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION**

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**ARTICLE 5**

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

- (v) The right to own property alone as well as in association with others;
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**COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION**

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**GENERAL RECOMMENDATION XXIII (51) ON THE RIGHTS OF INDIGENOUS PEOPLES, ADOPTED AT THE COMMITTEE'S 1235TH MEETING, ON 18 AUGUST 1997**

1. In the practice of the Committee on the Elimination of Racial Discrimination, in particular in the examination of reports of States parties under article 9 of the International Convention on the Elimination of All Forms of Racial Discrimination, the situation of indigenous peoples has always been a matter of close attention and concern. In this respect the Committee has consistently affirmed that discrimination against indigenous peoples falls under the scope of the Convention and that all appropriate means must be taken to combat and eliminate such discrimination.
2. The Committee, noting that the General Assembly proclaimed the International Decade of the World's Indigenous People commencing on 10 December 1994, reaffirms that the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination apply to indigenous peoples.
3. The Committee is conscious of the fact that in many regions of the world indigenous peoples have been, and are still being, discriminated against and deprived of their human rights and fundamental freedoms and in particular that they have lost their land and resources to colonists, commercial companies and State enterprises. Consequently the preservation of their culture and their historical identity has been and still is jeopardized.
4. The Committee calls in particular upon States parties to:

(a) Recognize and respect indigenous distinct culture, history, language and way of life as an enrichment of the State's cultural identity and to promote its preservation;

(b) Ensure that members of indigenous peoples are free and equal in dignity and rights and free from any discrimination, in particular that based on indigenous origin or identity;

(c) Provide indigenous peoples with conditions allowing for a sustainable economic and social development compatible with their cultural characteristics;

(d) Ensure that members of indigenous peoples have equal rights in respect of effective participation in public life and that no decisions directly relating to their rights and interests are taken without their informed consent;

(e) Ensure that indigenous communities can exercise their rights to practise and revitalize their cultural traditions and customs and to preserve and to practise their languages.

5. The Committee especially calls upon States parties to recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources and, where they have been deprived of their lands and territories traditionally owned or otherwise inhabited or used without their free and informed consent, to take steps to return those lands and territories. Only when this is for factual reasons not possible, the right to restitution should be substituted by the right to just, fair and prompt compensation. Such compensation should as far as possible take the form of lands and territories.

6. The Committee further calls upon States parties with indigenous peoples in their territories to include in their periodic reports full information on the situation of such peoples, taking into account all relevant provisions of the Convention.

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## INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

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### ARTICLE 27

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

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### HUMAN RIGHTS COMMITTEE

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#### GENERAL COMMENT 23, ARTICLE 27 (FIFTIETH SESSION, 1994)

...

3.2 The enjoyment of the rights to which article 27 relates does not prejudice the sovereignty and territorial integrity of a State party. At the same time, one or other aspect of the rights of individuals protected under that article - for example, to enjoy a particular culture - may consist in a way of life which is closely associated with territory and use of its resources. This may particularly be true of members of indigenous communities constituting a minority.

...

7. With regard to the exercise of the cultural rights protected under article 27, the Committee observes that culture manifests itself in many forms, including a particular way of life associated with the use of land resources,

especially in the case of indigenous peoples. That right may include such traditional activities as fishing or hunting and the right to live in reserves protected by law. The enjoyment of those rights may require positive legal measures of protection and measures to ensure the effective participation of members of minority communities in decisions which affect them.

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**INTERNATIONAL LABOUR ORGANIZATION CONVENTION NO. 169 CONCERNING  
INDIGENOUS AND TRIBAL PEOPLES IN INDEPENDENT COUNTRIES (1989)**

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**ARTICLE 4**

1. Special measures shall be adopted as appropriate for safeguarding the persons, institutions, property, labour, cultures and environment of the peoples concerned.
2. Such special measures shall not be contrary to the freely-expressed wishes of the peoples concerned.
3. Enjoyment of the general rights of citizenship, without discrimination, shall not be prejudiced in any way by such special measures.

**ARTICLE 7**

The peoples concerned shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development. In addition, they shall participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly.

**ARTICLE 13**

1. In applying the provisions of this Part of the Convention Governments shall respect the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories, or both as applicable, which they occupy or otherwise use, and in particular the collective aspects of this relationship.
2. The use of the term lands in Articles 15 and 16 shall include the concept of territories, which covers the total environment of the areas which the peoples concerned occupy or otherwise use.

**ARTICLE 14**

1. The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognized. In addition, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities. Particular attention shall be paid to the situation of nomadic peoples and shifting cultivators in this respect.
2. Governments shall take steps as necessary to identify the lands which the peoples concerned traditionally occupy, and to guarantee effective protection of their rights of ownership and possession.
3. Adequate procedures shall be established within the national legal system to resolve land claims by the peoples concerned.

#### **ARTICLE 15**

1. The rights of the peoples concerned to the natural resources pertaining to their lands shall be specially safeguarded. These rights include the right of these peoples to participate in the use, management and conservation of these resources.

2. In cases in which the State retains the ownership of mineral or sub-surface resources or rights to other resources pertaining to lands, Governments shall establish or maintain procedures through which they shall consult these peoples, with a view to ascertaining whether and to what degree their interests would be prejudiced, before undertaking or permitting any programmes for the exploration or exploitation of such resources pertaining to their lands. The peoples concerned shall wherever possible participate in the benefits of such activities, and shall receive fair compensation for any damages which they may sustain as a result of such activities.

#### **ARTICLE 16**

1. Subject to the following paragraphs of this Article, the peoples concerned shall not be removed from the lands which they occupy.

2. Where the relocation of these peoples is considered necessary as an exceptional measure, such relocation shall take place only with their free and informed consent. Where their consent cannot be obtained, such relocation shall take place only following appropriate procedures established by national laws and regulations, including public inquiries where appropriate, which provide the opportunity for effective representation of the peoples concerned.

3. Whenever possible, these peoples shall have the right to return to their traditional lands, as soon as the grounds for relocation cease to exist.

4. When such return is not possible, as determined by agreement or, in the absence of such agreement, through appropriate procedures, these peoples shall be provided in all possible cases with lands of quality and legal status at least equal to that of the lands previously occupied by them, suitable to provide for their present needs and future development. Where the peoples concerned express a preference for compensation in money or in kind, they shall be so compensated under appropriate guarantees.

5. Persons thus relocated shall be fully compensated for any resulting loss or injury.

#### **ARTICLE 17**

1. Procedures established by the peoples concerned for the transmission of land rights among members of these peoples shall be respected.

2. The peoples concerned shall be consulted whenever consideration is being given to their capacity to alienate their lands or otherwise transmit their rights outside their own community.

3. Persons not belonging to these peoples shall be prevented from taking advantage of their customs or of lack of understanding of the laws on the part of their members to secure the ownership, possession or use of land belonging to them.

#### **ARTICLE 18**

Adequate penalties shall be established by law for unauthorized intrusion upon, or use of, the lands of the peoples concerned, and Governments shall take measures to prevent such offences.

## **ARTICLE 19**

National agrarian programmes shall secure to the peoples concerned treatment equivalent to that accorded to other sectors of the population with regard to:

- (a) The provision of more land for these peoples when they have not the area necessary for providing the essentials of a normal existence, or for any possible increase in their numbers;
- (b) The provision of the means required to promote the development of the lands which these peoples already possess.

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## **AGENDA 21**

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### **REPORT OF THE UNITED NATIONS CONFERENCE ON ENVIRONMENT AND DEVELOPMENT, RIO DE JANEIRO, 3-14 JUNE 1992 (A/CONF.151/26 (VOL. III))**

Chapter 26, Recognizing and strengthening the role of indigenous people and their communities

...

#### **BASIS FOR ACTION**

26.1 Indigenous people and their communities have an historical relationship with their lands and are generally descendants of the original inhabitants of such lands. In the context of this chapter the term "lands" is understood to include the environment of the areas which the people concerned traditionally occupy. Indigenous people and their communities represent a significant percentage of the global population. They have developed over many generations a holistic traditional scientific knowledge of their lands, natural resources and environment. Indigenous people and their communities shall enjoy the full measure of human rights and fundamental freedoms without hindrance or discrimination. Their ability to participate fully in sustainable development practices on their lands has tended to be limited as a result of factors of an economic, social and historical nature. In view of the interrelationship between the natural environment and its sustainable development and the cultural, social, economic and physical well-being of indigenous people, national and international efforts to implement environmentally sound and sustainable development should recognize, accommodate, promote and strengthen the role of indigenous people and their communities.

26.2 Some of the goals inherent in the objectives and activities of this programme area are already contained in such international legal instruments as the ILO Indigenous and Tribal Peoples Convention (No. 169) and are being incorporated into the draft universal declaration on indigenous rights, being prepared by the United Nations Working Group on Indigenous Populations. The International Year of the World's Indigenous People (1993), proclaimed by the General Assembly in its resolution 45/164 of 18 December 1990, presents a timely opportunity to mobilize further international technical and financial cooperation.

#### **OBJECTIVES**

26.3 In full partnership with indigenous people and their communities, Governments and, where appropriate, intergovernmental organizations should aim at fulfilling the following objectives:

- (a) Establishment of a process to empower indigenous people and their communities through measures that include:
  - (i) Adoption or strengthening of appropriate policies and/or legal instruments at the national level;

(ii) Recognition that the lands of indigenous people and their communities should be protected from activities that are environmentally unsound or that the indigenous people concerned consider to be socially and culturally inappropriate;

(iii) Recognition of their values, traditional knowledge and resource management practices with a view to promoting environmentally sound and sustainable development;

(iv) Recognition that traditional and direct dependence on renewable resources and ecosystems, including sustainable harvesting, continues to be essential to the cultural, economic and physical well-being of indigenous people and their communities;

(v) Development and strengthening of national dispute-resolution arrangements in relation to settlement of land and resource-management concerns;

(vi) Support for alternative environmentally sound means of production to ensure a range of choices on how to improve their quality of life so that they effectively participate in sustainable development;

(vii) Enhancement of capacity-building for indigenous communities, based on the adaptation and exchange of traditional experience, knowledge and resource-management practices, to ensure their sustainable development;

(b) Establishment, where appropriate, of arrangements to strengthen the active participation of indigenous people and their communities in the national formulation of policies, laws and programmes relating to resource management and other development processes that may affect them, and their initiation of proposals for such policies and programmes;

(c) Involvement of indigenous people and their communities at the national and local levels in resource management and conservation strategies and other relevant programmes established to support and review sustainable development strategies, such as those suggested in other programme areas of Agenda 21.

#### **ACTIVITIES**

26.4 Some indigenous people and their communities may require, in accordance with national legislation, greater control over their lands, self-management of their resources, participation in development decisions affecting them, including, where appropriate, participation in the establishment or management of protected areas. The following are some of the specific measures which Governments could take:

(a) Consider the ratification and application of existing international conventions relevant to indigenous people and their communities (where not yet done) and provide support for the adoption by the General Assembly of a declaration on indigenous rights;

(b) Adopt or strengthen appropriate policies and/or legal instruments that will protect indigenous intellectual and cultural property and the right to preserve customary and administrative systems and practices.

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#### **WORLD BANK OPERATIONAL DIRECTIVE 4.20 (SEPTEMBER 1991)**

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(Note: The World Bank is in the process of revising Operational Directive 4.20)

## CONTENTS

15. The development plan should be prepared in tandem with the preparation of the main investment. In many cases, proper protection of the rights of indigenous people will require the implementation of special project components that may lie outside the primary project's objectives. These components can include activities related to health and nutrition, productive infrastructure, linguistic and cultural preservation, entitlement to natural resources, and education. The project component for indigenous peoples development should include the following elements, as needed:

(a) Legal Framework ... (ii) the ability of such groups to obtain access to and effectively use the legal system to defend their rights. Particular attention should be given to the rights of indigenous peoples to use and develop the lands that they occupy, to be protected against illegal intruders, and to have access to natural resources (such as forests, wildlife, and water) vital to their subsistence and reproduction.

...

(c) Land Tenure. When local legislation needs strengthening, the Bank should offer to advise and assist the borrower in establishing legal recognition of the customary or traditional land tenure systems of indigenous peoples. Where the traditional lands of indigenous peoples have been brought by law into the domain of the State and where it is inappropriate to convert traditional rights into those of legal ownership, alternative arrangements should be implemented to grant long-term, renewable rights of custodianship and use to indigenous peoples. These steps should be taken before the initiation of other planning steps that may be contingent on recognized land titles.

## PREPARATION

17. If it is agreed in the IEPS (Initial Executive Project Summary) meeting that special action is needed, the indigenous peoples development plan or project component should be developed during project preparation. As necessary, the Bank should assist the borrower in preparing terms of reference and should provide specialized technical assistance (see para. 12). Early involvement of anthropologists and local NGOs with expertise in matters related to indigenous peoples is a useful way to identify mechanisms for effective participation and local development opportunities. In a project that involves the land rights of indigenous peoples, the Bank should work with the borrower to clarify the steps needed for putting land tenure on a regular footing as early as possible, since land disputes frequently lead to delays in executing measures that are contingent on proper land titles (see para. 15 (c)).

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## UNITED NATIONS DRAFT DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

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### ARTICLE 10

Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

### ARTICLE 12

Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. This includes the 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, as well as the right to the restitution of cultural, intellectual, religious and spiritual property taken without their free and informed consent or in violation of their laws, traditions and customs.

### **ARTICLE 13**

Indigenous peoples have the right to manifest, practise, 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 ceremonial objects; and the right to the repatriation of human remains.

States shall take effective measures, in conjunction with the indigenous peoples concerned, to ensure that indigenous sacred places, including burial sites, are preserved, respected and protected.

### **ARTICLE 25**

Indigenous peoples have the right to maintain and strengthen their distinctive spiritual and material relationship with the lands, territories, waters and coastal seas and other resources which they have traditionally owned or otherwise occupied or used, and to uphold their responsibilities to future generations in this regard.

### **ARTICLE 26**

Indigenous peoples have the right to own, develop, control and use the lands and territories, including the total environment of the lands, air, waters, coastal seas, sea-ice, flora and fauna and other resources which they have traditionally owned or otherwise occupied or used. This includes the right to the full recognition of their laws, traditions and customs, land-tenure systems and institutions for the development and management of resources, and the right to effective measures by States to prevent any interference with, alienation of or encroachment upon these rights.

### **ARTICLE 27**

Indigenous peoples have the right to the restitution of the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, occupied, used or damaged without their free and informed consent. Where this is not possible, they have the right to just and fair compensation. 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.

### **ARTICLE 28**

Indigenous peoples have the right to the conservation, restoration and protection of the total environment and the productive capacity of their lands, territories and resources, as well as to assistance for this purpose from States and through international cooperation. Military activities shall not take place in the lands and territories of indigenous peoples, unless otherwise freely agreed upon by the peoples concerned.

States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands and territories of indigenous peoples.

States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented.



#### **ARTICLE 29**

Indigenous peoples are entitled to the recognition of the full ownership, control and protection of their cultural and intellectual property.

They have the right to special measures to control, develop and protect their sciences, technologies and cultural manifestations, including human and other genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs and visual and performing arts.

#### **ARTICLE 30**

Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands, territories and other resources, including the right to require that States obtain their free and informed consent prior to the approval of any project affecting their lands, territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources. Pursuant to agreement with the indigenous peoples concerned, just and fair compensation shall be provided for any such activities and measures taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

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### **PROPOSED INTER-AMERICAN DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES**

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Approved by the Inter-American Commission on Human Rights on 26 February 1997

#### Article VII.

#### **RIGHT TO CULTURAL INTEGRITY**

1. Indigenous peoples have the right to their cultural integrity, and their historical and archeological heritage, which are important both for their survival as well as for the identity of their members.
2. Indigenous peoples are entitled to restitution in respect of the property of which they have been dispossessed, and where that is not possible, compensation on a basis not less favourable than the standard of international law.
3. The States shall recognize and respect indigenous ways of life, customs, traditions, forms of social, economic and political organization, institutions, practices, beliefs and values, use of dress, and languages.

#### **RIGHT TO ENVIRONMENTAL PROTECTION**

#### Article 13

1. Indigenous peoples have the right to a safe and healthy environment, which is an essential condition for the enjoyment of the right to life and collective well-being.

2. Indigenous peoples have the right to be informed of measures which will affect their environment, including information that ensures their effective participation in actions and policies that might affect it.
3. Indigenous peoples shall have the right to conserve, restore and protect their environment, and the productive capacity of their lands, territories and resources.
4. Indigenous peoples have the right to participate fully in formulating, planning, managing and applying governmental programmes of conservation of their lands, territories and resources.
5. Indigenous peoples have the right to assistance from their States for purposes of environmental protection, and may receive assistance from international organizations.
6. The States shall prohibit and punish, and shall impede jointly with the indigenous peoples, the introduction, abandonment, or deposit of radioactive materials or residues, toxic substances and garbage in contravention of legal provisions; as well as the production, introduction, transportation, possession or use of chemical, biological and nuclear weapons in indigenous areas.
7. When a State declares an indigenous territory as protected area, any lands, territories and resources under potential or actual claim by indigenous peoples, conservation areas shall not be subject to any natural resource development without the informed consent and participation of the peoples concerned.

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**TRADITIONAL FORMS OF OWNERSHIP AND CULTURAL SURVIVAL. RIGHTS TO LAND,  
TERRITORIES AND RESOURCES**

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**ARTICLE 18**

1. Indigenous peoples have the right to the legal recognition of their varied and specific forms and modalities of their control, ownership, use and enjoyment of territories and property.
2. Indigenous peoples have the right to the recognition of their property and ownership rights with respect to lands, territories and resources they have historically occupied, as well as to the use of those to which they have historically had access for their traditional activities and livelihood.
3. (i) Subject to 3.ii, where property and user rights of indigenous peoples arise from rights existing prior to the creation of those States, the States shall recognize the titles of indigenous peoples relative thereto as permanent, exclusive, inalienable, imprescriptible and infeasible.  
  
(ii) Such titles may only be changed by mutual consent between the State and respective indigenous peoples when they have full knowledge and appreciation of the nature or attributes of such property.  
  
(iii) Nothing in 3.i shall be construed as limiting the right of indigenous peoples to attribute ownership within the community in accordance with their customs, traditions, uses and traditional practices, nor shall it affect any collective community rights over them.
4. Indigenous peoples have the right to an effective legal framework for the protection of their rights with respect to the natural resources on their lands, including the ability to use, manage, and conserve such resources; and with respect to traditional uses of their lands, interests in lands, and resources, such as subsistence.

5. In the event that ownership of the minerals or resources of the subsoil pertains to the State or that the State has rights over other resources on the lands, the Governments must establish or maintain procedures for the participation of the peoples concerned in determining whether the interests of these people would be adversely affected and to what extent, before undertaking or authorizing any programme for planning, prospecting or exploiting existing resources on their lands. The peoples concerned shall participate in the benefits of such activities, and shall receive compensation, on a basis not less favourable than the standard of international law for any loss which they may sustain as a result of such activities.

6. Unless exceptional and justified circumstances so warrant in the public interest, the States shall not transfer or relocate indigenous peoples without the free, genuine, public and informed consent of those peoples, but in all cases with prior compensation and prompt replacement of lands taken, which must be of similar or better quality and which must have the same legal status; and with guarantee of the right to return if the causes that gave rise to the displacement cease to exist.

7. Indigenous peoples have the right to the restitution of the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, occupied, used or damaged, or when restitution is not possible, the right to compensation on a basis not less favorable than the standard of international law.

8. The States shall take all measures, including the use of law enforcement mechanisms, to avert, prevent and punish, if applicable, any intrusion or use of those lands by unauthorized persons to take possession or make use of them. The States shall give maximum priority to the demarcation and recognition of properties and areas of indigenous use.

# The Mataatua Declaration

on Cultural and Intellectual Property Rights of Indigenous Peoples - June 1993

Contact:

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In recognition that 1993 is the United Nations International Year for the World's Indigenous Peoples;

The **Nine Tribes of Mataatua** in the Bay of Plenty Region of Aotearoa New Zealand convened the First International Conference on the Cultural and Intellectual Property Rights of Indigenous Peoples, (12 - 18 June 1993, Whakatane)

Over 150 Delegates from fourteen countries attended, including indigenous representatives from Ainu (Japan), Australia, Cook Islands, Fiji, India, Panama, Peru, Philippines, Surinam, USA, and Aotearoa.

The Conference met over six days to consider a range of significant issues,- including; the value of indigenous knowledge, biodiversity and biotechnology, customary environmental management, arts, music, language and other physical and spiritual cultural forms. On the final day the following Declaration was passed by the Plenary.

## PREAMBLE

**Recognizing** that 1993 is the United-Nations International Year for the World's Indigenous Peoples;

**Reaffirming** the undertaking of United Nations Member States to: "Adopt or strengthen appropriate policies and/or legal instruments that will protect indigenous intellectual and cultural property and the right to preserve customary and administrative systems and practices." United Nations Conference on Environmental Development; UNCED Agenda 21 (26.4b);

**Noting** the Working principles that emerged from the United Nations Technical Conference on Indigenous Peoples and the Environment in Santiago, Chile from 18 - 22 May 1992 (E/CN.4/Sub.2/1992/31);

**Endorsing** the recommendations on Culture and Science from the World Conference of Indigenous Peoples on Territory, Environment and Development, Kari-Oca, Brazil, 25 - 30 May 1992;

## WE

**Declare** that Indigenous Peoples of the world have the **right to self determination**: and in exercising that right must be recognised as the **exclusive owners of their cultural and intellectual property**.

**Acknowledge** that Indigenous Peoples have a commonality of experiences relating to the exploitation of their cultural and intellectual property;

**Affirm** that the knowledge of the Indigenous Peoples of the world is of benefit to all humanity;

**Recognise** that Indigenous Peoples are capable of managing their traditional knowledge themselves, but are willing to offer it to all humanity provided their fundamental rights to define and control this knowledge are protected by the international community;

**Insist** that the first beneficiaries of indigenous knowledge (cultural and intellectual property rights) must be the direct indigenous descendants of such knowledge;

**Declare** that all forms of discrimination and exploitation of indigenous peoples, indigenous knowledge and indigenous cultural and intellectual property rights must cease.

## **1 RECOMMENDATIONS TO INDIGENOUS PEOPLES**

In the development of policies and practices, indigenous peoples should:

**1.1** Define for themselves their own intellectual and cultural property.

**1.2** Note that existing protection mechanisms are insufficient for the protection of Indigenous Peoples Intellectual and Cultural Property Rights.

**1.3** Develop a code of ethics which external users must observe when recording (visual, audio, written) their traditional and customary knowledge.

**1.4** Prioritise the establishment of indigenous education, research and training centres to promote their knowledge of customary environmental and cultural practices.

**1.5** Reacquire traditional indigenous lands for the purpose of promoting customary agricultural production.

**1.6** Develop and maintain their traditional practices and sanctions for the protection, preservation and revitalisation of their traditional intellectual and cultural properties.

**1.7** Assess existing legislation with respect to the protection of antiquities.

**1.8** Establish an appropriate body with appropriate mechanisms to:

- a) preserve and monitor the commercialism or otherwise of indigenous cultural properties in the public domain
- b) generally advise and encourage indigenous peoples to take steps to protect their cultural heritage
- c) allow a mandatory consultative process with respect to any new legislation affecting indigenous peoples cultural and intellectual property rights.

**1.9** Establish International indigenous information centres and networks.

**1.10** Convene a Second International Conference (Hui) on the Cultural and Intellectual Property Rights of Indigenous Peoples to be hosted by the Coordinating Body for the Indigenous Peoples Organisations of the Amazon Basin (COICA).

## **2. RECOMMENDATIONS TO STATES, NATIONAL AND INTERNATIONAL AGENCIES**

In the development of policies and practices, States, National and International Agencies must

**2.1** Recognise that indigenous peoples are the guardians of their customary knowledge and have the right to protect and control dissemination of that knowledge.

**2.2** Recognise that indigenous peoples also have the right to create new knowledge based on cultural traditions.

**2.3** Note that existing protection mechanisms are insufficient for the protection of indigenous Peoples Cultural and Intellectual Property Rights.

**2.4** Accept that the cultural and intellectual property rights of indigenous peoples are vested with those who created them.

**2.5** Develop in full co-operation with indigenous peoples an additional cultural and intellectual property rights regime incorporating the following:

- collective (as well as individual) ownership and origin
- retroactive coverage of historical as well as contemporary works
- protection against debasement of culturally significant items
- co-operative rather than competitive framework
- first beneficiaries to be the direct descendants of the traditional guardians of that knowledge
- multi-generational coverage span

## **BIODIVERSITY AND CUSTOMARY ENVIRONMENTAL MANAGEMENT**

**2.6** Indigenous flora and fauna is inextricably bound to the territories of indigenous communities and any property right claims must recognise their traditional guardianship.

**2.7** Commercialisation of any traditional plants and medicines of Indigenous Peoples, must be managed by the indigenous peoples who have inherited such knowledge.

**2.8** A moratorium on any further commercialisation of indigenous medicinal plants and human genetic materials must be declared until indigenous communities have developed appropriate protection mechanisms.

**2.9** Companies, institutions both governmental and private must not undertake experiments or commercialisation of any biogenetic resources without the consent of the appropriate indigenous peoples.

**2.10** Prioritise settlement of any outstanding land and natural resources claims of indigenous peoples for the purpose of promoting customary, agricultural and marine production.

**2.11** Ensure current scientific environmental research is strengthened by increasing the involvement of indigenous communities and of customary environmental knowledge.

## **CULTURAL OBJECTS**

**2.12** All human remains and burial objects of indigenous peoples held by museums and other institutions must be returned to their traditional area in a culturally appropriate manner.

**2.13** Museums and other institutions must provide, to the country and indigenous peoples concerned, an inventory of any indigenous cultural objects still held in their possession.

**2.14** Indigenous cultural objects held in museums and other institutions must be offered back to their traditional owners.

### **3. RECOMMENDATIONS TO THE UNITED NATIONS**

In respect for the rights of indigenous peoples, the United Nations should:

**3.1** Ensure the process of participation of indigenous peoples in United Nations fora is strengthened so their views are fairly represented.

**3.2** Incorporate the Mataatua Declaration in its entirety in the United Nations Study on Cultural and Intellectual Property of Indigenous Peoples.

**3.3** Monitor and take action against any States whose persistent policies and activities damage the cultural and intellectual property rights of indigenous peoples.

**3.4** Ensure that indigenous peoples actively contribute to the way in which indigenous cultures are incorporated into the 1995 United Nations International Year of Culture.

**3.5** Call for an immediate halt to the ongoing 'Human Genome Diversity Project' (HUGO) until its moral, ethical, socio-economic, physical and political implications have been thoroughly discussed, understood and approved by indigenous peoples.

### **4. CONCLUSION**

**4.1** The United Nations, International and National Agencies and States must provide additional funding to indigenous communities in order to implement these recommendations.

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# Convention on Biological Diversity - Convention Text

## Text of the Convention on Biological Diversity (1992)

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See also "[In-Situ Conservation](#)" and "[Indigenous and Local Communities Knowledge](#)" on the Clearing-House Mechanism Webpages

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### **Article 8. In-situ Conservation**

Each Contracting Party shall, as far as possible and as appropriate:

- (a) Establish a system of protected areas or areas where special measures need to be taken to conserve biological diversity;
- (b) Develop, where necessary, guidelines for the selection, establishment and management of protected areas or areas where special measures need to be taken to conserve biological diversity;
- (c) Regulate or manage biological resources important for the conservation of biological diversity whether within or outside protected areas, with a view to ensuring their conservation and sustainable use;
- (d) Promote the protection of ecosystems, natural habitats and the maintenance of viable populations of species in natural surroundings;
- (e) Promote environmentally sound and sustainable development in areas adjacent to protected areas with a view to furthering protection of these areas;
- (f) Rehabilitate and restore degraded ecosystems and promote the recovery of threatened species, inter alia, through the development and implementation of plans or other management strategies;
- (g) Establish or maintain means to regulate, manage or control the risks associated with the use and release of living modified organisms resulting from biotechnology which are likely to have adverse environmental impacts that could affect the conservation and sustainable use of biological diversity, taking also into account the risks to human health;
- (h) Prevent the introduction of, control or eradicate those alien species which threaten ecosystems, habitats or species;
- (i) Endeavour to provide the conditions needed for compatibility between present uses and the conservation of biological diversity and the sustainable use of its components;
- (j) Subject to its national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices;
- (k) Develop or maintain necessary legislation and/or other regulatory provisions for the protection of threatened species and populations;
- (l) Where a significant adverse effect on biological diversity has been determined pursuant to Article 7, regulate or manage the relevant processes and categories of activities; and
- (m) Cooperate in providing financial and other support for in-situ conservation outlined in subparagraphs (a) to (l) above, particularly to developing countries.



ANNEX 1C

AGREEMENT ON TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS

**PART I**

GENERAL PROVISIONS AND BASIC PRINCIPLES

**PART II**

STANDARDS CONCERNING THE AVAILABILITY, SCOPE AND USE OF INTELLECTUAL PROPERTY RIGHTS

1. Copyright and Related Rights
2. Trademarks
3. Geographical Indications
4. Industrial Designs
5. Patents
6. Layout-Designs (Topographies) of Integrated Circuits
7. Protection of Undisclosed Information
8. Control of Anti-Competitive Practices in Contractual Licences

**PART III**

ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

1. General Obligations
2. Civil and Administrative Procedures and Remedies
3. Provisional Measures
4. Special Requirements Related to Border Measures
5. Criminal Procedures

**PART IV**

ACQUISITION AND MAINTENANCE OF INTELLECTUAL PROPERTY RIGHTS AND RELATED INTER-PARTES PROCEDURES

**PART V**

DISPUTE PREVENTION AND SETTLEMENT

**PART VI**

TRANSITIONAL ARRANGEMENTS

**PART VII**

INSTITUTIONAL ARRANGEMENTS; FINAL PROVISIONS

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PART II

STANDARDS CONCERNING THE AVAILABILITY, SCOPE  
AND USE OF INTELLECTUAL PROPERTY RIGHTS

SECTION 5: PATENTS

*Article 27*

*Patentable Subject Matter*

1. Subject to the provisions of paragraphs 2 and 3, patents shall be available for any inventions, whether products or processes, in all fields of technology, provided that they are new, involve an inventive step and are capable of industrial application. [See footnote 5](#) Subject to paragraph 4 of Article 65, paragraph 8 of Article 70 and paragraph 3 of this Article, patents shall be available and patent rights enjoyable without discrimination as to the place of invention, the field of technology and whether products are imported or locally produced.
2. Members may exclude from patentability inventions, the prevention within their territory of the commercial exploitation of which is necessary to protect *ordre public* or morality, including to protect human, animal or plant life or health or to avoid serious prejudice to the environment, provided that such exclusion is not made merely because the exploitation is prohibited by their law.
3. Members may also exclude from patentability:
  - (a) diagnostic, therapeutic and surgical methods for the treatment of humans or animals;
  - (b) plants and animals other than micro-organisms, and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes. However, Members shall provide for the protection of plant varieties either by patents or by an effective *sui generis* system or by any combination thereof. The provisions of this subparagraph shall be reviewed four years after the date of entry into force of the WTO Agreement.

SECTION 7: PROTECTION OF UNDISCLOSED INFORMATION

*Article 39*

1. In the course of ensuring effective protection against unfair competition as provided in Article 10*bis* of the Paris Convention (1967), Members shall protect undisclosed information in accordance with paragraph 2 and data submitted to governments or governmental agencies in accordance with paragraph 3.
2. Natural and legal persons shall have the possibility of preventing information lawfully within their control from being disclosed to, acquired by, or used by others without their consent in a manner contrary to honest commercial practices. [See footnote 10](#) so long as such information:
  - (a) is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question;
  - (b) has commercial value because it is secret; and
  - (c) has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret.
3. Members, when requiring, as a condition of approving the marketing of pharmaceutical or of agricultural chemical products which utilize new chemical entities, the submission of undisclosed test or other data, the origination of which involves a considerable effort, shall protect such data against unfair commercial use. In addition, Members shall protect such data against disclosure, except where necessary to protect the public, or unless steps are taken to ensure that the data are protected against unfair commercial use.

*Footnote: 5* For the purposes of this Article, the terms "inventive step" and "capable of industrial application" may be deemed by a Member to be synonymous with the terms "non-obvious" and "useful" respectively.

*Footnote: 10* For the purpose of this provision, "a manner contrary to honest commercial practices" shall mean at least practices such as breach of contract, breach of confidence and inducement to breach, and includes the acquisition of undisclosed information by third parties who knew, or were grossly negligent in failing to know, that such practices were involved in the acquisition.

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## PART 5 - EXCERPTS OF VARIOUS NATIONAL LEGISLATION

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The two sections below provides excerpts of national legislation which attempt to provide protection of indigenous knowledge. Section 1 is excerpts from the Indigenous Peoples Rights Act of the Philippines and Section 2 is excerpts from the United States Native American Graves Protection and Repatriation Act.

Other countries that have enacted relevant legislation, or are in the process of developing new laws in this area, include Australia, Ethiopia and Costa Rica. The Organization of African Unity in June 1998 developed model legislation on community rights and access to biological resources.

The Venezuelan Government is in the process of drafting a new Constitution. The three newly-elected indigenous leaders took their seats in the National Constitutional Assembly last summer and called for the new constitution to include recognition of land and cultural rights.

PHILIPPINE ENVIRONMENT LAWS  
ON-LINE

This web page contains the full text of  
[Republic Act No. 8371](#)

THE INDIGENOUS PEOPLES RIGHTS ACT OF 1997  
[AN ACT TO RECOGNIZE, PROTECT AND PROMOTE THE RIGHTS OF INDIGENOUS CULTURAL COMMUNITIES/INDIGENOUS PEOPLE, CREATING A NATIONAL COMMISSION OF INDIGENOUS PEOPLE, ESTABLISHING IMPLEMENTING MECHANISMS, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES]

REPUBLIC ACT NO. 8371

[AN ACT TO RECOGNIZE, PROTECT AND PROMOTE THE RIGHTS OF INDIGENOUS CULTURAL COMMUNITIES/INDIGENOUS PEOPLE, CREATING A NATIONAL COMMISSION OF INDIGENOUS PEOPLE, ESTABLISHING IMPLEMENTING MECHANISMS, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES]

CHAPTER I  
GENERAL PROVISIONS

Sec. 1. *Short Title.*- This Act shall be known as "*The Indigenous Peoples Rights Act of 1997.*"

Sec. 2. *Declaration of State Policies.*- The State shall recognize and promote all the rights of Indigenous Cultural Communities/Indigenous Peoples (ICCs/IPs) hereunder enumerated within the framework of the Constitution:

- a) The State shall recognize and promote the rights of ICCs/IPs within the framework of national unity and development;
- b) The State shall protect the rights of ICCs/IPs to their ancestral domains to ensure their economic, social and cultural well being and shall recognize the applicability of customary laws governing property rights or relations in determining the ownership and extent of ancestral domain;
- c) The State shall recognize, respect and protect the rights of ICCs/IPs to preserve and develop their cultures, traditions and institutions. It shall consider these rights in the formulation of national laws and policies;
- d) The State shall guarantee that members of the ICCs/IPs regardless of sex, shall equally enjoy the full measure of human rights and freedoms without distinctions or discriminations;
- e) The State shall take measures, with the participation of the ICCs/IPs concerned, to protect their rights and guarantee respect for their cultural integrity, and to ensure that members of the ICCs/IPs benefit on an equal footing from the rights and opportunities which national laws and regulations grant to other members of the population and
- f) The State recognizes its obligations to respond to the strong expression of the ICCs/IPs for cultural integrity by assuring maximum ICC/IP participation in the direction of education, health, as well as other services of ICCs/IPs, in order to render such services more responsive to the needs and desires of these communities.

Towards these ends, the State shall institute and establish the necessary mechanisms to enforce and guarantee the realization of these rights, taking into consideration their customs, traditions, values, beliefs, their rights to their ancestral domains.

CHAPTER II  
DEFINITION OF TERMS

Sec. 3. *Definition of Terms.*- For purposes of this Act, the following terms shall mean:

- a) *Ancestral Domains* - Subject to Section 56 hereof, refer to all areas generally belonging to ICCs/IPs comprising lands, inland waters, coastal areas, and natural resources therein, held under a claim of ownership, occupied or possessed by

ICCs/IPs, themselves or through their ancestors, communally or individually since time immemorial, continuously to the present except when interrupted by war, force majeure or displacement by force, deceit, stealth or as a consequence of government projects or any other voluntary dealings entered into by government and private individuals, corporations, and which are necessary to ensure their economic, social and cultural welfare. It shall include ancestral land, forests, pasture, residential, agricultural, and other lands individually owned whether alienable and disposable or otherwise, hunting grounds, burial grounds, worship areas, bodies of water, mineral and other natural resources, and lands which may no longer be exclusively occupied by ICCs/IPs but from which their traditionally had access to for their subsistence and traditional activities, particularly the home ranges of ICCs/IPs who are still nomadic and/or shifting cultivators;

b) *Ancestral Lands* - Subject to Section 56 hereof, refers to land occupied, possessed and utilized by individuals, families and clans who are members of the ICCs/IPs since time immemorial, by themselves or through their predecessors-in-interest, under claims of individual or traditional group ownership, continuously, to the present except when interrupted by war, force majeure or displacement by force, deceit, stealth, or as a consequence of government projects and other voluntary dealings entered into by government and private individuals/corporations, including, but not limited to, residential lots, rice terraces or paddies, private forests, swidden farms and tree lots;

c) *Certificate of Ancestral Domain Title* - refers to a title formally recognizing the rights of possession and ownership of ICCs/IPs over their ancestral domains identified and delineated in accordance with this law;

d) *Certificate of Ancestral Lands Title* - refers to a title formally recognizing the rights of ICCs/IPs over their ancestral lands;

e) *Communal Claims* - refer to claims on land, resources and rights thereon, belonging to the whole community within a defined territory

f) *Customary Laws* - refer to a body of written and/or unwritten rules, usages, customs and practices traditionally and continually recognized, accepted and observed by respective ICCs/IPs;

g) *Free and Prior Informed Consent* - as used in this Act shall mean the consensus of all members of the ICCs/IPs to; be determined in accordance with their respective customary laws and practices, free from any external manipulation, interference and coercion, and obtained after fully disclosing the intent and scope of the activity, in a language an process understandable to the community;

h) *Indigenous Cultural Communities/Indigenous Peoples* - refer to a group of people or homogenous societies identified by self-ascription and ascription by other, who have continuously lived as organized community on communally bounded and defined territory, and who have, under claims of ownership since time immemorial, occupied, possessed customs, tradition and other distinctive cultural traits, or who have, through resistance to political, social and cultural inroads of colonization, non-indigenous religions and culture, became historically differentiated from the majority of Filipinos. ICCs/IPs shall likewise include peoples who are regarded as indigenous on account of their descent from the populations which inhabited the country, at the time of conquest or colonization, or at the time of inroads of non-indigenous religions and cultures, or the establishment of present state boundaries, who retain some or all of their own social, economic, cultural and political institutions, but who may have been displaced from their traditional domains or who may have resettled outside their ancestral domains;

i) *Indigenous Political Structure* - refer to organizational and cultural leadership systems, institutions, relationships, patterns and processed for decision-making and participation, identified by ICCs/IPs such as, but not limited to, Council of Elders, Council of Timuays, Bodong Holder, or any other tribunal or body of similar nature;

j) *Individual Claims* - refer to claims on land and rights thereon which have been devolved to individuals, families and clans including, but not limited to, residential lots, rice terraces or paddies and tree lots;

k) *National Commission on Indigenous Peoples (NCIP)* - refers to the office created under this Act, which shall be under the Office of the President, and which shall be the primary government agency responsible for the formulation and implementation of policies, plans and programs to recognize, protect and promote the rights of ICCs/IPs;

l) *Native Title* - refers to pre-conquest rights to lands and domains which, as far back as memory reaches, have been held under a claim of private ownership by ICCs/IPs, have never been public lands and are thus indisputably presumed to have been held that way since before the Spanish Conquest;

m) *Nongovernment Organization* - refers to a private, nonprofit voluntary organization that has been organized primarily for the delivery of various services to the ICCs/IPs and has an established track record for effectiveness and acceptability in the community where it serves;

n) *People's Organization* - refers to a private, nonprofit voluntary organization of members of an ICC/IP which is accepted as representative of such ICCs/IPs;

o) *Sustainable Traditional Resource Rights* - refer to the rights of ICCs/IPs to sustainably use, manage, protect and conserve a) land, air, water, and minerals; b) plants, animals and other organisms; c) collecting, fishing and hunting grounds; d) sacred sites; and e) other areas of economic, ceremonial and aesthetic value in accordance with their indigenous knowledge, beliefs, systems and practices; and

p) *Time Immemorial* - refers to a period of time when as far back as memory can go, certain ICCs/IPs are known to have occupied, possessed in the concept of owner, and utilized a defined territory devolved to them, by operation of customary law or inherited from their ancestors, in accordance with their customs and traditions.

### CHAPTER III RIGHTS TO ANCESTRAL DOMAINS

Sec. 4. *Concept of Ancestral Lands/Domains.*- Ancestral lands/domains shall include such concepts of territories which cover not only the physical environment but the total environment including the spiritual and cultural bonds to the area which the ICCs/IPs possess, occupy and use and to which they have claims of ownership.

Sec. 5. *Indigenous Concept of Ownership.*- Indigenous concept of ownership sustains the view that ancestral domains and all resources found therein shall serve as the material bases of their cultural integrity. The indigenous concept of ownership generally holds that ancestral domains are the ICC's/IP's private but community property which belongs to all generations and therefore cannot be sold, disposed or destroyed. It likewise covers sustainable traditional resource rights.

Sec. 6. *Composition of Ancestral Lands/Domains.*- Ancestral lands and domains shall consist of all areas generally belonging to ICCs/IPs as referred under Sec. 3, items (a) and (b) of this Act.

Sec. 7. *Rights to Ancestral Domains.*- The rights of ownership and possession of ICCs/IPs to their ancestral domains shall be recognized and protected. Such rights shall include:

a. *Rights of Ownership.*- The right to claim ownership over lands, bodies of water traditionally and actually occupied by ICCs/IPs, sacred places, traditional hunting and fishing grounds, and all improvements made by them at any time within the domains;

b. *Right to Develop Lands and Natural Resources.*- Subject to Section 56 hereof, right to develop, control and use lands and territories traditionally occupied, owned, or used; to manage and conserve natural resources within the territories and uphold the responsibilities for future generations; to benefit and share the profits from allocation and utilization of the natural resources found therein; the right to negotiate the terms and conditions for the exploration of natural resources in the areas for the purpose of ensuring ecological, environmental protection and the conservation measures, pursuant to national and customary laws; the right to an informed and intelligent participation in the formulation and implementation of any project, government or private, that will affect or impact upon the ancestral domains and to receive just and fair compensation for any damages which they sustain as a result of the project; and the right to effective measures by the government to prevent any interference with, alienation and encroachment upon these rights;

c. *Right to Stay in the Territories.*- The right to stay in the territory and not be removed therefrom. No ICCs/IPs will be relocated without their free and prior informed consent, nor through any means other than eminent domain. Where relocation is considered necessary as an exceptional measure, such relocation shall take place only with the free and prior informed consent of the ICCs/IPs concerned and whenever possible, they shall be guaranteed the right to return to their

ancestral domains, as soon as the grounds for relocation cease to exist. When such return is not possible, as determined by agreement or through appropriate procedures, ICCs/IPs shall be provided in all possible cases with lands of quality and legal status at least equal to that of the land previously occupied by them, suitable to provide for their present needs and future development. Persons thus relocated shall likewise be fully compensated for any resulting loss or injury;

d. *Right in Case of Displacement.*- In case displacement occurs as a result of natural catastrophes, the State shall endeavor to resettle the displaced ICCs/IPs in suitable areas where they can have temporary life support system: Provided, That the displaced ICCs/IPs shall have the right to return to their abandoned lands until such time that the normalcy and safety of such lands shall be determined: Provided, further, That should their ancestral domain cease to exist and normalcy and safety of the previous settlements are not possible, displaced ICCs/IPs shall enjoy security of tenure over lands to which they have been resettled: Provided, furthermore, That basic services and livelihood shall be provided to them to ensure that their needs are adequately addressed:

e. *Right to Regulate Entry of Migrants.*- Right to regulate the entry of migrant settlers and organizations into the domains;

f. *Right to Safe and Clean Air and Water.*- For this purpose, the ICCs/IPs shall have access to integrated systems for the management of their inland waters and air space;

g. *Right to Claim Parts of Reservations.*- The right to claim parts of the ancestral domains which have been reserved for various purposes, except those reserved and intended for common and public welfare and service; and

h. *Right to Resolve Conflict.*- Right to resolve land conflicts in accordance with customary laws of the area where the land is located, and only in default thereof shall the complaints be submitted to amicable settlement and to the Courts of Justice whenever necessary.

Sec. 8. *Rights to Ancestral Lands.*- The right of ownership and possession of the ICCs/IPs, to their ancestral lands shall be recognized and protected.

a. *Right to transfer land/property.*- Such right shall include the right to transfer land or property rights to/among members of the same ICCs/IPs, subject to customary laws and traditions of the community concerned.

b. *Right to Redemption.*- In cases where it is shown that the transfer of land/property rights by virtue of any agreement or devise, to a non-member of the concerned ICCs/IPs is tainted by the vitiated consent of the ICCs/IPs, or is transferred for an unconscionable consideration or price, the transferor ICC/IP shall have the right to redeem the same within a period not exceeding fifteen (15) years from the date of transfer.

Sec. 9. *Responsibilities of ICCs/IPs to their Ancestral Domains.*- ICCs/IPs occupying a duly certified ancestral domain shall have the following responsibilities:

a. *Maintain Ecological Balance.*- To preserve, restore, and maintain a balanced ecology in the ancestral domain by protecting the flora and fauna, watershed areas, and other reserves;

b. *Restore Denuded Areas.*- To actively initiate, undertake and participate in the reforestation of denuded areas and other development programs and projects subject to just and reasonable remuneration; and

c. *Observe Laws.*- To observe and comply with the provisions of this Act and the rules and regulations for its effective implementation.

Sec. 10. *Unauthorized and Unlawful Intrusion.*- Unauthorized and unlawful intrusion upon, or use of any portion of the ancestral domain, or any violation of the rights herein before enumerated, shall be punishable under this law. Furthermore, the Government shall take measures to prevent non-ICCs/IPs from taking advantage of the ICCs/IPs customs or lack of understanding of laws to secure ownership, possession of land belonging to said ICCs/IPs.

Sec. 11. *Recognition of Ancestral Domain Rights.*- The rights of ICCs/IPs to their ancestral domains by virtue of Native Title shall be recognized and respected. Formal recognition, when solicited by ICCs/IPs concerned, shall be embodied in a Certificate of Ancestral Domain Title (CADT), which shall recognize the title of the concerned ICCs/IPs over the territories identified and delineated.



Sec. 12. *Option to Secure Certificate of Title under Commonwealth Act 141, as amended, or the Land Registration Act 496.*- Individual members of cultural communities, with respect to individually-owned ancestral lands who, by themselves or through their predecessors-in-interest, have been in continuous possession and occupation of the same in the concept of owner since the immemorial or for a period of not less than thirty (30) years immediately preceding the approval of this Act and uncontested by the members of the same ICCs/IPs shall have the option to secure title to their ancestral lands under the provisions of Commonwealth Act 141, as amended, or the Land Registration Act 496.

For this purpose, said individually-owned ancestral lands, which are agricultural in character and actually used for agricultural, residential, pasture, and tree farming purposes, including those with a slope of eighteen percent (18%) or more, are hereby classified as alienable and disposable agricultural lands.

The option granted under this Section shall be exercised within twenty (20) years from the approval of this Act.

#### CHAPTER IV RIGHT TO SELF-GOVERNANCE AND EMPOWERMENT

Sec. 13. *Self-Governance.*- The State recognizes the inherent right of ICCs/IPs to self-governance and self-determination and respects the integrity of their values, practices and institutions. Consequently, the State shall guarantee the right of ICCs/IPs to freely pursue their economic, social and cultural development.

Sec. 14. *Support for Autonomous Regions.*- The State shall continue to strengthen and support the autonomous regions created under the Constitution as they may require or need. The State shall likewise encourage other ICCs/IPs not included or outside Muslim Mindanao and the Cordillera to use the form and content of their ways of life as may be compatible with the fundamental rights defined in the Constitution of the Republic of the Philippines and other internationally recognized human rights.

Sec. 15. *Justice System, Conflict Resolution Institutions and Peace Building Processes.*- The ICCs/IPs shall have the right to use their own commonly accepted justice systems, conflict resolution institutions, peace building processes or mechanisms and other customary laws and practices within their respective communities and as may be compatible with the national legal system and with internationally recognized human rights.

Sec. 16. *Right to Participate in Decision-Making.*- ICCs/IPs have the right to participate fully, if they so choose, at all levels of decision-making in matters which may affect their rights, lives and destinies through procedures determined by them as well as to maintain and develop their own indigenous political structures. Consequently, the State shall ensure that the ICCs/IPs shall be given mandatory representation in policy-making bodies and other local legislative councils.

Sec. 17. *Right to Determine and Decide Priorities for Development.*- The ICCs/IPs shall have the right to determine and decide their own priorities for development affecting their lives, beliefs, institutions, spiritual well-being, and the lands they own, occupy or use. They shall participate in the formulation, implementation and evaluation of policies, plans and programs for national, regional and local development which may directly affect them.

Sec. 18. *Tribal Barangays.*- The ICCs/IPs living in contiguous areas or communities where they form the predominant population but which are located in municipalities, provinces or cities where they do not constitute the majority of the population, may form or constitute a separate barangay in accordance with the Local Government Code on the creation of tribal barangays.

Sec. 19. *Role of Peoples Organizations.*- The State shall recognize and respect the role of independent ICCs/IPs organizations to enable the ICCs/IPs to pursue and protect their legitimate and collective interests and aspirations through peaceful and lawful means.

Sec. 20. *Means for Development /Empowerment of ICCs/IPs.*- The Government shall establish the means for the full development/empowerment of the ICCs/IPs own institutions and initiatives and, where necessary, provide the resources needed therefor.

#### CHAPTER V SOCIAL JUSTICE AND HUMAN RIGHTS



Sec. 21. *Equal Protection and Non-discrimination of ICCs/IPs.*- Consistent with the equal protection clause of the Constitution of the Republic of the Philippines, the Charter of the United Nations, the Universal Declaration of Human Rights including the Convention on the Elimination of Discrimination Against Women and International Human Rights Law, the State shall, with due recognition of their distinct characteristics and identity, accord to the members of the ICCs/IPs the rights, protections and privileges enjoyed by the rest of the citizenry. It shall extend to them the same employment rights, opportunities, basic services, educational and other rights and privileges available to every member of the society. Accordingly, the State shall likewise ensure that the employment of any form of force of coercion against ICCs/IPs shall be dealt with by law.

The State shall ensure that the fundamental human rights and freedoms as enshrined in the Constitution and relevant international instruments are guaranteed also to indigenous women. Towards this end, no provision in this Act shall be interpreted so as to result in the diminution of rights and privileges already recognized and accorded to women under existing laws of general application.

Sec. 22. *Rights during Armed Conflict.*- ICCs/IPs have the right to special protection and security in periods of armed conflict. The State shall observe international standards, in particular, the Fourth Geneva Convention of 1949, for the protection of civilian populations in circumstances of emergency and armed conflict, and shall not recruit members of the ICCs/IPs against their will into armed forces, and in particular, for the use against other ICCs/IPs; not recruit children of ICCs/IPs into the armed forces under any circumstance; nor force indigenous individuals to abandon their lands, territories and means of subsistence, or relocate them in special centers for military purposes under any discriminatory condition.

Sec. 23. *Freedom from Discrimination and Right to Equal Opportunity and Treatment.*- It shall be the right of the ICCs/IPs to be free from any form of discrimination, with respect to recruitment and conditions of employment, such that they may enjoy equal opportunities as other occupationally-related benefits, informed of their rights under existing labor legislation and of means available to them for redress, not subject to any coercive recruitment systems, including bonded labor and other forms of debt servitude; and equal treatment in employment for men and women, including the protection from sexual harassment.

Towards this end, the State shall within the framework of national laws and regulations, and in cooperation with the ICCs/IPs concerned, adopt special measures to ensure the effective protection with regard to the recruitment and conditions of employment of persons belonging to these communities, to the extent that they are not effectively protected by the laws applicable to workers in general.

ICCs/IPs shall have the right to association and freedom for all trade union activities and the right to conclude collective bargaining agreements with employers' conditions. They shall likewise have the right not to be subject to working conditions hazardous to their health, particularly through exposure to pesticides and other toxic substances.

Sec. 24. *Unlawful Acts Pertaining to Employment.*- It shall be unlawful for any person:

- a. To discriminate against any ICC/IP with respect to the terms and conditions of employment on account of their descent. Equal remuneration shall be paid to ICC/IP and non-ICC/IP for work of equal value; and
- b. To deny any ICC/IP employee any right or benefit herein provided for or to discharge them for the purpose of preventing them from enjoying any of the rights or benefits provided under this Act.

Sec. 25. *Basic Services.*- The ICC/IP have the right to special measures for the immediate, effective and continuing improvement of their economic and social conditions, including in the areas of employment, vocational training and retraining, housing, sanitation, health and social security. Particular attention shall be paid to the rights and special needs of indigenous women, elderly, youth, children and differently-abled persons. Accordingly, the State shall guarantee the right of ICCs/IPs to government 's basic services which shall include, but not limited to water and electrical facilities, education, health and infrastructure.

Sec. 26. *Women.*- ICC/IP women shall enjoy equal rights and opportunities with men, as regards the social, economic, political and cultural spheres of life. The participation of indigenous women in the decision-making process in all levels, as well as in the development of society, shall be given due respect and recognition.

The State shall provide full access to education, maternal and child care, health and nutrition, and housing services to indigenous women. Vocational, technical, professional and other forms of training shall be provided to enable these women to fully participate in all aspects of social life. As far as possible, the State shall ensure that indigenous women have access to all services in their own languages.

Sec. 27. *Children and Youth.*- The State shall recognize the vital role of the children and youth of ICCs/IPs in nation-building and shall promote and protect their physical, moral, spiritual, moral, spiritual, intellectual and social well-being. Towards this end, the State shall support all government programs intended for the development and rearing of the children and youth of ICCs/IPs for civic efficiency and establish such mechanisms as may be necessary for the protection of the rights of the indigenous children and youth.

Sec. 28. *Integrated System of Education.*- The State shall, through the NCIP, provide a complete, adequate and integrated system of education, relevant to the needs of the children and Young people of ICCs/IPs.

#### CHAPTER VI CULTURAL INTEGRITY

Sec. 29. *Protection of Indigenous Culture, traditions and institutions.*- The state shall respect, recognize and protect the right of the ICCs/IPs to preserve and protect their culture, traditions and institutions. It shall consider these rights in the formulation of national plans and policies.

Sec. 30. *Educational Systems.*- The State shall provide equal access to various cultural opportunities to the ICCs/IPs through the educational system, public or cultural entities, scholarships, grants and other incentives without prejudice to their right to establish and control their educational systems and institutions by providing education in their own language, in a manner appropriate to their cultural methods of teaching and learning. Indigenous children/youth shall have the right to all levels and forms of education of the State.

Sec. 31. *Recognition of Cultural Diversity.*- The State shall endeavor to have the dignity and diversity of the cultures, traditions, histories and aspirations of the ICCs/IPs appropriately reflected in all forms of education, public information and cultural-educational exchange. Consequently, the State shall take effective measures, in consultation with ICCs/IPs concerned, to eliminate prejudice and discrimination and to promote tolerance, understanding and good relations among ICCs/IPs and all segments of society. Furthermore, the Government shall take effective measures to ensure that State-owned media duly reflect indigenous cultural diversity. The State shall likewise ensure the participation of appropriate indigenous leaders in schools, communities and international cooperative undertakings like festivals, conferences, seminars and workshops to promote and enhance their distinctive heritage and values.

Sec. 32. *Community Intellectual Rights.*- ICCs/IPs have the right to practice and revitalize their own cultural traditions and customs. The State shall preserve, protect and develop the past, present and future manifestations of their cultures as well as the right to the restitution of cultural, intellectual, religious, and spiritual property taken without their free and prior informed consent or in violation of their laws, traditions and customs.

Sec. 33. *Rights to Religious, Cultural Sites and Ceremonies.*- ICCs/IPs shall have the right to manifest, practice, develop teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect and have access to their religious and cultural sites; the right to use and control of ceremonial object; and the right to the repatriation of human remains. Accordingly, the State shall take effective measures, in cooperation with the burial sites, be preserved, respected and protected. To achieve this purpose, it shall be unlawful to:

- a. Explore, excavate or make diggings on archeological sites of the ICCs/IPs for the purpose of obtaining materials of cultural values without the free and prior informed consent of the community concerned; and
- b. Deface, remove or otherwise destroy artifacts which are of great importance to the ICCs/IPs for the preservation of their cultural heritage.

Sec. 34. *Right to Indigenous Knowledge Systems and Practices and to Develop own Sciences and Technologies.*- ICCs/IPs are entitled to the recognition of the full ownership and control and protection of their cultural and intellectual rights. They shall have the right to special measures to control, develop and protect their sciences, technologies and cultural

manifestations, including human and other genetic resources, seeds, including derivatives of these resources, traditional medicines and health practices, vital medicinal plants, animals and minerals, indigenous knowledge systems and practices, knowledge of the properties of fauna and flora, oral traditions, literature, designs, and visual and performing arts.

Sec. 35. *Access to Biological and Genetic Resources.*- Access to biological and genetic resources and to indigenous knowledge related to the conservation, utilization and enhancement of these resources, shall be allowed within ancestral lands and domains of the ICCs/IPs only with a free and prior informed consent of such communities, obtained in accordance with customary laws of the concerned community.

Sec. 36. *Sustainable Agro-Technical Development.* - The State shall recognize the right of ICCs/IPs to a sustainable agro-technological development and shall formulate and implement programs of action for its effective implementation. The State shall likewise promote the bio-genetic and resource management systems among the ICCs/IPs and shall encourage cooperation among government agencies to ensure the successful sustainable development of ICCs/IPs.

Sec. 37. *Funds for Archeological and Historical Sites.* - The ICCs/IPs shall have the right to receive from the national government all funds especially earmarked or allocated for the management and preservation of their archeological and historical sites and artifacts with the financial and technical support of the national government agencies.

- [United States Code](#)
  - [TITLE 25 - INDIANS](#)
    - [CHAPTER 32 - NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION](#)

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**Sec. 3001. Definitions**

For purposes of this chapter, the term -

- (1) "burial site" means any natural or prepared physical location, whether originally below, on, or above the surface of the earth, into which as a part of the death rite or ceremony of a culture, individual human remains are deposited.
- (2) "cultural affiliation" means that there is a relationship of shared group identity which can be reasonably traced historically or prehistorically between a present day Indian tribe or Native Hawaiian organization and an identifiable earlier group.
- (3) "cultural items" means human remains and -
  - (A) "associated funerary objects" which shall mean objects that, as a part of the death rite or ceremony of a culture, are reasonably believed to have been placed with individual human remains either at the time of death or later, and both the human remains and associated funerary objects are presently in the possession or control of a Federal agency or museum, except that other items exclusively made for burial purposes or to contain human remains shall be considered as associated funerary objects. <sup>11</sup>
  - (B) "unassociated funerary objects" which shall mean objects that, as a part of the death rite or ceremony of a culture, are reasonably believed to have been placed with individual human remains either at the time of death or later, where the remains are not in the possession or control of the Federal agency or museum and the objects can be identified by a preponderance of the evidence as related to specific individuals or families or to known human remains or, by a preponderance of the evidence, as having been removed from a specific burial site of an individual culturally affiliated with a particular Indian tribe,
  - (C) "sacred objects" which shall mean specific ceremonial objects which are needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present day adherents, and (D) "cultural patrimony" which shall mean an object having ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual Native American, and which, therefore, cannot be alienated, appropriated, or conveyed by any individual regardless of whether or not the individual is a member of the Indian tribe or Native Hawaiian organization and such object shall have been considered inalienable by such Native American group at the time the object was separated from such group.

- (4) "Federal agency" means any department, agency, or instrumentality of the United States. Such term does not include the Smithsonian Institution.
- (5) "Federal lands" means any land other than tribal lands which are controlled or owned by the United States, including lands selected by but not yet conveyed to Alaska Native Corporations and groups organized pursuant to the Alaska Native Claims Settlement Act of 1971 (43 U.S.C. 1601 et seq.).
- (6) "Hui Malama I Na Kupuna O Hawai'i Nei" means the nonprofit, Native Hawaiian organization incorporated under the laws of the State of Hawaii by that name on April 17, 1989, for the purpose of providing guidance and expertise in decisions dealing with Native Hawaiian cultural issues, particularly burial issues.
- (7) "Indian tribe" means any tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village (as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.)), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.
- (8) "museum" means any institution or State or local government agency (including any institution of higher learning) that receives Federal funds and has possession of, or control over, Native American cultural items. Such term does not include the Smithsonian Institution or any other Federal agency.
- (9) "Native American" means of, or relating to, a tribe, people, or culture that is indigenous to the United States.
- (10) "Native Hawaiian" means any individual who is a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii.
- (11) "Native Hawaiian organization" means any organization which -
  - (A) serves and represents the interests of Native Hawaiians,
  - (B) has as a primary and stated purpose the provision of services to Native Hawaiians, and
  - (C) has expertise in Native Hawaiian Affairs, and shall include the Office of Hawaiian Affairs and Hui Malama I Na Kupuna O Hawai'i Nei.
- (12) "Office of Hawaiian Affairs" means the Office of Hawaiian Affairs established by the constitution of the State of Hawaii.
- (13) "right of possession" means possession obtained with the voluntary consent of an individual or group that had authority of alienation. The original acquisition of a Native American unassociated funerary object, sacred object or object of cultural patrimony from an Indian tribe or Native Hawaiian organization with the voluntary consent of an individual or group with authority to alienate such object is deemed to give right of possession of that object, unless the phrase so defined would, as applied in section [3005\(c\)](#) of this title, result in a Fifth Amendment taking by the United States as determined by the United States Court of Federal Claims pursuant to 28 U.S.C. 1491 in which event the "right of possession" shall be as provided under otherwise

applicable property law. The original acquisition of Native American human remains and associated funerary objects which were excavated, exhumed, or otherwise obtained with full knowledge and consent of the next of kin or the official governing body of the appropriate culturally affiliated Indian tribe or Native Hawaiian organization is deemed to give right of possession to those remains.

- (14) "Secretary" means the Secretary of the Interior.
- (15) "tribal land" means -
  - (A) all lands within the exterior boundaries of any Indian reservation;
  - (B) all dependent Indian communities; <sup>[2]</sup> So in original. Probably should be followed by "and".
  - (C) any lands administered for the benefit of Native Hawaiians pursuant to the Hawaiian Homes Commission Act, 1920, and section 4 of Public Law 86-3.

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#### FOOTNOTES

[1] So in original. The period probably should be a comma.

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*[Updates / Parallel authorities: CFR /  
• Topical references Notes]*

- [United States Code](#)
  - [TITLE 25 - INDIANS](#)
    - [CHAPTER 32 - NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION](#)

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**Sec. 3002. Ownership**

- (a) Native American human remains and objects  
The ownership or control of Native American cultural items which are excavated or discovered on Federal or tribal lands after November 16, 1990, shall be (with priority given in the order listed) -
  - (1) in the case of Native American human remains and associated funerary objects, in the lineal descendants of the Native American; or
  - (2) in any case in which such lineal descendants cannot be ascertained, and in the case of unassociated funerary objects, sacred objects, and objects of cultural patrimony -
    - (A) in the Indian tribe or Native Hawaiian organization on whose tribal land such objects or remains were discovered;
    - (B) in the Indian tribe or Native Hawaiian organization which has the closest cultural affiliation with such remains or objects and which, upon notice, states a claim for such remains or objects; or
    - (C) if the cultural affiliation of the objects cannot be reasonably ascertained and if the objects were discovered on Federal land that is recognized by a final judgment of the Indian Claims Commission or the United States Court of Claims as the aboriginal land of some Indian tribe -
  - (1) in the Indian tribe that is recognized as aboriginally occupying the area in which the objects were discovered, if upon notice, such tribe states a claim for such remains or objects, or
  - (2) if it can be shown by a preponderance of the evidence that a different tribe has a stronger cultural relationship with the remains or objects than the tribe or organization specified in paragraph (1), in the Indian tribe that has the strongest demonstrated relationship, if upon notice, such tribe states a claim for such remains or objects.
- (b) Unclaimed Native American human remains and objects  
Native American cultural items not claimed under subsection (a) of this section shall be disposed



of in accordance with regulations promulgated by the Secretary in consultation with the review committee established under section [3006](#) of this title, Native American groups, representatives of museums and the scientific community.

- (c) Intentional excavation and removal of Native American human remains and objects  
The intentional removal from or excavation of Native American cultural items from Federal or tribal lands for purposes of discovery, study, or removal of such items is permitted only if -
  - (1) such items are excavated or removed pursuant to a permit issued under section [470cc](#) of title 16 which shall be consistent with this chapter;
  - (2) such items are excavated or removed after consultation with or, in the case of tribal lands, consent of the appropriate (if any) Indian tribe or Native Hawaiian organization;
  - (3) the ownership and right of control of the disposition of such items shall be as provided in subsections (a) and (b) of this section; and
  - (4) proof of consultation or consent under paragraph (2) is shown.
- (d) Inadvertent discovery of Native American remains and objects
  - (1) Any person who knows, or has reason to know, that such person has discovered Native American cultural items on Federal or tribal lands after November 16, 1990, shall notify, in writing, the Secretary of the Department, or head of any other agency or instrumentality of the United States, having primary management authority with respect to Federal lands and the appropriate Indian tribe or Native Hawaiian organization with respect to tribal lands, if known or readily ascertainable, and, in the case of lands that have been selected by an Alaska Native Corporation or group organized pursuant to the Alaska Native Claims Settlement Act of 1971 (43 U.S.C. 1601 et seq.), the appropriate corporation or group. If the discovery occurred in connection with an activity, including (but not limited to) construction, mining, logging, and agriculture, the person shall cease the activity in the area of the discovery, make a reasonable effort to protect the items discovered before resuming such activity, and provide notice under this subsection. Following the notification under this subsection, and upon certification by the Secretary of the department or the head of any agency or instrumentality of the United States or the appropriate Indian tribe or Native Hawaiian organization that notification has been received, the activity may resume after 30 days of such certification.
  - (2) The disposition of and control over any cultural items excavated or removed under this subsection shall be determined as provided for in this section.
  - (3) If the Secretary of the Interior consents, the responsibilities (in whole or in part) under paragraphs (1) and (2) of the Secretary of any department (other than the Department of the Interior) or the head of any other agency or instrumentality may be delegated to the Secretary with respect to any land managed by such other Secretary or agency head.



- (e) Relinquishment  
Nothing in this section shall prevent the governing body of an Indian tribe or Native Hawaiian organization from expressly relinquishing control over any Native American human remains, or title to or control over any funerary object, or sacred object.

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[\[Updates](#) / [Parallel authorities: CFR](#) /

- [Topical references](#) [Notes](#)]

- [United States Code](#)
    - [TITLE 25 - INDIANS](#)
      - [CHAPTER 32 - NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION](#)
- 

### **Sec. 3005. Repatriation**

- (a) Repatriation of Native American human remains and objects possessed or controlled by Federal agencies and museums
  - (1) If, pursuant to section [3003](#) of this title, the cultural affiliation of Native American human remains and associated funerary objects with a particular Indian tribe or Native Hawaiian organization is established, then the Federal agency or museum, upon the request of a known lineal descendant of the Native American or of the tribe or organization and pursuant to subsections (b) and (e) of this section, shall expeditiously return such remains and associated funerary objects.
  - (2) If, pursuant to section [3004](#) of this title, the cultural affiliation with a particular Indian tribe or Native Hawaiian organization is shown with respect to unassociated funerary objects, sacred objects or objects of cultural patrimony, then the Federal agency or museum, upon the request of the Indian tribe or Native Hawaiian organization and pursuant to subsections (b), (c) and (e) of this section, shall expeditiously return such objects.
  - (3) The return of cultural items covered by this chapter shall be in consultation with the requesting lineal descendant or tribe or organization to determine the place and manner of delivery of such items.
  - (4) Where cultural affiliation of Native American human remains and funerary objects has not been established in an inventory prepared pursuant to section [3003](#) of this title, or the summary pursuant to section [3004](#) of this title, or where Native American human remains and funerary objects are not included upon any such inventory, then, upon request and pursuant to subsections (b) and (e) of this section and, in the case of unassociated funerary objects, subsection (c) of this section, such Native American human remains and funerary objects shall be expeditiously returned where the requesting Indian tribe or Native Hawaiian organization can show cultural affiliation by a preponderance of the evidence based upon geographical, kinship, biological, archaeological, anthropological, linguistic, folkloric, oral traditional, historical, or other relevant information or expert opinion.
  - (5) Upon request and pursuant to subsections (b), (c) and (e) of this section, sacred objects and objects of cultural patrimony shall be expeditiously returned where -
    - (A) the requesting party is the direct lineal descendant of an individual who owned the sacred object;

- (B) the requesting Indian tribe or Native Hawaiian organization can show that the object was owned or controlled by the tribe or organization; or
  - (C) the requesting Indian tribe or Native Hawaiian organization can show that the sacred object was owned or controlled by a member thereof, provided that in the case where a sacred object was owned by a member thereof, there are no identifiable lineal descendants of said member or the lineal descendants, upon notice, have failed to make a claim for the object under this chapter.
- (b) Scientific study  
If the lineal descendant, Indian tribe, or Native Hawaiian organization requests the return of culturally affiliated Native American cultural items, the Federal agency or museum shall expeditiously return such items unless such items are indispensable for completion of a specific scientific study, the outcome of which would be of major benefit to the United States. Such items shall be returned by no later than 90 days after the date on which the scientific study is completed.
  - (c) Standard of repatriation  
If a known lineal descendant or an Indian tribe or Native Hawaiian organization requests the return of Native American unassociated funerary objects, sacred objects or objects of cultural patrimony pursuant to this chapter and presents evidence which, if standing alone before the introduction of evidence to the contrary, would support a finding that the Federal agency or museum did not have the right of possession, then such agency or museum shall return such objects unless it can overcome such inference and prove that it has a right of possession to the objects.
  - (d) Sharing of information by Federal agencies and museums  
Any Federal agency or museum shall share what information it does possess regarding the object in question with the known lineal descendant, Indian tribe, or Native Hawaiian organization to assist in making a claim under this section.
  - (e) Competing claims  
Where there are multiple requests for repatriation of any cultural item and, after complying with the requirements of this chapter, the Federal agency or museum cannot clearly determine which requesting party is the most appropriate claimant, the agency or museum may retain such item until the requesting parties agree upon its disposition or the dispute is otherwise resolved pursuant to the provisions of this chapter or by a court of competent jurisdiction.
  - (f) Museum obligation  
Any museum which repatriates any item in good faith pursuant to this chapter shall not be liable for claims by an aggrieved party or for claims of breach of fiduciary duty, public trust, or violations of state <sup>(1)</sup> law that are inconsistent with the provisions of this chapter.
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FOOTNOTES

[1] So in original. Probably should be capitalized.

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*[[Updates](#) / [Parallel authorities: CFR](#) /  
• [Topical references Notes](#)]*

- [United States Code](#)
    - [TITLE 18 - CRIMES AND CRIMINAL PROCEDURE](#)
      - PART I - CRIMES
        - [CHAPTER 53 - INDIANS](#)
- 

**Sec. 1170. Illegal trafficking in Native American human remains and cultural items**

- (a) Whoever knowingly sells, purchases, uses for profit, or transports for sale or profit, the human remains of a Native American without the right of possession to those remains as provided in the Native American Graves Protection and Repatriation Act shall be fined in accordance with this title, or imprisoned not more than 12 months, or both, and in the case of a second or subsequent violation, be fined in accordance with this title, or imprisoned not more than 5 years, or both.
  - (b) Whoever knowingly sells, purchases, uses for profit, or transports for sale or profit any Native American cultural items obtained in violation of the Native American Grave Protection and Repatriation Act shall be fined in accordance with this title, imprisoned not more than one year, or both, and in the case of a second or subsequent violation, be fined in accordance with this title, imprisoned not more than 5 years, or both.
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*[[Updates](#) / [Parallel authorities: CFR](#) /  
• [Topical references Notes](#)]*

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## **PART 6 - INVESTOR-RELATED POLICY**

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The Calvert Group is an investment company that offers to the public socially responsible mutual funds. Before including a company in a portfolio, the Group's portfolio manager examines the company's performance against six areas of concern: the environment; workplace issues; product safety and impact; international operations and human rights; weapons contracting; and indigenous peoples' rights. Attached is a copy of their Indigenous Peoples' Rights Investment Policy.



## About Socially Responsible Investing

- Calvert Funds
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- Retirement Planning
- Newsletters
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- Investing in Innovative Companies
- Know What You Own®
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### Indigenous Peoples' Rights Investment Policy

#### CSIF Statement on Indigenous Rights:

The Calvert Social Investment Fund (CSIF) is concerned about the survival and security of approximately 300 million indigenous peoples living in more than 70 countries around the world.<sup>1</sup> There are indigenous peoples living in the Americas, Asia, Africa, Australia and the South Pacific, and some parts of Europe as well.<sup>2</sup> Over the years, the basic human rights and fundamental freedoms of indigenous peoples continue to be violated. They are experiencing ongoing oppression and social and economic injustice on a massive scale. Indigenous people have also been exploited because they are seldom represented in the political participation process.

Calvert Group sponsors the nation's [largest family of socially responsible mutual funds](#), with assets exceeding \$2.1 billion. Calvert is a leader in social investing. In 1982, we were one of the first mutual funds to take a stand against apartheid in South Africa. In light of our long-standing commitment to social justice, CSIF is the first socially responsible fund in the U.S. to develop a policy on indigenous peoples.

All over the world, the rights and survival of indigenous peoples are under attack. Indigenous peoples often live in areas that contain some of the world's last untapped natural resources. With the rapid expansion of globalization, these areas are increasingly under assault. Because of our strong commitment to protecting human beings all over the planet, we are actively working toward the rights and survival of indigenous people worldwide.

Indigenous peoples have long lived in harmony and balance with nature, reflecting a personal and spiritual connection to all human beings, plants and animals. They have made an invaluable contribution in the technology of stewardship. For example, environmental conservation is closely connected to the rights of indigenous peoples, as they have long been the protectors of this Earth. Indigenous peoples inhabit and can ensure the conservation of critical and sensitive habitats and species. Therefore, lessons learned from indigenous peoples and their cultures could be a vital force to humanizing capitalism and helping us ensure the survivability of all of our planet. In addition, we believe that their culture of harmony can offer us valuable guidance in living our own lives. They are an integral part of our humanity. Therefore, Calvert Group is determined to support the rights of indigenous people.

There are many definitions of indigenous peoples. The United Nations working definition of indigenous people is as follows:

*"...those people having an historical continuity with pre-invasion and pre-colonial societies, consider themselves distinct from other sectors of the societies now prevailing in those territories or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations, their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples in accordance with their own cultural patterns, social institutions, and legal systems."<sup>3</sup>*

Article 1 of the International Labor Organization's (ILO) Convention Concerning Indigenous and Tribal Peoples in Independent Countries (Convention 169) has defined tribal and indigenous peoples as:<sup>4</sup>

1. Tribal peoples in independent countries whose social, cultural, and economic conditions distinguish them from other sections of the national community, and

*whose status is regulated by their own customs or traditions or by special laws or regulations;*

2. *Peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or by geographic region to which the country belongs, at the time of the conquest or colonisation or the establishment of present state boundaries and who, irrespective of their legal status retain some or all of their own social, economic, cultural and political institutions.*
3. *Self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply.*

CSIF is concerned that, due to discrimination and the forced expropriation of their land and basic resources, indigenous cultures are facing extinction. The Fund will use its resources in partnership with indigenous people to preserve their cultures, and to pursue, worldwide, a just sharing of common wealth and a durable relationship to the natural world.

#### **Calvert Social Investment Fund Policy:**

We believe that companies operating on land of indigenous peoples should support appropriate development that respects indigenous territories, cultures, environment and livelihoods. We seek to ensure that our investments respect the dignity, human rights, and cultural uniqueness of indigenous peoples. Calvert is aware that many companies, particularly the natural resource extraction and pharmaceutical industries, are increasingly infringing upon the traditional homelands and intellectual property of indigenous peoples.

#### **Role of governments:**

As socially responsible investors, we are primarily concerned with the actions of corporations. At the same time, we recognize from the International Labor Organization and other international treaties that governments play an integral role in preserving and protecting the rights of indigenous people. For example, **ILO Convention 169** expressly states that governments have the "responsibility for developing, with the participation of the peoples concerned, co-ordinated and systematic action to protect the rights of these peoples and to guarantee respect for their integrity." These measures include ensuring that indigenous peoples benefit from the rights and opportunities of national laws, promoting the full realization of social, economic, and cultural rights with respect to their social and cultural identity; and assisting indigenous peoples to eliminate socio-economic gaps in a manner compatible with their aspirations and ways of life. Indigenous peoples shall enjoy, without discrimination, the full measure of human rights and fundamental freedoms.

Other international conventions also reference the responsibility of governments. For example the **U.N. Convention on Biological Diversity** (which has been ratified by more countries than ILO Convention 169) expressly recognizes the rights of indigenous peoples to customary uses of their lands, and to the traditional knowledge associated with those uses. Similarly, the **U.N.'s International Convention on the Elimination of All Forms of Racial Discrimination (CERD)** also refers to the responsibilities of governments to condemn and eliminate racial discrimination.

We recognize governments have often abused or neglected their responsibility. Such failures have produced injustices of the most fundamental kind. In many cases, traditional systems of governance and stewardship that had assured sustainable use of land, waters, resources for generations, have been destroyed.

#### **Calvert Policy Implementation:**

In light of these grave concerns, CSIF will challenge companies that have a pattern and practice of violating the rights of indigenous peoples. We will not invest in companies that have a pattern of egregious practices toward indigenous people. We will also urge companies that have direct on-going conflicts with indigenous communities to resolve concerns through dialogue with indigenous community representatives, shareholders, and others.

We may invest in companies whose practices may impact indigenous communities. Under these circumstances, CSIF will actively encourage companies, through shareholder dialogue



and advocacy, to adopt and implement company-wide guidelines and policies that take proactive measures in dealing with indigenous communities. These principles may include:

1. Respect land, sovereignty, and natural resource rights or traditional homelands of indigenous communities.
2. Respect cultural heritage, ceremonial and sacred indigenous sites.
3. Obtain prior informed consent from indigenous communities, negotiate agreements transparently with independent observers present, and uphold the self-governance of indigenous communities.
4. Avoid exacerbating any tensions between indigenous communities and local or national governments.
5. Contribute to community-driven development and environmental management plans.
6. Hold on-going consultations and meetings with indigenous communities and leaders in their area of operations.
7. Provide restitution and equitable compensation to indigenous peoples when any property, including intellectual property, has been taken from them.

In implementing this policy, CSIF may employ a variety of strategies including avoiding investing in companies, divestment, working with others to publicly challenge companies, engaging in dialogue with management, and filing shareholder resolution, when applicable.

### **CSIF POLICY ON NEGATIVE IMAGES**

#### **Statement on Negative Images:**

The Calvert Social Investment Fund (CSIF) actively supports the rights of American Indians, Alaskan Natives, and Native Hawaiians (herein referred to as "American Indians" or "Native Americans") to influence and control traditional cultural and religious symbols. We support the promotion of positive portrayals of American Indians and their religious and cultural heritage. CSIF actively discourages corporations from appropriating Native American imagery in the advertising and marketing of their products. Our policy stems from the belief that these images have inflicted considerable damage on the Native American community as well as the non-Native American community at-large. The array of these images used in the marketing of products today, ranging from sports teams to automobiles and toys to movies and fashion, are merely the most recent rendition of a commercial tradition begun over a hundred years ago.

From an historical perspective, the systematic and well-entrenched practice of employing "Indian" imagery by advertisers and marketers emerged in the late 1890s to inspire product loyalty and name brand recognition. Characteristic of the era, the burgeoning consumer culture became infused with trademarks that featured a number of aboriginal groups, including African-Americans, Indian peoples, Hispanic and mestizo subjects, and other 'tribal' groups, including Filipinos, Hawaiians, and Eskimos. Through the production, packaging, and purchasing of material goods, American consumer culture became a screen onto which signs of "otherness" that reinforced and legitimated civilization over savagery and progress over primitivism were writ large.<sup>5</sup>

With the rise of mass-mediated consumerism at the turn of the century negative imagery of aboriginal groups became pervasive in U.S. culture. Given the historical relationship between Euro-Americans and Native Americans, it is no accident that the adoption of Native American images as distinctive markings for products originated in a time when Native Americans were equated with animals as reflected in the common expression from the late 1800s "No Dogs. No Indians."<sup>6</sup>

Whereas there has been a reduction and almost complete elimination of negative images associated with many minority groups, corporations seem peculiarly immune to appeals to cease using Native American imagery. Entities like the Cleveland baseball franchise and Washington football franchise persist unimpeded in their marketing of symbols like "Chief Wahoo" and "Redskins" despite opposition from virtually every Native American organization in the country on the grounds that these symbols are racist.<sup>7</sup>

The common practice and rules of U.S. commerce have been particularly destructive to Native American cultures. The nature of U.S. trademark and copyright law privilege corporations by protecting their rights as "owners" while simultaneously displacing the rights of the Native

Americans whose cultures are being misused and abused. Companies' claim to ownership of cultural symbols has undermined the ability of Native Americans to forge their own identity in a positive and contemporary light. The fictional Indians of Western lore, as represented in many commercial products, serve to portray racist images as being "harmless" at best.

**To intervene constructively with corporations in the elimination of negative Native American imagery is to assist in preserving the heritage and tradition central to the viability of Native American culture.**

**Anti Defamation Policy:**

CSIF supports the promotion of positive portrayals of all individuals and ethnic groups. We object to the use of mascots, logos, and symbols that serve to perpetuate racism and bigotry in our society. We believe that ignorance is the basis for such attitudes. To combat negative stereotypes, we will engage in a diligent educational and monitoring effort of images (whether in advertising, media or sport) to promote greater understanding and respect for all.

**Statement of Support Against Racism Toward Indian Peoples:**

CSIF actively supports the rights of Native Americans to influence and control traditional cultural and religious symbols. We support the promotion of positive portrayals of American Indians and their religious and cultural heritage. CSIF objects to the unauthorized use of names, native references, mascots, logos, symbols and the use of tribal insignia that portray Native Americans in a negative light. We are offended by patterns and practices of behavior that denigrate Native Americans. We are also offended that symbols such as "Chief Wahoo," "Washington Redskins" and "Crazy Horse" are used and accepted as marketing tools. Calvert Group is committed to working with American Indian organizations to examine racism toward Indian Peoples. We are also interested in identifying and challenging stereotypes, which negatively impact Indian Peoples, their cultures, and their religions.

**American Indian Policy for Corporations to Adopt:**

CSIF will actively dialogue with companies that manufacture and/or market products with offensive labels. We will encourage companies we invest in to adopt and implement the following goals. The following are broad-based principles with additional steps for implementation to be developed between corporate management and socially concerned shareholders.

These goals were initially developed by the American Indian Coalition on Institutional Accountability (AICIA), a coalition of various American Indian tribes, nations, and organizations. Calvert is working with the AICIA on the development and implementation of these goals.

As a first step, we encourage management to meet with American Indian leaders, religious and social shareholders to dialogue on the issue of negative images. We also encourage management to:

- Develop a corporate or institutional wide policy on the discontinuation of products and advertisements associated with negative images of American Indians.
- Develop and participate in American Indian Diversity Training Programs.
- Inform corporate shareholders through annual reports, annual meetings and diversity reports about the company's policy on negative images.
- Support public educational programs on the elimination of negative images.
- Communicate to the Commissioners of professional sports teams that the company and/or University has been contacted by American Indian representatives, religious and social investors concerned about the company's association with products misusing American Indian names, mascots, images, logos, and religious items.

**PROACTIVE INVESTMENTS: NATIVE AMERICANS**

Over the years, Calvert Asset Management Company Inc. (CAMCO) has taken a proactive role in investing in Native American and Tribal development projects. Calvert Group is committed to the advancement of economic opportunity for American Indians. CAMCO portfolio managers and social analysts are committed to seeking out development investment opportunities aimed at the creation of "responsible" tribal enterprise and educational development. In addition, CAMCO portfolio managers have received recognition from various American Indian leaders for their assistance in helping them develop and attain their economic objectives.

Examples of projects CAMCO has directly supported via its economic development bond program include:

Tribal Nation	Project Purpose
Passamaquoddy Tribe of Maine  <i>As of 9/30/99, Passamaquoddy is no longer a current holding.</i>	Development of a cement plant
Oneida Tribe of Wisconsin  <i>As of 9/30/99, Oneida is no longer a current holding.</i>	Building a school, public parking facility and roadway improvements
Fort Mojave Tribe  <i>As of 9/30/99, Fort Mojave constitutes 0.31% of the Calvert Tax Free Reserves Limited – Term Portfolio, and 3.31% of the Calvert National Municipal Intermediate Fund.</i>	Roadway improvements and bridge project
Las Vegas Paiute Tribe  <i>As of 9/30/99, Las Vegas Paiute Tribe is no longer a current holding.</i>	Golf course development
Chickasaw Nation  <i>As of 9/30/99, Chickasaw Nation constitutes 1.78% of the CSIF Bond portfolio; 1.53% of the Calvert Income Fund; and 1.52% of the Calvert Variable Series Social Balanced Portfolio.</i>	Development of two travel plazas
Crow Tribe of Montana  <i>As of 9/30/99, Crow Tribe is no longer a current holding.</i>	Development of an RV Park, public parking and roadway improvements
Sault Ste. Marie Tribe of Chippewa Indians  <i>As of 9/30/99, Sault Ste. Marie constitutes 1.33% of the Calvert Tax Free Reserves Money Market portfolio; 0.85% of the Calvert Cash Reserves Institutional Prime Fund; and 0.46% of the Calvert Variable Series Social Money</i>	Building a recreation center and improvements to the school and hotel/convention center.

Market portfolio.

### **Community Investing:**

The Calvert Social Investment Fund (through its High Social Impact Investment program) and the Calvert Foundation, places capital with [community development loan funds](#) that directly support Native American populations in North America.

\*For more complete information about the Calvert Social Investment Fund and rest of Calvert Group's Family of Socially Responsible Mutual Funds, call (800) 368-2748 for a prospectus. Read it carefully before you invest. An investment in the fund is neither insured nor guaranteed by the U.S. Government. Distribution: Calvert Distributors, Inc. 4550 Montgomery Avenue, Bethesda, MD 20814. Legal #2331; 10/99.

<sup>1</sup>United Nations "Human Rights: The Rights of Indigenous Peoples" Fact Sheet No. 9.

<sup>2</sup>For example, indigenous peoples in Europe include the Sami peoples in Sweden, Norway and Finland; Basques of Spain; Abkhazians of Georgia; and the Romany/gypsies.

<sup>3</sup>Special Rapporteur on the Problem of Discrimination Against Indigenous Populations (United Nations Document No. E/CN.4/Suf.2/1983/21).

<sup>4</sup>The ILO distinguishes between "indigenous" and "tribal" peoples while recognizing that both peoples have the same rights.

<sup>5</sup>Staurowsky, E. J. (1998, December). An act of honor or exploitation? The Cleveland Indians' Use of the Louis Francis Sockalexis Story. *Sociology of Sport Journal*, 15, 299-316.

<sup>6</sup>Staurowsky, E. J. (1999, pending). Sockalexis and the making of the myth at the core of Cleveland's Indian image. In R. King & C. F. Springwood (Eds.). *Team spirits: Essays on the history and significance of Native American mascots*.

<sup>7</sup>Staurowsky, E. J. (1999, July 15). Response to the U.S. Patent and Trademark Office's Request for Public Comments. 63 Federal Register 71, 619-71, 620 (December 29, 1998). Statutorily Required Study of Issues Surrounding Trademark Protection for the Official Insignia of Federally and/or State Recognized Native American Tribes. U.S. Patent and Trademark Hearing, Washington, D.C.



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**PART 7 - SNAPSHOT OF FORESTRY AND MINING IN BRITISH COLUMBIA**

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## **A Snapshot of Forestry and Mining in British Columbia**

Prepared for the Union of BC Indian Chiefs  
by Tonio Sadik

### **I - Introduction**

The BC landscape covers an area of 95.2 million hectares, 93 percent of which is designated Crown (or ‘public’) land. Approximately 30 percent of the province’s Gross Domestic Product (GDP) is derived from the export of resources extracted from Crown lands.<sup>1</sup> Many of these commodities leave the province in a raw or nearly-raw form and, hence, export revenues are derived predominantly from the difference between the cost of extracting a commodity and the value of the raw material in the global market. As a consequence, the production of commodities is closely tied to market fluctuations where factors of supply and demand extract heavy tolls on products that have undergone minimal manufacture and, therefore, have little or no “added value.”

The process of extracting resources from Crown lands takes place through land tenures (e.g. leases, licences, permits, etc.). Crown land tenures allow private individuals and corporations to develop and/or extract specific interests on Crown land. They are, in effect, agreements to use land for certain purposes, under certain conditions, for a limited length of time. Although some forms of tenure are replaceable (or “renewable”) and, therefore, may exist in perpetuity, the premise of a Crown tenure is to allow for the utilization/development of land while retaining its title in the Crown. Most resource-related Crown tenures are non-exclusive, which is to say that while they do confer specific rights, these rights may be shared by other non-exclusive tenure holders in a given region. For example, a licence to cut timber may operate alongside other timber licences, as well as mineral claims and/or a grazing lease. Typically, a tenure will specify the level/form of utilization which, in turn, allows differing interests to co-exist.

Commodity production in British Columbia is focused primarily on export. BC’s major trading partners are the United States and Japan. However, recent shifts in the global market have affected BC’s export markets. For example, commodity exports to the USA have risen from 49 to 63 percent of BC’s total exports between 1995 and 1998, while the percentage of commodity exports to Asian markets have dropped from 37 to 27 percent in the same period. Exports to the European Union (EU) have remained steady at 8 percent. By comparison, in 1998, 85 percent of all national commodity exports were to the United States, 6 percent to Asia, and 5 percent to the EU.

### **Relative Value of BC Exports (1998)**

<b>EXPORT PRODUCT</b>	<b>PERCENTAGE OF TOTAL EXPORT</b>
Lumber	34%
Other Forest Products	26%
Other	18%
Coal	6%
Food Products	5%
Oil & Gas	3%
Aluminum	2%
Copper	2%
Gold	2%
Zinc	1%
Other Minerals	1%

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<sup>1</sup> While every effort has been made to maintain accuracy in this research, figures quoted are intended for overview purposes only.

The Aboriginal 'land question' in BC exists in contradistinction to the many uses which Crown land is put. For example, the provincial government has indicated that it will not expropriate Crown tenures as a result of treaties, while at the same time under the current BC Treaty Commission (BCTC) process only Crown land is identified as available for potential treaty settlements. As a consequence, only Crown lands that are not encumbered by tenures are eligible as settlement lands, or, First Nations may be obliged to accept settlement lands undergoing active resource extraction. The extent of overlap between traditional Aboriginal territories and Crown tenures is a difficult assessment to make. However, given that more than half of the BC land base is defined as productive forest land, and virtually the entire province is defined as having some mineral potential, there is no doubt that a conflict exists.

## II - Forestry in BC

As BC's single largest commodity sector, forestry represented \$16.8 billion of the provincial economy in the fiscal year 1997/98. This includes \$1.4 billion collected by the Ministry of Forests (MoF) in the form of 'stumpage'.<sup>2</sup> Some 154,000 hectares of Crown land was logged in 1997/98, translating into approximately 63 million cubic meters (m<sup>3</sup>) of timber. These figures increase to 174,000 hectares and 71 million m<sup>3</sup> respectively when private lands are included in final figures. In total, British Columbia is estimated to have almost 50 million hectares of productive forest land.

The regulation of timber harvesting in BC began in 1912 with the introduction of BC's first Forest Act. Not until 1947, however, was there any meaningful attempt to managed how, where, and how much timber was being harvested. These regulations were made more stringent following a Royal Commission in 1976, and led to the introduction of a new Forest Act in 1978. The changes led to the designation of Forest Regions, and a regime for awarding licences and other mechanisms to allow for a controlled harvest of Crown timber. It also invoked the concept of an Allowable Annual Cut (AAC), a calculation which corresponds to the volume of timber which can be cut in a given area. The AAC is determined by the Chief Forester in the province, and corresponds to the division of the province into 6 administrative Forest Regions, which are in turn composed of some 41 forest Districts.

Of the 63 million cubic meters of timber cut on Crown land in 1997/98, over 35 million m<sup>3</sup> was cut under Forest Licences.<sup>3</sup> Another 12 million m<sup>3</sup> was cut under Tree Farm Licences (TFLs),<sup>4</sup> while the remaining 16 million m<sup>3</sup> was cut through a variety of other permits.

### Quantity of BC Timber Harvested on Crown and Private Land by Forest Region (1997/98) (Millions of Meters Cubed)

	CARIBOO	KAMLOOPS	NELSON	PRINCE GEORGE	PRINCE RUPERT	VANCOUVER
CROWN	8	8	5.4	16.8	7.7	16.8
PRIVATE	0.3	0.5	0.9	0.9	0.3	5
TOTAL	8.3	8.5	6.3	17.7	8	21.8

<sup>2</sup> Stumpage refers to a tax that is paid to the province for each cubic meter logged on Crown land. It currently averages between \$25-30/m<sup>3</sup>.

<sup>3</sup> There were 151 replaceable, and 47 non-replaceable Forest Licences in operation in the 1997/98 fiscal year.

<sup>4</sup> There were 34 TFLs in the 1997/98 fiscal year.

About 80 percent of the province's total allowable cut is committed to replaceable (or 'renewable') Forest and Tree Farm Licences. The remaining harvestable volume is generally reserved for new, short-term, non-replaceable licences which are sold publicly through competitions.

In 1980, the province introduced a Small Business Forest Enterprise Program (SBFEP) to help foster locally-oriented forest initiatives. A significant program in itself, representing just under 20 percent (\$345 million) of all MoF revenues in 1997/98, Ministry statistics give no indication that Aboriginal communities are gaining access to forestry resources through this program. The First Nations Forestry Program (FNFP) on the other hand, established in 1996, emphasizes Aboriginal communities but has a budget of under \$1 million to fund projects in the fiscal year 1999/2000.

Without a doubt, forestry continues to be dominated by a relatively small number of major corporations. In 1999, almost half of the 54 million m<sup>3</sup> of timber apportioned to major licencees across BC's 37 Timber Supply Areas (TSAs) went to ten corporations.<sup>5</sup>

**Top 10 Cumulative Forest Licence Timber  
 Harvesting Allocations in BC  
 (1999)**

<b>COMPANY</b>	<b>AAC m<sup>3</sup></b>
Slocan Forest Products	4,033,982
Northwood	3,470,433
Canadian Forest Products	3,372,088
West Fraser Mills	3,132,361
Interfor	2,916,368
Weyerhaeuser	1,656,851
Tolko Industries	1,485,974
Riverside Forest Products	1,461,039
Weldwood	1,432,440
Ainsworth Lumber	1,156,034
<b>TOTAL</b>	<b>24,117,570</b>

Tree Farm Licences (TFLs) represent the other significant part of the logging equation. TFLs are distinguished from Forest Licences (as allocated within TSAs) by their exclusive right to harvest timber in a given area. Where a number of different licencees are apportioned a share of the AAC in a TSA, TFLs are typically logged only by one licencee. There are currently 34 TFLs in operation, representing just under 14 percent of the total area logged on Crown land in 1997/98. This compares to 83 percent of the total area logged on Crown land through Forest Licences on TSA-designated lands during the same period.

Generally speaking, a large majority of lumber exports from the Interior go to the United States, while a similar majority of Coastal exports go to Japan. The major Interior species include lodgepole pine and spruce, while Coastal forests contain more hemlock than any other species. Other significant species include douglas fir, balsam, and cedar. On the whole, BC accounts for 46 percent of softwood lumber production in Canada, 43 percent of the pulp market, 79 percent of softwood plywood, and 15 percent of newsprint production.

While the Forest Act contains provisions relating to the processing of raw timber in BC prior to export, some raw timber is exported from this province (particularly from private lands). For example, the Ministry of Forests Annual Report indicates that a total of 496,000 m<sup>3</sup> of raw logs were exported in 1997/98. In recent years, raw log exports have been evenly split between the USA and Japan. While exports to Japan dominated into the early 1990s, the level of exports to Japan have

<sup>5</sup> A 'major' licence is defined as a Forest Licence holder with an AAC over 10,000 m<sup>3</sup>.



come down to American levels or less since 1996. Exports to Japan and the United States dominate all raw log exports from BC by a factor 30 to 1.

Unfortunately, comparisons between logs and other wood-product exports (e.g. lumber, plywood, shingles, pulp, and paper) are difficult to make because of the different units of comparison. Where logs are calculated by volume (m<sup>3</sup>), lumber is measured in board feet (bf), while other wood products are generally calculated in dollars. Nevertheless, we can get a sense of wood-product exports—the dominant product being lumber<sup>6</sup>—even without a clear basis for comparison.

Taking all wood products combined, BC exported almost \$13.5 billion to foreign markets in 1998. Of these, almost \$8 billion were to the United States, \$2.25 billion to Japan, \$1 billion to other East Asian and Oceanic countries, and \$1.75 billion to the EU and UK. With the exception of plywood exports to Japan, the United States dominated in every wood-product category. Pulp and paper exports to the USA exceeded \$2 billion in 1998, while pulp and paper exports to Asia/Ociana (including Japan) totaled \$1.5 billion, and \$1 billion to the EU/UK.

As regard lumber exports specifically, exports to the United States in 1998 exceeded exports to all other markets combined—8.7 billion bf versus 4 billion bf respectively. The second largest lumber market is Japan, with a BC export of 1.6 billion bf in 1998. Other significant lumber exports include the destinations of Taiwan (67 million bf), Australia (65 million bf), the Middle East (40 million bf), Belgium/Luxembourg (36 million bf), and Italy (30 million bf).

### **III - Mining in BC**

Both mining and logging have a long history in BC, but mining in particular harks back to images of the Fraser River Gold Rush which led to the formation of this province. While mining is a much smaller industry than logging in BC, the significance which mining plays in the ‘founding myths’ of this province should not be discounted.

With exception of the Queen Charlotte Islands, the Ministry of Energy and Mines (formerly a division of the Ministry of Employment and Investment) identifies the entire province as having some form of mineral/mining potential. As of 1999, there were 56 major operating mines in the province: 12 metal, 8 coal, and 36 industrial-mineral mines. The total value of coal and metal minerals produced in BC was over \$3 billion in 1998.

#### **BC Coal and Metal Mineral Production (1998)**

*(Millions of Dollars)*

<b>COMMODITY</b>	<b>\$</b>
COAL	1,100 m
COPPER	681 m
GOLD	304 m
ZINC	231 m
SILVER	119 m
MOLYBDENUM	82 m
LEAD	24 m
OTHER	475 m

There are 24 mining divisions, arranged into 7 regions in BC. Most mining activities fall under the Mineral Tenure Act, and are regulated by the Ministry of Energy and Mines (MoEM), under the jurisdiction of the province’s Chief Gold Commissioner.

Mineral mines are scattered throughout the province, but are dominant in the southern and southeastern sections. Coal mines in particular are dominant in the southeastern region of the province. The Highland Valley copper mine in the Thompson-Okanagan is by far the largest mine in the province, employing over 1000 workers, and milling almost 45 million tonnes of raw material in 1997. The Gibraltar copper mine in the Cariboo is the second largest mine, milling over

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<sup>6</sup> Softwood lumber exports represented 48 percent of all wood-product exports in 1998. Lumber is not considered a “value-added” product.

## *A Snapshot of Forestry and Mining in British Columbia*

Prepared for the Union of BC Indian Chiefs

By Tonio Sadik

13 million tonnes of material in 1997. In total, in 1997, almost 76 million tonnes of raw material was milled for the production of copper, gold, silver, zinc and molybdenum, while another 43 million tonnes of material was milled in the production of coal.

The mining industry employs up to 14,000 people directly, and another 15-20,000 indirectly. Because of technical innovations, however, the number of persons employed in the mining industry has gone down, while the volume of materials mined has increased. Even where commodity prices have been dropping, as has been the case with gold, production has increased over the past two decades, possibly as a means to off-set a lower return.

Much of the surface disturbance associated with mining is the result of large-scale open pit mines which developed in the late 1960s. Seven of BC's eight coal mines are of the open pit variety. Over 45,000 hectares of land have been disturbed by metal and coal mines in BC since 1969. While this number is small in comparison to the huge tracts of land affected by logging, the long-term environmental impacts of mining are much greater in scale.

Almost 100 percent of the coal mined in BC is exported. Coal is BC's third-largest commodity export after softwood lumber and wood pulp. Japan remained BC's largest importer of coal in 1998 at a value of \$882 million, a drop of 17 percent from 1997. Overall, there was a drop in metal exports to Japan in 1998, including a drop of 41 percent in copper exports to a value of \$221 million. Only unwrought aluminum exports to Japan remained steady at \$322 million. After the United States and Japan, Korea is BC's next-largest commodity destination with exports worth \$670 million in 1998, down 30 percent from one year earlier. Korea imported \$316 million worth of coal from BC in 1998, and \$91 million in unwrought aluminum.

BC also exports several commodities to South and Central America. For example, Brazil imported \$61 million in coal in 1998, up 15 percent from a year previous, while Chilean coal imports dropped 53 percent to \$16 million in the same year. It is interesting to note that Canada entered into a Bilateral Free Trade Agreement with Chile in 1996. Overall exports to Chile dropped 31 percent in 1997. Commodity exports to Mexico remained stable through 1998 at \$59 million, and commodity exports to China, valued at \$1.1 billion in 1998, dropped 11 percent from 1997 levels.

### **IV - Conclusion**

It is not without some irony that we can read about the vastness of this land in government and industry brochures at the same time that we can look at the hundreds of tiny dots that make up the so-called 'Indian reserves' in this province. To date, compensation for lost resources remains a non-starter in treaty negotiations, while governments promise 'fair compensation' where commercial interests are concerned. Why it is that a Crown tenure in the hands of a multinational corporation appears as more of a benefit to the provincial economy than the same tenure in the hands of an Aboriginal nation has to do with the history of economic marginalization of Aboriginal peoples in this province.

In 1999, the BC government prepared to hand over to MacMillan Bloedel a large tract of land as compensation for a loss of some of its forest tenure. MacMillan Bloedel would have shaved the land clean and exported the timber in its rawest form. Although an outcry led the government to shelve this proposal, it spoke volumes about the double-standard which exists in the eyes of government where Aboriginal land rights and compensation are concerned.

The Supreme Court of Canada's decision in *Delgamuukw* has surely strengthened the hand of Aboriginal nations challenging resource extraction on their traditional lands, but it has not changed the government's position in any significant respects. A fair apportionment of Crown lands and resources for Aboriginal peoples in BC will certainly require many more years of work and activism before this goal can ever be reached. Quite possibly the impetus will have to come from the international sphere where Aboriginal organizations, like the Interior Alliance, have been working to develop a lobby to help ensure that Aboriginal peoples' rights are adequately addressed in the domestic sphere.

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**PART 8 - CONTACTS**

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*Protecting Knowledge: Traditional Resource Rights in the New Millennium*

February 23<sup>rd</sup> – February 26<sup>th</sup>, 2000

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