

INTERNATIONAL HUMAN RIGHTS OVERVIEW: BASIC INFORMATION AND LEGAL PROVISIONS

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There are many documents, treaties, conventions, covenants, resolutions and declarations that are relevant to the protection of Indigenous knowledge and heritage at the international level. The following is a selection of provisions from basic international human rights documents, mainly from the United Nations. Further UN information can be accessed (sometimes to subscribers only) at the basic UN web-site www.un.org. Useful information on international developments can also be accessed through the web-site of the Native Law Centre of the University of Saskatchewan at www.usask.ca/nativelaw/. A third site that is quite useful is the Netwarriors site at www.hookele.com/netwarriors/. An Australian site with useful cross-links is www.vicnet.net.au/vicnet/COUNTRY/INDIG.HTM. Information on the status of ratification of most UN human rights treaties is available at www.unhchr.ch/tbs/doc.nsf.

A. The International Bill of Rights

This phrase is sometimes used to describe the combined provisions of the Universal Declaration of Human Rights, 1948, the International Covenant on Economic, Social and Cultural Rights, 1966 and the International Covenant on Civil and Political Rights, 1966.

1. Universal Declaration of Human Rights

The Universal Declaration is not a binding convention or treaty in international law. It is a resolution that was passed by the UN General Assembly on December 10, 1948. It has been extremely influential in the drafting and adoption of other human rights documents at both the international and national level. Canada, the United States, Australia, New Zealand and 44 other nation-states voted for the Declaration. All members of the UN are probably now bound by the provisions of the Declaration under international customary law.

The Universal Declaration can be accessed in full at www.un.org/Overview/rights.html. There is no mention of the right to self-determination in this document but please note the following provisions:

Article 18

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 27

(1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

(2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

2. The International Covenant on Economic, Social and Cultural Rights, 1966.

This Covenant [or "ICESCR"] is a binding treaty or convention in international law. All nation-states who have both signed and ratified this document are bound by it under international law. Canada, Australia, New Zealand and over a hundred other states have ratified this treaty. The United States has signed but not ratified it. It has therefore indicated an intention to be bound, but is not yet actually required under international law to fulfil the provisions of the Convention.

States who are parties to this convention cannot be forced to comply with its provisions. There is no enforcement procedure and the provisions are said to be human rights that are to be "achieved" through "progressive development" rather than immediately enforceable rights. But this does not make them any less as "human rights" in international law and state-parties are bound to do their best to meet their obligations under this Covenant. The Covenant is monitored by the UN Committee on Economic, Social and Cultural Rights. States-parties to the Covenant must submit periodic *Country Reports* indicating their progress in fulfilling the provisions.

The first article of this Covenant on the right to self-determination is identical to the first article of the International Covenant on Civil and Political Rights [or "ICCPR"] and is referred to as "Common Article 1". It is the most important expression of the right to self-determination in international law.

Please note the following provisions:

Article 1

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

Article 2

1. Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the

present Covenant by all appropriate means, including particularly the adoption of legislative measures.

2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

3. Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.

Article 15

1. The States Parties to the present Covenant recognize the right of everyone:

- (a) To take part in cultural life;**
- (b) To enjoy the benefits of scientific progress and its applications;**
- (c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.**

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.

3. The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.

4. The States Parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields.

3. The International Covenant on Civil and Political Rights, 1966.

This is the companion Covenant to the ICESCR. Unlike the ICESCR the provisions of the ICCPR are enforceable (to a limited extent) once a nation-state signs and ratifies it. Canada, Australia, New Zealand, the United States and a very large percentage of the world's nations are parties to this covenant and are bound by it, including Common Article 1. Compliance is monitored by the *UN Human Rights Committee*. Countries who have ratified the ICCPR must submit periodic country reports, as they do under the ICESCR and most other UN human rights conventions.

Attached to this Covenant are two Optional Protocols, or additions, which contain different procedures or substantive provisions. States-parties to the main Covenant need not ratify the Protocols. States cannot ratify these Protocols, however, unless they are already parties to the ICCPR itself.

We are concerned only with the First Optional Protocol that contains procedures for the hearing of *individual communications* lodged with the UN. These communications are heard by the *UN Human Rights Committee* that monitors the Covenant generally. Canada, Australia and New Zealand have ratified the First Optional Protocol and individuals can complain to the UN Human Rights Committee about breaches of the ICCPR by these countries. The United States has not ratified this Protocol and therefore individuals cannot complain directly to this international

body.

The procedure for hearing individual communications is similar to procedures under other UN Covenants and Conventions. The Committee is not a court or judicial body and the communications mechanism is not a trial. Witnesses do not give evidence and the Committee does not render a “decision” or “judgment”, but rather puts forward its “views”. These “views” can, however, recommend that a state must do or cease from doing a wide range of activities, including the implementation of interim measures. The Committee monitors compliance by a state with its “views” but has no enforcement procedure if a state refuses or neglects to implement the Committee's opinion.

In addition there is an optional procedure under Article 41 of the ICCPR for one state to complain to the Committee that another state-party is not fulfilling its obligations under the Covenant. As far as I am aware this optional “state-to-state” procedure has never been used. It has however been ratified by a significant number of states, including Australia, Canada, New Zealand and (interestingly) the United States. Please note the following provisions from the ICCPR. The full text of the First Optional Protocol is also included.

Article 2

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

Article 18

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or

to adopt a religion or belief of his choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others. 4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

Article 19

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

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.

Article 28

1. There shall be established a Human Rights Committee (hereafter referred to in the present Covenant as the Committee). It shall consist of eighteen members and shall carry out the functions hereinafter provided.

2. The Committee shall be composed of nationals of the States Parties to the present Covenant who shall be persons of high moral character and recognized competence in the field of human rights, consideration being given to the usefulness of the participation of some persons having legal experience.

3. The members of the Committee shall be elected and shall serve in their personal capacity.

Optional Protocol to the International Covenant on Civil and Political Rights

The States Parties to the present Protocol,

Considering that in order further to achieve the purposes of the International Covenant on Civil and Political Rights (hereinafter referred to as the Covenant) and the implementation of its provisions it would be appropriate to enable the Human Rights Committee set up in part IV of the Covenant (hereinafter referred to as the Committee) to receive and consider, as provided in the present Protocol, communications from individuals claiming to be victims of violations of any of the rights set forth in the Covenant.

Have agreed as follows:

Article 1

A State Party to the Covenant that becomes a Party to the present Protocol recognizes the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of any of the rights set forth in the Covenant. No communication shall be received by the Committee if it concerns a State Party to the Covenant which is not a Party to the present Protocol.

Article 2

Subject to the provisions of article 1, individuals who claim that any of their rights enumerated in the Covenant have been violated and who have exhausted all available domestic remedies may submit a written communication to the Committee for consideration.

Article 3

The Committee shall consider inadmissible any communication under the present Protocol which is anonymous, or which it considers to be an abuse of the right of submission of such communications or to be incompatible with the provisions of the Covenant.

Article 4

1. Subject to the provisions of article 3, the Committee shall bring any communications submitted to it under the present Protocol to the attention of the State Party to the present Protocol alleged to be violating any provision of the Covenant.
2. Within six months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.

Article 5

1. The Committee shall consider communications received under the present Protocol in the light of all written information made available to it by the individual and by the State Party concerned.
2. The Committee shall not consider any communication from an individual unless it has ascertained that:
 - (a) The same matter is not being examined under another procedure of international investigation or settlement;
 - (b) The individual has exhausted all available domestic remedies. This shall not be the rule where the application of the remedies is unreasonably prolonged.
3. The Committee shall hold closed meetings when examining communications under the present Protocol.
4. The Committee shall forward its views to the State Party concerned and to the individual.

Article 6

The Committee shall include in its annual report under article 45 of the Covenant a summary of its activities under the present Protocol.

Article 7

Pending the achievement of the objectives of resolution 1514(XV) adopted by the General Assembly of the United Nations on 14 December 1960 concerning the Declaration on the Granting of Independence to Colonial Countries and Peoples, the provisions of the present Protocol shall in no way limit the right of petition granted to these peoples by the Charter of the United Nations and other international conventions and instruments under the United Nations and its specialized agencies.

Article 8

1. The present Protocol is open for signature by any State which has signed the Covenant.
2. The present Protocol is subject to ratification by any State which has ratified or acceded to the Covenant. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. The present Protocol shall be open to accession by any State which has ratified or acceded to the Covenant.
4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.
5. The Secretary-General of the United Nations shall inform all States which have signed the present Protocol or acceded to it of the deposit of each instrument of ratification or accession.

Article 9

1. Subject to the entry into force of the Covenant, the present Protocol shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the tenth instrument of ratification or instrument of accession.
2. For each State ratifying the present Protocol or acceding to it after the deposit of the tenth instrument of ratification or instrument of accession, the present Protocol shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

Article 10

The provisions of the present Protocol shall extend to all parts of federal States without any limitations or exceptions.

Article 11

1. Any State Party to the present Protocol may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the States Parties to the present Protocol with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.
2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Protocol in accordance with their respective

constitutional processes.

3. When amendments come into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Protocol and any earlier amendment which they have accepted.

Article 12

1. Any State Party may denounce the present Protocol at any time by written notification addressed to the Secretary-General of the United Nations. Denunciation shall take effect three months after the date of receipt of the notification by the Secretary-General.

2. Denunciation shall be without prejudice to the continued application of the provisions of the present Protocol to any communication submitted under article 2 before the effective date of denunciation.

Article 13

Irrespective of the notifications made under article 8, paragraph 5, of the present Protocol, the Secretary-General of the United Nations shall inform all States referred to in article 48, paragraph I, of the Covenant of the following particulars:

(a) Signatures, ratifications and accessions under article 8;

(b) The date of the entry into force of the present Protocol under article 9 and the date of the entry into force of any amendments under article 11;

(c) Denunciations under article 12.

Article 14

1. The present Protocol, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States referred to in article 48 of the Covenant.

B. *Convention on the Elimination of All Forms of Racial Discrimination, 1965*

This is also an extremely important Convention very widely ratified. Canada, Australia, New Zealand and the United States are all parties to this Convention. Like the ICCPR it also has an optional individual communications mechanism. Both Canada and Australia have ratified this. It works in a very similar manner to the First Optional Protocol. *Country Reports* must also be submitted to the Committee on the Elimination of Racial Discrimination ["CERD"]. Please note the following:

Article I

1. In this Convention, the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

2. This Convention shall not apply to distinctions, exclusions, restrictions or preferences made by a State Party to this Convention between citizens and non-

citizens.

3. Nothing in this Convention may be interpreted as affecting in any way the legal provisions of States Parties concerning nationality, citizenship or naturalization, provided that such provisions do not discriminate against any particular nationality.

4. Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved.

Article 2

1. States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end:

(a) Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation;

(b) Each State Party undertakes not to sponsor, defend or support racial discrimination by any persons or organizations;

(c) Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists;

(d) Each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization;

(e) Each State Party undertakes to encourage, where appropriate, integrationist multiracial organizations and movements and other means of eliminating barriers between races, and to discourage anything which tends to strengthen racial division.

2. States Parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. These measures shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved.

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:

(d) Other civil rights, in particular:

(vii) The right to freedom of thought, conscience and religion;

(e) Economic, social and cultural rights, in particular:

(vi) The right to equal participation in cultural activities;

Article 6

States Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.

Article 7

States Parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups, as well as to propagating the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, and this Convention.

C. *Convention on the Elimination of all Forms of Discrimination Against Women, 1979*

Much of the cultural and intellectual property, knowledge and heritage made or owned by Indigenous communities is “women’s business” or knowledge controlled by women. This rarely receives significant attention either nationally or internationally. Nevertheless, the Women’s Convention could be important in establishing rights to Indigenous knowledge held by women for the benefit of the whole community.

The Women’s Convention is administered by the Committee for the Elimination of Discrimination Against Women [“CEDAW”]. As above, member-states must submit periodical *Country Reports* which the Committee monitors. In addition an Optional Protocol allowing for communications by individuals *and groups* has been tabled for signature and ratification by the UN General Assembly in late 1999. Neither Canada, Australia, the US nor New Zealand had ratified this Protocol as of the end of 1999 and it is not yet in force. Canada, Australia and New Zealand are parties to the main Convention however. The US remains one of the few countries in the world that has so far refused to ratify this Convention even though it did sign it in 1980 (similar to the ICESCR).

The fact that the Optional Protocol to the Women’s Convention allows for communications to be submitted by groups or on behalf of groups marks a significant departure from other individual communications mechanisms. The Human Rights Committee, CERD and other UN Committees that hear individual complaints (such as the Torture Committee) have made it plain that they will hear only communications submitted by individuals. The alleged breach must be in relation to *that* individual. Class or group actions are not allowed, although as a matter of practical application a decision on behalf of an individual may well have benefits for others, including members of a group. In addition, the Human Rights Committee will not review complaints brought to it with regards to Common Article 1 on self-determination. It has stated that its purpose is to hear individual communications with regards to individual rights. Self-determination as a group right inherent to a “people” cannot be treated the same as individual rights under this or other Covenants and conventions. But the possibility of group complaints being

brought under the Women's Convention may indicate a long-term loosening of this rigid division between individual and group rights. The Women's Convention does not explicitly mention the right to self-determination.

The Optional Protocol is reproduced in full. Please also note the following provisions:

Article 1

For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

Article 5

States Parties shall take all appropriate measures:

(a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;

(b) To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.

Article 13

States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular:

(a) The right to family benefits;

(b) The right to bank loans, mortgages and other forms of financial credit;

(c) The right to participate in recreational activities, sports and all aspects of cultural life.

Article 14

1. States Parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including their work in the non-monetized sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of the present Convention to women in rural areas.

2. States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right:

(a) To participate in the elaboration and implementation of development planning at all levels;

(b) To have access to adequate health care facilities, including information,

counselling and services in family planning;

(c) To benefit directly from social security programmes;

(d) To obtain all types of training and education, formal and non-formal, including that relating to functional literacy, as well as, inter alia, the benefit of all community and extension services, in order to increase their technical proficiency;

(e) To organize self-help groups and co-operatives in order to obtain equal access to economic opportunities through employment or self employment;

(f) To participate in all community activities;

(g) To have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes;

(h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

Optional Protocol to the Convention on the Elimination of Discrimination against Women

Preamble:

The preamble is the introductory part of the Protocol which sets out the object and purpose of the Protocol. It refers to the principles of equality and non-discrimination as embodied in the UN Charter, the Universal Declaration of Human Rights, and other international human rights instruments, including the Convention on the Elimination of All Forms of Discrimination against Women. It reaffirms the determination of States parties which adopt the protocol to ensure the full and equal enjoyment by women of all human rights and fundamental freedoms and to take effective action to prevent violations of these rights and freedoms."

Article 1

Establishes that States who become parties to the optional protocol recognise the competence of the Committee to receive and consider communications under the protocol.

Article 2

Provides a Communications Procedure which allows either individuals or groups of individuals to submit individual complaints to the Committee. Communications may also be submitted on behalf of individuals or groups of individuals, with their consent, unless it can be shown why that consent was not received.

Article 3

Establishes that a communication will only be considered by the Committee if it concerns a country that has become party to the protocol. In addition, a communication must be submitted in writing and may not be anonymous.

Article 4

Stipulates admissibility criteria of communications. Before a complaint is considered, the Committee must determine that all available domestic remedies have been exhausted and the complaint is not, nor has been examined by the Committee or has been or is being examined under another procedure of international investigation or settlement. In addition, a complaint will only be admissible provided the complaint is compatible with the provisions of the Convention; is not an abuse of the right to submit a communication; the claimants' allegations can be substantiated, and the facts presented occurred after the State party ratified the Protocol.

Article 5

After receipt of a communication and prior to its final decision, the Committee has the option of contacting the State Party with an urgent request that the State Party take steps to protect the alleged victim or victims from irreparable harm.

Article 6

Establishes the communications procedure. Where a communication has been found admissible, the Committee will confidentially bring a communication to the attention of the State Party, provided the complaint has consented to disclosure of their identity to the State Party. The State Party is given six months to provide a written explanation or statement to the complaint.

Article 7

Outlines the process of complaint consideration. The Committee will examine and consider all information provided by a complaint in closed meetings. The Committee's views and recommendations will be transmitted to the parties concerned. The State Party has six months to consider the views of the Committee and provide a written response, including remedial steps taken. The Committee may request further information from the State Party, including in subsequent reports.

Article 8

Establishes an inquiry procedure that allows the Committee to initiate a confidential investigation by one or more of its members where it has received reliable information of grave or systematic violations by a State Party of rights established in the Convention. Where warranted and with the consent of the State Party, the Committee may visit the territory of the State Party. Any findings, comments or recommendations will be transmitted to the State Party concerned, to which it may respond within six months.

Article 9

Establishes a follow-up procedure for the Committee. After the six-month period referred to in article 8, the State Party may be invited to provide the Committee with details of any remedial efforts taken following an inquiry. Details may also be provided in the State Party report to the Committee under article 18 of the Convention.

Article 10

Provides an opt-out clause. At ratification of the Optional Protocol, a State Party has the option of refusing to recognize the competence of the Committee to initiate and conduct an inquiry as established under articles 8 and 9. However, this

declaration may be withdrawn at a later time.

Article 11

Requires a State Party to ensure the protection of those submitting communications.

Article 12

A summary of the Committee's activities relating to the Protocol will be included under article 21 of the Convention.

Article 13

Establishes a requirement that States Parties widely publicize the Convention and its Protocol and provide access to the views and recommendations of the Committee.

Article 14

Requires the Committee to develop its own rules of procedure when dealing with communications and inquiries considered in accordance with the Optional Protocol.

Article 15

Governs eligibility for States to sign, ratify or accede to the Protocol. Any State Party that is party to the Convention may become party to the Protocol.

Article 16

Establishes that a minimum of ten countries must have ratified or acceded to the Protocol before the Protocol enters into force. The Protocol will enter into force three months after the 10th ratification or accession.

Article 17

Provides that there shall be no reservations to the Protocol.

Article 18

Establishes procedures for amending the Protocol. Any State Party may suggest amendments to be sent to the Secretary-General of the United Nations to be communicated to all States Parties to the Protocol. If requested by a minimum of one-third of States Parties, a conference may be convened to discuss and vote on any amendments. With the support of a two-thirds majority and the General Assembly, an amendment comes into force and is binding on States that have accepted the amendments.

Article 19

Provides for a State Party to withdraw from the Protocol by written notification to the Secretary-General. Withdrawal will not impact any communications submitted prior to the effective date of withdrawal.

Article 20

States that the Secretary-General of the United Nations shall inform States of signatures, ratifications and accessions, the date the Protocol comes into force and any amendments and withdrawals.

Article 21

Provides that the Protocol will be deposited in the United Nations archives, made available in Arabic, Chinese, English, French, Russian and Spanish and sent to all States Parties by the Secretary General.

D. *Beginning an Individual Communication under the Various Procedures*

The following is a brief guide to matters that need to be considered before submitting a communication to the *UN Human Rights Committee*. I have also added a "Model Communication" (also to the Human Rights Committee). Communications to the other Committees are very similar. The following is taken from the UN Web-site.

Overview of procedure

One of the clearest signs of progress in human rights is the fact that individuals who claim that their rights and freedoms have been violated may call the State in question to account for its actions - if it is a party to the International Covenant on Civil and Political Rights and to the Optional Protocol.

In the latter part of the 1980s, growing public awareness of the Human Rights Committee's work under the Optional Protocol multiplied the number of communications it received from individuals complaining of violations of their rights.

In all, 728 communications from individuals involving 52 States parties had been examined by the Committee by November 1996. The Committee had concluded its work and made known its views in 239 cases, and had established in 181 instances that violations of the Covenant had occurred.

The Committee considers communications from individuals in private meetings.

Is it admissible?

Communications must not be anonymous, and cannot be considered unless they come from a person or persons subject to the jurisdiction of a State which is a party to the Optional Protocol.

Normally, a communication should be sent in by the individual who claims that his or her rights have been violated by the State. When it appears that the alleged victim cannot submit the communication, the Committee may consider a communication from another person who must prove that he or she is acting on behalf of the alleged victim. A third party with no apparent links with the person whose rights have allegedly been violated cannot submit a communication.

The complaint cannot be considered if the same problem is being investigated under another international procedure, and all domestic remedies must have been exhausted before it can be taken up by the Committee.

Even before deciding whether a communication is admissible or not, the Committee -or its Working Group on Communications- may ask the alleged victim or the State concerned for additional information or comments and set a time limit. If the State has anything to say at this stage, the person complaining receives a copy of its reply for comment.

If the case is merely referred back to the author for more information before being found inadmissible, nothing will have been transmitted to the State.

The Committee may decide to drop a complaint without a written decision; for example, when the author withdraws it, or shows in some other way that he or she does not want to go on with the matter.

Assessing a complaint

Once a communication has been declared admissible, the Committee asks the State concerned to explain or clarify the problem and to indicate whether anything has been done to settle it. A time limit of six months is set for the State party's reply. Then the author of the complaint has an opportunity to comment on the State's reply. After that, the Committee expresses its final views and sends them to the State concerned and to the author.

The Committee puts individuals who complain and the States which are alleged to have violated their rights on an equal footing throughout its proceedings. Each has an opportunity to comment on the other's arguments. The findings of the Committee - its views on communications which have been declared admissible and examined on their merits, as well as decisions declaring other communications inadmissible - are always made public immediately after the session at which the findings were adopted and are reproduced in the Committee's annual report to the General Assembly.

Interim protection

Usually it takes about 12 to 18 months to declare a case admissible or inadmissible. The examination of the merits of the case may then take a year or two, depending on the degree of co-operation by States parties and the authors of complaints in submitting all the information needed by the Committee.

People who allege that their human rights are being violated may need protection before the Committee adopts its final views. Without prejudging the merits of complaints, the Committee has, for this reason, sometimes addressed urgent requests to the States involved. There have, for example, been cases where the Committee has advised against a threatened expulsion, for the suspension of a death sentence, or the need for an urgent medical examination.

Evidence and burden of proof

The Committee has, as yet, no independent fact-finding functions, but it is bound to consider all written information made available by the parties concerned.

In a number of cases dealing with the right to life, torture and ill-treatment, as well as arbitrary arrests and disappearances, the Committee has established that the burden of proof cannot rest alone on the person who is complaining of the violation of rights and freedoms. The Committee also maintains that it is not sufficient to make a refutation in general terms of a complaint of a violation of a person's human rights.

Individual opinions

The Human Rights Committee works by consensus, but individual members can add their opinions to the views it expresses on the merits of a case or when communications have been declared inadmissible.

Results

Several countries have changed their laws as a result of decisions by the Committee on individual complaints under the Optional Protocol. In a number of cases, prisoners have been released and compensation paid to victims of human rights violations. In 1990, the Committee instituted a mechanism whereby it seeks to monitor more closely whether States parties have given effect to its final decisions on the merits; cooperation from States parties has been encouraging.

Model communication

Date:Communication to:

The Human Rights Committee

c/o OHCHR-UNOG

1211 Geneva 10, Switzerland,

submitted for consideration under the Optional Protocol to the International Covenant on Civil and Political Rights.

I. Information concerning the author of the communication

Name First name(s)
Nationality..... Profession
Date and place of birth
Present address

Address for exchange of confidential correspondence (if other than present address)
.....

Submitting the communication as:

- (a) Victim of the violation or violations set forth below /_/
- (b) Appointed representative/legal counsel of the alleged victim(s) /_/
- (c) Other /_/

If box (c) is marked, the author should explain:

(i) In what capacity he is acting on behalf of the victim(s) (e.g. family relationship or other personal links with the alleged victim(s)):
.....

(ii) Why the victim(s) is (are) unable to submit the communication himself (themselves):
.....

An unrelated third party having no link to the victim(s) cannot submit a communication on his (their) behalf.

**II. Information concerning the alleged victim(s)
(if other than author)**

Name First name(s)
Nationality..... Profession
Date and place of birth
Present address or whereabouts

III. State concerned/articles violated/domestic remedies

Name of the State party (country) to the International Covenant and the Optional Protocol against which the communication is directed:
.....

Articles of the International Covenant on Civil and Political Rights allegedly violated:
.....

Steps taken by or on behalf of the alleged victim(s) to exhaust domestic remedies-recourse to the courts or other public authorities, when and with what results (if possible, enclose copies of all relevant judicial or administrative decisions):
.....

If domestic remedies have not been exhausted, explain why:
.....

IV. Other international procedures

Has the same matter been submitted for examination under another procedure of international investigation or settlement (e.g. the Inter-American Commission on Human Rights, the European Commission on Human Rights)? If so, when and with what results?

.....

V. Facts of the claim

Detailed description of the facts of the alleged violation or violations (including relevant dates)*

.....

Author's signature:

* Add as many pages as needed for this description.

Printed at United Nations, Geneva

May 1989



Addresses for the submission of communications to the various Committees are as follows:

Procedures/mandates	Examining body or expert(s)	Precise and updated address
"1503" (not available)	Sub-Commission on Prevention of Discrimination and Protection of Minorities	Sub-Commission on Prevention of Discrimination and Protection of Minorities c/o Support Services Branch, OHCHR-UNOG, 1211 Geneva 10, Switzerland
Optional Protocol to the International Covenant on Civil and Political Rights	Human Rights Committee	Human Rights Committee c/o OHCHR-UNOG, 1211 Geneva 10, Switzerland Fax. No. (41-22) 917 9022
Article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (not available)	Committee against Torture	Committee against Torture c/o OHCHR-UNOG, 1211 Geneva 10, Switzerland Fax. No. (41-22) 917 9022
Article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination (not available)	Committee on the Elimination of Racial Discrimination	Committee on the Elimination of Racial Discrimination c/o OHCHR-UNOG, 1211 Geneva 10, Switzerland Fax. No. (41-22) 917 9022
Extrajudicial, summary or arbitrary execution	Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions	Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions c/o OHCHR-UNOG, 1211 Geneva 10, Switzerland Fax: (41 22) 917 9006
Violence against women	Special Rapporteur on violence against women, its causes and consequences	Special Rapporteur on violence against women c/o OHCHR-UNOG, 1211 Geneva 10, Switzerland Fax: (41 22) 917 9006
Arbitrary Detention	Working Group on Arbitrary Detention	Working Group on Arbitrary Detention c/o OHCHR-UNOG, 1211 Geneva 10, Switzerland Fax: (41 22) 917 9006.
Enforced or involuntary disappearances of persons	Working Group on Enforced or Involuntary Disappearances	Working Group on Enforced or Involuntary Disappearances c/o OHCHR-UNOG, 1211 Geneva 10, Switzerland Fax: (41-22) 917 9006
Promotion and protection of the right to freedom of opinion and expression	Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression	Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression c/o OHCHR-UNOG, 1211 Geneva 10, Switzerland Fax: (41-22) 917 9003

Checklist before Lodging a Communication:

1. Choose the most appropriate Convention or Covenant with the best possible chance of success. You can only pursue a complaint in one – *no double dipping!*
2. Make sure that provisions in the Convention arguably cover the complaint being raised. There is jurisprudence on many of the provisions in the Conventions – particularly under the ICCPR. Also check jurisprudence under the Inter-American system, the European system and possibly also the African Charter system. There is no equivalent regional human rights system in the Asia-Pacific region. Neither Canada nor the United States has ratified the American Convention on Human Rights (administered by the Inter-American system) but Canada at least seems to be willing to address issues made to the Inter-American Commission and Court on complaints made under the American *Declaration of Human Rights*.
3. MAKE SURE YOUR NATION-STATE IS A PARTY TO BOTH THE RELEVANT CONVENTION AND ITS OPTIONAL COMMUNICATIONS PROCEDURE. The complaint must have occurred after the nation-state has ratified *both* the relevant convention and the optional procedure or Optional Protocol allowing for individual communications. It is possible to argue that the complaint is *ongoing* – i.e. even though it arose before ratification the breach is still continuing and is therefore justiciable. Check for any reservations in relation to a specific provision that may have been lodged by a state upon ratification. This may effect the liability of the state under international law for the wrong alleged.
4. ALL DOMESTIC REMEDIES MUST HAVE BEEN EXHAUSTED. This is very important. All possible remedies in national courts, tribunals, administrative bodies or even legislatures must have been tried and have failed. It may be possible to argue that there is no effective domestic remedy and therefore it is no point trying them all.
5. The person or (under the Women's Convention Optional Protocol) group of individuals must be personally effected by the breach complained of. They must also be within the jurisdiction of the state complained against.
6. Communications must not be lodged anonymously. If confidentiality is a problem, this should be drawn to the attention of the relevant Committee, as should any need for interim measures. Hearings, investigations and evidence brought before the Committees are in dealt with in confidence. The final opinion or views of the Committees will be made public only after each side has had a chance to present its case. A nation-state will not be contacted with the name of the complainant without the consent of that complainant.
7. The procedures take time – sometimes years. Evidence must be fully documented and is presented to the Committees usually in Geneva where most of them meet (with the exception of CEDAW). A third party or agent may act on behalf of a complainant. Even if the relevant Committee decides that a breach of one or more provisions has occurred there is no guarantee that the state-party will do what the Committee suggests it should, although Canada, Australia and New Zealand at least generally do eventually comply with views of the different Committees that have ruled against them.

E. *International Labour Organisation Convention No.169 Concerning Indigenous and Tribal Peoples in Independent Countries, 1989*

This Convention, which revised and updated an earlier ILO Convention on Indigenous "Populations", is also an important document. It is a product of the International Labour Organisation or ILO, not a body which immediately springs to mind as a likely source of international law on Indigenous peoples' rights! This Convention does not have an individual communications mechanism and is relatively poorly ratified (10 countries as of

1998, mainly in Latin America). Australia, Canada, New Zealand and the United States have *not* ratified this document. Further information about it can be obtained at www.ilo.org/public/english/employment/strat/poldev/papers/1998/169guide/index.

Please note the following provisions:

Article 1

1. This Convention applies to:

(a) 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 wholly or partially by their own customs or traditions or by special laws or regulations;

(b) Peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of 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.

2. 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.

3. The use of the term "peoples" in this Convention shall not be construed as having any implications as regards the rights which may attach to the term under international law.

Article 2

1. Governments shall 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.

2. Such action shall include measures for:

(a) Ensuring that members of these peoples benefit on an equal footing from the rights and opportunities which national laws and regulations grant to other members of the population;

(b) Promoting the full realisation of the social, economic and cultural rights of these peoples with respect for their social and cultural identity, their customs and traditions and their institutions;

(c) Assisting the members of the peoples concerned to eliminate socio-economic gaps that may exist between indigenous and other members of the national community, in a manner compatible with their aspirations and ways of life.

Article 5

In applying the provisions of this Convention:

(a) The social, cultural, religious and spiritual values and practices of these peoples shall be recognised and protected, and due account shall be taken of the nature of the problems which face them both as groups and as individuals;

(b) The integrity of the values, practices and institutions of these peoples shall be respected;

(c) Policies aimed at mitigating the difficulties experienced by these peoples in facing new conditions of life and work shall be adopted, with the participation and co-operation of the peoples affected.

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.

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 18

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

Article 23

1. Handicrafts, rural and community-based industries, and subsistence economy and traditional activities of the peoples concerned, such as hunting, fishing, trapping and gathering, shall be recognised as important factors in the maintenance of their cultures and in their economic self-reliance and development. Governments shall, with the participation of these peoples and whenever appropriate, ensure that these activities are strengthened and promoted.

2. Upon the request of the peoples concerned, appropriate technical and financial assistance shall be provided wherever possible, taking into account the traditional technologies and cultural characteristics of these peoples, as well as the importance of sustainable and equitable development.

Article 28

1. Children belonging to the peoples concerned shall, wherever practicable, be taught to read and write in their own indigenous language or in the language most commonly used by the group to which they belong. When this is not practicable, the competent authorities shall undertake consultations with these peoples with a view to the adoption of measures to achieve this objective.

2. Adequate measures shall be taken to ensure that these peoples have the opportunity to attain fluency in the national language or in one of the official languages of the country.

3. Measures shall be taken to preserve and promote the development and practice of the indigenous languages of the peoples concerned.

F. Draft Declaration on the Rights of Indigenous Peoples

This document, although neither a binding treaty nor even (as yet) a declaration or resolution of the UN, is potentially the most important of all international documents on Indigenous rights in international law. It was drafted over a period of 13 years by the UN Working Group on Indigenous Populations, the Chair and Rapporteur of which, Dr. Erica-Irene Daes, is the keynote speaker at this conference. The Declaration is the only document within the UN which has had significant Indigenous input into its drafting (although there were significant representations made by Indigenous groups in the drafting of ILO Convention No.169). The Draft Declaration is currently under discussion in the UN Human Rights Commission (the Working Group's parent body) where a special *ad hoc* Working Group on the Declaration has been set up to review and revise the existing draft. At the moment almost all provisions of the Declaration are under discussion and are proving contentious. Although Indigenous groups do have some capacity to make submissions to this Working Group, the agenda is largely determined by the needs and wishes of the member-states of the Commission.

The full draft of the Declaration is available at www.usask.ca/nativelaw/ddir.html. The following provisions are however worth noting:

ARTICLE 3

Indigenous peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

ARTICLE 4

Indigenous peoples have the right to maintain and strengthen their distinct political, economic, social and cultural characteristics, as well as their legal systems, while retaining their rights to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

ARTICLE 7

Indigenous peoples have the collective and individual right not to be subjected to ethnocide and cultural genocide, including prevention of and redress for:

- a. any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;**
- b. any action which has the aim or effect of dispossessing them of their lands, territories or resources;**
- c. any form of population transfer which has the aim or effect of violating or undermining any of their rights;**
- d. any form of assimilation or integration by other cultures or ways of life imposed on them by legislative, administrative or other measures;**
- e. any form of propaganda directed against them.**

ARTICLE 8

Indigenous peoples have the collective and individual right to maintain and develop their distinct identities and characteristics, including the right to identify themselves as indigenous and to be recognized as such.

ARTICLE 9

Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No disadvantage of any kind may arise from the exercise of such a right.

ARTICLE 12

Indigenous peoples have the right to practice 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, artefacts, 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, practice, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of 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, be preserved, respected and protected.

ARTICLE 14

Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons.

States shall take effective measures, whenever any right of indigenous peoples may be threatened, to ensure this right is protected and also to ensure that they can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means.

ARTICLE 21

Indigenous peoples have the right to maintain and develop their political, economic and social systems, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities. Indigenous peoples who have been deprived of their means of subsistence and development are entitled to just and fair compensation.

ARTICLE 24

Indigenous peoples have the right to their traditional medicines and health practices, including the right to the protection of vital medicinal plants, animals and minerals.

They also have the right to access, without any discrimination, to all medical institutions, health services and medical care.

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 31

Indigenous peoples, as a specific form of exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, including culture, religion, education, information,

media, health, housing, employment, social welfare, economic activities, land and resources management, environment and entry by non-members, as well as ways and means for financing these autonomous functions.

G. *Final Report on the Protection of the Heritage of Indigenous People by Special Rapporteur Erica-Irene Daes, submitted to the UN Human Rights Commission, 1995*

The following is the full text of this document with the citation for its source fully reproduced. This document was prepared with major input by Indigenous groups and individuals and represents a clear expression of the requirement of protection of Indigenous intellectual property, cultural heritage and knowledge. It is based on the right of self-determination as expressed in the Draft Declaration and in Common Article 1 of the Covenants. It is not a convention or binding legal document, but it does provide a basis for the establishment of international law in this area, or in the interpretation of existing international law to incorporate the principles expressed.

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INTRODUCTION

1. By its resolution 1993/44 of 26 August 1993, the Subcommission on Prevention of Discrimination and Protection of Minorities endorsed the study of the protection of the cultural and intellectual property of indigenous peoples prepared by the Special Rapporteur Mrs. Erica-Irene Daes (E/CN.4/Sub.2/1993/28), and requested that she expand her study with a view to elaborating draft principles and guidelines for the protection of indigenous peoples, heritage. A preliminary report containing draft principles and guidelines was transmitted to the Subcommission at its forty-sixth session (E/CN.4/Sub.2/1994/31).
2. In accordance with the recommendation of the Subcommission contained in its resolution 1994/48, a note verbale was sent on 28 October 1994 to indigenous peoples, organizations, communities and nations, as well as to Governments, the specialized agencies and intergovernmental and non-governmental organizations, inviting them to submit comments on the draft principles and guidelines.
3. Replies have been received from the following: the Governments of Niger and Sweden; United Nations Centre for Human Settlements (Habitat); United Nations Environment Programme; Food and Agriculture Organization of the United Nations; International Labour Organization; World Intellectual Property Organization; American Indian Law Alliance; Black Hills Teton Sioux Nation; Indian Council of South America (CISA); Mapuche Nation (Consejo de Todas las Tierras); National Aboriginal and Islander Legal Services Secretariat. The Special Rapporteur wishes to express her gratitude to all those who have thus contributed to the completion of her study.
4. The Special Rapporteur was particularly fortunate to be able to participate in the Global Cultural Diversity Conference, organized by the Government of Australia as a part of Australia's observance of the fiftieth anniversary of the United Nations in April 1995. Also, she had the opportunity to exchange views with a number of indigenous people from different parts of the world community and in particular with the professors and experts of the Native Law Center, University of Saskatchewan. These discussions, among others, impressed upon the Special Rapporteur the high priority attached to this vitally important issue by indigenous peoples, and the breadth of support for urgent, prompt and effective action by the United Nations.
5. The present document reviews and responds to the comments which have been received by the above-mentioned Governments, specialized agencies and indigenous non-governmental organizations and presents a revised draft of the principles and guidelines for consideration and action by the Subcommission.

I. GENERAL COMMENTS

6. The Government of Niger observed that the absence of a definition of "indigenous people" invited subjective interpretations, which poses dangers for those emerging nations-States in Africa that face recurrent tribal conflicts. Concern was also expressed about the proliferation of United Nations bodies and institutions, which may divert resources from existing activities.

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7. The Government of Sweden explained that the Sameting, an elected governmental authority of Sami people established in 1992, decides how to allocate national funding for the promotion of Sami culture and the Sami language. Sami cultural heritage is included in the curricula of all Swedish schools, and Sami communities are free to establish their own schools. All abandoned sacred and ceremonial sites are protected by Swedish law; however, Swedish law does not distinguish between the intellectual property rights of Sami and other citizens. As a general matter, the Government of Sweden expressed concern that the guidelines not restrict freedom of speech or of the press, or freedom of academic inquiry.

8. The United Nations Centre for Human Settlements (Habitat), noting the attention already given by the Special Rapporteur to the spiritual and cultural attachment of indigenous people to their land, suggested that greater emphasis be placed on the need for legal recognition by Governments of traditional land tenure systems and land use practices, as this is a prerequisite for economic survival and the maintenance of the forms of social and cultural organization, norms, and practices of indigenous people.

9. The United Nations Environment Programme, noting its role as task manager for chapter 15 of Agenda 21, and its responsibilities for the implementation of the Convention on Biological Diversity, affirmed its commitment to continuing to facilitate and catalyze the cooperation of States in recognizing the unique contributions of indigenous peoples to conservation and sustainable development, as well as their right to be compensated for their contributions to society. Chapter 15 directs Governments to recognize and foster the traditional conservation methods and knowledge of indigenous people, and ensure the opportunity of indigenous people to participate in the benefits derived from such knowledge. Similarly, the Convention on Biological Diversity requests each Contracting Party, as far as possible and as appropriate, subject to its national legislation, to respect, preserve and maintain such traditional knowledge, and promote its wider application with the approval and involvement of indigenous people, and the equitable sharing of the benefits with the

people concerned.

10. The Food and Agriculture Organization of the United Nations also noted that the question of indigenous peoples' heritage rests outside the ambit of its activities.

11. The International Labour Organization expressed the view that the draft principles and guidelines are a very positive development, which is moreover consistent with several provisions of the ILO's Indigenous and Tribal Peoples Convention, 1989 (No. 169). There are considerable similarities between paragraph 16 of the draft guidelines and article 27 of the Convention; paragraph 18 of the draft guidelines and article 28 of the Convention; and between paragraph 49 of the draft guidelines and article 27 of the Convention. It was noted that in some respects, the terms of the Convention are somewhat broader in scope.

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12. The World Intellectual Property Organization maintained that its activities do not include the protection of the heritage of indigenous peoples, and therefore it would appreciate that all references to WIPO in the draft guidelines be deleted.

13. The American Indian Law Alliance reiterated its concern over the Human Genome Diversity Project, stressed the central importance of the international protection of indigenous peoples, lands, and noted that the present guidelines, if eventually adopted by the General Assembly, could provide a basis for requests by United Nations treaty bodies for information from State parties to existing human rights conventions.

14. The Black Hills Teton Sioux Nation also emphasized the importance of the protection of the lands of indigenous peoples, referring to its own situation in the United States, and in this context appealed for a greater respect for treaties made with indigenous peoples.

15. The Indian Council of South America (CISA) provided the Special Rapporteur with extensive suggestions for improving the wording of the principles and guidelines, by way of clarification. Several of these suggestions have been incorporated into the revised text.

16. The Mapuche Nations organization Aukin Wallmapu Ngulam (Consejo de Todas las Tierras) convened a conference in November-December 1994, at Temuco, Chile, to evaluate the consequences of the North American Free Trade Agreement for indigenous peoples in the Americas. Participants came from Chile, Argentina, Peru and Mexico, and adopted a declaration which, inter alia, condemned the accelerated usurpation and patenting of indigenous peoples' knowledge by transnational

corporations.

17. The National Aboriginal and Islander Legal Services Secretariat provided the Special Rapporteur with the text of a proposed convention to establish international jurisdiction for the restitution of objects constituting a part of the heritage of indigenous peoples. While this proposal extends beyond the current mandate of the Special Rapporteur, it would be an appropriate task to consider undertaking as a follow-up to the adoption of the present guidelines and a recommendation to this effect has been added, as paragraph 60.

II. COMMENTS ON SPECIFIC RECOMMENDATIONS

18. Concerning the question of definition, the Special Rapporteur is in complete sympathy with the concerns expressed by the Government of Niger. She wishes to point out, however, that the United Nations has never found it appropriate or necessary to attempt a definition of the term "peoples", which appears in the Charter of the United Nations and in the International Covenants on Human Rights, or the term "minorities", which appears in the recently adopted Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. The Working Group on Indigenous Populations considered a working definition of the term "indigenous" at its second session (E/CN.4/Sub.2/AC.4/1983/CRP.2; E/CN.4/Sub.2/1983/22, paras. 109-119), but subsequently concluded that justice would best be served by allowing the scope of this concept to evolve flexibly over time, through practice. Also, the Special Rapporteur of the Subcommission, Jose R. Martinez Cobo, in his Study of the Problem of Discrimination Against Indigenous Populations, has proposed a working definition, which in certain cases was unofficially used (E/CN.4/Sub.2/1986/7/Add.4, p. 29, para. 379, subsequently published as a United Nations publication, Sales No. E.86.XIV.3).

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19. In connection with the recovery and restitution of heritage, the Government of Sweden observed that its current treaty obligations and national laws pertain only to the return of moveable cultural property between certain European Governments. The Special Rapporteur is aware of the limitations of existing bilateral and multilateral treaties for the return of moveable cultural property, having identified this as an important obstacle to the effective protection of indigenous peoples, heritage in her study. She also observes that the instrument she has drafted for consideration by the Subcommission is in the nature of a declaration, rather than a binding convention; that a declaration, in United Nations practice, is aspirational, and ordinarily goes further than the existing practices of States, with the aim of encouraging all States to adopt more effective

legislation; and that this declaration of principles and guidelines, should it eventually be approved by the General Assembly, would constitute an invitation to States to consider taking additional steps to secure the purposes to which their existing cultural and educational legislation is already addressed.

20. With regard to strengthening national programmes and legislation, the Government of Sweden explained that Swedish law permits a person to retain items of moveable cultural property which were acquired in good faith. It is one of the principal aims of the measures proposed by the Special Rapporteur to heighten worldwide public understanding of the nature and importance of the heritage of indigenous peoples, so that public and private purchasers of objects with indigenous origins will be more cautious in the future, and demand adequate documentation of the licit acquisition of such objects. This is in the interest of legitimate collectors and scholars, as well as indigenous peoples. As for those objects which were removed from indigenous communities in the past, draft paragraph 22 does not require that they be returned in every case, but according to their cultural, religious, and historical significance. Paragraph 22 also contemplates the retention of objects in private as well as public collections, under agreements for custody made with the traditional owners. This strikes a balance between the interests of indigenous peoples in retaining particularly significant elements of their heritage, and the interests of good-faith purchasers in what they believe they have lawfully acquired.

21. The Government of Sweden also observed that Swedish law protects the creative freedom of artists, writers, and performers. This would not prevent artists from freely lending their support to strengthening public understanding of and respect for indigenous peoples, heritage, as contemplated by paragraphs 47 and 48 of the guidelines. Nor would the freedom of artistic expression be unduly curtailed by encouraging artists to seek the consent of indigenous peoples before incorporating elements of indigenous peoples, heritage into new creative works. The protection of artistic freedom is ancillary to the right of freedom of speech, which itself is never absolute, but subject to legitimate limitations in favour of the privacy, security, rights and reputations of others. In the UNESCO Declaration of the Principles of International Cultural Cooperation (1966), moreover, the free exchange of cultural knowledge is expressly linked with "respect" and "reciprocity" among cultures. The study prepared by the Special Rapporteur documents the extent to which respect and reciprocity have been lacking in the case of appropriation of indigenous peoples, heritage by other societies. Paragraph 46 does not forbid the incorporation of indigenous peoples, heritage in works of art, but urges artists to consult with the peoples concerned and to seek their consent, which in turn will promote the growth of dialogue, understanding, respect and reciprocity, and indeed increase the extent to which artists appreciate the true

meaning and full richness of the indigenous motifs and themes they have so long admired and copied.

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22. Similarly, in the field of public information and education, the Government of Sweden expressed concern that journalists remain free to conduct critical investigations of all social issues, including those involving indigenous peoples. Specific provisions for the privacy of indigenous peoples are unnecessary, as the right to privacy is already secured to all citizens by Swedish law. The Special Rapporteur agrees wholeheartedly with the importance of protecting freedom of the press, and does not perceive how this freedom is jeopardized by paragraphs 50 and 51 of the draft guidelines. Respect for privacy and accuracy are well-established canons of international professional journalism, and expressing the importance of applying these canons scrupulously in the case of indigenous peoples does not create new restrictions. Indeed, paragraph 51 encourages the international mass media to increase their scrutiny of events involving the heritage of indigenous peoples.

III. ANALYSIS AND REVISIONS

23. The Temuco-Wallmapuche Declaration of 2 December 1994 underscores the urgency of taking international action to protect the heritage of indigenous peoples from further erosion by commercial interests. The rapid expansion of regional trading blocs in the Americas and South-East Asia and the intellectual property provisions of the Uruguay Round of GATT will facilitate and accelerate the acquisition of patents to indigenous peoples, knowledge by biotechnology firms in the North.

24. With respect to freedom of speech, freedom of the press, freedom of academic inquiry and artistic freedom, it should be emphasized that the right to privacy is guaranteed by article 17 of the International Covenant on Civil and Political Rights and that, pursuant to article 19 of the Covenant, there is no right to exercise the right of freedom of expression in ways that are injurious to the "rights or reputations of others". These principles imply, inter alia, a duty to maintain accuracy and transparency in the fields of information, communications and education, as the General Assembly recognized when it adopted the Guidelines for the regulation of computerized personal data files by resolution 45/95 of 14 December 1990. Accuracy with respect to information about indigenous peoples cannot be achieved without the participation of the peoples concerned.

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25. The Special Rapporteur also fails to understand how the right to freedom of expression includes the right to obtain commercial or other benefits from the repetition of the ideas or creative works of others. The measures she has recommended pose no more of a conflict with free expression than patent and copyright legislation, which secure to the creators of useful knowledge and artistic works the right to control, and to benefit from, what they have created. A balance must always be struck between privacy, property rights, and the free flow of cultural and scientific knowledge, and the Special Rapporteur believes that the guidelines she has prepared strike this balance in a constructive, reasonable, fair and appropriate manner in the case of indigenous peoples, in the light of the intrinsically collective nature of these peoples.

26. With due respect for the concerns expressed by the Government of Sweden, furthermore, paragraph 49 of the guidelines does not require that journalists collaborate with indigenous peoples, or obtain their consent, whenever writing about them. Rather, it calls upon organs of the mass media to collaborate with indigenous peoples in preparing "special broadcasts and public service programmes", to promote a wider public understanding of these peoples and their heritage. The Special Rapporteur believes that this is consistent with, inter alia, article 7 of the International Convention on the Elimination of All Forms of Racial Discrimination; articles 17 and 28 of the Convention on the Rights of the Child; article 5 of the Convention against Discrimination in Education; and article 31 of the Indigenous and Tribal Peoples Convention, 1989 (No. 169).

27. With respect to the recommendation by Habitat that the guidelines broadly affirm the responsibility of Governments to recognize the land tenure systems of indigenous peoples, the Special Rapporteur believes that it is more appropriate to develop such a principle in the context of the draft declaration on the rights of indigenous peoples, which is currently before the Commission on Human Rights for its consideration, and possible revision. Furthermore, this issue has been addressed in comprehensive terms by article 17.1 of ILO Convention No. 169 and by paragraph 6.27 of the Programme of Action of the International Conference on Population and Development (see A/CONF.171/13). The Special Rapporteur agrees, however, that paragraph 31 of the present draft guidelines should be given as broad an application as may be consistent with the concept of "heritage" in her mandate, viz. Subcommission resolution 1993/44.

28. The Special Rapporteur also believed it appropriate to harmonize the terms of paragraph 18 with the parallel provision contained in ILO Convention No. 169.

29. Concerning the proposed role of the World Intellectual Property Organization in the implementation of the guidelines (paras. 53, 55 and 56), that agency has expressed its unwillingness to assume the additional responsibilities. It is

far from the wishes of the Special Rapporteur to impose upon any part of the United Nations system tasks which it considers inappropriate or burdensome, although it would seem to be squarely within the agency's existing mandate. In any event, it is clear that other United Nations bodies and specialized agencies are already committed to the protection and development of the rights and heritage of indigenous peoples, and it is to them that the final draft of the guidelines is now addressed.

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30. The reader will observe that paragraphs 52 to 59, concerning the role of international organizations, have been re-ordered and revised, mainly to clarify the role of the Secretary-General in determining the proper assignment of implementation tasks among organs and agencies of the United Nations system.

IV. RECOMMENDATIONS

31. The Special Rapporteur respectfully recommends that the attached, revised Principles and Guidelines be considered by the Subcommission as a matter of the highest priority, with the aim of transmitting them to the Commission on Human Rights at its fifty-second session.

32. The Special Rapporteur expresses her sincere wish that it will be possible for the General Assembly to adopt a declaration of principles and guidelines on the heritage of indigenous peoples in 1996, which is the second year of the International Decade of the World's Indigenous People. The adoption of such an instrument would constitute a strong message of the commitment of the United Nations to the goals and objectives of the Decade, even while the Commission on Human Rights continues its review of the draft declaration on the rights of indigenous peoples, a far more comprehensive and far-reaching project.

33. In this connection, the Special Rapporteur further recommends the convening of a United Nations technical meeting, as early as possible in the Decade, to propose mainly practical modalities for the cooperation of relevant United Nations bodies and specialized agencies in protecting the heritage of indigenous peoples. The participants should include representatives of Governments, relevant United Nations bodies such as UNEP, the specialized agencies, in particular ILO and UNESCO, as well as the largest feasible number of representative organizations of indigenous peoples actively involved in the protection of heritage.

34. The Special Rapporteur notes that mandates already exist for the establishment of interregional technical exchanges and communications networks among indigenous peoples, for example in chapter 26 of Agenda 21, as well as General Assembly

resolution 49/214 of 23 December 1994. Initiatives of this kind by appropriate United Nations bodies and specialized agencies in the field of heritage need not await the adoption of the Principles and Guidelines proposed here. On the contrary, such initiatives are urgently required to further the global recognition of "the value and diversity of the cultures and the forms of social organization of the world's indigenous people", in the terms employed by the General Assembly in its resolution 49/214, and to bring the erosion of these irreplaceable cultures to a speedy end.

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ANNEX

PRINCIPLES AND GUIDELINES FOR THE PROTECTION OF THE HERITAGE OF INDIGENOUS PEOPLE

**Elaborated by the Special Rapporteur of the Subcommission
Mrs. Erica-Irene Daes**

PRINCIPLES

- 1. The effective protection of the heritage of the indigenous peoples of the world benefits all humanity. Cultural diversity is essential to the adaptability and creativity of the human species as a whole.**
- 2. To be effective, the protection of indigenous peoples, heritage should be based broadly on the principle of self-determination, which includes the right and the duty of indigenous peoples to develop their own cultures and knowledge systems, and forms of social organization.**
- 3. Indigenous peoples should be recognized as the primary guardians and interpreters of their cultures, arts and sciences, whether created in the past, or developed by them in the future.**
- 4. International recognition and respect for indigenous peoples, own customs, rules and practices for the transmission of their heritage to future generations is essential to these peoples, enjoyment of human rights and human dignity.**
- 5. Indigenous peoples, ownership and custody of their heritage must continue to be collective, permanent and inalienable, as prescribed by the customs, rules and practices of each people.**
- 6. The discovery, use and teaching of indigenous peoples, knowledge, arts and cultures is inextricably connected with the traditional lands and territories of each people. Control over traditional territories and resources is essential to the continued transmission of indigenous peoples, heritage to**

future generations, and its full protection.

7. To protect their heritage, indigenous peoples must control their own means of cultural transmission and education. This includes their right to the continued use and, wherever necessary, the restoration of their own languages and orthographies.

8. To protect their heritage, indigenous peoples must also exercise control over all research conducted within their territories, or which uses their people as subjects of study.

9. The free and informed consent of the traditional owners should be an essential precondition of any agreements which may be made for the recording, study, use or display of indigenous peoples, heritage.

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10. Any agreements which may be made for the recording, study, use or display of indigenous peoples, heritage must be revocable, and ensure that the peoples concerned continue to be the primary beneficiaries of commercial application.

GUIDELINES

DEFINITIONS

11. The heritage of indigenous peoples is comprised of all objects, sites and knowledge the nature or use of which has been transmitted from generation to generation, and which is regarded as pertaining to a particular people or its territory. The heritage of an indigenous people also includes objects, knowledge and literary or artistic works which may be created in the future based upon its heritage.

12. The heritage of indigenous peoples includes all moveable cultural property as defined by the relevant conventions of UNESCO; all kinds of literary and artistic works such as music, dance, song, ceremonies, symbols and designs, narratives and poetry; all kinds of scientific, agricultural, technical and ecological knowledge, including cultigens, medicines and the rational use of flora and fauna; human remains; immoveable cultural property such as sacred sites, sites of historical significance, and burials; and documentation of indigenous peoples, heritage on film, photographs, videotape, or audiotape.

13. Every element of an indigenous peoples, heritage has traditional owners, which may be the whole people, a particular family or clan, an association or society, or individuals who have been specially taught or initiated to be its custodians. The traditional owners of heritage must be

determined in accordance with indigenous peoples, own customs, laws and practices.

TRANSMISSION OF HERITAGE

14. Indigenous peoples' heritage should continue to be learned by the means customarily employed by its traditional owners for teaching, and each indigenous peoples' rules and practices for the transmission of heritage and sharing of its use should be incorporated in the national legal system.

15. In the event of a dispute over the custody or use of any element of an indigenous peoples' heritage, judicial and administrative bodies should be guided by the advice of indigenous elders who are recognized by the indigenous communities or peoples concerned as having specific knowledge of traditional laws.

16. Governments, international organizations and private institutions should support the development of educational, research, and training centres which are controlled by indigenous communities, and strengthen these communities, capacity to document, protect, teach, and apply all aspects of their heritage.

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17. Governments, international organizations and private institutions should support the development of regional and global networks for the exchange of information and experience among indigenous peoples in the fields of science, culture, education and the arts, including support for systems of electronic information and mass communication.

18. Governments, with international cooperation, should provide the necessary financial resources and institutional support to ensure that every indigenous child has the opportunity to achieve full fluency and literacy in his/her own language, as well as an official language.

RECOVERY AND RESTITUTION OF HERITAGE

19. Governments, with the assistance of competent international organizations, should assist indigenous peoples and communities in recovering control and possession of their moveable cultural property and other heritage.

20. In cooperation with indigenous peoples, UNESCO should establish a programme to mediate the recovery of moveable cultural property from across international borders, at the request of the traditional owners of the property concerned.

21. Human remains and associated funeral objects must be returned to their descendants and territories in a culturally appropriate manner, as determined by the indigenous peoples

concerned. Documentation may be retained, displayed or otherwise used only in such form and manner as may be agreed upon with the peoples concerned.

22. Moveable cultural property should be returned wherever possible to its traditional owners, particularly if shown to be of significant cultural, religious or historical value to them. Moveable cultural property should only be retained by universities, museums, private institutions or individuals in accordance with the terms of a recorded agreement with the traditional owners for the sharing of the custody and interpretation of the property.

23. Under no circumstances should objects or any other elements of an indigenous peoples' heritage be publicly displayed, except in a manner deemed appropriate by the peoples concerned.

24. In the case of objects or other elements of heritage which were removed or recorded in the past, the traditional owners of which can no longer be identified precisely, the traditional owners are presumed to be the entire people associated with the territory from which these objects were removed or recordings were made.

NATIONAL PROGRAMMES AND LEGISLATION

25. National laws should guarantee that indigenous peoples can obtain prompt, effective and affordable judicial or administrative action in their own languages to prevent, punish and obtain full restitution and just compensation for the acquisition, documentation or use of their heritage without proper authorization of the traditional owners.

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26. National laws should deny to any person or corporation the right to obtain patent, copyright or other legal protection for any element of indigenous peoples, heritage without adequate documentation of the free and informed consent of the traditional owners to an arrangement for the sharing of ownership, control, use and benefits.

27. National laws should ensure the labelling and correct attribution of indigenous peoples, artistic, literary and cultural works whenever they are offered for public display or sale. Attribution should be in the form of a trademark or an appellation of origin, authorized by the peoples or communities concerned.

28. National laws for the protection of indigenous peoples, heritage should be adopted following consultations with the peoples concerned, in particular the traditional owners and teachers of religious, sacred and spiritual knowledge, and, wherever possible, should have the informed consent of the

peoples concerned.

29. National laws should ensure that the use of traditional languages in education, arts and the mass media is respected and, to the extent possible, promoted and strengthened.

30. Governments should provide indigenous communities with financial and institutional support for the control of local education, through community-managed programmes, and with use of traditional pedagogy and languages.

31. Governments should take immediate steps, in cooperation with the indigenous peoples concerned, to identify sacred and ceremonial sites, including burials, healing places, and traditional places of teaching, and to protect them from unauthorized entry or use.

RESEARCHERS AND SCHOLARLY INSTITUTIONS

32. All researchers and scholarly institutions should take immediate steps to provide indigenous peoples and communities with comprehensive inventories of the cultural property, and documentation of indigenous peoples, heritage, which they may have in their custody.

33. Researchers and scholarly institutions should return all elements of indigenous peoples, heritage to the traditional owners upon demand, or obtain formal agreements with the traditional owners for the shared custody, use and interpretation of their heritage.

34. Researchers and scholarly institutions should decline any offers for the donation or sale of elements of indigenous peoples, heritage, without first contacting the peoples or communities directly concerned and ascertaining the wishes of the traditional owners.

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35. Researchers and scholarly institutions must refrain from engaging in any study of previously undescribed species or cultivated varieties of plants, animals or microbes, or naturally occurring pharmaceuticals, without first obtaining satisfactory documentation that the specimens were acquired with the consent of the traditional owners.

36. Researchers must not publish information obtained from indigenous peoples or the results of research conducted on flora, fauna, microbes or materials discovered through the assistance of indigenous peoples, without identifying the traditional owners and obtaining their consent to publication.

37. Researchers should agree to an immediate moratorium on the Human Genome Diversity Project. Further research on the specific genotypes of indigenous peoples should be suspended

unless and until broadly and publicly supported by indigenous peoples to the satisfaction of United Nations human rights bodies.

38. Researchers and scholarly institutions should make every possible effort to increase indigenous peoples, access to all forms of medial, scientific and technical education, and participation in all research activities which may affect them or be of benefit to them.

39. Professional associations of scientists, engineers and scholars, in collaboration with indigenous peoples, should sponsor seminars and disseminate publications to promote ethical conduct in conformity with these guidelines and discipline members who act in contravention.

BUSINESS AND INDUSTRY

40. In dealings with indigenous peoples, business and industry should respect the same guidelines as researchers and scholarly institutions.

41. Business and industry should agree to an immediate moratorium on making contracts with indigenous peoples for the rights to discover, record and use previously undescribed species or cultivated varieties plants, animals or microbes, or naturally occurring pharmaceuticals. No further contracts should be negotiated until indigenous peoples and communities themselves are capable of supervising and collaborating in the research process.

42. Business and industry should refrain from offering incentives to any individuals to claim traditional rights of ownership or leadership within an indigenous community, in violation of their trust within the community and the laws of the indigenous peoples concerned.

43. Business and industry should refrain from employing scientists or scholars to acquire and record traditional knowledge or other heritage of indigenous peoples in violation of these guidelines.

44. Business and industry should contribute financially and otherwise to the development of educational and research institutions controlled by indigenous peoples and communities.

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45. All forms of tourism based on indigenous peoples, heritage must be restricted to activities which have the approval of the peoples and communities concerned, and which are conducted under their supervision and control.

ARTISTS, WRITERS AND PERFORMERS

46. Artists, writers and performers should refrain from incorporating elements derived from indigenous heritage into their works without the informed consent of the traditional owners.

47. Artists, writers and performers should support the full artistic and cultural development of indigenous peoples, and encourage public support for the development and greater recognition of indigenous artists, writers and performers.

48. Artists, writers and performers should contribute, through their individual works and professional organizations, to the greater public understanding and respect for the indigenous heritage associated with the country in which they live.

PUBLIC INFORMATION AND EDUCATION

49. The mass media in all countries should take effective measures to promote understanding of and respect for indigenous peoples' heritage, in particular through special broadcasts and public-service programmes prepared in collaboration with indigenous peoples.

50. Journalists should respect the privacy of indigenous peoples, in particular concerning traditional religious, cultural and ceremonial activities, and refrain from exploiting or sensationalizing indigenous peoples' heritage.

51. Journalists should actively assist indigenous peoples in exposing any activities, public or private, which destroy or degrade indigenous peoples, heritage.

52. Educators should ensure that school curricula and textbooks teach understanding and respect for indigenous peoples, heritage and history and recognize the contribution of indigenous peoples to creativity and cultural diversity.

INTERNATIONAL ORGANIZATIONS

53. The Secretary-General should ensure that the task of coordinating international cooperation in this field is entrusted to appropriate organs and specialized agencies of the United Nations, with adequate means of implementation.

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54. In cooperation with indigenous peoples, the United Nations should bring these principles and guidelines to the attention of all Member States through, inter alia, international, regional and national seminars and publications, with a view to promoting the strengthening of national legislation and international conventions in this field.

55. The United Nations should publish a comprehensive annual report, based upon information from all available sources,

including indigenous peoples themselves, on the problems experienced and solutions adopted in the protection of indigenous peoples, heritage in all countries.

56. Indigenous peoples and their representative organizations should enjoy direct access to all intergovernmental negotiations in the field of intellectual property rights, to share their views on the measures needed to protect their heritage through international law.

57. In collaboration with indigenous peoples and Governments concerned, the United Nations should develop a confidential list of sacred and ceremonial sites that require special measures for their protection and conservation, and provide financial and technical assistance to indigenous peoples for these purposes.

58. In collaboration with indigenous peoples and Governments concerned, the United Nations should establish a trust fund with a mandate to act as a global agent for the recovery of compensation for the unconsented or inappropriate use of indigenous peoples, heritage, and to assist indigenous peoples in developing the institutional capacity to defend their own heritage.

59. United Nations operational agencies, as well as the international financial institutions and regional and bilateral development assistance programmes, should give priority to providing financial and technical support to indigenous communities for capacity-building and exchanges of experience focused on local control of research and education.

60. The United Nations should consider the possibility of drafting a convention to establish international jurisdiction for the recovery of indigenous peoples, heritage across national frontiers, before the end of the International Decade of the World's Indigenous People.

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H. Some Other Relevant Documents

1. Declaration on the Granting of Independence to Colonial Countries and Peoples, adopted by General Assembly resolution 1514 (XV) of 14 December 1960;
2. Declaration on Race and Racial Prejudice, adopted and proclaimed by the General Conference of the United Nations Educational, Scientific and Cultural Organization at its twentieth session, on 27 November 1978;
3. Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, proclaimed by General Assembly resolution 36/55 of 25 November 1981;
4. Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities, adopted by General Assembly resolution 47/135 of 18 December 1992;
5. WORLD CONFERENCE ON HUMAN RIGHTS, Vienna, 14-25 June 1993 and VIENNA DECLARATION AND PROGRAMME OF ACTION.
6. Draft of the Inter-American Declaration on the Rights of Indigenous Peoples, approved by the Inter-American Commission of Human Rights at the 1278 session held on September 18, 1995;
7. UN Sustainable Development Project, see <http://www.un.org/esa/sustdev/>.
8. Universal Declaration on the Human Genome and Human Rights, UNESCO, 1997.
9. Declaration on the Rights and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, General Assembly Resolution 53/1448 March 1999;
10. World Intellectual Property Organisation ["WIPO"] Global Intellectual Property Issues, Draft Programme, 1998-1999, see <http://srch1.un.org/esa/subindex/ej.htm>.