Traditional Resource Rights
International Instruments for Protection and Compensation for Indigenous Peoples and Local Communities

by Dr Darrell A. Posey

with contributions by:
Graham Dutfield
Kristina Plenderleith
Eugênio da Costa e Silva
Alejandro Argumedo
Traditional Resource Rights

International Instruments for Protection and Compensation for Indigenous Peoples and Local Communities

By
Dr Darrell A. Posey

Programme for Traditional Resource Rights
The Oxford Centre for the Environment, Ethics and Society
Mansfield College
University of Oxford

With contributions by:
Graham Dutfield
Kristina Plenderleith
Eugênio da Costa e Silva
Alejandro Argumedo

IUCN – The World Conservation Union
1996
The presentation of material in this work and the geographical designations employed do not imply expression of any opinion whatsoever on the part of IUCN or of other participating organizations concerning the legal status of any country, territory or area, or concerning the delimitation of its frontiers or boundaries.

The views of the author expressed in this work do not necessarily reflect those of IUCN or of other participating organizations.

The text of this book is printed on environmentally friendly paper.

---

### Contents

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Title</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>RIGHTS AND RESOURCES</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>Indigenous peoples and the right to self-determination</td>
<td>5</td>
</tr>
<tr>
<td>2</td>
<td>CONSERVATION AND KNOWLEDGE</td>
<td>7</td>
</tr>
<tr>
<td>3</td>
<td>TRADITIONAL RESOURCE RIGHTS</td>
<td>13</td>
</tr>
<tr>
<td></td>
<td>What is a <em>sui generis</em> system?</td>
<td>14</td>
</tr>
<tr>
<td>4</td>
<td>HUMAN RIGHTS AND BIODIVERSITY CONSERVATION</td>
<td>23</td>
</tr>
<tr>
<td></td>
<td>- The Universal Declaration of Human Rights</td>
<td>23</td>
</tr>
<tr>
<td></td>
<td>- The International Labour Organization 169.</td>
<td>25</td>
</tr>
<tr>
<td></td>
<td>- The Draft Declaration of the Rights of Indigenous Peoples</td>
<td>28</td>
</tr>
<tr>
<td></td>
<td>- The Draft Declaration of Principles on Human Rights and the Environment</td>
<td>36</td>
</tr>
<tr>
<td>5</td>
<td>ENVIRONMENT AND DEVELOPMENT RIGHTS</td>
<td>41</td>
</tr>
<tr>
<td></td>
<td>- The Rio Declaration</td>
<td>41</td>
</tr>
<tr>
<td></td>
<td>- Convention on Biological Diversity (CBD)</td>
<td>43</td>
</tr>
<tr>
<td></td>
<td>- Agenda 21</td>
<td>57</td>
</tr>
<tr>
<td></td>
<td>- Forest Principles</td>
<td>65</td>
</tr>
<tr>
<td></td>
<td>- The International Convention to Combat Desertification (CCD)</td>
<td>70</td>
</tr>
<tr>
<td></td>
<td>- Draft International Convenant on Environment and Development</td>
<td>76</td>
</tr>
<tr>
<td>6</td>
<td>HERITAGE AND PROPERTY RIGHTS</td>
<td>79</td>
</tr>
<tr>
<td></td>
<td>- World Heritage Convention</td>
<td>79</td>
</tr>
<tr>
<td></td>
<td>- Ilicit Trade Convention</td>
<td>81</td>
</tr>
<tr>
<td></td>
<td>- World Intellectual Property Organization</td>
<td>82</td>
</tr>
<tr>
<td></td>
<td>- International Union for the Protection of New Varieties</td>
<td>83</td>
</tr>
<tr>
<td></td>
<td>- Neighbouring Rights</td>
<td>84</td>
</tr>
<tr>
<td></td>
<td>- Model Folklore Provisions</td>
<td>85</td>
</tr>
<tr>
<td></td>
<td>- Principles and Guidelines for the Protection of the Heritage of Indigenous Peoples</td>
<td>86</td>
</tr>
<tr>
<td>7</td>
<td>FORUMS AND PROCESSES</td>
<td>93</td>
</tr>
<tr>
<td></td>
<td>- Conference of the Parties (COP)</td>
<td>93</td>
</tr>
<tr>
<td></td>
<td>- Clearing House Mechanism (CHM)</td>
<td>94</td>
</tr>
<tr>
<td></td>
<td>- Global Environment Facility (GEF)</td>
<td>95</td>
</tr>
<tr>
<td></td>
<td>- Commission on Sustainable Development (CSD)</td>
<td>96</td>
</tr>
<tr>
<td></td>
<td>- Intergovernmental Panel on Forests (IPF)</td>
<td>98</td>
</tr>
<tr>
<td></td>
<td>- Food and Agriculture Organization (FAO) and Farmers' Rights</td>
<td>99</td>
</tr>
<tr>
<td></td>
<td>- World Trade Organization and GATT/TRIPS</td>
<td>102</td>
</tr>
<tr>
<td></td>
<td>- Local, Institutional and National Initiatives</td>
<td>103</td>
</tr>
<tr>
<td>8</td>
<td>CONCLUSIONS AND RECOMMENDATIONS</td>
<td>109</td>
</tr>
</tbody>
</table>
REFERENCES AND FURTHER READING

LIST OF ILLUSTRATIONS 113

Summary Chart 1: Summary of Key Concepts in UNCED
and Other International Agreements
Summary Chart 2: Additional Recommendations for Action
Table 1: Summary of Demands and Concerns of Indigenous Peoples
Table 2: Traditional Resource Rights
Table 3: Comparison of main provisions of PBR under UPOV 1978 and 1991 and Patent Law
Box 1: Some Principal Rights Affirmed by the Draft Declaration on the Rights of Indigenous Peoples
Box 2: Major Principles from the Draft Declaration of Principles on Human Right and the Environment
Box 3: Relevant Principles of the Rio Declaration
Box 4: Some Key Terms in the CBD
Box 5: What is Prior Informed Consent?
Box 6: The FAO Global System for the Conservation and Sustainable Use of Plant Genetic Resources for Food and Agriculture
Box 7: Useful guides to Agenda 21
Box 8: Summary of Relevant Sections of the Statement on Human Right and the Environment
Box 9: Components of the Convention to Combat Desertification relevant to indigenous Peoples and local communities
Box 10: Fundamental Principles of the Draft International Covenant on Environment and Development (Articles 2-11)
Box 11: Principal Features of the World Heritage Convention
Box 12: Principal Features of ‘the Illicit Import Convention’
Box 13: Summary of Principles and Guidelines for the Protection of the Heritage of Indigenous Peoples

LIST OF ACRONYMS 123

RESOURCES ON THE WORLD WIDE WEB FOR FURTHER INFORMATION 125

APPENDICES

Appendix 1 Universal Declaration of Human Rights
Appendix 2 ILO Convention 169 Concerning Indigenous and Tribal Peoples in Independent Countries
Appendix 3 Rio Declaration on Environment and Development
Appendix 4 Convention on Biological Diversity
Appendix 5 Agenda 21 Chapter 26: Recognizing and Strengthening the Role of Indigenous People and Their Communities

Appendix 6 Non-Legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of All Types of Forests
Appendix 7 Convention to Combat Desertification in Countries Experiencing Serious and/or Desertification, Particularly in Africa
Appendix 8 Convention Concerning the Protection of The World Cultural and Natural Heritage
Appendix 9 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property
Appendix 10 Model Provisions for National Laws on the Protection of Expressions of Folklore Against Illicit Exploitation and Other Prejudicial Actions
Appendix 11 In Safe Hands: Communities Safeguard Biodiversity for Food Security,
Leipzig, Germany, 14-16 June 1996
Appendix 12 Farmers Rights Charter (draft charter by Indian Farmers Unions, circulated by Third World Network, February 1996
Appendix 13 The Declaration of Belm
Appendix 14 Suggested Ethical Guidelines for Accessing and Exploring Biodiversity
Appendix 15 Conclusions, Findings and Recommendations From The Green College Workshop on Indigenous Peoples and Traditional Resource Rights
Appendix 16 Community Intellectual Rights Act
Foreword

This book is an important contribution to the current discussion on implementing the Convention on Biological Diversity. The focus is on how to build alliances to develop a *sui generis* system which strengthens and empowers Indigenous peoples in the protection of community intellectual property and traditional resource rights.

In part this document is the result of the growing international dialogue which has begun to involve Indigenous peoples to a greater degree. Hopefully, this book will contribute to widening dialogue and action.

The Convention on Biological Diversity can provide a workable framework for the equitable sharing of benefits resulting from use and application of traditional and indigenous knowledge, innovations and practices. Its full implementation will provide reciprocal benefits: the strengthening of Indigenous and local communities, and the protection of biological diversity through sustainable use practiced by these communities. On balance there are lessons learned by this approach for the industrialized sector. One lesson is that humans are a part of nature and must find ways to obey the original natural laws of all our creators.

Simon Brascoup
Apikan Indigenous Network
Coordinator, Indigenous Peoples Committee for the Commission on Sustainable Development
Preface

The International Union for Conservation of Nature and Natural Resources (IUCN) (the World Conservation Union, was founded in 1948, and unites states, government agencies and non-governmental organisations. Its mission is to influence, encourage and assist societies throughout the world to conserve the integrity and diversity of nature and to ensure that any use of natural resources is equitable and ecologically sustainable. In 1991, together with the United Nations Environment Programme (UNEP) and the World Wide Fund for Nature (WWF), IUCN published a global ‘Strategy for Survival’ known as Caring for the Earth, which recognises that successful conservation is linked to local community efforts and concerns.

According to Caring for the Earth, community empowerment is a cornerstone for responsible development and effective biodiversity conservation:

Most of the creative and productive activities of individuals or groups take place in communities. Communities and citizens’ groups provide the easiest means for people to take socially valuable action as well as to express their concerns. When they are properly empowered and informed, communities can contribute to decisions that affect them and play an indispensable part in creating a sustainable society.

Although support for community-based action is critical, governments are often reluctant to invest in them or hand over control to communities. Secure access to land and resources, equitable sharing, education and training, rights to free speech and free assembly, as well as full participation in decision-making, frequently threaten government, political, business, and sometimes even environmental, leaders. Consequently, resistance to community empowerment is common at all levels.

IUCN is, however, committed to the support and strengthening of Indigenous peoples and other ‘traditional peoples’ and ‘local communities’ that form the larger ‘alliance’ of those societies around the world who still live close to the Earth. These are the peoples who embody the wisdom of generations who have practised the sustainable lifestyles that environmentalists and conservationists promote.

Motivated by these concerns, the 18th General Assembly of IUCN, held in 1990 in Perth, Australia, recommended that the Director General establish an Inter-Commission Task Force Group on Indigenous Peoples to make sure that indigenous concerns were incorporated in the work of the Union. The Task Force has focused on the need and means to integrate Indigenous peoples’ perspectives in strategies for sustainability and to make policy recommendations about IUCN’s role in implementing those strategies.

The 19th General Assembly of IUCN, held in Buenos Aires, Argentina, in 1994, voted to continue the Task Force and re-committed the Union to work to develop meaningful partnerships with Indigenous peoples. Subsequently, the Director General has established a plan to develop regional Task Forces in order to effectively respond to diverse ecological, political, and social situations. The long-term Work Programme calls for, among other things, activities to: sensitise, educate, and train global leaders interested in working with Indigenous peoples; develop stronger legal instruments to promote indigenous rights; and prepare guidelines for ‘equitable sharing’ related to sustainable use of biological resources and ‘traditional lifestyles’ as called for in the Convention on Biological Diversity.
The Biodiversity Programme of IUCN commissioned this book to investigate how international agreements on environment, trade and sustainable development could be harmonised with human rights instruments to support and strengthen the role by Indigenous peoples in biodiversity conservation. The intention of this work is to highlight provisions within existing international hard and soft law documents, such as conventions, declarations and resolutions that can be utilised to develop sui generis systems — that is to say new and unique systems — for protection and compensation of indigenous and traditional peoples for their knowledge, technologies and biological resources. Traditional Resource Rights (TRR) is proposed as a model for the development of these sui generis systems.

Key to the success of this approach is to convince governments, conservationists, and non-governmental organisations that local knowledge and experience is fundamental to effective conservation. The underlying assumption is that the best way to maintain biodiversity is through the development of mechanisms to protect and enhance indigenous, traditional and local communities. Furthermore, traditional ecological knowledge is central to the development of economic options for communities and states alike.

This volume is intended to complement Indigenous Peoples and Sustainability, a two-volume work developed in collaboration with the IUCN Inter-Commission Task Force on Indigenous Peoples. Volume 1 explores policy options for more effective involvement of indigenous peoples in conservation and sustainable development programmes and projects. Volume 2 is a set of case studies of successful conservation experiences with indigenous and local communities from around the world.

Acknowledgements

The authors would like to gratefully acknowledge the encouragement and intellectual stimulation received while preparing this manuscript from Donna Craig, Michel Pimbert, Dinah Shelton and Johanna Sutherland. We appreciate the contributions in early stages of this work by Sarah Laird, Tom Griffiths, Jordana Friedman, and subsequent contributions by Torri Willard, Susie Hussey, and Pat Berhau. Detailed comments from Lyle Glowka of the IUCN Environmental Law Centre were especially helpful. We also acknowledge useful critiques from Johanna Sutherland and Sarah Titchen as well as editorial comments from Helen Hornbeck Tanner. We are grateful to the Oxford Centre for the Environment, Ethics & Society, and our colleagues and Fellows for sustained support and tolerance during the preparation of this project and manuscript. Documents were generously provided by Mr José Graça Araújo, Consultant, Development Cooperation and External Relations Bureau for Latin America and the Caribbean, WFP, and Mr Bruno Bath, First Secretary, Environment and Human Rights Section, Brazilian Embassy, London.

Funding for this book came primarily from the Swiss Development Cooperation. Our special thanks to Caroline Martinet and Jeff McNeely of IUCN's Biodiversity Programmes for their support for these efforts. The work on Traditional Resource Rights is part of a larger project of the Programme for Traditional Resource Rights, funded by the World Wide Fund for Nature International, with assistance from the Earth Love Fund, Companions of Arts and Nature, and the Nuffield Foundation. We would also like to thank the Akan Indigenous Network, Both Ends, Environment and Development Service for NGOs and the Government of the Netherlands for support during the final preparation of the manuscript.
Executive Summary

There is increasing recognition that the wider use and application of traditional ecological knowledge, as well as local or indigenous natural resource management systems, provide effective alternative strategies for conservation and sustainable use of natural resources. As a result, environmental concerns increasingly focus on the roles of Indigenous peoples and local communities in enhancing and maintaining biological diversity.

The Convention on Biological Diversity (CBD) reflects this perspective in recognising that ‘knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles’ are central to successful *in situ* conservation. The fundamental importance of benefit-sharing and compensation for the peoples and communities providing traditional knowledge, innovations and practices is also acknowledged. Furthermore, the CBD encourages the use and application of those ‘indigenous and traditional technologies’ that are relevant to biodiversity conservation. The Convention to Combat Desertification (CCD) is another international, legally-binding agreement that supports local communities and recognises their roles in environmental conservation.

There is a danger, however, that in the sudden flurry of interest in indigenous and traditional knowledge, economic, political, and environmental interests will dominate, overshadowing the basic human, cultural and scientific rights that are already afforded to local and indigenous communities. In the CBD, access to and transfer of genetic resources and technologies (including indigenous and traditional technologies) are assumed to be basic rights of States. But Indigenous peoples consider this a problematic issue that must be negotiated with local communities, whose rights are enunciated by international agreements and laws to which those same States are parties. Recently, environment, trade and development debates have emerged without taking into account the many well-established human rights and cultural heritage instruments that must temper all aspects of international governance including environmental decision-making.

The CBD does not provide specific mechanisms to protect the rights of indigenous peoples and local communities to their genetic materials, knowledge and technologies. Nor does it establish effective means to secure equitable benefit-sharing from the wider use and application of these resources. Therefore, such mechanisms will have to be developed. Existing intellectual property rights (IPR) are wholly inadequate and inappropriate for these purposes, and special alternative or *sui generis* systems need to be created instead. Debates on *sui generis* systems are now taking place within a number of international processes: the implementation of the 1994 General Agreement on Tariffs and Trade (GATT) under the auspices of the World Trade Organization (WTO); the development and revision of the FAO Global Plan of Action and International Undertaking on Plant Genetic Resources (IUPGR); and the review and further development of the Convention on Biological Diversity through its Conference of the Parties (COP).

The Traditional Resource Rights (TRR) concept is presented in this volume to guide the development of *sui generis* systems. TRR, premised on human rights principles, is a process and framework to develop multiple, locally-appropriate systems and ‘solutions’ that reflect the diversity of contexts where *sui generis* systems are required. TRR is built around four processes: (1) identifying ‘bundles of rights’ expressed in existing moral and ethical principles; (2) recognising rapidly evolving ‘soft law’ influenced by customary practice and legally non-binding agreements, declarations, and covenants; (3) harmonising existing legally-binding international agreements signed by Nation States; and, (4) ‘Equitising’ to provide marginalised indigenous, traditional, and local communities with favourable conditions to influence all levels and aspects of policy planning and implementation.
The UN document leading the international debate is the Draft Declaration on the Rights of Indigenous Peoples, currently under review by the Commission on Human Rights of the UN Economic and Social Council. The principles from the Draft Declaration also serve to provide a political base for non-indigenous traditional communities that also embody traditional lifestyles.

A broad range of other international agreements (both legally and non-legally binding) are presented with the intention of identifying existing support for and protection of Indigenous peoples and local communities. Key principles are identified across major agreements and declarations. There is a call for global support of efforts to harmonize human rights with trade, development and environmental laws, initiatives and policies. Traditional Resource Rights can guide these efforts. Basic principles and major instruments that guide TRR are provided in Summary Chart 1.

The book also offers specific recommendations as to how indigenous and local communities can be supported in their attempts to maintain, conserve, and establish their own programmes and projects for biodiversity conservation, including integration of their priorities and criteria. These are presented in Summary Chart 2.

KEY FOR SUMMARY CHART 1

A = Article
C = Chapter
P = Principle/Paragraph
PRB = Preamble
X = major principle of the document

Agreements:

- CBID: Convention on Biological Diversity
- CCD: UN Convention on Combat Desertification in Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa
- CBD: UN Convention on the Elimination of All Forms of Racial Discrimination
- CED: UN Convention on the Prevention and Punishment of the Crime of Genocide
- CHC: UN Commission on the Rights of the Child
- CSF: Draft Declaration on Principles on Human Rights and the Environment
- DHR: UN Draft Declaration on the Rights of Indigenous Peoples
- DHO: Declaration on Human Rights and Development
- DISE: Draft International Covenant on Environment and Development
- FAO: International Undertaking on Plant Genetic Resources
- FP: Non-Legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of All Types of Forests
- IFUORG: International Covenant on Civil and Political Rights
- ICESCR: UN International Covenant on Economic, Social and Cultural Rights
- ILO169: International Labour Organization Convention 169 Concerning Indigenous and Tribal Peoples in Independent Countries
- RC: Rome Convention for the Protection of Performing, Producers of Phonograms and Broadcasting Organisations
- RD: Rio Declaration
- UDHR: Universal Declaration of Human Rights
- UNESCO: Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property
- UNESCO-E: Recommendations on the Safeguarding of Traditional Culture and Folklore
- UNESCO-G: Declaration on the Principles of International Cultural Cooperation
- UNESCO-W: Convention Concerning the Protection of the World Cultural and Natural Heritage
- UNESCO-WIP: Model Provisions for National Laws on Protection of Expressions of Folklore Against Illicit Exploitation and Other Unjustifiable Actions
- UNVIPA: UN Vienna Declaration and Programme of Action
Chapter 1

RIGHTS AND RESOURCES

Indigenous peoples have been relegated to "exotic footnotes in history" by many scientists, academic and political writers, ignoring totally their major contributions to global food, medicine, philosophy, the arts, environmental management and biodiversity conservation. Likewise, many countries have marginalised, weakened or even annihilated—indigenous populations in an effort to obtain their lands, territories, and resources.

This process has led to the erosion of valuable knowledge about the sustainable use and conservation of diverse ecosystems and genetic resources, now increasingly recognised to form the future wealth of nations. Some countries have begun national programmes to investigate the economic value of flora and fauna utilised and conserved by indigenous and traditional ecological management systems, but have not put into place necessary laws to protect the people themselves from further marginalisation.

Likewise, the recent and growing interest in gene-hunting, together with the realisation that research and development (Rand D) costs can be radically cut through the use of traditional knowledge, have led companies to "discover" the important role of indigenous peoples and their knowledge in product development. "Bioprospecting" on indigenous lands and territories has become a central goal of pharmaceutical, agricultural, and natural product industries, often encouraged or subsidised by governments unconcerned with the privacy and rights issues that should protect local communities.

On another level, indigenous music, art, ceremonies, and beliefs are enjoying a faddish surge in many parts of the world. A growing dissatisfaction with industrial and technological societies is leading the disillusioned to seek solutions in the ancient cultures that have tried to avoid the "evils of the modern world". The extremists are known as "wannabe's" by the North American Indians. Others are more sensible, often swing upon indigenous societies in numbers that threaten the very well-being of those they want to emulate. Frequently it is a consumer-culture attitude that allows the admirers to think they can buy the arts and pieces they want for happiness without embracing the holistic principles that indigenous cultures embody.

These are only some of the reasons why indigenous peoples feel they need more political and financial support to strengthen and defend their beleaguered cultures and communities. They also feel they need additional legal protection against uninvited and unwanted exploitation of their knowledge and resources. And, when they do authorise the use and application of their knowledge, and practices, they want legal assurances that they will receive just compensation and equitable benefits from such use.

Indigenous peoples are profoundly worried by the globalisation of trade and the commoditisation of common property that ignores existing, local values. They worry that the "use it or lose it" mentality of some conservationists, governments, and businesses means that only external market values will be used to assess the importance of their prized and sacred ecosystems, plants, animals, and knowledge systems.

They know that existing human rights legislation, for example, is directed mainly at individual rights. Present laws do not adequately protect the rights of their communities, nationalities, lineages, or families that hold resources and knowledge for all generations-past, present, and future. They know that intellectual property rights (IPR) serve to protect private, corporate property, but
Traditional Resource Rights

not the collective wisdom of their untold generations. They are increasingly demanding that new, alternative, or sui generis systems be developed nationally and internationally to enhance, protect, and honour their societies, languages, and cultures. Only with such legal support, they argue, will the biological, ecological, agricultural and cultural diversity of the planet be conserved.

Over the years, non-indigenous organisations have developed to support, defend, and protect indigenous peoples. Many continue to fight for indigenous rights, including the development of sui generis systems for protection of intellectual, cultural, and scientific property rights. They have worked many years to help indigenous leaders find ‘political space’ and develop the experience and independence to represent themselves. These organisations are now facing the effects of their own success, an impressive number of well-organised, well-informed, and well-funded indigenous leaders who no longer want non-indigenous organisations as their intermediaries. Indigenous peoples want to argue their own issues and concerns in their own words and ways, following their own priorities and criteria.

The United Nations has provided the principal forums for indigenous issues to be aired, and been a critical stage for the emergence of global indigenous leaders. It has not only been the main international arena for debates on indigenous rights, but also on the role of Indigenous peoples in biodiversity use and conservation.

The major international forums for indigenous peoples’ issues are: (1) the International Labour Organization of the United Nations (ILO), (2) the UN Working Group on Indigenous Populations (WGIP), (3) the UN Food and Agricultural Organization (FAO), and (4) the UN Conference on Environment and Development (UNCED).

1. The International Labour Organization and Convention 169

The International Labour Organization (ILO) was the first international organisation to deal with indigenous issues. A Committee of Experts on Native Labour was established in 1926 to develop international standards for the protection of native workers. ILO became the Specialised Agency of the United Nations in 1946. In 1957, it developed a special Convention 107, known as the Convention Concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries. ILO 107 was highly criticised by indigenous peoples for its ‘integrationist language’ and disrespect for the unique identities of indigenous nations.

The Convention was revised in 1989 to remove some of the ‘integrationist’ language and became Convention 169 Concerning Indigenous Peoples in Independent Countries. It is the only international legal instrument devoted exclusively to the rights of Indigenous peoples. It calls for consultation and cooperation with Indigenous peoples, supports customary law and practice, and recognises collective rights, including land, territorial, and development rights. It does not, however, require explicit indigenous consent for activities, nor does it mention the right to self-determination. Most indigenous groups agree that the language of ILO 169 is weak, but, provides at least minimum standards for indigenous rights. Negotiations were important in providing experience for indigenous leaders and representatives. The Convention itself established an indispensable place for indigenous issues in the global agenda, and continues to juxtapose labour and development issues with human rights.

2. Working Group on Indigenous Populations and the Draft Declaration on the Rights of Indigenous Peoples

In 1970 the Subcommission on Prevention of Discrimination and Protection of Minorities of the United Nations Commission on Human Rights recommended that a broad study be made of ‘the problem of discrimination against Indigenous peoples’. After lengthy delay, a voluminous report found that existing international instruments were not ‘wholly adequate for the recognition and promotion of the specific rights of indigenous populations as such within the overall societies of the countries in which they now live’.

In 1982, partly in response to the study, but also due to pressure from NGOs and Indigenous peoples’ organisations, the United Nations Economic and Social Council (ECOSOC) created a Working Group on Indigenous Populations as a subsidiary body of the Subcommission. The Working Group consists of five legal experts who meet annually in Geneva and hear in open sessions hundreds of indigenous representatives who present statements on the current status of rights in various countries. The Working Group has become the most open international forum for Indigenous peoples and advocates of indigenous rights.

The mandate of the Working Group is:

- to review national developments pertaining to the promotion and protection of the human rights and fundamental freedoms of indigenous peoples; and
- to develop international standards concerning the rights of indigenous peoples, taking account of both the similarities and differences in their situations and aspirations throughout the world.

The Working Group is periodically called upon to prepare reports and studies for the Subcommission. These are based on the concerns and views of Indigenous peoples as expressed at Working Group meetings, but depend primarily on information received from governments and UN agencies. Much of its work has concentrated on the development of a Draft Declaration on the Rights of Indigenous Peoples to develop minimum standards for the treatment of Indigenous peoples by the international community.

The Draft Declaration took over a decade to develop, but that process proved to be a major political training ground for Indigenous leaders. It will undoubtedly become the primary and leading ‘soft law’ document for framing the development of international law in all areas that affect Indigenous peoples. It incorporates links development, trade and environmental conservation issues with human rights and the indigenous demand for autonomy, or self-determination (see Chapter 2 for more details of the Draft Declaration).

3. Food and Agricultural Organization (FAO) and Farmers’ Rights

The Food and Agricultural Organization (FAO) is the largest autonomous agency within the United Nations. Its mandate is to raise levels of nutrition and standards of living, to improve agricultural productivity, and to better conditions of rural populations.

Since 1985, FAO has worked to develop the concept of Farmers’ Rights as a way to recognise the contributions of traditional farmers (indigenous and non-indigenous) in conserving, improving and making available the plant genetic resources upon which modern plant breeding is founded. These contributions are not adequately recognised or protected under existing international arrangements.

FAO Resolution 58/9 defines Farmers’ Rights as:

...rights arising from the past, present and future contributions of farmers in conserving, improving and making available plant genetic resources particularly those in the centres of origin/diversity. These rights are vested in the international community, as trustees for present and future generations of farmers, and supporting the continuation of their contributions...

1 For Indigenous peoples the use of terms like Indigenous people (without the ‘s’) and the phrase used in Article 8(3) of the Convention on Biological Diversity: ‘indigenous and local communities embodying traditional lifeways’, ‘people’ and ‘communities’ do not. The ‘s’ distinction symbolises land, territorial and collective rights subsumed. In contrast, the use of terms like ’people’, ‘populations’, ‘communities’ and ‘minorities’ implicitly denies territorial rights.
Traditional Resource Rights

To implement the resolution, the International Fund for Plant Genetic Resources was nominally established to compensate, not farmers, but their governments for the maintenance of genetic resources. However, the fund never came into existence because of lack of donations.

The Farmers' Rights concept has been heavily criticised by indigenous peoples and farmers alike, who feel that governments have not been historically supportive of their interests and that compensation for and control over genetic resources must be at a community, not governmental, level. Farmers' Rights is currently under review by the FAO through its revision of the International Undertaking on Plant Genetic Resources (IUPGR) and implementation of a Global Plan of Action (GPA) to conserve agricultural genetic resources.

4. The UN Conference on Environment and Development (UNCED)

The United Conference on Environment and Development (UNCED) took place in Rio de Janeiro in June 1992. It is commonly known as ‘the Earth Summit’ because it brought together more heads of state than had ever before been assembled to discuss the future of the planet.

To prepare for the UNCED, four preparatory meetings were held over a two-year period in Nairobi, Geneva, and New York under the auspices of UNEP. These meetings, together with activities, discussions, and negotiations that occurred between them, are known as ‘the UNCED Process’.

Many feel that the ‘process’ was as important as the subsequent Summit, since non-governmental organisations (NGOs) and Indigenous peoples were allowed to participate in the United Nations meetings. Many alliances between Indigenous peoples and with environmental groups were formed during this period. For the first time also, questions of human rights were linked to environmental concerns, and human poverty was linked to flawed development models as well as conservation of biological diversity.

One important product of UNCED was Agenda 21, an action plan to guide sustainability strategies into the next century. Indigenous peoples are considered to have a critical role to play, constituting one of the nine social groups, or ‘major groups’, that are stakeholders in sustainable development. Chapter 26 deals specifically with Indigenous peoples.

The Summit adopted a basic statement of principles, known as ‘the Rio Declaration on Environment and Development’, that clearly establishes the relevance of Indigenous peoples and the central importance of protecting their rights in order to attain sustainable development and biodiversity conservation. The Non-Legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of All Types of Forests (Statement on Forest Principles) was also developed at the Earth Summit and provides considerable support for traditional forest dwellers, including Indigenous peoples.

The Convention on Biological Diversity (CBD)

One of the two legally-binding agreements opened for signature during the Summit was the Convention on Biological Diversity (CBD). The basic objective of this agreement is to guide and govern the use and conservation of genetic resources, while protecting Indigenous peoples and local communities. Article 8(j) calls for the wider use and application of knowledge, innovations and practices of ‘indigenous and local communities embodying traditional lifestyles’ subject to their involvement and approval. These innovations and practices are referred to in Article 18.4 as indigenous and traditional technologies. Similarly, Article 10(c) requires the protection and encouragement of customary use of biological resources in accordance with traditional cultural practices.

Article 15 of the CBD recognises:

...the sovereign rights of States over their natural resources, their authority to determine access to genetic resources rests with the national governments and is subject to national legislation.

Although this merely reflects a well-established principle of international law, national sovereignty over genetic resources is a controversial issue for Indigenous peoples. Indigenous leaders maintain that it contradicts international human rights law that guarantees that ‘all peoples may, for their own ends, freely dispose of their natural wealth and resources’. They are concerned that governments that have historically been responsible for marginalising Indigenous peoples may enact legislation to implement the CBD that could violate territorial integrity and resource rights (ILO-TPTF, 1995). Furthermore, they know that many governments are incapable of effectively limiting access or even monitoring bioprospecting activities within their borders.

Indigenous peoples and the right to self-determination

The key to effective environment and development policy, according to Indigenous peoples, is for nation states to re-define the concept of ‘national sovereignty’ to accommodate Indigenous self-determination. This would give Indigenous peoples the capacity to effectively monitor and control access to and transfer of genetic resources and traditional technologies, while enhancing biological diversity.

Indigenous peoples are unanimous in their demand for self-determination. The International Indian Treaty Council (in E/CN.4/1995/WG.15/4) argues that Indigenous peoples had the right to self-determination ‘even before the United Nations and many of its member states were conceived, even before many colonial societies themselves were formed.’ They do not want a privileged position in law, but only recognition of all the human rights (both collective and individual) that international law already provides to all peoples.

It is the demand for self-determination that frequently separates Indigenous peoples from other traditional societies and local communities. Traditional agriculturalists, pastoralists, fisherfolk, forest-dwellers, rural peasants, and other ‘local communities embodying traditional lifestyles’ are adamant in their demands for land tenure, economic security, and local control over resources and decision-making. In general, however, they do not express these demands in terms of sovereign rights and self-determination.

The FAO re-evaluation of the concept of Farmers Rights and implementation of the CBD Article 8(j) regarding indigenous and local communities embodying traditional lifestyles puts indigenous peoples in the awkward position of having to define themselves in relation to non-indigenous farmers and other traditional peoples. ILO 169 guarantees the right of indigenous peoples to define themselves, but no international agreement defines traditional societies or their lifestyles. There is a fear in some camps that the ‘we are all indigenous’ and ‘our society is traditional’ arguments will undermine the unique indigenous claim to self-determination. Common goals are not necessarily attained through common political processes.

1 Earlier agreements have proclaimed the principle that nation states have sovereign rights over all natural resources, but the CBD is the first treaty that refers specifically to genetic resources.
2 Article 1.2 of both the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights.
3 This is provided for in the ICCPR (UN International Covenant on Civil and Political Rights of 1966) and the ICESCR (UN International Covenant on Economic, Social and Cultural Rights of 1966).

The other major groups are women, youth, NGOs, local authorities, trade unions, industry, scientists and farmers.

The other was the International Framework Convention on Climate Change.
Traditional Resource Rights

Indigenous peoples are enthusiastic about cooperation with traditional peoples, but know that effective alliances rely on respect for the different priorities of members. Areas of common interest where Indigenous peoples and local communities may benefit from working together include:

- need for global trade reform;
- protection from the globalisation of trade;
- re-evaluation of farmers’ rights; and
- development of sui generis systems to strengthen rights over traditional knowledge and biological resources.

This book is primarily concerned with how sui generis systems can be developed to enhance protection of and control by local communities. It is argued that any alternative system that supports the knowledge and resources of Indigenous peoples, traditional societies, and local communities must begin with an integrated rights approach. This approach requires nation states to harmonise their environment, conservation, development and trade laws with already recognised international human rights agreements.

This Traditional Resource Rights approach interprets harmonisation to mean that where areas of conflict occur between different agreements, these differences should be resolved giving priority to human rights concerns. This affects such critical international negotiations as those within the World Trade Organization (WTO), the World Intellectual Property Organization (WIPO), and the International Union for the Protection of New Varieties of Plants (UPOV). WTO is especially important because it administers the Trade Related Intellectual Property Rights (TRIPS) Annex of the 1994 General Agreement on Tariffs and Trade, which is the only international agreement that specifically mentions the possibility of a sui generis alternative to patents in the context of plant varieties. Developments within WTO will need to be correlated with the FAO and CBD efforts to establish effective sui generis systems that, in the face of globalisation of trade, protect and enhance conservation of agricultural genetic resources and biodiversity. Likewise, use, application and protection of traditional ecological knowledge will have to be prioritised in trade, sustainable development and conservation concerns, since cultural diversity is inseparably linked to biological diversity. In other words, any global trade or intellectual property rights developments that work against biodiversity and sustainable development agreements if indigenous peoples, traditional societies, and local communities are not supported, protected, and their cultures enhanced.

Chapter 2

CONSERVATION AND KNOWLEDGE

Indigenous peoples believe their natural resource management systems embody the principles and practices of sustainability and that their communities play critical roles in biodiversity conservation. In the (1995) Final Statement from the UNDP Pacific Regional Consultation on Indigenous Peoples’ Knowledge and Intellectual Property Rights, Suva, Fiji states:

- We assert that ‘in situ’ conservation by indigenous peoples is the best method to conserve and protect biological diversity and Indigenous knowledge, and encourage its implementation by Indigenous communities and all relevant bodies.

Indigenous peoples are clear that successful conservation depends upon full rights and control over their lands, territories, and resources. For example, the (1992) Charter of the Indigenous-Tribal Peoples of the Tropical Forests (CITP) states that:

The best guarantee of the conservation of biodiversity is that those who promote it should uphold our rights to the use, administration, management and control of our territories. We assert that guardianship of the different ecosystems should be entrusted to us, Indigenous peoples, given that we have inhabited them for thousands of years and our very survival depends on them.

Historical evidence records the sustained productivity of indigenous systems in some cases for millennia on the same land (Posey and Dutfield, 1996). Such successes depend upon a strong sense of stewardship and a “conservation ethic” which cannot be regarded as universal, but most indigenous land and resource management systems tend to emphasise the following specific values and features:

- cooperation;
- family bonding and cross-generational communication, including links with ancestors;
- concern for the well-being of future generations;
- local-scale, self-sufficiency, and reliance on locally available natural resources;
- rights to lands, territories and resources which tend to be collective and inalienable rather than individual and alienable;
- restraint in resource exploitation and respect for nature; especially for sacred sites;
- spiritual and aesthetic values that tie human societies to the earth;
- reliance upon local, traditional ecological knowledge.

1 Also see Warren et al (1995).
2 Johannes and Ruddle (1993) define ‘conservation ethic’ as ‘an awareness of people’s ability to deplete or otherwise damage natural resources, coupled with a commitment to reduce or eliminate the consequences’.
3 According to Clarkson et al (1990): for North American indigenous peoples ‘each generation has a responsibility to ensure the survival for the seventh generation’.
4 According to Gray (1994: 2-3): ‘Indigenous land rights are based on a people’s prior occupation of an area, usually before a state was even formed. In this sense, Indigenous peoples have a claim to “eminent domain” (inalienability) which a state usually considers to be its own exclusive right... Connected with the concept of inalienability is the collective responsibility which a people has for its territory. This does not mean that individual persons cannot buy lands and resources for their own use, but that personal ownership is based on collective consent. The collective rights to lands and resources of Indigenous peoples have been acknowledged by many governments of the world in their constitutions and in international provisions’.

6 Points raised at the meeting at the Osa Foundation, London, 27 January 1996.
Traditional Resource Rights

According to the Convention on Biological Diversity (Article 8(d)), effective in situ conservation depends upon the wider use and application of “traditional knowledge, innovations and practices”, often referred to by scientists as Traditional Ecological Knowledge (TEK). TEK is far more than a simple compilation of facts. It is holistic and forms the basis for local-level decision-making in areas of contemporary life, including natural resource management, nutrition, food preparation, health, education, and community and social organisation. Above all, it is essential for effective in situ biodiversity conservation.

TEK is not static, but highly innovative and inherently dynamic, constantly evolving through experimentation and innovation, fresh insight, and external stimuli. Pereira and Gupta (1993) refer to this as a “tradition of invention”. As the Four Directions Council (1996) points out:

What is 'traditional' about traditional knowledge is not its antiquity, but the way it is acquired and used. In other words, the social process of learning and sharing knowledge, which is unique to each indigenous culture, lies at the very heart of its 'traditionality'. Much of this knowledge is actually quite new, but it has a social meaning, and legal character, entirely unlike the knowledge indigenous peoples acquire from settlers and industrialised societies. This is why we believe that protecting indigenous knowledge necessarily involves the recognition of each peoples' own laws and their own processes of discovery and teaching.

Increased use and application of TEK is reflected in the proliferation of bioprospecting and the rapid penetration of traditional communities by commercial interests. Traditional Ecological Knowledge contributes substantially to the global economy with natural products, drugs, pesticides, fertilisers, repellents, oils, essences, foods, and agricultural products and genetic materials for biotechnology. Natural resource management, soil fertility maintenance, stream and coastal conservation, and forest and agricultural system models also provide viable, time-tested options for sustainable development adapted to micro-climatic variations and local socio-political ecosystems.

The pursuit of new products, raw materials, and knowledge has left few indigenous or traditional communities unpenetrated by traders, environmentalists, or researchers. This has led to what Arnhem Land (1994) calls ‘the latest wave in neo-colonial exploitation’ and has provoked devastating losses of biological and cultural diversity. Indigenous peoples and local communities feel this loss results from disrespect for their basic human rights, including their cultural and intellectual property rights.

Just prior to the Earth Summit, Indigenous peoples met to establish their own agenda and strategies for biological diversity conservation and sustainable development. The encounter was known as ‘Kari-Oca’ and produced ‘The Kari-Oca Declaration and Indigenous Peoples’ Earth Charter’. It is one of the most important international documents prepared by Indigenous peoples on their own terms and addressing their own agendas. The Charter states:

As creators and carriers of civilisations which have given and continue to share knowledge, experience and values with humanity, we require that our right to intellectual and cultural properties be guaranteed and that the mechanism for each implementation be in favour of our peoples and studied in depth and implemented. This respect must include the right over genetic resources, genebanks, biotechnology and knowledge of biodiversity programs (Clause 102).

9 Defined by Gadgil et al (1993: 151) as ‘A cumulative body of knowledge and beliefs handed down through generations by cultural transmission about the relationship of living beings, (including humans) with one another and with their environment’.

In another important international document, the 1992 Charter of the Indigenous-Tribal Peoples of the Tropical Forests, Article 44 expresses similar concerns:

Since we highly value our traditional knowledge and believe that our biotechnologies can make an important contribution to humanity, including 'developed' countries, we demand guaranteed rights to our intellectual property, and control over the development and manipulation of this knowledge.

Indigenous societies honour the principle of free exchange and do not necessarily want to close themselves off from others. The CIPT declares that:

Indigenous peoples are willing to share our knowledge with humanity provided we determine when, where and how it is used. At present the international system does not recognize or respect our past, present and potential contributions.

The CIPT, however, condemns “those who use our biological diversity for commercial and other purposes without our full knowledge and consent.”

During the 1993 United Nations Year for the World’s Indigenous Peoples, intellectual and cultural property rights were major agenda items for nearly every major indigenous encounter. One of the most significant meetings was the First International Conference on the Cultural and Intellectual Property Rights of Indigenous Peoples convened by the nine Mataatua Tribes in Whakatane, Aotearoa, New Zealand. The resulting Mataatua Declaration on Cultural and Intellectual Property Rights of Indigenous Peoples reflects the concerns of the 150 delegates from 14 countries who were present.

The Declaration states that cultural and intellectual property are central to the right of self-determination. Another very important principle is established that, although the knowledge of Indigenous peoples is of benefit to all humanity, the first beneficiaries of indigenous knowledge must be the direct indigenous descendants of such knowledge.

In the Preamble, the Declaration recognises that:

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

The ‘Intellectual Property Rights and Biodiversity’ meeting that took place in September 1994 in Santa Cruz, Bolivia, under the auspices of COICA and UNDP (United Nations Development Programme), was highly critical of ‘the dominant intellectual property systems’; stating that, for indigenous peoples, the intellectual property system means legitimisation of the misappropriation of our peoples’ knowledge and resources for commercial purposes.

IPR regimes are seen to strengthen integrationist national legal systems, undermines even ailing and faster, indigenous traditions and customary law. The Indigenous Peoples’ Biodiversity Network (IPBN) (pers. comm., 1995) points out that the growing asymmetry between the recognition of information, innovation and resources contained in Indigenous communities, and that given to industry (especially in Northern countries) undermines greatly the prospects of reaching appropriate and equitable benefit-sharing arrangements. The expanding IPR regimes in many industrialised countries and the GATT TRIPS agreement, which will force developing countries to harmonize their IPR regimes with those in Northern countries, will increase this asymmetry and diminish our chances of recognition.

The IPBN decided to push for the development of national laws and international sui generis systems to protect ‘cultural integrity’. Community protection systems are needed that build upon customary law and practices, while providing security of livelihoods and conservation of local biological diversity. Likewise, the 1994 Santa Cruz ‘Intellectual Property Rights and Biodiversity’ meeting found that there must be appropriate mechanisms for maintaining and ensuring rights of Indigenous peoples to deny indiscriminate access to the resources of our communities or peoples and making it possible to contest patents or other exclusive rights to what is essentially indigenous.
The Agreement recognises the need to study the feasibility of alternative systems and mechanisms for protecting indigenous interests in their resources and knowledge.


There is a relationship, in the laws and philosophies of indigenous peoples, between cultural property and intellectual property, and that the protection of both is essential to the indigenous peoples' cultural and economic survival and development.

In May, 1992, the Commission organised a Technical Conference on Practical Experience in the Realisation of Sustainable and Environmentally Sound Self-Development of Indigenous Peoples in Santiago, Chile. The Conclusions and Recommendations on Indigenous Peoples and the Environment from this conference called for: 'recognition, protection and respect for indigenous knowledge and practices that are essential contributions to the sustainable management of the environment'. It was also recommended that the United Nations system take effective measures to protect the cultural and intellectual property rights of Indigenous peoples (E/CN.4/Sub.2/1992/31/Add.1).

In July 1993, Ms Erica-Irene Dues, Chairperson of the Working Group and Special Rapporteur of the Subcommission produced her Study on the Protection of the Cultural and Intellectual Property of Indigenous Peoples (E/CN.4/Sub.2/1993/28) in response to the Subcommission's request for such a document. This study surveys issues relating to indigenous heritage, with particular emphasis on cultural heritage, and of international legal instruments – particularly human rights and IPR instruments. Among the study’s findings are that Indigenous peoples do not view their heritage in terms of property at all – that is, something which has an owner and is used for the purpose of extracting economic benefits – but in terms of community and individual responsibility. For indigenous peoples, heritage is a bundle of relationships, rather than a bundle of economic rights.

Moreover, Indigenous peoples have always had their own laws and procedures for protecting their heritage and for determining when and with whom their heritage can be shared. The rules can be complex and they vary greatly among different indigenous peoples. To describe these rules thoroughly would be an almost impossible task; in any case, each indigenous people must remain free to interpret its own system of laws, as it understands them.

In August 1993 the Subcommission endorsed the study and requested that it be expanded to include a set of principles and guidelines for the protection of the heritage of Indigenous peoples. In June 1995 (E/CN.4/Sub.2/1995/26) a draft of these principles and guidelines was produced based on comments received from Indigenous peoples' organisations, governments, NGOs, international organisations and intergovernmental organisations. Among the principles and guidelines are the following:

- 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. (Item 26)
- Business and industry should agree to an immediate moratorium on making contracts with indigenous peoples for the rights to discover, record and use previously underscribed species or cultivated varieties of 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. (Item 41)

These statements not only challenge the right of industry to obtain IPR protection for indigenous knowledge, resources and technologies, but support the idea for an indigenous moratorium on bioprospecting on indigenous lands and territories. The Mataatua Declaration was the first indigenous call for a moratorium:

Indigenous flora and fauna is inextricably bound to the territories of Indigenous communities and any property right claims must recognise their traditional guardianship. Commercialisation of any traditional plants and medicines of indigenous peoples must be managed by the indigenous peoples who have inherited such knowledge. A moratorium on any further commercialisation of indigenous medicinal plants and human genetic materials must be declared until indigenous communities have developed appropriate protection measures.

The CITP also asserts the right of Indigenous peoples to deny access to their resources, as does the Declaration of the 1994 Santa Cruz Intellectual Property Rights and Biodiversity (Clause 9). The Final Statement of the 1995 UNDP Regional Consultation, reiterates Indigenous peoples' suspicion of bioprospecting and their hostility to patenting life expressed at Santa Cruz, calls for 'a moratorium on bioprospecting in the Pacific, and urges Indigenous peoples 'not to co-operate in bioprospecting activities until appropriate protection measures are in place'. Delegates also agreed on 'the establishment of a treaty declaring the Pacific Region to be a life-forms patent-free zone' including in the treaty 'protocols governing bioprospecting, human genetic research, in situ conservation by Indigenous peoples, ex situ collections and relevant international instruments.'

Thus, with a growing interest in traditional ecological knowledge for natural resource management, as well as increased recognition of the role of indigenous peoples in in situ conservation, support of local communities forms a central theme in discussions on sustainable resource use and biodiversity conservation. Indigenous peoples, supported by the UN Subcommission on Prevention of Discrimination and Protection of Minorities, are calling for the development of sui generis systems to protect their societies, knowledge and natural resources. This is because existing intellectual property rights are not appropriate to peoples that regard flora and fauna as inextricable parts of society and culture. Without considerable efforts to develop culturally-appropriate systems to protect traditional knowledge and resources, future research, access and transfer of genetic resources and traditional technologies will become difficult, if not impossible. An indigenous moratorium on all research and development activities would in the long run be in no-one’s interest.
Chapter 3

TRADITIONAL RESOURCES RIGHTS

Given the holistic nature of indigenous knowledge and environmental management systems, the call for ‘wider use and application’ of traditional knowledge, innovations, and practices in the CBD is disturbing to local communities. This implies dismembering these systems to provide ‘useful’ components for conservation and development programs beyond the control of indigenous and traditional peoples. Indigenous peoples know from historical experience that once knowledge or genetic resources leave their lands and territories, they lose all control over future use and exploitation. They also know the importance of having the power to decide who determines what is ‘useful’ and what is not.

Intellectual property rights are generally assumed to be the only mechanisms to provide guarantees of protection and benefit-sharing. But there are great difficulties with applying IPR law to the knowledge of Indigenous peoples and traditional communities. This is because IPR:

(i) are intended to benefit society through the granting of exclusive rights to ‘natural’ and ‘juridical’ persons or ‘creative individuals’, not collective entities such as Indigenous peoples. As the Bellagio Declaration (in Boyle, 1996) puts it:

Contemporary intellectual property law is constructed around the notion of the author as an individual, solitary and original creator, and it is for this figure that its protections are reserved. Those who do not fit this model—custodians of tribal culture and medical knowledge, collectives practising traditional artistic and musical forms, or peasant cultivators of valuable seed varieties, for example—are denied intellectual property protection.

(ii) cannot protect information that does not result from a specific historic act of ‘discovery’. Indigenous knowledge is transgenerational and communally shared. Knowledge may come from ancestor spirits, vision quests, or orally-transmitted lineage groups. Therefore, it is considered to be in the ‘public domain’ and unprotectable.

(iii) cannot accommodate complex non-western systems of ownership, tenure, and access. IPR law assigns authorship of a song to a writer or publishing company that can record or publish as it sees fit. Indigenous singers, however, may attribute songs to the creator spirit and elders may reserve the right to prohibit its performance, or to limit it to certain occasions and to restricted audiences.

(iv) serve to stimulate commercialization and distribution, whereas Indigenous concerns may be primarily to prohibit commercialization and to restrict use and distribution. According to the 1994 COICA Statement:

For members of indigenous peoples, knowledge and determination of the use of resources are collective and inter-generational. No indigenous population, whether of individuals or communities, nor the government, can sell or transfer ownership of resources which are the property of the people and which each generation has an obligation to safeguard for the next.

(v) recognise only market economic values, not spiritual, aesthetic, or cultural— or even local economic-values. Information or objects may have their greatest value to Indigenous peoples because of their ties with cultural identity and symbolic unity.

(vi) are subject to manipulation by economic interests that wield political power. Thus, sui generis protection has been obtained for semi-conductor chips and copyright protection for ‘literary works’ generated by computers, whereas Indigenous peoples have insufficient power to protect even their most sacred plants, places, or artefacts.
(vii) are expensive, complicated, and time-consuming to obtain, and even more difficult to defend.

Nevertheless, industrialised countries and multinational corporations have been successful in pressing for extended and strictly-enforced IPR regimes. They allege huge losses due to piracy of books, designs, trademarks, recordings, and computer programs, as well as illicit sales of pharmaceuticals. The Rural Advancement Foundation International (RAFI) has shown, however, that corporations and industrial countries themselves have been the ones that have primarily benefited from pirated biological resources and knowledge from local farmers and Indigenous peoples (RAFI, 1994). ‘Biopiracy’, as RAFI calls it, is possible because industries can obtain legal monopolies over their applications of traditional knowledge and resources, but Indigenous peoples cannot obtain the same protection.

It is frequently assumed that protection is required only for specific information, organisms or genetic materials. But any legal regime that affords reasonable protection for traditional ecological knowledge must also provide security for:

- sacred property (images, sounds, knowledge, material, culture or anything that is deemed sacred and, thereby, not commoditizable);
- knowledge of current use, previous use, and/or potential use of plant and animal species, as well as soils and minerals;
- knowledge of preparation, processing, or storage of useful species;
- knowledge of formulations involving more than one ingredient;
- knowledge of individual species (planting methods, care for, selection criteria, etc.);
- knowledge of ecosystem conservation (methods of protecting or preserving a resource that may be found to have commercial value, although not specifically used for that purpose or other practical purposes by the local community or the culture);
- biogenetic resources that originate (or originated) on Indigenous lands and territories;
- cultural Property (images, sounds, crafts, arts and performances);
- classificatory systems of knowledge, such as traditional plant taxonomies (see Posey, 1994a).

Protection of these ‘components’ of traditional resources would be adequate only if they are conserved, maintained, and enhanced in situ resources, that is to say, as a part of the lands, territories, and cultures of the peoples themselves. Thus, *self-determination* is at the heart of any effective *sui generis* system.

**What is a *sui generis* system?**

*Sui generis* is Latin for ‘unique’, or ‘of its own kind’. The only international agreement which specifically refers to a *sui generis* system is the Trade Related Intellectual Property Section (TRIPS) of GATT, where it is presented as a possible alternative to patents or IPR protection for new plant varieties (see Chapter 7).

Article 27(3b) of TRIPS allows for:

...the protection of plant varieties either by patents or by an effective *sui generis* system or by any combination thereof [emphasis added].

In other words, Member States have the option to develop ‘effective’ *sui generis* systems for protecting plant varieties as an alternative to patents. These systems should be able to develop ethically, socially and environmentally appropriate mechanisms of protection so long as they can be shown to be ‘effective’ (i.e., enforceable). A *sui generis* system can be understood in three ways:

1. As a modification of an existing intellectual property right to cover something previously unprotected or inadequately protected. A good example is the extension of copyright protection to computer programs by categorising them as literary works.

2. As an entirely new intellectual property right that again protects something previously deemed un- or under-protected. An example is the protection of layout designs of integrated circuits (semiconductor). UPOV breeders’ rights were a *sui generis* system when they were first introduced in 1961.

3. As an alternative to intellectual property rights. Such alternatives can be divided into what might be termed ‘counter-intellectual property rights systems’, or ‘beyond intellectual property rights systems’. The former are rights regimes to ‘prevent the usurpation, commoditisation and privatisation of [communities’] knowledge and ward off any threats to the integrity of these societies’ (Nijjar, 1995:12). The latter also seek to do this, but also to subordinate existing IPR laws to human rights, respect for cultural heritage, and protection of cultural and biological diversity. In either case, future cases of ‘biopiracy’ would be heard not just on IPR grounds, but as infringements of basic human rights.

Indigenous peoples and some NGOs feel that the third option, an alternative to IPR, is necessary to effectively implement the CBD provisions on Indigenous peoples. Thus, any *sui generis* system for TRIPS would have to harmonise with the CBD and have among its basic objectives:

- the encouragement of biodiversity conservation;
- the promotion of social justice and equity;
- the effective protection of traditional knowledge and resources from unauthorised collection, use, documentation and exploitation;
- provisions for prior informed consent;
- the recognition and reinforcement of customary laws and practice, and traditional resource management systems, that are effective in conserving biological diversity.

Furthermore, the system would have to be:

- consistent with, and supportive of, the CBD provisions on Indigenous peoples and local communities, and environmental conservation;
- based on an integrated rights approach guided by human rights principles and concern for the environment;
- developed in close collaboration with Indigenous peoples and local communities through a broad-based consultative process that reflects a country’s cultural diversity.

**Traditional Resource Rights as a *sui generis* system**

Traditional Resource Rights (TRR) is a process that respects these requirements in the development of appropriate *sui generis* systems to protect and enhance Indigenous peoples, traditional societies, and local communities. TRR is not a ready-made product, but a framework for developing multiple systems and ‘solutions’ that reflect the diversity of contexts where *sui generis* systems are required.

‘Traditional resources’ are meant to include tangible and intangible assets and attributes deemed to be of value (spiritual, aesthetic, cultural, economic) to Indigenous and local communities. Resources describe all that sustain communal identity, express history, are manifest in nature and life, sustain the pride of unique heritage, maintain a healthy environment, and from which emerge sacred and spiritual values.

Traditional, following the definition of the Four Directions Council (1996), is not antiquity, but rather the established and respected social process of learning and sharing knowledge that are unique to each Indigenous culture. Traditional resources, therefore, can include plants, animals, and other material objects that have sacred, ceremonial, heritage, or aesthetic and religious qualities, as well as economic and social values.
Traditional resource rights emerge from four processes: (a) Identifying ‘bundles of rights’ expressed in existing moral and ethical principles; (b) Recognising rapidly evolving ‘soft law’ based on legally non-binding agreements, declarations, and resolutions which recognise customary practice. (c) Harmonising existing legally-binding international agreements signed by Nation States; and, (d) Equitising to provide marginalised indigenous, traditional, and local communities with favourable conditions to influence all levels and aspects of policy planning and implementation. 

(a) Bundles of Rights. Expressions of rights can be found in a variety of places, including legally-binding instruments, non-legally binding agreements, statements and principles of international institutions, declarations and manifestos of non-governmental and peoples’ organisations, professional and business codes of conduct, and recognised local, regional, or national practice. Table 1 gives a summary of a survey of the principles used by 80 indigenous groups to express their rights and needs.

Table 1 Summary of Demands and Concerns of Indigenous Peoples

A survey carried out by the Working Group on Traditional Resource Rights during 1996 looked for ways to elucidate the demands and concerns of Indigenous Peoples worldwide and identify those most commonly held. The 63 statements made by Indigenous peoples that were analysed included statements of individual Indigenous organisations and those resulting from conferences which purport to represent the views of all Indigenous peoples present.

From these statements 80 common demands were extracted. These were encompassed by the six main topic areas listed below:

1. Self-determination: This category includes the right of self-definition, self-government, to make laws and maintain economic, cultural and social relations across political borders.
2. Territory: This group contains a range of demands relating to land and resource rights.
3. Prior informed consent: In this section the demands are related to respect for Indigenous knowledge, protection of medicinal plants etc. and the right to determine standards for development.
4. Human rights: There are several related demands in this area, including freedom from discrimination and oppression, rule of law, and the right to life and liberty.
5. Cultural rights: These cover the right to have and express distinct culture, the right to language, access to sacred sites, and the right to practice religion freely.
6. Treaties: There are only three demands in this category all relating to treaties made between colonial rulers and Indigenous peoples. In addition to two calls for the recognition of extant treaties, there was a demand for the re-negotiation of treaties.

As far as can be discerned from the statements studied, the most important demands of Indigenous peoples concern around the rights to self-determination and territory.


Many countries already have flexibility built into their laws to accommodate ethnic, social, economic, and religious differences of citizens. The mechanisms that afford flexibility are also guides to how new laws can evolve and where TRR can be applied nationally.

By gleaning these sources and analysing points of accommodation, certain basic principles, or bundles of rights are discerned. They are called ‘bundles of rights’ because principles are frequently overlapping and synergistic (i.e., mutually supporting). Some basic ‘bundles’ are:

- human rights (individual and collective)
- right to self-determination
- land and territorial rights
- right to development
- environmental integrity rights
- religious freedom
- prior informed consent
- intellectual property rights
- cultural heritage rights
- right to privacy

A summary of these rights ‘bundles’ and some major international agreements in which they are expressed, is set out in Table 2. Some are enshrined in legally-binding international agreements and are theoretically supported and enforceable by international law. Others have no legal basis, but because they come from respected sources and have broad support, may have great influence on political discussions and development of legal instruments. Not all of these are analysed in this book. Readers should also seek other instruments that are relevant to specific regions and countries.

The lack of adequate national and international law on the environment, access and transfer of genetic resources, and protection of traditional knowledge and genetic resources, means that credible non-legal sources with political support can significantly influence the development of sui generis systems. Given the current urgency and demand for such systems, the evolution of law from customary practice and informal sources – which the author considers to be ‘soft law’ – is nebulous, multi-faceted, and rapid.

(b) Soft Law. Whereas treaties take the form of documents signed by governments that agree to be bound by their contents, customary law evolves over time, becoming universally accepted through continuous practice. During this process, the elements that influence, and even catalyse, the evolution of international law are sometimes referred to as ‘soft law’. These elements include, inter alia, declarations of principles, codes of practice, recommendations, guidelines, standards, charters, resolutions, etc., that lack legal status, but enjoy strong political expectations that their provisions will be respected and followed by the international community.

Historically, soft law has been influenced mostly by legal, NGO, and business interests. Traditional Resource Rights, however, must be guided by indigenous, traditional and local peoples, who have their own diverse regimes to regulate access to and control over knowledge and resources.

According to the Four Directions Council (1996), indigenous and traditional systems are frequently more sophisticated than those based on intellectual property rights or national sovereignty:

Indigenous peoples possess their own locally-specific systems of jurisprudence with respect to the classification of different types of knowledge, proper procedures for acquiring and sharing knowledge, and the rights and responsibilities which attach to possessing knowledge, all of which are embedded uniquely in each culture and its language.

The Four Directions Council warns that:

Any attempt to devise uniform guidelines for the recognition and protection of indigenous peoples’ knowledge runs the risk of collapsing this rich jurisprudential diversity into a single ‘model’ that will not fit the values, conceptions or laws of any indigenous society. A better approach would be for the international community to agree that traditional knowledge must be acquired and used in conformity with the customary laws of the peoples concerned.
Thus an important aspect of conservation of cultural diversity is the maintenance of customary law and practice including traditional jurisprudential diversity. A number of international documents and declarations are provided in subsequent Chapters and in the Appendices to emphasise and elucidate this essential point.

(c) Harmonisation. Government representatives in international forums are frequently unaware of commitments made by their nation in other forums. Environment and development issues, for example, are discussed independently of parallel discussions on human rights. Genetic resource access and transfer agreements are negotiated with little or no co-ordination with trade and commerce representatives. Food security and biodiversity conservation are debated at the same time, but in cities on different continents. As a result, most nations find little need to 'harmonise' their many agreements to present a consistent, integrated international position.13 A holistic approach to environment and sustainable development requires that such a harmonisation process take place. The foundation for this process is international human rights principles and law.

Harmonisation is not just desirable, it is necessary. Article 8 (in situ conservation) of the CBD, for example, cannot be successfully implemented without integrating human rights principles. Unless a rights-driven approach is utilised to guarantee equity, the CBD (as well FAO and WTO), will become targets of derision and protest from Indigenous peoples and local communities.

The process should begin with the following steps to be taken (and funded) by governments and the international community:

i) States should conduct inventories of all international legal agreements to which they are parties; this should be followed by a thorough analysis of points of synergy and conflict; a national plan should be developed to transform all conflict into synergy.

ii) States should support the rights of Indigenous peoples and local communities in international law and soft law, for example by:

- signing and ratifying ILO 169 providing minimal recognition of Indigenous rights in international law;
- accepting the present Draft Declaration on the Rights of Indigenous Peoples and ensuring its early adoption by the UN General Assembly.

iii) States should undertake an immediate review of how their human rights commitments can be harmonised with the CBD and GATT to provide equity throughout negotiations on trade, development, and conservation.

iv) States should develop model sui generis systems that respect customary law and practice and indigenous jurisprudence as fundamental elements of national law.

(d) Equitising. Equity is not something granted by words in a convention. The current imbalance of power, access to judicial forums, and economic resources, means that real equity can only be achieved through pro-active efforts by government and non-government organisations to ensure effective participation of indigenous and traditional peoples in all phases of the political and implementing process. These efforts, known as 'Equitising', require that:

- Funding should be provided and support given for adequate and effective participation of indigenous peoples, traditional societies, and local communities in all international forums where issues that affect them are discussed. This same equitising support should be provided at national, regional and local levels.

13 The term 'integration' may be preferable to harmonisation, since the latter is frequently interpreted as reaching the lowest common denominator between instruments. The authors feel that the term 'harmonisation' has a popular meaning of a positive, constructive, and progressive process that would guide States to find the best possible solution to benefit their citizens and conserve biological diversity. There is no objection, however, to use of the term 'integration', if, indeed, such us would be strengthening, rather than weakening, international instruments for protection of biological and cultural diversity.

A high-profile Global Consultation would draw attention to the existence of an investigation process, and annual reviews would maintain publicity. Similarly an Ombudsman's Office would provide a public forum for democratic discussion and evaluation of international and national policies and programs.

The time and costs needed to establish an Ombudsman's Office and Global Consultation may seem long and expensive. But if this is not done now, in ten years time equitable solutions will still not be developed, costing more time and money than these 'equitising' processes would have cost. Furthermore, there will have been another decade of devastation of Indigenous and local communities and their knowledge and resources.

By acknowledging indigenous peoples' rights to control access to traditional resources and territories, TRR-guided negotiations and legal processes can offer opportunities and mechanisms for new partnerships based on increased respect for indigenous peoples and their knowledge. States will also find it easier to implement their international obligations on trade, environment and development, as well as their commitments to human rights covenants.

The remainder of this book is dedicated to providing a brief outline of some of the major international instruments that are felt to be useful in building TRR. It is hoped that by amassing these documents, readers will be convinced that the global community has already made great progress in recognizing the rights of indigenous and traditional peoples. In particular, we hope that the selected agreements, conventions, covenants, and declarations will show how the link between community empowerment and biodiversity conservation is de facto and effective element of global governance. To develop effective sui generis systems, organizations, institutions, and countries will need to undergo their own TRR processes. A diversity of solutions are necessary for a multitude of situations.
Table 2 Traditional Resource Rights

<table>
<thead>
<tr>
<th>Category</th>
<th>Supporting agreements</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Legally binding</td>
</tr>
<tr>
<td>Human rights</td>
<td>ICCESCR, ICCPR, CDW,</td>
</tr>
<tr>
<td></td>
<td>CERD, CC, CRC, NLS</td>
</tr>
<tr>
<td>Right to self-determination</td>
<td>ICCESCR, ICCPR</td>
</tr>
<tr>
<td>Collective rights</td>
<td>ILO169, ICCESCR, ICCPR</td>
</tr>
<tr>
<td>Land and territorial rights</td>
<td>ILO169, NLS</td>
</tr>
<tr>
<td>Right to religious freedom</td>
<td>ICCPR, NLS</td>
</tr>
<tr>
<td>Right to development</td>
<td>ICCESCR, ICCPR, ILO169</td>
</tr>
<tr>
<td>Prior informed consent</td>
<td>CBD, NLS</td>
</tr>
<tr>
<td>Environmental integrity</td>
<td>CBD, CCD</td>
</tr>
<tr>
<td>Intellectual property rights</td>
<td>CBD, GATT, UPOV, WIPO</td>
</tr>
<tr>
<td></td>
<td>NLS</td>
</tr>
<tr>
<td>Neighbouring rights</td>
<td>RC, NLS</td>
</tr>
<tr>
<td>Right to enter into legal agreements</td>
<td>NLS</td>
</tr>
<tr>
<td>cultural and covenants</td>
<td></td>
</tr>
<tr>
<td>Cultural property rights</td>
<td>Unesco-CCP, Unesco-WHC, NLS</td>
</tr>
<tr>
<td>Right to protection of folklore</td>
<td>NLS</td>
</tr>
<tr>
<td>Right to protection of cultural</td>
<td>Unesco-WHC, NLS</td>
</tr>
<tr>
<td>heritage</td>
<td>Unesco-PICC</td>
</tr>
<tr>
<td>Recognition of cultural landscapes</td>
<td>Unesco-WHC</td>
</tr>
<tr>
<td>Recognition of customary law and</td>
<td>CBD, ILO169, NLS</td>
</tr>
<tr>
<td>practice</td>
<td></td>
</tr>
<tr>
<td>Farmers’ rights</td>
<td>FAO-IUPGR</td>
</tr>
</tbody>
</table>

NOTES:
CBD, Convention on Biological Diversity (1992) — 147 states parties as of 1 May 1996.
CCD, UN Convention to Combat Desertification in Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa (1994) — not in force.
Chapter 4
HUMAN RIGHTS AND BIODIVERSITY CONSERVATION

Although UNCED brought biodiversity conservation and human rights together as no international debate had ever done before, human rights agreements have always considered environment as a fundamental consideration for human well-being. The following are some of the principle human rights instruments that form a foundation for harmonising environmental, development, and trade agreements with established principles of human rights (these are also summarised and compared in the Table 2 in Chapter 3).

The Universal Declaration of Human Rights

The Universal Declaration of Human Rights (UDHR) was adopted by the General Assembly of the United Nations on 10 December 1948. It is the theoretical and structural basis for both international conventions and national constitutions and, although it is not legally-binding, is considered to be an international instrument of tremendous political, symbolic and soft law importance.

Article 17 provides that:

1. Everyone has the right to own property alone as well as in association with others [emphasis added]
2. No one shall arbitrarily be deprived of his property.

The right to property is regarded as a civil right and, more specifically, as a ‘physical integrity right’. ‘Physical integrity rights’ concern the right to life, liberty and security of person, and protect individuals from physical violence, slavery and servitude, detention or exile, interference with one’s privacy and right of ownership and restriction of one’s freedom of movement, among other violations (European Commission, 1992).

This article is particularly important because it acknowledges collective, as well as individual, ownership of property. Together with Article 13 of ILO 169 and Article 2.1 of both the ICESCR and the ICCPR (see below), it can be used to build sui generis systems for collective benefit-sharing.

Article 18 maintains that:

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.

This article is relevant for the protection of plants, animals and entire ecosystems that form part of the religious or belief systems of indigenous peoples, traditional societies, and local communities.

Article 23.1 provides that:

Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
Traditional Resource Rights

Article 23.3 states that:

Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

Indigenous peoples could argue on the basis of Article 23 that they be compensated for traditional knowledge and methods because these represent the fruits of generations of labour and innovation. For example, Indigenous peoples could be compensated for sharing their knowledge of particular biological processes such as drying or curing that take time, involve labour and eventually impart medicinal value to a plant that it does not possess in its natural state.

Article 27 states that:

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.

Although Article 27 supports protection of scientific, literary, and artistic property, like the CBD and Agenda 21, such protection for traditional peoples is problematic. Most human rights are individualistic, not collective, and group ownership of knowledge or resources is difficult to establish (see Appendix 1 for the full document).

International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR)

After the adoption of the UDHR, the UN Commission on Human Rights began the process of drafting legally binding instruments. Due to widely differing points of view among states regarding economic, social, cultural and political rights, it was not until 1966 that the UN General Assembly adopted the legally-binding International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR).

Article 1.1 of both the ICESCR and the ICCPR upholds the right of all peoples to self-determination:

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.

Article 1.2 of both covenants similarly supports the right to development:

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.

These articles are instrumental for Indigenous peoples seeking self-determination, since control over use, commercialisation and disposal of resources without "any obligations arising out of international economic cooperation" is de facto self-determination. The UN debate over indigenous self-determination is still symbolically focused on the use of indigenous "people" or "peoples".

The plural ending is taken to imply sovereign rights under international law and practice and is adamantly opposed by governments that fear indigenous peoples within their borders will weaken their national integrity.

Article 3 of the CBD confirms the sovereign rights of States to exploit natural resources. As previously discussed, this creates a conundrum for Indigenous peoples who regard this as a usurpation. Thus the guarantees in ICESCR and ICCPR Article 1 are particularly important to Indigenous peoples who fear that the CBD encourages States to nationalise traditional knowledge, practices, and innovations, as well as genetic materials. These covenants also support the provisions in the UNCED agreements that support local community control over conservation and sustainable use of biological diversity.

Article 7 of the ICESCR recognises the right to just remuneration for work. It is similar to Article 23 of the UDHR. Likewise, Article 15.1(c) provides that States recognise the right 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.

This statement is almost identical to Article 27 of the UDHR. It provides the basis for intellectual, scientific, and cultural property rights protection.

Article 18.1 of the ICCPR provides that "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 (or her) choice, and freedom, either individually or in community with others and in public or private, to manifest his (or her) religion or belief in worship, observance, practice and teaching."

Article 27 states that:

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 other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

Although the Working Group on Indigenous Populations is part of the UN Economic and Social Council's Sub-Commission on Minorities, Indigenous peoples demand a status in the United Nations different from that of minorities.

Since the CBD, and related UNCED documents, clearly recognise the intricate interrelationships of indigenous, traditional and local communities to their environments, then it follows that these basic rights extend to protection of traditional knowledge, innovations, and practices, as well as genetic resources. The ICESCR and ICCPR also support the CBD's call for community-based conservation and mechanisms for benefit sharing.

The International Labour Organization Convention 169

Convention 169 Concerning Indigenous and Tribal Peoples in Independent Countries, commonly known as ILO 169, was adopted in June, 1989, by the Conference of the International Labour Organization.

The seventh paragraph of the Preamble recognises:

the distinctive contributions of indigenous and tribal peoples to the cultural diversity and social and ecological harmony of humankind and to international co-operation and understanding.

This statement is consistent with language from the CBD and CCD.

Article 2.1 affirms that:

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.

4 The Economic and Social Council is one of the five principle organs of the United Nations System. The others are: the International Court of Justice, the General Assembly, the Security Council, the UN Secretariat, and the Trusteeship Council.
Article 2.2(b) provides that such action will include measures for:

- 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 institutions.

Thus, protection of indigenous rights is the responsibility of governments, but only with the cooperation and participation of the Indigenous peoples themselves. Article 2.2(b) specifies that governments should encourage Indigenous peoples’ full enjoyment of their social, economic and cultural rights. While intellectual property or resource rights are not specifically mentioned, control over and protection of intellectual, scientific, and cultural property, including genetic resources and traditional knowledge, are critical aspects of such rights.

Paragraph 1 of Article 4 states that:

- special measures shall be adopted as appropriate for safeguarding the persons, institutions, property, labour, cultures and environment of the peoples concerned.

This provision can be interpreted to include development of sui generis systems of intellectual property and resource rights. Implementation, according to Article 6 of ILO 169, might require governments to develop new legal or administrative measures and to:

- consult the peoples concerned, through appropriate procedures and in particular through their representative institutions.

This implies that mechanisms for protection of and equitable sharing from traditional knowledge and resources require governments to negotiate with Indigenous peoples (Barsh, 1990:219).

Article 5(a) and b) provide that:

- (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.

Social, cultural, religious and spiritual values of Indigenous peoples necessarily include sacred sites, religious objects and artefacts of cultural importance, such as sacred groves, streams, plants, seeds, etc.

Article 7.1 provides that:

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

This Article safeguards Indigenous peoples’ right to set their own development strategies. The qualifier, ‘to the extent possible’, weakens local control and self-determination.

Article 7.3 and 7.4 elaborate upon 7.1, stating:

- Governments shall ensure that, whenever appropriate, studies are carried out, in cooperation with the peoples concerned, to assess the social, spiritual, cultural and environmental impact on them of planned development activities. The results of these studies shall be considered as fundamental criteria for the implementation of these activities; and,
- Governments shall take measures, in co-operation with the peoples concerned, to protect and preserve the environment of the territories they inhabit.

The Convention on Biological Diversity uses similar language in support of research and monitoring activities. Indigenous and local communities insist not only upon their full participation in such activities, but also that their own criteria and research priorities guide such projects. Otherwise, scientific and technical ‘experts’ from the outside will be left to establish fundamental criteria that do not reflect local knowledge and practice. This would be contrary to Article 8 of ILO 169, that requires that:

- in applying national laws and regulations to the peoples concerned, due regard shall be had to their customs or customary laws.

However, this is qualified by providing that:

- these peoples shall have the right to retain their own customs and institutions where these are not incompatible with fundamental rights defined by the national legal system and with internationally recognized human rights.

This does not appear to be a troublesome statement. National laws should not permit Indigenous peoples or anyone else to, for example, torture or murder. But Article 8 could also be used by governments to forcibly remove and exploit a plant or an animal for ‘the greater good of society’ or ‘for national interests’, even though it might be considered sacred by local people.

Article 12 provides that:

- no one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, or to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Indigenous peoples’ privacy is sometimes violated by researchers trespassing on indigenous lands and seeking traditional knowledge or access to plants and herbs located there (Shelton, 1995). If Indigenous peoples can prove that their territory was entered unlawfully and their materials or knowledge taken through fraud, force or coercion, the resulting claim of an invasion of privacy could deny the offenders use of the materials in question.

Article 13.1 states that:

- 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.

This is a significant article because it recognises values of ‘special importance’, including those of spiritual and cultural character in relation to their lands or territories. By extension, this would also apply to natural resources associated with those lands and territories. The article explicitly recognises the collective and spiritual aspects of Indigenous cultural resources and is unique in international agreements. Collective rights are fundamental to Indigenous societies and are central to the formulation of any sui generis system of rights (Posey, 1994:4b).

Article 15.1 provides that:

- 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.

Although Indigenous peoples’ resource rights are specially protected, no definite mechanisms are provided. Likewise, Indigenous peoples are given the right to participate in managing their own resources, although ‘participation’ is usually defined by governments. However, the ILO 169, taken together with the CBD, CCD, ICSER, and ICCPR, provides strong language to support full and effective participation. This includes community control over decision-making, conservation, use, and management of resources. Together these are known as ‘Development Rights’ and provide a strong basis in international law and practice to oppose States that would deprive Indigenous.
traditional and local communities of their full participation and decision-making powers (see Appendix 2 for the full text).

The Draft Declaration on the Rights of Indigenous Peoples

A final version of the Draft Declaration on the Rights for Indigenous Peoples was agreed upon by members of the United Nations Working Group on Indigenous Populations at its 11th session in 1993. Because of its broad and long consultation process with indigenous leaders, the DDRIP is considered the most complete and representative statement of principles and demands for indigenous rights. It has become the standard international document upon which negotiations and discussions — whether UN, governmental, or non-governmental — about indigenous peoples are based.

Box 1

Some Principal Rights Affirmed by the Draft Declaration on the Rights of Indigenous Peoples

- Right to self-determination, representation and full participation.
- Recognition of existing treaty arrangements with indigenous peoples.
- Right to determine own citizenry and obligations of citizenship.
- Right to collective, as well as individual, human rights.
- Right to live in freedom, peace, and security without military intervention or involvement.
- Right to religious freedoms and protection of sacred sites and objects, including ecosystems, plants, and animals.
- Right to reparation and redress for cultural, intellectual, religious or spiritual property that is taken or used without authorisation.
- Right to free and informed consent (prior informed consent).
- Right to control access and exercise ownership over plants, animals and minerals vital to their cultures.
- Right to own, develop, control and use the lands and territories, including the total environment of the lands, air, waters, coastal seas, sea-ice, flora and fauna and other resources which they have traditionally owned or otherwise occupied or used.
- 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.
- Right to just and fair compensation for any such activities that have adverse environmental, economic, social, cultural or spiritual impact.

Although the Draft Declaration is only a draft document and already is meeting formidable opposition from UN Member States, it is a laudable and eloquent statement that holds broad support from some governments, many NGOs and nearly all indigenous and traditional peoples. It has increasingly argued that even if ECOSOC and the UN General Assembly weaken the Declaration, it already enjoys considerable influence. It will undoubtedly remain a historic and fundamental element in negotiations in all future discussions, and any sui generis system to protect indigenous peoples, traditional societies, and local communities will necessarily use the Draft Declaration as a basic legal foundation (see Box 7).

The Draft Declaration begins with a series of affirmations that link indigenous peoples and cultural diversity with conservation of resources and sustainable and equitable development. Preservation of and respect for this diversity depends upon equality amongst all peoples and societies, including the right to development and control over land, territories, and resources. The ICESCR and ICHR are specifically referred to as legally-binding human rights instruments that support the Draft Declaration.

The text of the preamble reads:

**Affirming** that indigenous peoples are equal in dignity and rights to all other peoples, while recognizing the right of all peoples to be different, to consider themselves different, and to be respected as such.

**Affirming also** that all peoples contribute to the diversity and richness of civilisations and cultures, which constitute the common heritage of humankind.

**Affirming further** that all doctrines, policies and practices based on or advocating superiority of peoples or individuals on the basis of national origin, racial, religious, ethnic or cultural differences are racist, scientifically false, legally invalid, morally condemnable and socially unjust.

**Reaffirming also** that indigenous peoples, in the exercise of their rights, should be free from discrimination of any kind.

**Concerned** that indigenous peoples have been deprived of their human rights and fundamental freedoms, resulting, inter alia, in their colonisation and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests.

**Recognising** the urgent need to respect and promote the inherent rights and characteristics of indigenous peoples, especially their rights to their lands, territories and resources, which derive from their political, economic and social structures, and from their cultures, spiritual traditions, histories and philosophies.

**Welcoming** the fact that indigenous peoples are organizing themselves for political, economic, social and cultural enhancement and in order to bring an end to all forms of discrimination and oppression wherever they occur.

**Convinced** that control by indigenous peoples over developments affecting them and their lands, territories and resources will enable them to maintain and strengthen their institutions, cultures and traditions, and to promote their development in accordance with their aspirations and needs.

**Recognising also** that respect for indigenous knowledge, cultures and traditional practices contributes to sustainable and equitable development and proper management of the environment.

**Emphasising** the need for demilitarisation of the lands and territories of indigenous peoples, which will contribute to peace, economic and social progress and development, understanding and friendly relations among the nations and peoples of the world.

**Recognising in particular** the right of indigenous families and communities to retain shared responsibility for the upbringing, training, education and well-being of their children.

**Recognising also** that indigenous peoples have the right freely to determine their relationships with States in a spirit of coexistence, mutual benefit and full respect.

**Considering** that treaties, agreements and other arrangements between States and indigenous peoples are properly matters of international concern and responsibility.

**Acknowledging** that the Charter of the United Nations, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights affirm the fundamental importance of the right of self-determination of all peoples, by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development.
Bearing in mind that nothing in this Declaration may be used to deny any peoples their right of self-determination.

Encouraging States to comply with and effectively implement all international instruments, in particular those related to human rights, as they apply to indigenous peoples, in consultation and cooperation with the peoples concerned.

Emphasising that the United Nations has an important and continuing role to play in promoting and protecting the rights of indigenous peoples.

Believing that this Declaration is a further important step forward for the recognition, promotion, and protection of the rights and freedoms of indigenous peoples and in the development of relevant activities of the United Nations system in this field.

The Draft Declaration then elaborates in 9 Parts a series of Articles.

Part I states clearly the unified indigenous call for self-determination and the right to enjoy the rights guaranteed to all human beings. Full rights of participation, representation, and nationality are emphasised. It is important to emphasise that indigenous peoples do not, and never have, asked for special rights or privileges - they merely seek the basic human rights they feel have been systematically denied to them by Nation States.

The language of Part I reads:

1. Indigenous peoples have the right to the full and effective enjoyment of all human rights and fundamental freedoms recognised in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law.

2. Indigenous individuals and peoples are free and equal to other individuals and peoples in dignity and rights, and have the right to be free from any kind of adverse discrimination, in particular that based on their indigenous origin or identity.

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.

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.

5. Every indigenous individual has the right to a nationality.

Part II emphasises collective rights as distinct peoples possessing lands, territories, and natural resources. Assertion of collective rights does not imply loss of individual rights as guaranteed by all international human rights agreements. This section emphasises that governments do not have the right to forcibly remove indigenous peoples from their lands, nor force their integration with other cultures or ways of life. It calls upon governments to respect the Fourth Geneva Convention (1949), that protects indigenous peoples from forced service in military operations.

The text reads:

6. Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and to full guarantees against genocide or any other act of violence, including the removal of indigenous children from their families and communities under any pretext. In addition, they have the individual rights to life, physical and mental integrity, liberty and security of person.

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.

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

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 this right.

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

11. Indigenous peoples have the right to special protection and security in periods of armed conflict. States shall observe international standards, in particular the Fourth Geneva Convention of 1949, for the protection of civilian populations in circumstances of emergency and armed conflict, and shall not:

(a) Recruit indigenous individuals against their will into the armed forces and, in particular, for use against other indigenous peoples;

(b) Recruit indigenous children into the armed forces under any circumstances;

(c) Force indigenous individuals to abandon their lands, territories or means of subsistence, or relocate them in special centres for military purposes;

(d) Force indigenous individuals to work for military purposes under any discriminatory purposes.

PART III calls upon States to take "effective measures, in conjunction with the indigenous peoples concerned" to protect sacred places, as well as maintain and protect archaeological sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature. The right to restitution of cultural, intellectual, religious and spiritual property is also asserted. The right to transmit culture, knowledge and tradition is also affirmed.

The text for Part III reads:

12. Indigenous peoples have the right to practice and revitalise 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.

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.

14. Indigenous peoples have the right to revitalise, use, develop and transmit to future generation 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 any other appropriate means.

PART IV affirms indigenous rights to education in their own languages, utilising their own media and 'manner appropriate to their cultural methods of teaching and learning'. It asserts the obligation of States to eliminate prejudice and discrimination against indigenous peoples in all places, including at work and in schools.

The text for Part IV reads:

15. Indigenous children have the right to all levels and forms of education of the State. All indigenous peoples also have this right and the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning. Indigenous children living outside their communities have the right to be provided access to education in their own culture and language. States shall take effective measures to provide appropriate resources for these purposes.

16. Indigenous peoples have the right to have the dignity and diversity of their cultures, traditions, histories and aspirations appropriately reflected in all forms of education and public information. States shall take effective measure, in consultation with the indigenous peoples concerned, to eliminate prejudice and discrimination and to promote tolerance, understanding and good relations among indigenous peoples and all segments of society.

17. Indigenous peoples have the right to establish their own media in their own languages. They also have the right to equal access to all forms of non-indigenous media. States shall take effective measures to ensure that State-owned media duly reflect indigenous cultural diversity.

18. Indigenous peoples have the right to enjoy fully all rights established under international labour law and national labour legislation. Indigenous peoples have the right not to be subjected to any discriminatory conditions of labour, employment or salary.

PART V affirms the right to prior informed consent and full participation on their own terms. It calls for the respect and strengthening of local decision-making institutions that utilise local criteria and procedures. The right to traditional livelihoods, medicines and health practices is also asserted.

The text for Part V reads:

19. Indigenous peoples have the right to participate fully, if they so choose, at all levels of decision-making in matters which may affect their rights, lives and destinies through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

20. Indigenous peoples have the right to participate fully, if they so choose, through procedures determined by them, in devising legislative or administrative measures that may affect them. States shall obtain the free and informed consent of the peoples concerned before adopting and implementing such measures.

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 systems 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.

22. Indigenous peoples have the right to special measures for the immediate, effective and continuing improvement of their economic and social conditions, including in the areas of employment, vocational training and retraining, housing, sanitation, health and social security. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and disabled persons.

23. Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to determine and develop all health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.

24. Indigenous peoples have the right to their traditional medicine 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.

PART VI emphasises the responsibilities of the current generation to future generations. It exerts the right to "conservation, restoration and protection of the total environment and the productive capacity of their lands, territories and resources." This section again opposes military activities and prohibits the storage of hazardous materials on indigenous lands and territories. States are called upon to provide monitoring programmes, secure restitution for damaged or confiscated land and resources, and provide just and fair compensation for development, utilisation or exploitation of indigenous resources. Article 29 states that indigenous peoples are entitled to full ownership, control and protection of their cultural and intellectual property.

The full text for Part VI reads:

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

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

27. Indigenous peoples have the right to the restitution of the lands, territories and resources which they have traditionally owned or otherwise occupied or used; and which have been confiscated, occupied, used or damaged without their free and informed consent. Where this is not possible, they have the right to just and fair compensation. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status.

28. Indigenous peoples have the right to the conservation, restoration and protection of the total environment and the productive capacity of their lands, territories and resources, as well as to assistance for this purpose from States and through international cooperation. Military activities shall not take place in the lands and territories of indigenous peoples, unless otherwise freely agreed upon by the peoples concerned. States shall take effective measures to ensure that no storage of hazardous materials shall take place in the lands and territories of indigenous peoples. States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented.

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.

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

PART VII asserts the rights of indigenous peoples to define their own citizenship and responsibilities of citizens. It also calls for maintenance of social and cultural integrity of indigenous peoples divided by international borders and respect for international treaties signed with indigenous nations. These latter two points especially are opposed by some States that feel such demands threaten State sovereignty.

The text of Part VII reads:

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.

32. Indigenous peoples have the collective right to determine their own citizenship in accordance with their customs and traditions. Indigenous citizenship does not impair the right of indigenous individuals to obtain citizenship of the States in which they live.

33. Indigenous peoples have the right to determine the structures and to select the membership of their institutions in accordance with their own procedures.

34. Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive juridical customs, traditions, procedures and practices, in accordance with internationally recognised human rights standards.

35. Indigenous peoples, in particular those divided by international borders, have the right to maintain and develop contacts, relations and cooperation, including activities for spiritual, cultural, political, economic and social purposes, with other peoples across borders. States shall take effective measures to ensure the exercise and implementation of this right.

36. Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors, according to their original spirit and intent, and to have States honour and respect such treaties, agreements and other constructive arrangements. Conflicts and disputes which cannot otherwise be settled should be submitted to competent international bodies agreed to by all parties concerned.

PART VIII calls on States to enact legislation that will implement the Declaration. It also calls upon the United Nations and all of its agencies and organisations to 'contribute to the full realisation of the provisions' of the Declaration. Significantly, it specifically calls for the creation of a body at the highest level that will have 'special competence' in indigenous issues as provided in the Declaration.

The text of Part VIII reads:

37. States shall take effective and appropriate measures, in consultation with the indigenous peoples concerned, to give full effect to the provisions of this Declaration. The rights recognised herein shall be adopted and included in national legislation in such a manner that indigenous peoples can avail themselves of such rights in practice.

38. Indigenous peoples have the right to have access to adequate financial and technical assistance, from States and through international cooperation, to pursue freely their political, economic, social, cultural and spiritual development and for the enjoyment of the rights and freedoms recognised in this Declaration.

39. Indigenous peoples have the right to have access to and prompt decision through mutually acceptable and fair procedures for the resolution of conflicts and disputes with States, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision should take into consideration the customs, traditions, rules and legal systems of the indigenous peoples concerned.

40. The organs and specialised agencies of the United Nations system and other intergovernmental organisations shall contribute to the full realisation of the provisions of this Declaration through the mobilisation, inter alia, of financial cooperation and technical assistance. Ways and means of ensuring participation of indigenous peoples on issues affecting them shall be established.

41. The United Nations shall take the necessary steps to ensure the implementation of this Declaration including the creation of a body at the highest level with special competence in this field and with the direct participation of indigenous peoples. All United Nations bodies shall promote respect for and full application of the provisions of this Declaration.

PART IX emphasises that the Draft Declaration is a statement of minimum standards that apply equally to men and women. It declares that all of the articles of the Declaration are in harmony with the Charter of the United Nations. It reads:

42. The rights recognised herein constitute the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world.

43. All the rights and freedoms recognised herein are equally guaranteed to male and female indigenous individuals.

44. Nothing in this Declaration may be construed as diminishing or extinguishing existing or future rights indigenous peoples may have or acquire.

45. Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations.
Draft Declaration of Principles on Human Rights and the Environment


Box 2

Major Principles from the Draft Declaration of Principles on Human Rights and the Environment

- Ecological security, sustainable development, and peace are inseparable;
- A healthy environment and freedom from pollution are basic rights;
- All persons have the right to effective participation in decision-making;
- All persons have the right to benefit equitably from conservation and sustainable development;
- Individual and collective rights are guaranteed;
- Preservation of unique sites of cultural significance is a basic right;
- All persons have the right to remedies and redress for ecological damage; and
- Access to information, environmental, and human rights education is a fundamental right.

The text consists of a Preamble and 5 Parts, which are included in their entirety:

Preamble:

Guided by the United Nations Charter, the Universal Declaration of Human Rights, the International Covenant on Economic, Social, and Cultural Rights, the International Covenant on Civil and Political Rights, the Vienna Declaration and Programme of Action of the World Conference on Human Rights, and other relevant international human rights instruments


Guided also by the Declaration on the Right to Development, which recognises that the right to development is an essential human right and that the human person is the central subject of development,

Guided further by fundamental principles of international humanitarian law,

Reaffirming the universality, indivisibility and interdependence of all human rights,

Recognising that sustainable development links the right to development and the right to a secure health and ecologically sound environment,

Recalling the right of peoples to self-determination by virtue of which they have the right freely to determine their political status and to pursue their economic, social and cultural development,

Deeply concerned by the severe human rights consequences of environmental harm caused by poverty, structural adjustment and debt programmes and by international trade and intellectual property regimes,

Convinced that the potential irreversibility of environmental harm gives rise to special responsibility prevent such harm,

Concerned that human rights violations lead to environmental degradation and that environmental degradation leads to human rights violations.

Part I

1. Human rights, an ecologically sound environment, sustainable development, and peace are interdependent and indivisible.
2. All persons have the right to a secure, healthy and ecologically sound environment. This right and other human rights, including civil, cultural, economic, political and social rights, are universal, interdependent and indivisible.
3. All persons shall be free from any form of discrimination in regard to actions and decisions that affect the environment.
4. All persons have the right to an environment adequate to meet equitably the needs of present generations and that does not impair the rights of future generations to meet equitably their needs.

Part II

5. All persons have the right to freedom from pollution, environmental degradation and activities that adversely affect the environment, threaten life, health, livelihood, wellbeing or sustainable development within, across or outside national boundaries.
6. All persons have the right to protection and preservation of the air, soil, water, sea-ice, flora and fauna, and the essential processes and areas necessary to maintain biological diversity and ecosystems.
7. All persons have the right to the highest attainable standard of health free from environmental harm.
8. All persons have the right to safe and healthy food and water adequate to their well-being.
9. All persons have the right to a safe and healthy working environment.
10. All persons have the right to adequate housing, land tenure and living conditions in a secure, healthy and ecologically sound environment.
11. All persons have the right not to be evicted from their homes and for the purpose of, or as a consequence of, decisions or actions affecting the environment, except in emergencies or due a compelling purpose benefiting society as a whole and not attainable by other means.
12. All persons have the right to participate effectively in decisions and to negotiate concerning their eviction and the right, if evicted, to timely and adequate restitution, compensation and/or appropriate and sufficient accommodation and or land.
13. All persons have the right to timely assistance in the event of natural or technological or other human-caused catastrophes.

Everyone has the right to benefit equitably from the conservation and sustainable use of nature and natural resources for cultural, ecological, educational, health, livelihood, recreational, spiritual or other purposes. This includes ecologically sound access to nature.

Everyone has the right to preservation of unique sites, consistent with the fundamental rights of persons or groups living in the area.

14. Indigenous peoples have the right to control their lands, territories and natural resources and to maintain their traditional way of life. This includes the right to security in the enjoyment of their means of subsistence.

Indigenous peoples have the right to protection against any action or course of conduct that may result in the destruction or degradation of their territories, including land, air, water, sea-ice, wildlife or other resources.
Part III

15. All persons have the right to information concerning the environment. This includes information, however compiled, on actions and courses of conduct that may affect the environment and information necessary to enable effective public participation in environmental decision-making. The information shall be timely, clear, understandable and available without undue financial burden to the applicant.

16. All persons have the right to hold and express opinions' and to disseminate ideas and information regarding the environment.

17. All persons have the right to environmental and human rights education.

18. All persons have the right to active, free, and meaningful participation in planning and decision making activities and processes that may have an impact on the environment and development. This includes the right to a prior assessment of the environmental, developmental and human rights consequences of proposed actions.

19. All persons have the right to associate freely and peacefully with others for purposes of protecting the environment or the rights of persons affected by environmental harm.

20. All persons have the right to effective remedies and redress in administrative or judicial proceedings for environmental harm or the threat of such harm.

Part IV

21. All persons, individually and in association with others, have a duty to protect and preserve the environment.

22. All States shall respect and ensure the right to a secure, healthy and ecologically sound environment. Accordingly, they shall adopt the administrative, legislative and other measures necessary to effectively implement the rights in this Declaration. These measures shall aim at the prevention of environmental harm, at the provision of adequate remedies, and at the sustainable use of natural resources and shall include, inter alia,
   - collection and dissemination of information concerning the environment;
   - prior assessment and control, licensing, regulation or prohibition of activities and substances potentially harmful to the environment;
   - public participation in environmental decision-making;
   - effective administrative and judicial remedies and redress for environmental harm and the threat of such harm;
   - monitoring, management and equitable sharing of natural resources;
   - measures aimed at ensuring that transnational corporations, wherever they operate, carry out their duties of environmental protection, sustainable development and respect of human rights; and
   - measures aimed at ensuring that the international organisations and agencies to which they belong observe the rights and duties in this Declaration.

23. States and all other parties shall avoid using the environment as a means of war or inflicting significant, long-term or widespread harm on the environment; and shall respect international law providing protection for the environment in of armed conflict and cooperate in its further development.

24. All international organisations and agencies shall observe the rights and duties in this Declaration.

Part V

25. In implementing the rights and duties in this Declaration, attention shall be given to vulnerable persons and groups.

26. The rights in this Declaration may be subject only to restrictions provided by law and which are necessary to protect public order, health and the fundamental rights and freedoms of others.

27. All persons are entitled to a social and international order in which the rights in this Declaration can be fully realised.
Chapter 5
ENVIRONMENT AND DEVELOPMENT RIGHTS

Advances in the harmonisation of human rights with development and environment rights gained vital impetus from the 1992 United Nations Conference on Environment and Development (UNCED). The Conference not only resulted in a number of key international agreements, both binding and non-binding, but influenced significantly all subsequent negotiations, such as the Convention to Combat Desertification (CCD), as well as non-binding agreements based upon intergovernmental and NGO collaboration.

The Rio Declaration

The 1992 Rio Declaration on Environment and Development (commonly known just as 'the Rio Declaration') is a statement of non-legally binding principles. Principle 1 of the Rio Declaration establishes the priority of human concerns in sustainable development. Principle 2 states the rights of States with regard to natural resources, but points to the international responsibilities that sovereign States have to each other:

States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.

Principle 3 introduces the theme of 'equitable sharing', not only in present generations, but between present and future generations. This Principle is already an integral part of most indigenous cultures, and this is therefore a major harmonious point of articulation.

Principle 10 provides some important conditions and options for Indigenous peoples. It states:

Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.

Participation by 'concerned citizens' presumes action at the individual level, rather than the community level. Indigenous peoples, however, have had to struggle for recognition of their rights as communities and groups, where most decisions are made and participation begins.

Principle 15 recognises the precautionary principle. It reads:

In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.
Given that in Principle 1 humans are of primary concern, this implies not only that actions which could be detrimental to human societies should be avoided, but also that lack of scientific evidence of detrimental effects should not be used to justify projects known or suspected by the local communities to be environmentally deleterious.

Environmental Impact Assessments (EIAs) are provided for in Principle 17:

Environmental impact assessment, as a national instrument, shall be undertaken for proposed activities that are likely to have a significant adverse impact on the environment and are subject to a decision of a competent national authority.

It can be argued that to be consistent with Principle 22 (below), EIA should include the participation of local communities and incorporate community criteria in the evaluation. In other words, studies must be understood to include social and cultural impacts as well as environmental ones.

Principle 22 is the pivotal section on Indigenous peoples:

Indigenous people and their communities have a vital role in environmental management and development because of their knowledge and traditional practices. States should recognise and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development.

This is historic language in the United Nations context: not only is the ‘vital role’ of Indigenous peoples in environment and development acknowledged, but States accept the principle that Indigenous peoples have identities, cultures and interests which should be recognised and supported. Furthermore, the language of ‘effective participation’ in sustainable development supports the attempts by Indigenous peoples to secure control over their own lands, territories, and resources.

Because Indigenous communities around the world are more likely to be operating under siege conditions than in idyllic splendour as they are frequently depicted, Principle 23 of the Rio Declaration is especially relevant:

The environment and natural resources of people under oppression, domination and occupation shall be protected.

---

**Box 3: Relevant Principles of the Rio Declaration**

Principle 1 Establishes human concerns as critical to sustainable development.

Principle 2 Establishes rights and responsibilities of States vis a vis natural resources.

Principle 3 Provides for ‘equitable sharing’ between nation states for present and future generations.

Principal 10 Ensures citizen participation in decision-making; provides for access to information; calls for judicial and administrative redress and remedy.

Principle 15 Establishes the Precautionary Principle.

Principle 17 Calls for Environmental Impact Assessment.

Principle 22 Pivotal section on Indigenous peoples: recognises vital role of indigenous communities and calls for state recognition and support.

Principle 23 Calls for special protection of the environment and natural resources of peoples under oppression, domination and occupation.

---

Often environmental degradation and natural resource devastation are the direct result of domination and occupation by outsiders of indigenous, traditional and local communities. Given the vital role of Indigenous peoples in environmental management it is important that special political and financial support be provided for Indigenous peoples who suffer from these extreme conditions (see Appendix 3 for the full text).

**Convention on Biological Diversity**

The Convention on Biological Diversity begins with a general statement of principles (the Preamble), Paragraph 10, states:

_the fundamental requirement for the conservation of biological diversity is the in-situ conservation of ecosystems and natural habitats and the maintenance and recovery of viable populations of species in their natural surroundings._

Indigenous peoples are widely recognised as playing an important role in _in situ_ conservation as they have often sustainably managed for thousands of years the natural resources of fragile, biologically rich ecosystems such as rainforests, mountains, coastlines, and savannas. This is specifically noted in paragraph 12, which recognises the:

close and traditional dependence of many Indigenous and local communities embodying traditional lifestyles on biological resources, and the desirability of sharing equitably benefits arising from the use of traditional knowledge, innovations and practices relevant to the conservation of biological diversity and the sustainable use of its components.

This is the most direct reference in the CBD to equitable benefit sharing with Indigenous peoples, although some interpret the word ‘desirability’ to weaken the aspiration. No specified criteria or mechanisms to guarantee benefit sharing are provided, leaving this task to those who implement the Convention.

**Article 1: Objectives**

Objectives of the Convention, as stated in Article 1 are:

_the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilisation of genetic resources, including by appropriate access to genetic resources and by appropriate transfer of relevant technologies, taking into account all rights over those resources and technologies, and by appropriate funding._

Here the reference to equitable sharing is explicit, but it is not clear whether this refers only to the Parties (short for Contracting Parties, which are nation states that ratify the CBD), or to individuals or communities as well. National legislation will undoubtedly vary in terms of the extent to which individuals and communities are included as beneficiaries.

It is important to note that ‘relevant technologies’ include ‘indigenous and traditional technologies’ (in reference to the language in Article 18.4; see below). These are not defined, but the term appears to refer to those technologies relevant for the conservation and sustainable use of biological diversity which are based upon ‘knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles’ (in reference to language used in Article 8(j); see below). According to this interpretation, the ‘knowledge, innovations and practices of indigenous and local communities and ‘indigenous and traditional technologies’ become subject to the rights and obligations found in the section of the Convention dealing with access to and transfer of technology (Article 16).

**Article 2: Definitions**

Article 2 provides basic definitions of key terms used in the CBD (see Box 5). The definition of ‘biological resources’ is significant because of the wording ‘...with actual or potential use or value
for humanity'. From the Indigenous peoples' perspective, this include a huge range of living things, since most indigenous and traditional communities use an extraordinarily high percentage of species in their environments. This can be interpreted to mean that where the CBD refers to 'resources', then biological resources used by Indigenous peoples should be entitled to the same levels of IPR protection afforded to industrially modified biological resources.

The definition of 'domesticated or cultivated species' has significant implications for Indigenous peoples as well. Most traditional peoples rely extensively upon hunted, collected, or gathered foods and resources which are overlooked or undervalued by non-indigenous people who tend to assume that many of them are 'wild'. On the contrary, a significant portion of these are 'semi-domesticates' or 'semi-wild species' (Posey, 1994a) that are influenced by humans and form vast treasuries of useful species that provide food and health security for local communities. This broader definition emphasis the link between traditional ecological knowledge and biodiversity conservation.

It is very significant that 'in situ conservation' includes the proviso that domesticated or cultivated species should be conserved 'in the surroundings where they have developed their distinctive properties'. Since plants and animals are intricately linked to indigenous societies, then in situ conservation means support for and empowerment of indigenous and local communities to manage and conserve their biodiversity in their own unique cultural traditions.
Indigenous peoples will have to consider carefully the appropriateness of information to be included in these surveys. Once information is included in the inventories, communities lose control over access (Possey and Dutfield, 1996; Possey, Dutfield and Plenderleith, 1995).

Paragraph (b) provides for a monitoring mechanism to include areas under special threat or of special importance to biodiversity conservation. Monitoring should be done with the full participation of local communities, and utilizing their own criteria for evaluation of degradation, change, or economic potential. Indigenous perceptions of environmental change have rarely been taken seriously, nor local criteria for definition of ecosystems and their useful components. Development of these local criteria are, however, fundamental to the successful implementation of Paragraph (b).

Paragraph (c) calls for monitoring of ‘processes and categories of activities which have or are likely to have significant adverse impacts on the conservation and sustainable use of biological diversity’. Indigenous communities might be considered as ‘Indicator Cultures’, who are the first to sense change in their ecosystems. Thus, 7(c) can be most effectively implemented with the full participation of local communities and using their criteria for evaluating change, threats, trends, and processes.

Paragraph (d) provides that data from identification and monitoring activities be maintained and organised. Indigenous peoples can benefit from data banks that codify, classify, analyse information in their own language and in ways useful to their own use. However, much of the ‘data’ referred to in Paragraph (d) would undoubtedly be collected in a Western scientific paradigm and open for further use and exploitation.55 Use of information in databases once it has been accessed is notoriously difficult to control.

**Article 8: In situ Conservation**

Paragraph (a) calls for the establishment of ‘a system of protected areas or areas where special measures need to be taken to conserve biological diversity’. Indigenous communities are recognised for their contribution to biodiversity conservation and sustainable development, and given that their societies and ecosystems are heavily threatened, Paragraph (a) should be interpreted as a call to enhance land and territorial security of Indigenous peoples. It may be worthwhile to consider the potential of IUCN protected area category Vii: ‘Managed resources protected areas’, which enable protected area status to be conferred on areas which provide sustainable flows of goods and services (such as forest products) to indigenous communities (J. Sutherland, pers. comm., 1996).

Paragraph (b) provides that guidelines should be developed for the ‘selection, establishment and management of protected areas’. Indigenous peoples should not only be involved in the preparation of these guidelines, but that their own criteria play a significant part in selection of areas for protection. These would undoubtedly include the prior informed consent, full participation and decision-making provisions afforded in the Rio Declaration (Principle 10). Paragraphs (c,d,e,f,l,k,l) all have to do with regulation, management, protection, rehabilitation, and restoration of ecosystems. The same full participation, prior informed consent, and decision-making provisions are applicable here.

Paragraph (g,h) deal with biosecurity issues, including the control of alien species and modified organisms produced by biotechnology. Indigenous peoples should take special note of these sections, since the vulnerability of their lands and communities make them especially susceptible to the effects of alien and genetically modified organisms. Discussions on a Biosafety Protocol are currently underway. Indigenous and local communities are often the first to detect, and be affected by, changes to ecosystems; therefore, their concerns, priorities and criteria should be central to any protocol.

**Article 8(j): Indigenous peoples and in situ conservation**

Article 8(j) states that each Contracting Party (nation state) shall:

Subject to its national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote the wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilisation of such knowledge, innovations and practices.

In summary Article 8(j) commits States to:

- respect, preserve and maintain indigenous and local communities and their knowledge, innovations and practices;
- promote the wider use and application of such knowledge, innovations and practices with the involvement and approval of the indigenous and local communities concerned; and
- share equitably the benefits resulting from use and application of such knowledge, innovations, and practices.

**RECOMMENDATIONS: IMPLEMENTATION OF ARTICLE 8(j)**

The call in Paragraph (m) for financial and other support is important in terms of the implementation of the provisions of 8(j), and should be carefully considered by Indigenous peoples. Independent of separate provisions in Agenda 21, indigenous leaders and organisations should consider developing an Action Plan of their own based upon this Article. They might consider:

- indigenous land demarcation and guarantees of security
- support for indigenous-based and designed conservation and sustainable development efforts
- research centres to develop strategies and models to apply traditional technologies in a larger context
- support for and strengthening of indigenous organisations, including local, regional, national and international indigenous alliances, councils, federations, unions, etc.
- development of enforceable international legal structures to guide new mechanisms for protection of and equitable sharing of benefits from indigenous and traditional knowledge, innovations, and practices.

Glowka et al. (1994) note that the use of the word ‘traditional’ implies that those communities considered not to embody traditional lifestyles are excluded from the CBD. In an analysis of the use of ‘traditional’, the Programme for Traditional Resource Rights66 identified two distinct understandings of the word:

---

55 When the knowledge of a traditional community is published, it immediately falls into the public domain, so that it can be used by anybody, including companies that find the knowledge useful and valuable to their R and D programmes. Even though the book or research report was dependent on information provided freely by indigenous people, it is copyrightable by the researcher/writer, publishing company or sponsor of the research (for further information, see, D. A. Possey & G. Dutfield, Beyond Intellectual Property IDRC Press, 1996).

66 For further information, contact the Working Group on Traditional Resource Rights, the Oxford Centre for the Environment, Ethics & Society, Mansfield College, The University of Oxford, Oxford OX1 3TP, U.K.
(1) Tradition is assumed to be tied to the past, resistant to change, and therefore an unpromising source of solutions for new problems. This usage could imply exclusion from benefit-sharing arrangements to those no longer considered sufficiently 'traditional' or who are assumed to be unable or unwilling to adapt to changing conditions without outside guidance.

(2) Tradition is seen as a filter through which innovation occurs. Pereira and Gupta (1993) refer to this as a 'tradition of invention' that encourages 'traditional innovators' in local communities.

For Article 8(j) to become effective, the innovative, adaptive, and dynamic nature of traditional knowledge will have to be recognised, encouraged, and protected. This should not exclude any local communities, since it can be argued that local ecological knowledge is important in all locations and is constantly adapting to changing ecological conditions.

Article 9: Ex-situ Conservation

Article 9 covers 'the conservation of components of biological diversity outside their natural habitats', meaning in germplasm and seed banks, botanical gardens, museums, laboratories, and other institutions. Collections made before the Convention came into effect are not affected (see the Crucible Group, 1994; Yusuf, 1995). This Article calls for national laws to govern collections, as well as to establish and maintain facilities for research, conservation, storage, and management of ex-situ collections. Indigenous peoples should participate in the creation of such laws to ensure that they continue to have access to materials collected from their lands and territories even when these are held ex-situ.17

Article 10: Sustainable Use of Components of Biological Diversity

Article 10(c) provides that each Contracting Party shall:

- protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements.

Indigenous peoples seek accommodation for their customary laws and practices within national law, but insist that each group should be allowed to determine its own criteria for 'compatibility with conservation and sustainable use'. Without this basic guarantee, indigenous and local communities are subject to external criteria from environment and development 'experts' who are likely not to understand local conditions or details of local ecological knowledge and practice.

Paragraph (d) states that Contracting Parties shall:

- support local populations to develop and implement remedial action in degraded areas where biological diversity has been reduced.

Both the CBD and Agenda 21 stress restoration and remedial action in degraded areas. Funding priorities should reflect this emphasis by focusing on restoration and revitalisation projects. In the absence of a clear idea of what is meant by 'support', Indigenous peoples should be proactive and formulate their own projects on their territories, utilising their own conservation and management models as the basis for such projects.

Paragraph (e) calls for the encouragement of cooperation between governments and the private sector in 'developing methods for sustainable use of biological resources'. Given the rising interest by the private sector in traditional resources and 'bioprospecting', and their exploitative record to date, it behoves indigenous groups to establish codes of ethics and standards for business practices that can guide relationships between corporations and local communities.

Article 13: Incentive Measures, Research and Training, and Public Education and Awareness

Article 11 calls for 'economically and socially sound measures' that act as incentives to effect conservation and sustainable use of components of biological diversity. Parties are also required to establish research, training, public education and awareness programmes. These articles can be used by Indigenous peoples in ways that strengthen their own research agendas. Emphasis should be given to collaborative research and community-controlled research. Collaborative research is scientific research in which local communities are treated as expert collaborators. True collaborative research is non-exploitative and addresses issues of IPR, privacy, confidentiality, and prior informed consent. Community-controlled research is research with or without the involvement of outsiders. Where involved, their work is supervised by community members, and all data are the property of the community. Information enters the public domain only at the discretion of the community.18

Article 12 provides that research on biological diversity should be in accordance with recommendations by a Subsidiary Body on Scientific, Technical, and Technological Advice (SBSTTA). Its role is to advise the Conference of the Parties and other Subsidiary Bodies that might be created. (See section on Article 25).

Indigenous peoples can seek support, financial and otherwise, to establish their own programmes for scientific and technical education and training in 'measures for the identification, conservation, and sustainable use of biological diversity' (cf. Article 12(e)). Likewise, they should seek financial and technical support for their own media projects as provided for in Article 13(a).

Article 14: Impact Assessment and Minimising Adverse Impacts

Section 1(a) calls for the Parties to:

- introduce appropriate procedures requiring environmental impact assessment of its proposed project that are likely to have significant adverse effects on biological diversity with a view to avoiding or minimising such effects, and where appropriate, allow for public participation in such procedures.

Effective implementation of this article depends upon effective local participation in projects that affect indigenous, traditional, or local communities. Environmental Impact Assessments (EIAs) themselves should include not only local guidance and full participation, but also local criteria and mechanisms for assessment. A critical part of the EIA procedures must include Prior informed consent (see Box 2, Article 8 and 15, and Principle 10 of the Rio Declaration), meaning that local communities must be provided with all relevant information regarding the project, including background, technical surveys and feasibility studies, and already existing assessments of the projects in question. Furthermore, EIAs must be made available to indigenous communities, as provided for under the access to information provisions of the Rio Declaration (Principle 10).

Article 14.2 is of primary importance because it calls for the COP to consider liability and redress, including restoration and compensation for damage to biological diversity. Unfortunately this article subjugates 'purely internal matters' to governments. This, in effect, leaves States to be solely responsible for liability and compensation issues related to damage to biodiversity. There is growing concern by governments, peoples and non-governmental organisations, however, that international mechanisms be established with legal authority and jurisdiction to deal with 'liability and redress' as well as direct 'restoration and compensation'.

17 Material Transfer Agreements (MTAs) are common forms of contract governing the details of access and use of biological materials in ex-situ collections. It has been suggested that MTAs are already effective tools for Indigenous Peoples to utilize to impose their cultural stipulations for use of traditional resources (Lester, 1994; see Posey and Dutfield, 1996).

18 For greater detail, see Posey and Dutfield's, Beyond Intellectual Property, IDRC Canada, 1996.
Article 15: Access to Genetic Resources

Article 15 reaffirms the sovereign rights of States over their natural resources, including the authority to 'determine access to genetic resources' (15.1). Article 15.2 calls on Contracting Parties to facilitate access to genetic resources for environmentally sound uses by other Contracting Parties. Article 15.4 provides for 'mutually agreed terms' for such access, whereas 15.5 establishes the principle of prior informed consent (see Box 5) prior to access. Research and development benefits are called for in Article 15.6 to be shared in 'a fair and equitable way', in part, through financial mechanisms established in Articles 20 and 21.

Box 5

What is Prior Informed Consent?

Prior Informed Consent, although not clearly defined, is a concept that exists in international law. For example, two international legally binding documents use the concept: the 1989 Convention on the Control of Transboundary Movement of Hazardous Wastes and Their Disposal and the Convention on Biological Diversity (CBD). Article 15, clause 5 of the CBD states: 'Access to genetic resources shall be subject to prior informed consent of the Contracting Party providing such resources, unless otherwise determined by that Party.' The IUCN guide to the CBD (Glokwa et al, 1994, p. 105), describes prior informed consent as:

1. Consent of the Contracting Party which is the genetic resource provider,
2. Based on information provided by the potential genetic resource user,
3. Prior to consent for access being granted.

According to the above IUCN Guide, the PIC requirement gives a Contracting Party the authority to require a potential genetic resource user – whether another Party or, for example, a collector or a company in the private sector – not only to gain its authorisation before accessing genetic resources within its jurisdiction, but also to require the potential user to outline the implications of access by, among other things, specifying how and by whom the genetic resources will be subsequently used. This information, or lack of information, may be important for the provider to decide whether, and on which terms, to grant access.

Implementation will probably require national legislation in both the country providing and the country using genetic resources. Will this require users of genetic resources on the lands of Indigenous peoples to obtain the prior informed consent of the local communities? This will certainly depend on national law.
Article 18: Technical and Scientific Cooperation

Article 18.2, calls for the promotion of cooperation to develop and strengthen ‘national capabilities, by means of human resources development and institutional building’. Article 18.3, specifically calls for the establishment of a Clearing-House Mechanism to ‘promote and facilitate technical and scientific cooperation’.

- Developing and strengthening national capabilities, through human resource development and institution building;
- Facilitating the transfer of technologies, in accordance with Article 16;
- Promoting the establishment of joint research programmes and joint ventures for the development of technologies relevant to the objectives of the Convention.

RECOMMENDATIONS: CLEARING HOUSE MECHANISMS

A Clearing-House Mechanism is currently being established by the Conference of the Parties. The CHM could develop a central base with many satellites, including community-controlled research and training centres developed in partnership with indigenous and traditional peoples. Additional Clearing-House Mechanisms can include such things as indigenous designed and maintained databases, monitoring, and conservation centres, which should be afforded funding priorities under the financial mechanisms established by the CBD (Articles 20 and 21). Ethical and legal guidelines governing access to and use of information are essential to ensure that CHMs do not serve to accelerate the piracy of Indigenous peoples’ knowledge and resources.

Where indigenous knowledge and technologies are involved, CHMs should:

- involve indigenous participation in all phases of conceptualisation, implementation and maintenance;
- establish priorities and guidelines developed by communities embodying traditional livelihoods;
- create community-controlled regional clearing-houses; and
- adopt secure intellectual property rights agreements to ensure protection and compensation for information transfer.

Article 18.4 provides that:

the Contracting Parties shall, in accordance with national legislation and policies, encourage and develop methods of cooperation for the development and use of technologies, including traditional and indigenous technologies.

This paragraph, referred to earlier, supports the argument for treating traditional and indigenous technologies like all other ‘technologies’ that are relevant to the Convention. Therefore all technologies with a role to play in the conservation of biodiversity, whether indigenous or western, should be afforded equal status and subject to the technology transfer provisions of Article 16 that ensure protection of the rights of knowledge holders.

Articles 20-21: Financial Resources and Financial Mechanism

Articles 20 and 21 call for ‘new and additional financial resources’ from developed countries to enable developing country Parties to meet the agreed full incremental costs to them of implementing measures which fulfil the obligations of this Convention...’ (also refer to the discussion on Article 15, as well as Articles 16, 18 and 39). The financial mechanism for providing financial resources to developing countries is to operate under the authority of the Conference of the Parties.

It is essential that all projects and programmes financed through this mechanism that impact on Indigenous peoples conform to guidelines requiring participation of Indigenous peoples and local communities and conceding to them decision-making powers including the right of veto. Prior informed consent is again a powerful and highly relevant concept, since it requires full disclosure of all relevant information and implies that consent, if given, should come prior to access to any genetic resources on indigenous land or territory. These guarantees are central for implementation of Traditional Resource Rights.

Article 22: Relationship with Other International Conventions

Article 22.1 states that:

the provisions of this Convention shall not affect the rights and obligations of any Contracting Party deriving from any existing international agreement, except where the exercise of those rights and obligations would cause a serious damage or threat to biological diversity.

This raises the important matter of whether the CBD should take priority over other agreements which have implications for biodiversity, such as the Trade-Related Aspects of Intellectual Property Rights (TRIPS) annex of the 1994 GATT. There is a strong argument that the CBD should take precedence over every TRIPS provision with clear environmental implications.

Article 23: Conference of the Parties

Article 23 establishes the Conference of the Parties consisting of all States that ratify the Convention. The Conference of the Parties (COP), which is to meet at regular intervals, has full authority to review implementation of the Convention and to consider and adopt measures to develop further the CBD. To perform these tasks the COP may consider establishing subsidiary bodies to provide scientific, technical and technological advice in areas where such advice is felt to be needed. The COP can also consider and adopt amendments to the Convention and protocols.

In addition to the existing SBSTTA, a special ‘Subsidiary Body on Indigenous and Traditional Scientific, Technical and Technological Advice’ could be established to advise the COP on all aspects of in situ conservation and sustainable development as it relates to indigenous and traditional technologies, knowledge, innovations and practices.

According to N. Trask of the Indigenous Women’s Network (pers. comm., 1994): ‘the term ‘technology’ is western, but traditional cultures had sophisticated technologies’. She argues also that the term ‘technology’ in Article 16 should be defined or qualified so that it is clear that Indigenous innovations and practices are ‘technologies’.

IPR for Indigenous peoples is not explicitly provided for in existing international instruments such as the Universal Declaration on Human Rights and International Labour Organization (ILO) Convention 169. However, the language of these international documents is not inconsistent with the CBD provisions on benefit sharing or with the objectives and principles of the CBD as a whole. The Draft Declaration on the Rights of Indigenous Peoples, which contains quite strong language protecting Indigenous resources, supports the CBD’s call for community-based support, protection, and maintenance of traditional technologies through IPR protection.
Article 24: Secretariat

Article 24 establishes the CBD Secretariat. The main functions of the Secretariat are to arrange for and service meetings of the COP, to prepare reports on matters relating to the Convention for consideration by the COP, and to coordinate with other international bodies such as the Secretariats of other Conventions. From time to time international bodies may request the COP to provide advice on their activities relating to conservation of biological diversity. The COP may request the Secretariat to solicit advice from other international bodies. To implement the functions of the Secretariat as defined in sections la-(e) of Article 24, it would be beneficial to include indigenous and traditional people as permanent members and staff of the Secretariat.

Article 25: Subsidiary Body on Scientific, Technical and Technological Advice

Article 25 gives details about the Subsidiary Body on Scientific, Technical, and Technological Advice (SBSTTA), which is to serve as an advisory body to the Conference of the Parties. The SBSTTA is open to participation by all Parties and shall be multidisciplinary. The Conference of the Parties is to provide guidelines and establish the authority of the SBSTTA. The CBD outlines its functions as providing:

(a) "scientific and technical assessments of the status of biodiversity" (24.2(a));
(b) assessments of measures taken in the implementation of the CBD (24.2(b));
(c) identification of "innovative, efficient and state-of-the-art technologies and know-how", while "promoting development and/or transferring such technologies" (24.2(c));
(d) advice on international cooperation in research and development (24.2(d));
(e) responses to technical, technological and methodological questions that arise.

The Subsidiary Body on Scientific, Technical and Technological Advice should be well represented by indigenous and traditional peoples. Since knowledge, innovations and practices of local communities embodying traditional lifestyles are highlighted elsewhere (e.g., Articles 8(k) and 18.4) as being relevant to conservation and sustainable use of biological diversity, then the Subsidiary Body should give research into and application of traditional technologies a central focus of highest priority. SBSTTA should also give priority to the establishment of indigenous criteria for evaluation, assessment, monitoring and advising. It should be instrumental in identifying traditional technologies, knowledge, innovations and practices in state-of-the-art applications in wider contexts. It should also encourage collaborative research efforts with Indigenous peoples and foster community-controlled research controlled by local communities. To facilitate international cooperation, it should develop guidelines and propose model legislation to develop adequate intellectual property rights (IPR) and traditional resource rights (TRR) at national and international levels. Finally, it should propose guidelines for the establishment of monitoring and enforcement institutions and mechanisms to ensure protection of and benefit-sharing from the use of knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles.

The first annual meeting of the SBSTTA took place from 4 to 8 September 1995 in Paris (see below). There was negligible indigenous participation in the meeting, although informally there was some discussion at COP2 about a special SBSTTA for traditional technologies.

RECOMMENDATIONS:
SUBSIDIARY BODY ON SCIENTIFIC, TECHNICAL AND TECHNOLOGICAL ADVICE

The Subsidiary Body on Scientific, Technical, and Technological Advice should:

- include a fair representation of scientific and technical specialists from indigenous, traditional, and local communities;
- identify relevant traditional technologies, innovations and practices.
In line with the request in Resolution 3 to the FAO to ensure that the Global System is consistent with and supportive of the CBD, the CPGR at its Fifth Session in 1993 considered the issue of *ex situ* collections existing prior to the entry into force of the CBD and offered the following possible interpretations of the situation:

- 'that these genetic resources were outside the Convention, and, since most of them were collected on the general understanding that CPGR were the heritage of mankind, these resources should continue to be freely available, with a global compensatory mechanism';
- 'that these genetic resources were outside the Convention, and therefore that the host country could legislate on ownership and conditions of access';
- 'that, since Parties to the Convention can provide only those genetic resources originating in their own countries, or acquired under the terms of the Convention, that the permission of the country of origin is required for the release of genetic resources from pre-existing collections. It was noted, however, that in many cases countries of origin cannot be identified, and that the collections are widely dispersed.'

It was agreed that these interpretations need further discussion. The Commission also agreed that these issues will be discussed as part of the negotiations to revise the IUPGR (see Box 6). The Farmers' Rights issues are covered below (see Appendix 4 for the full text of the CBD).

**Box 6**

**The FAO Global System for the Conservation and Sustainable Use of Plant Genetic Resources for Food and Agriculture**

Since 1993 the UN Food and Agriculture Organization (FAO) has been developing its Global System, the objectives of which are:

To ensure the safe conservation and promote the unrestricted availability and sustainable utilisation of plant genetic resources for present and future generations, by providing a flexible framework for sharing the benefits and burdens.

The Global System consists of three institutional components (UNEP, 1995):

1. The Commission for Plant Genetic Resources (CPGR), an intergovernmental forum which discusses matters relating to plant genetic resources.
2. The International Undertaking on Plant Genetic Resources (IUPGR), a non-legally-binding agreement intended originally to ensure the unrestricted collection, conservation and use of plant genetic resources for food and agriculture for plant breeding and scientific purposes.
3. The International Fund for Plant Genetic Resources, an inter-financial mechanism.

As well as the CPGR, the IUPGR and the fund, the Global System consists of two other elements (Pitersius, 1995):

- **Network systems**, including the World Information and Early Warning System on Plant Genetic Resources; a network of *ex situ* gene banks; and a network of *in situ* and on-farm conservation areas.

**Agenda 21**

Agenda 21 is a comprehensive programme for action in international environmental policy agreed upon by governments at UNCED. It is a non-legally binding statement of priorities in the areas of sustainable development, environmental management and conservation and, as such, represents an important political commitment on the part of the international community to implement an effective environmental policy for the next millennium. Agenda 21 reflects an unprecedented global environmental consensus, commitment and cooperation in identifying practical strategies for solving difficult problems. It has a preamble and 40 chapters, each with four sections: basis for action, objectives, activities, and means of implementation.

**Box 7**

**Useful guides to Agenda 21**


Agenda 21 has been described as possibly the most far-reaching and voluminous example of international soft law ever to be attempted. It may provide a 'moral if not legal force [that] may subsequently serve to underpin both national actions and subsequent, possibly more stringent, international agreements in specific areas' (Johnson, 1993). The following sections examine chapters of Agenda 21 which refer directly to the rights of indigenous, traditional, and communities, paying special attention to Chapter 26 specifically on indigenous issues.

**Chapter 3: Sustainable Livelihoods**

Chapter 3 deals with 'enabling the poor to achieve sustainable livelihoods':

—an effective strategy for tackling the problems of poverty, development and environment simultaneously should begin by focusing on resources, production and people and should cover... the role of youth and Indigenous people and local communities.

Empowering communities is seen as an essential part of alleviating global poverty. Consequently, governments, in cooperation with appropriate international and non-governmental organisations, should support a community-driven approach to sustainability, which would include, _inter alia:_

- Respecting the cultural integrity and the rights of Indigenous people and their communities (paragraph A, item b); and
- Giving communities a large measure of participation in the sustainable management and protection of the local natural resources in order to enhance their productive capacity' (paragraph A, item d).

**Chapter 6: Health and Environment**

Chapter 6 sets out to:

- support initiatives for self-management of services by vulnerable groups (item a.viii);
- integrate traditional knowledge and experience into national health systems, as appropriate (item a.ii).
Traditional Resource Rights

- conduct environmental health research...on ways to increase coverage and ensure greater utilisation of services by peripheral, underserved and vulnerable populations... (item b.i) and
- conduct research into traditional knowledge of prevention and curative health practices (item b.iii).

Statements (a,viii) and (b.i) encourage governments to give local communities more autonomy and more opportunities for increased access to services, including health care. However, no mention is made regarding benefit-sharing with local communities for the use of their traditional medicinal knowledge. Only in Chapters 15, 16 and 26 does Agenda 21 explicitly call for the sharing of economic and commercial benefits derived from traditional knowledge with local communities.

A fifth principal aim of Chapter 6 is (C) ‘Protecting vulnerable groups’:

In addition to meeting basic health needs, specific emphasis has to be given to protecting and educating vulnerable groups, particularly infants, youth, women, indigenous peoples and the very poor, as a prerequisite for sustainable development...

Although indigenous communities are very diverse, they tend to suffer the same problems: disproportionate unemployment, lack of housing, poverty, inadequate diets, and poor health. Governments themselves are frequently responsible for these sub-standard conditions that threaten environments. Thus, providing basic health care needs of indigenous communities is central to sustainability.

Chapter 6 also calls upon governments to:
- strengthen, through resources and self-management, preventative and curative health services’ (item d, i), and
- integrate traditional knowledge and experience into health systems’ (item d, ii).

Guidelines and mechanisms for implementing these provisions should be developed through the leadership of Indigenous peoples, who best know the specific needs of their communities. Indigenous communities may even be able to benefit economically from sharing aspects of their own traditional medical systems, provided adequate mechanisms are available for protection and compensation.

Chapter 10: Managing Land Resources

When the Indigenous Peoples’ Preparatory Committee for the UN Commission on Sustainable Development met in April 1995, they felt that Chapter 10, together with Chapter 26, best reflect indigenous concerns (Henriksen, 1996). Chapter 10 deals with ‘integrated approaches’ to the planning and management of land resources, stating that:

protected areas, private property rights, the rights of indigenous people and their communities... should be taken into account.

‘Taking into account’ presumably means (item d) to create mechanisms to facilitate the active involvement and participation of all concerned, particularly communities and people at the local level, in decision-making on land use and management...

Chapter 10(a) deals with ‘Management-related activities’ and calls upon governments to:

develop policies that encourage sustainable land use and management of land resources and take the land resource base, demographic issues and the interests of the local population into account (item A.6).

This provision should prevent government-sanctioned extraction, logging, mining, ranching, farming and other projects not sanctioned by local communities. Indigenous peoples have always insisted that they need full decision-making power over projects that affect the well-being of their communities including the right of veto.

Chapter 10 (B.d) also provides that management systems for land and natural resources include ‘appropriate traditional and indigenous methods’. Indigenous peoples can establish their own technical guidelines and economic conditions to utilise their traditional methods, where necessary – and at their own choosing – in conjunction with non-indigenous land management systems.

Similarly, paragraph E, in collaboration with international, regional and national NGOs, calls for the establishment of:

- innovative procedures, programmes, projects and services that facilitate and encourage active participation of those affected in the decision-making and implementation process, especially of groups that have, hitherto, often been excluded, such as women, youth, indigenous people and their communities and other local communities.

The reference to indigenous women is especially significant, since indigenous peoples themselves are increasingly concerned about the lack of recognition of women in traditional natural resource use and management.

Chapter 11: Combating Deforestation

Chapter 11 states that:

More effective measures and approaches are often required at the national level to improve and harmonize participation of the general public, especially women and indigenous peoples.

Under ‘Management-related activities’, Chapter 11(b) prioritises the promotion of:

- participation of the private sector, labour unions, rural cooperatives, local communities, indigenous people...in forest-related activities, and access to information and training programmes within the national context;

and in 11(g) calls for:

- establishing and strengthening capabilities for research...[inter alia] on the sustainable management of forests, research on biodiversity, on the effects of air-borne pollutants, on traditional uses of forest resources by local populations and indigenous peoples, and on improving market returns and other non-market values from the management of forests.

Likewise, in Paragraph B, on ‘Enhancing the protection, sustainable management and conservation of all forests’, governments are encouraged to pursue forest conservation with the participation of local community groups and Indigenous people (among other actors). Specifically, governments should undertake:

- supportive measures to ensure sustainable utilisation of biological resources and conservation of biological diversity and the traditional forest habitats of indigenous people, forest dwellers and local communities (item b);

and should launch or improve:

- opportunities for all people, including youth, women, indigenous people and local communities in the formulation, development and implementation of forest-related programmes and other activities, taking due account of the local needs and cultural values (item i).

Paragraph C, on ‘Promoting...the full valuation of the goods and services provided by forests...’, recommends that governments, with the support of Indigenous peoples and other actors undertake development and conservation activities that take advantage of the vast economic and biodiversity potential of forest resources. Thus, governments should call upon Indigenous peoples to help implement environmentally sound methods of forest harvesting; encourage better, more efficient
use of forests; and promote the production, marketing and use of sustainably-harvested non-timber forest products among other priorities.

**Chapters 12 and 13: Fragile Ecosystems**

Chapters 12 and 13 deal with managing fragile ecosystems such as mountains, while also combating desertification and drought. Local communities are acknowledged as playing important roles in combating desertification and drought. Specifically, Chapter 12 directs governments to undertake management-related activities that:

- create or strengthen village associations focused on economic activities of common pastoral interest (item C.4); and
- develop infrastructure, as well as local production and marketing capacity, by involving the local people to promote alternative livelihood systems and alleviate poverty (item C.4); and
- support local communities in their own efforts in combating desertification, and to draw on the knowledge and experience of the populations concerned, ensuring the full participation of women and indigenous populations (item F.4).

Furthermore, governments are encouraged to:

- develop training programmes to increase the level of education and participation of people, particularly women and indigenous groups, through, inter alia, literacy and the development of technical skills (items E.4); and
- taking into account the need for full participation of women, including indigenous people and local communities, in development (item B.4).

Thus, given that local communities and indigenous peoples care for many of the fragile and endangered ecosystems of the planet, Chapters 12 and 13 are significant to support their conservation efforts.

**Chapter 14: Sustainable Agriculture**

Chapter 14 calls for the promotion of sustainable agriculture and rural development that ensures people's participation and human resource development. The aims are:

- to promote greater public awareness of the role of people's participation and people's organisations, especially women's groups, youth, indigenous people and people under occupation, local communities and small farmers, in sustainable agriculture and rural development (Objectives, item a); and
- to ensure equitable access of rural people, particularly women, small farmers, landless and indigenous people and people under occupation, to land, water and forest resources and to technologies, financing, marketing, processing and distribution (Objectives, item b).

Under 'management-related activities', governments should:

- review and refocus existing measures to achieve wider access to land, water and forest resources and ensure equal rights of women and other disadvantaged groups, with particular emphasis on rural populations, indigenous people, people under occupation and local communities (item b).

In paragraph C, on 'improving farm production and farming systems', governments are encouraged to:

- facilitate the transfer of environmentally sound technologies for integrated production and farming systems, including indigenous technologies and the sustainable use of biological and ecological processes (Objectives, item b).

These sections relate Agenda 21 to the genetic resource conservation concerns of FAO. Chapter 14 is especially important in guiding discussions on Farmers' Rights.

**Chapter 15: Conservation of Biological Diversity**

Chapter 15 urges governments to take into consideration Indigenous peoples and their communities while pressing for global adherence to the Convention on Biological Diversity and developing national strategies for biodiversity conservation. More specifically, it calls on governments:

- to take appropriate measures for the fair and equitable sharing of benefits derived from research and development and use of biological and genetic resources, including biotechnology, between the sources of those resources and those who use them (Objectives, item d); and
- to recognise and foster the traditional methods and the knowledge of indigenous people and their communities, emphasising the particular role of women, relevant to the conservation of biological diversity and the sustainable use of biological resources, and ensure the opportunity for the participation of those groups in the economic and commercial benefits derived from the use of such traditional methods and knowledge (Objectives, item g).

Item d is similar to statements made in the Twelfth Preambular Paragraph and Article 8(j) of the CBD in its call for 'fair and equitable sharing' of benefits with Indigenous peoples. It is the right and responsibility of Indigenous peoples to determine what form of benefit-sharing is fair and appropriate.

Item g acknowledges the value of Indigenous peoples' know-how for the promotion and preservation of biodiversity. It parallels Principle 22 of the Rio Declaration, the Twelfth Preambular Paragraph and Article 8(j) of the CBD, and Chapter 16(a.vi) as described below.

In the sub-section on 'management-related activities' governments are directed to pursue various initiatives 'with the support of indigenous people and their communities'. These include activities which:

- encourage the conservation of biological diversity and the sustainable use of biological resources, including the promotion of sustainable production systems, such as traditional methods of agriculture, agroforestry, range and wildlife management, which use, maintain or increase biodiversity (item d); and
- take action to protect and promote the wider application of the knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles for the conservation of biological diversity and the sustainable use of biological resources (item e); and
- undertake long-term research into the importance of biodiversity for the functioning of ecosystems in producing goods, environmental services and other values supporting sustainable development. The work should be undertaken with the widest possible participation, especially with indigenous people and their communities, including women (item f).

These three statements prioritise indigenous participation in biodiversity conservation, including their role in research and sustainable development.

**Chapter 16: Environmentally Sound Management of Biotechnology**

Chapter 16 provides for environmentally sound management of biotechnology and recommends 'enabling mechanisms' for:

- recognising and fostering the traditional methods and the knowledge of indigenous people and their communities and ensuring the opportunity for their participation in the economic and commercial benefits arising from developments in biotechnology.
Although not explicitly stated, the biotechnology reference is certainly to developments from the use and application of indigenous genetic resources as well as traditional ecological knowledge.

Chapter 18: Freshwater Resources

Chapter 18 deals with the protection of the quality and supply of freshwater resources through: projects and programmes that are both economically efficient and socially appropriate within clearly defined strategies, based on an approach of full public participation, including that of women, youth, indigenous people, local communities, in water management policy-making and decision-making (item c).

Items 18 (d.e and f) in the 'management-related activities' are noteworthy because they encourage the participation of Indigenous peoples and local communities in developing conservation projects that will affect them.

Chapter 26: Recognising And Strengthening The Role Of Indigenous People And Their Communities

The only Chapter of Agenda 21 that is solely devoted to Indigenous peoples is Chapter 26. It recognises that Indigenous peoples have a special historical relationship to their lands which include not only official territories, but also the environments they have traditionally occupied. It notes that Indigenous peoples comprise a significant portion of the world's population, but that they have historically been marginalised in the development process because of external discrimination, geographical isolation, poverty, lack of education and other factors.

Chapter 26 refers to Indigenous peoples' 'holistic traditional scientific knowledge of their lands, natural resources and environment' and encourages governments to pursue sustainable development initiatives that 'accommodate, promote and strengthen the role of Indigenous people and their communities.' Three main objectives in the overall aim of strengthening indigenous communities are:

First, 'in full partnership with Indigenous people and their communities', Agenda 21 calls for the establishment of a process to empower Indigenous peoples which includes such measures as:

(a) developing national policies or laws;
(b) protecting Indigenous peoples from environmentally unsound policies;
(c) recognising traditional dependence on renewable resources and ecosystems;
(d) developing national dispute-resolution mechanisms;
(e) supporting alternative environmentally sound means of production; and (f) enhancing capacity-building for indigenous peoples, based on the adaptation and exchange of traditional experience, knowledge and resource-management practices.

Second, Chapter 26 calls for, 'where appropriate', arrangements to strengthen the active participation of Indigenous people and their communities in the national formulation of policies, laws and programmes relating to resource management and other development processes that may affect them, and their initiation of proposals for such policies and programmes (Objectives, item b).

By encouraging States to ensure that new laws and policies relating to resource management and development are formulated in partnership with Indigenous peoples, there are new opportunities to influence key decision-making and legislative processes from which Indigenous peoples are normally excluded.

Third, Chapter 26 makes a call to involve:

Indigenous people and their communities at the national and local levels in resource management and conservation strategies and other relevant programmes established to support and review sustainable development strategies (Objectives, item c).

Provisions throughout Agenda 21 call for 'involvement' or 'participation' of Indigenous peoples in development initiatives. This could be construed as cooperating, collaborating, or consulting with them. Indigenous peoples insist these terms guarantee prior informed consent and the right of veto projects they do not approve. This is consistent with Chapter 13, as well as Articles 7, 8 and 16 of the CBD.

The Activities sub-section of Chapter 26 proposes measures for 'greater control over their [indigenous] lands, self-management of their resources, participation in development decisions affecting them, including, where appropriate, participation in the establishment or management of protected areas'.

In particular, governments are encouraged to:

- adopt or strengthen appropriate policies and/or legal instruments that will protect Indigenous intellectual and cultural property and the right to preserve customary administrative systems and practices (Activities, item b).

In the Activities section, governments and international organisations are also called upon to draw on the 'active participation of Indigenous people and their communities, as appropriate,' and to 'take the following measures, inter alia, to incorporate their values, views and knowledge, including the unique contribution of Indigenous women, in resource management and other policies and programmes that may affect them'. These measures include, among others, appointing Indigenous people to key positions in relevant international organisations that assist governments in incorporating Indigenous peoples into the design and operation of programs that affect them.

Under this procedure,

Indigenous people and their communities should be informed and consulted and allowed to participate in national decision-making ... In addition, these policies and programmes should take fully into account strategies based on local indigenous initiatives (Activities, part 2, item a).

This section requires that Indigenous peoples be informed, consulted and allowed to participate in national policy-making, and recommends that, where applicable, indigenous methods and strategies should be applied. It is a step in the right direction, since Indigenous and local communities have historically been marginalised or excluded from development initiatives. This clause also calls upon development programs to draw as much as possible upon local knowledge to minimise social, economic and environmental disruption.

Chapter 26 goes on to propose measures that:

Contribute to the endeavours of Indigenous people and their communities in resource management and conservation strategies (Activities, part 2, item d).

and, finally, initiatives that:

- strengthen research and education programmes aimed at achieving a better understanding of Indigenous people's knowledge and management experience related to the environment, and applying this to contemporary development challenges (Activities, part 2, item c); and

Chapter 26 also recognises Indigenous Peoples' 'values, traditional knowledge and resource management practices with a view to promoting environmentally sound and sustainable development' (Objectives, item a ii). This correlates with Article 8(j) of the CBD, Principle 12 of the Rio Declaration, and Chapters 15 and 16 in Agenda 21.
or strengthen national arrangements with indigenous people and their communities with a view to reflecting their needs and incorporating their values and traditional and other knowledge and practices in national policies and programmes in the field of natural resource management and conservation and other development programmes affecting them (Activities, part 3, item a).

These sections emphasise the relevance and value of indigenous knowledge to current development initiatives.

Item 3(a) reiterates statements in Item 2(a) by encouraging governments to improve relations and channels of communication with indigenous communities with the aim of developing policies that better meet local community needs; and apply indigenous know-how to national development, conservation and resource management projects. As with item (a), part 2, this statement is significant because of the practical developmental, environmental and commercial value it confers on indigenous knowledge by acknowledging its potential benefit to development and conservation efforts beyond the local community level (see Appendix for the full text of Chapters 21 and 26).

RECOMMENDATIONS:
AGENDA 21 CHAPTER 26

Chapter 26 of Agenda 21 provides strong soft law support for Traditional Resource Rights. For example, Indigenous peoples can use Agenda 21 to support development and implementation of financial, legal, social and political mechanisms, procedures or projects that strengthen their involvement in and control over land management. Indigenous peoples can propose, as with health care, the establishment of those mechanisms - cooperative banks and lending institutions, inter-community decision-making bodies, legal aid, business training programmes, etc. - which will best serve their communities and increase their ability to manage their land autonomously and effectively.

The phrases 'greater control over their lands' and 'self-management of their resources' in Chapter 26 encompass the protection of human rights as well as other rights such as intellectual property rights. Item b is critical because it acknowledges the need for programmatic support and legal protection of indigenous peoples' intellectual property rights. Indigenous peoples can refer to this recommendation and insist that if these objectives are to be achieved, local communities need to have access to laws, policies, procedures or protocols that protect their rights to control what is done with their tangible and intangible cultural and intellectual resources. These constitute the effective implementation of the CBD and put Traditional Resource Rights into practice.

Chapter 35: Assessment of Trends

Chapter 35 provides for assessment of current trends in developmental and environmental issues: on the basis of the best available scientific knowledge in order to develop alternative strategies, including indigenous approaches, for the different scales of time and space required for long-term policy formulation (Paragraph C, Objectives).

While this statement is rather vague, it does acknowledge the value of traditional methods and know-how to the body of current scientific knowledge.

Chapter 36: Education

Chapter 36 promotes education, public awareness and training through 'Reorienting education towards sustainable development'. In Paragraph B, the United Nations is called upon to:

- increase their interaction with and include, as appropriate, indigenous people in the management, planning and development of their local environment, and should promote dissemination of traditional and socially learned knowledge through means based on local customs, especially in rural areas (Activities, item i).

This statement calls on governments and the UN to:

1. increase the participation, management, planning and development of indigenous peoples in activities that affect their communities and environments; and,

2. encourage the dissemination of traditional knowledge while actively developing mechanisms to acknowledge, protect, and benefit the sources of that information.

Local, regional and national initiatives are now underway around the globe to implement the principles and provisions of Agenda 21. International discussions continue through the Commission on Sustainable Development (see Chapter 7). Increasing interest in and support of Agenda 21 as a major soft law document to support community participation and indigenous rights is important. Its language provides ample opportunities to advance the conservation of biological and cultural conservation through enhancement of local communities and recognition of the unique and central role of traditional and indigenous peoples in in situ conservation.

The Forest Principles

To many people the lack of any legally binding document to protect the world's forests was one of the great disappointments of UNCED. The resulting 'Non-Legally Binding Authoritative Statement of Principles', known generally as 'The Forest Principles' has been described (Johnston, 1993) as a 'document which has no discernible structure or internal logic'. This may be true, but in many ways, the Statement reveals more clearly than any other the underlying economic and political forces that moulded UNCED.

Sovereign rights over all forest resources are of primary concern as shown in Principle 1(a):

States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources;

and 2(a):

States have the sovereign and inalienable right to utilise, manage and develop their forests in accordance with their development needs and level of socio-economic development and on the basis of national policies consistent with sustainable development and legislation, including the conversion of such areas for other uses within the overall socio-economic development plan and based on national land-use policies.

This allows States to exert their 'sovereign and inalienable right' to utilise or convert forest areas in accordance with perceived developmental needs. Given that national policies often fail to give adequate consideration to local rights, needs or concerns, indigenous, traditional and local communities, may find this principle disturbing.
Box 8
Summary of Relevant Sections of the Statement on Forest Principles

Preamble
Paragraph (a): States have the right to socio-economic development on a sustainable basis.
Paragraph (c): Forestry issues are holistic and traditional uses are relevant to development potential.
Paragraph (f): Forests are to be conserved because of their value to local communities and the environment as a whole.

Principles/Elements
Principle 1(a): States have sovereign rights to exploit resources.
Principle 1(b): Forests are for multiple products and services, including wildlife habitats, landscape diversity, carbon sinks and reservoirs, for present and future generations; spiritual needs are recognised.
Principle 2(a): States have inalienable right to determine socio-economic development through the conversion of forest areas.
Principle 2(d): Local participation in forest policy is essential.
Principle 5(a): Supports indigenous and community, including cultural, economic and tenurial rights.
Principle 7(a): Eradication of poverty is a principal aim of forestry conservation.
Principle 7(b): Financial resources for conservation efforts that stimulate economic and social substitution activities.
Principle 8(a): Efforts should be made to 'green the world'.
Principle 8(c): International financial and technical cooperation, including private sector assistance.
Principle 8(g): Countries control access to all biogenic resources, but profits are to be shared.
Principle 8(h): National policies are needed to ensure Environmental Impact Assessments.
Principle 9(b): Economic options are necessary for local communities.
Principle 10: Financial resources to develop forest resources.
Principle 12(a): Scientific research should include forest inventories and assessments to assist in development of non-wood products.
Principle 12(d): Institutional and financial support for indigenous and local communities to increase conservation and development capacities.

Multiple Use of Forests - Traditional Uses and Sovereign Rights
Principle 1(b) lists the needs for multiple uses of forests:
These needs are for forest products and services, such as wood and wood products, water, food, fodder, medicine, fuel, shelter, employment, recreation, habitats for wildlife, landscape diversity, carbon sinks and reservoirs, and for other forest products.

On the one hand, recognition of multiple forest uses is a great advance over seeing forests as merely timber reserves or empty lands for development. On the other hand, global concerns, such as serving as 'carbon sinks' and 'reservoirs', could threaten local communities if they are asked to give up their lands for global concerns. Just as indigenous communities are removed to make way for national parks, they may even find themselves expelled from their traditional territories so that forests can be planted to offset global warming.

Principle 8(a) provides that 'efforts should be undertaken towards the greening of the world'. Similarly 8(b) calls to 'maintain and increase forest cover'. Although these Principles may be sound from an ecological perspective, they could justly policies that infringe the rights of indigenous peoples and forest dwellers unless local control over these forests is guaranteed. One of the greatest threats to indigenous peoples today is seeing 'green labels' being put on repackaged mega-development projects that continue to marginalise, weaken, and dispossess local communities.

Likewise, Principle 1(b), together with the Sovereignty Principles [1(a) and 2(a)], can be used to justify the expropriation of lands and resources of forest dwellers and indigenous peoples so that wildlife habitats, landscape diversity, and recreation areas can be safeguarded in accordance with government development strategies. One reason for the vulnerability of indigenous, traditional and local communities is that their cultures are frequently undervalued. Consequently, they tend to be the first to have to give up their lands and rights for some perceived national economic or ecological priorities. Ironically, this happens despite the fact that the landscapes, habitats, and ecosystems may be the direct result of ancient, traditional and local use, management, conservation, and defensive efforts.

Preambular paragraph (c) provides that:
Forestry issues and opportunities should be examined in a holistic and balanced manner within the overall context of environment and development, taking into consideration the multiple functions and uses of forests, including traditional uses, and the likely economic and social stress when these uses are constrained or restricted, as well as the potential for development that sustainable forest management can offer.

Likewise, Principle 7(g) provides that:
Access to biological resources, including genetic material, shall be with due regard to the sovereign rights of the countries where the forests are located and to the sharing on mutually agreed terms of technology and profits from biotechnology products that are derived from these resources.

According to Section (a) of the Preamble:
The subject of forests is related to the entire range of environmental and development issues and opportunities, including the right to socio-economic development on a sustainable basis.

Presumably, the beneficiaries of the right to development in this context will accrue to inhabitants of the forests. The language of the Forest Principles document utilises the following categories for social groupings related to forest use (relevant sections in which the terms appear are listed in brackets after each category):
- indigenous people (1(d); 5(a))
- Forest Dwellers (5(a))
- Rural Poor (9(b))
- Urban Poor (9(b))
- Local Communities (1(d); 9(b); 12(d))

Beyond Economic Value
Principle 1(b) extends the concept of forest use to 'present and future generations', while providing language recognising non-economic value:
Forest resources and forest lands should be sustainably managed to meet the social, economic, ecological, cultural, and spiritual needs of present and future generations.
Inclusion of ‘spiritual needs’ in this list is significant, given that indigenous peoples frequently put the spiritual needs of their communities ahead of economic interests. Furthermore, plants, animals and other elements of the forest are likely to have highly significant spiritual qualities that are central to the well-being and continuation of indigenous societies. What the scientific world classifies as ‘nature’ may, in fact, be direct intangible extensions of human life, the collective being, and ancestral, present, and future generations.

Thus, things that others may see as ‘products’, local communities may regard as ‘sacred’. Forests in their entirety may be ‘sacred sites’, given that indigenous peoples frequently describe their landscapes as being their equivalent to temples, churches or mosques, and the Earth as their Sacred Mother. For these reasons, many forest ‘resources’ cannot be owned, privatised, commodified, or alienated: they are not, and never can be, ‘property’.

This fundamental point must be kept in mind when analysing other aspects of the Statement. For example, Principle 12(a) outlines an extensive research agenda on forest issues:

Scientific research, forest inventories and assessments carried out by national institutions which take into account, where relevant, biological, physical, social and economic variables, as well as technological development and its application in the field of sustainable forest management, conservation and development, should be strengthened through effective modalities, including international cooperation. In this context, attention should also be given to research and development of sustainably harvested non-wood products.

The implementation of this Principle would benefit from inclusion of indigenous peoples and forest dwellers as researchers and partners in all activities whose full consent to carry out such work should be acquired first. Indeed, it would be impossible, for example, to carry out a complete forest inventory without conducting a detailed study of traditional use of forest species and indigenous management practices. To apply this traditional knowledge: in the field of sustainable forest management practices. To apply this traditional knowledge: in the field of sustainable forest management practices. To apply this traditional knowledge: in the field of sustainable forest management practices. To apply this traditional knowledge: in the field of sustainable forest management practices. To apply this traditional knowledge: in the field of sustainable forest management practices. To apply this traditional knowledge: in the field of sustainable forest management practices. To apply this traditional knowledge: in the field of sustainable forest management practices. To apply this traditional knowledge: in the field of sustainable forest management practices. To apply this traditional knowledge: in the field of sustainable forest management practices. To apply this traditional knowledge: in the field of sustainable forest management practices. To apply this traditional knowledge: in the field of sustainable forest management practices. To apply this traditional knowledge: in the field of sustainable forest management practices. To apply this traditional knowledge: in the field of sustainable forest management practices. To apply this traditional knowledge: in the field of sustainable forest management practices. To apply this traditional knowledge: in the field of sustainable forest management practices. To apply this traditional knowledge: in the field of sustainable forest management practices. To apply this traditional knowledge: in the field of sustainable forest management practices. To apply this traditional knowledge: in the field of sustainable forest management practices. To apply this traditional knowledge: in the field of sustainable forest management practices. To apply this traditional knowledge: in the field of sustainable forest management practices. To apply this traditional knowledge: in the field of sustainable forest management practices. To apply this traditional knowledge: in the field of sustainable forest management practices. To apply this traditional knowledge: in the field of sustainable forest management practices. To apply this traditional knowledge: in the field of sustainable forest management practices. To apply this traditional knowledge: in the field of sustainable forest management practices. To apply this traditional knowledge: in the field of sustainable forest management practices. To apply this traditional knowledge: in the field of sustainable forest management practices. To apply this traditional knowledge: in the field of sustainable forest management practices. To apply this traditional knowledge: in the field of sustainable forest management practices. To apply this traditional knowledge: in the field of sustainable forest management practices. To apply this traditional knowledge: in the field of sustainable forest management practices. To apply this traditional knowledge: in the field of sustainable forest management practices. To apply this traditional knowledge: in the field of sustainable forest management practices. To apply this traditional knowledge: in the field of sustainable forest management practices. To apply this traditional knowledge: in the field of sustainable forest management practices. To apply this traditional knowledge: in the field of sustainable forest management practices. To apply this traditional knowledge: in the field of sustainable forest management practices. To apply this traditional knowledge: in the field of sustainable forest management practices. To apply this traditional knowledge: in the field of sustainable forest management practices. To apply this traditional knowledge: in the field of sustainable forest management practices. To apply this traditional knowledge: in the field of sustainable forest management practices. To apply this traditional knowledge: in the field of sustainable forest management practices. To apply this traditional knowledge: in the field of sustainable forest management practices. To apply this traditional knowledge: in the field of sustainable forest management practices. To apply this traditional knowledge: in the field of sustainable forest management practices. To apply this traditional knowledge: in the field of sustainable forest management practices. To apply this traditional knowledge: in the field of sustainable forest management practices. To apply this traditional knowledge: in the field of sustainable forest management practices.

The Statement does not deal with the question of who (indigenous peoples, forest dwellers, others) should have ‘constitutional’ recognition of rights to indigenous forests, but it does state, perhaps implicitly, who according to international law should be recognised, respected, and protected: indigenous peoples and forest dwellers.

Principle 9(a): Recognition of and Support for the Rights of Indigenous Peoples

The strongest Principle supporting indigenous peoples is 9(a):

National forest policies should [a] recognise and duly support the identity, culture and the rights of indigenous people, their communities and other communities and forest dwellers.

[b] Appropriation of land for conservation should be promoted for these groups to enable them to have an economic stake in forest use, perform economic activities, and achieve an enhanced cultural identity and social organisation, as well as adequate levels of livelihood and well-being, through, inter alia, those (c) land tenure arrangements which serve as incentives for the sustainable management of forests. [Brackets are added to emphasis points.]

This Principle is central, since it calls for:

[a] Recognition of and support for the rights of Indigenous peoples.

[b] Economic rights and development rights (see Posey and Dutfield, 1996), including the right to sustainably utilise resources and benefit from any useful or potentially useful materials or resources.

[c] Land and territorial rights, here described as ‘tenure arrangements’, but implying rights to occupy traditionally occupied areas and exercise freely the use of resources in these territories.

Financial Mechanisms

Finally, the Statement of Forest Principles deals with financial mechanisms to support basic and applied scientific research, as well as the economic means to implement the various provisions for sustainable development and conservation.

Principle 7(b) states that:

Specific financial resources should be provided to developing countries with significant forest areas which establish programmes for the conservation of forests including protected natural forest areas. These resources should be directed notably to economic sectors which would stimulate economic and social substitution activities.

These resources would presumably come mainly from industrialised countries, although Principle 8(c) seeks ‘international financial and technical cooperation, including through the private sector, where appropriate.’

It is critical to recognise the lack of economic options for local communities, who frequently are forced to become involved in environmentally destructive activities to meet their minimal economic needs. This is recognised in Principle 9(b):

The problems that hinder efforts to attain the conservation and sustainable use of forest resources and that stem from the lack of alternative options available to local communities, in particular the urban poor and other rural populations who are economically and socially dependent on forests and forest resources, should be addressed by Governments and the international community.

It is, therefore, crucial to, as Principle 10 puts it, provide ‘new and additional financial resources ... to developing countries to enable them to sustainably manage, conserve and develop their forest resources...’. These funds must, however, be carefully expended to support and empower indigenous communities rather than to marginalise them farther.

Principle 12(d):

Appropriate indigenous capacity and local knowledge regarding the conservation and sustainable management of forests should, through institutional and financial support and in collaboration with the people in the local communities concerned, be recognised, respected, recorded, developed and, as appropriate, introduced in the implementation of programmes.
Benefits arising from the utilisation of indigenous knowledge should therefore be equitably shared with such people.

The Statement on Forest Principles may become useful if and when negotiations resume on how forest issues will evolve on an international scale. In the interim, many of the Principles may be useful in developing the foundation for a sui generis system of rights for indigenous, traditional, and local communities (see Appendix 6 for the full text of the Statement on Forest Principles).

RECOMMENDATIONS:
STATEMENT ON FOREST PRINCIPLES

The expression of Traditional Resource Rights through effective implementation of Principle 13(d) of the Statement on Forest Principles requires:

- adoption of an international system that protects traditional intellectual, cultural, and scientific resource rights as well as the biological materials on Indigenous peoples' lands and territories;
- development of national laws that support traditional resource rights; and
- funding guidelines for national, regional, and international agencies (including GEF, World Bank, multilateral lending agencies, national development programs, and other financial institutions) require that all projects meet an internationally recognised set of standards on TRR before any funds are released.

UN Convention to Combat Desertification (CCD)

The UN Convention to Combat Desertification in Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa (CCD) has the potential to become another legally-binding agreement of considerable importance to indigenous peoples, traditional societies, and local communities. The Convention does not specifically mention indigenous or traditional peoples, but it does give significant emphasis to 'local peoples', 'local communities', 'local populations', and 'local organisations'. It also recognises local and traditional knowledge, know-how, practices, and skills throughout the text, with special emphasis in Article 17.

The Convention opens by affirming that 'human beings in affected or threatened areas are at the centre of concerns to combat desertification and mitigate the effects of drought...' and that 'arid, semi-arid and dry sub-humid areas together account for a significant proportion of the Earth's land area and are the habitats and the source of livelihood for a large segment of its population'. The Convention recognises that 'desertification is caused by complex interactions among physical, biological, political, social, cultural and economic factors', and that 'desertification and drought affect sustainable development through their interrelationships with important social problems such as poverty, poor health and nutrition, lack of food security, and those arising from migration, displacement of persons and demographic dynamics...'.

Overall the CCD emphasises scientific and technological solutions to desertification, although Article 2 recognises that reversing desertification:

will involve long-term integrated strategies that focus simultaneously, in affected areas, on improved productivity of land, and the rehabilitation, conservation and sustainable management of land and water resources, leading to improved living conditions, in particular at the community level.

Likewise, Paragraph (a) of Article 3 states that:

the Parties should ensure that decisions on the design and implementation of programmes to combat desertification and/or mitigate the effects of drought are taken with the participation of populations and local communities and that an enabling environment is created at higher levels to facilitate action at national and local levels.

Article 9 calls for the preparation and implementation of national action programmes (NAPs), including regional and subregional programmes, to combat desertification. These programmes call for a participatory process on the basis of lessons from field action, as well as the results of research. These NAPs are similar to the national plans called for in the CBD and should include effective participation of indigenous and local communities, as well as incorporate local values, criteria, and priorities.

Article 10 outlines the nature of national action programmes. Article 10 states that: 'National action programmes shall specify the respective roles of government, local communities and land users and the resources available and needed.' NAPs shall, inter alia, (a) allow for modifications to be made in response to changing circumstances and be sufficiently flexible at the local level to cope with different socio-economic, biological and geo-physical conditions;

(b) give particular attention to the implementation of preventive measures for lands that are not yet degraded or which are only slightly degraded;

(c) promote policies and strengthen institutional frameworks which develop cooperation and coordination, in a spirit of partnership, between the donor community, governments at all levels, local populations and community groups, and facilitate access by local populations to appropriate information and technology;

(d) provide for effective participation at the local, national and regional levels of non-governmental organisations and local populations, both women and men, particularly resource users, including farmers and pastoralists and their representative organisations, in policy planning, decision-making, and implementation and review of national action programmes; and

(e) require regular review of, and progress reports on, their implementation.

These are important provisions, since access to appropriate information and technology is as essential to local communities as is effective participation. Indigenous peoples may find (2c) useful, since in some parts of the world, their lands are the least degraded and, consequently, should be given priority for protection. In all cases, local goals and priorities for promotion of policies and implementation of preventive measures is essential. Likewise, indigenous and local criteria, categories, perceptions, and standards should be used to guarantee effective evaluation and monitoring of change, progress, and effective participation.

Article 10.3 provides that NAPs can include such things as local and regional early warning systems, strengthening of food security systems (including storage and marketing), and establishment of 'alternative livelihood projects that could provide incomes in drought prone areas'. Local communities are the key to these goals, since they are the first affected by change and their traditional ecological systems already have strategies for alternative food and medicine production.

Article 13 deals with implementation of NAPs, including:

(a) financial cooperation, allowing for necessary long-term planning;

(b) elaboration and use of cooperation mechanisms which enable better support at the local level, including action through non-governmental organisations, in order to promote the replicability of successful pilot programme activities;

(c) increased flexibility in project design, funding and implementation in keeping with the experimental, interactive approach indicated for participatory action at the local community level; and
Traditional Resource Rights

Administrative and budgetary procedures that increase the efficiency of cooperation and of support programmes.

Article 16 deals with information collection, analysis and exchange. Databases and networks are called for, and shall:

(b) ensure that the collection, analysis and exchange of information address the needs of local communities and decision makers, with a view to resolving specific problems, and that local communities are involved in these activities; and,

(g) exchange information on local and traditional knowledge, ensuring adequate protection for it and providing appropriate return from the benefits derived from it, on an equitable basis and on mutually agreed terms, to the local populations concerned.

Long-term planning, cooperation and efficient mechanisms for national planning depend upon effective dialogue with local communities. In general, countries are inadequately organised to effect this dialogue, and officials are poorly equipped and trained to interact with community leaders. To ensure efficiency, flexibility and effectiveness for NAPs, governments will need to recognise these inadequacies and become proactive in education and training of public officials and government representatives. One of the best ways to improve this situation may be through dialogue to develop sui generis systems for protection of and compensation for local knowledge. This is the process of ‘equitable’ that is a cornerstone of traditional resources (see Chapter 3).

Article 17 deals with research and development and commits Parties to:

(b) respond to well defined objectives, address the specific needs of local populations and lead to the identification and implementation of solutions that improve the living standards of people in affected areas.

(c) protect, integrate, enhance and validate traditional and local knowledge, know-how and practices, ensuring, subject to their respective national legislation and policies, that the owners of that knowledge will directly benefit on an equitable basis and on mutually agreed terms from any commercial utilisation of it or from any technological development derived.

This is a key article of the CCD, since it makes a specific and clear requirement for equitable benefit sharing on ‘mutually agreed terms’. The CBD also refers to mutually agreed terms, but refers specifically only to rights of State Parties, not ‘owners of that knowledge’. Article 17’s call to validate knowledge, know-how and practices can be considered to echo the CBD (Article 8(i)) reference to ‘wider use and application’ of knowledge, innovations and practices of indigenous and local communities. However, this implies the dismemberment of traditional ecological knowledge from its socio-cultural context, leaving indigenous and local groups with no control of information or genetic resources that leave their communities. Thus, to ‘protect, integrate, enhance and validate traditional and local knowledge, know-how and practices, ensuring that the owners of that knowledge will directly benefit on an equitable basis and mutually agreed terms’.

Article 18 deals with transfer, adaptation and development of technology, and in Item 1 calls on countries to:

(b) facilitate access, in particular by affected developing country Parties, on favourable terms, including on concessional and preferential terms, as mutually agreed, taking into account the need to protect intellectual property rights, to technologies most suitable to practical application for specific needs of local populations, paying special attention to the social, cultural, economic and environmental impact of such technology;

(d) extend technology cooperation with affected developing country Parties, including, where relevant, joint ventures, especially to sectors which foster alternative livelihoods; and

(e) take appropriate measures to create domestic market conditions and incentives, fiscal or otherwise, conducive to the development, transfer, acquisition and adaptation of suitable technology, knowledge, know-how and practices, including measures to ensure adequate and effective protection of intellectual property rights.

Likewise, Article 18.2 requires Parties to ‘protect, promote and use in particular relevant traditional and local technology, knowledge, know-how and practices’ by adopting the following measures:

(a) make inventories of such technology, knowledge, know-how and practices and their potential uses with the participation of local populations, and disseminate such information, where appropriate, in cooperation with relevant intergovernmental and non-governmental organisations;

(b) ensure that such technology, knowledge, know-how and practices are adequately protected and that local populations benefit directly, on an equitable basis and as mutually agreed, from any commercial utilisation of them or from any technological development derived therefrom;

Components of the Convention to Combat Desertification relevant to Indigenous Peoples and local communities

[Parties to the Convention agree to]

Article 16

(g) exchange information on local and traditional knowledge, ensuring adequate protection for it and providing appropriate return from the benefits derived from it, on an equitable basis and on mutually agreed terms, to the local populations concerned.

Article 17

(b) address the specific needs of local populations, and provide for and support traditional and local knowledge, know-how and practices, ensuring that the owners of that knowledge will directly benefit on an equitable basis and mutually agreed terms.

Article 18

(2) protect, promote and use in particular relevant traditional and local technology, knowledge, know-how and practices and, to that end, they undertake to:

(a) make inventories of such technology, knowledge, know-how and practices and their potential uses with the participation of local populations, and disseminate such information, where appropriate, in cooperation with relevant intergovernmental and non-governmental organisations;

(b) ensure that such technology, knowledge, know-how and practices are adequately protected and that local populations benefit directly, on an equitable basis and as mutually agreed, from any commercial utilisation of them or from any technological development derived therefrom;

(c) encourage and actively support the improvement and dissemination of such technology, knowledge, know-how and practices or of the development of new technology based on them; and

(d) facilitate, as appropriate, the adoption of such technology, knowledge, know-how and practices to wide use and integrate them with modern technology, as appropriate.

Article 19

(f) foster the use and dissemination of the knowledge, know-how and practices of local people in technical cooperation programmes, wherever possible;

(e) implement, where necessary, relevant environmentally sound technology and traditional methods of agriculture and pastoralism to modern socio-economic conditions.
Traditional Resource Rights

(c) encourage and actively support the improvement and dissemination of such technology, knowledge, know-how and practices or of the development of new technologies based on them;

(d) facilitate, as appropriate, the adaptation of such technology, knowledge, know-how and practices to wide use and integrate them with modern technology, as appropriate.

Here, as in Article 18.4 of the CBD, local knowledge, know-how, and practices are referred to as 'technologies', and, consequently should be guaranteed protection on the same basis as industrial technologies. The call for 'inventories of such technology, knowledge, know-how and practices and their potential uses' implies additional research, but 'with the participation of local populations'. The most appropriate way to implement this proposal would be through community-controlled research (CCR), plus inventories and registries controlled by and implemented through the local communities themselves (see Posey and Dutfield 1996).

The proposal to 'create domestic market conditions and incentives, fiscal or otherwise, conducive to development, transfer, acquisition and adaptation of suitable technology, knowledge, know-how and practices' is admirable, given that most communities seek economic alternatives based upon their own resource base and knowledge systems. But the 'measures to ensure adequate and effective protection of intellectual property rights' must be understood to be inadequate for protection of indigenous or community resources and additional sui generis systems must be developed.

Article 19 calls for capacity building, educational, and public awareness measures, including training in alternative technologies, conservation, and research. The article also calls for action:

(d) by fostering the use and dissemination of the knowledge, know-how and practices of local people in technical cooperation programmes, wherever possible;

(e) by adapting, wherever necessary, relevant environmentally sound technology and traditional methods of agriculture and pastoralism to modern socio-economic conditions.

The last provision is troubling, since adapting traditional methods of agriculture and pastoralism to modern socio-economic conditions can be tantamount to destroying those traditions and the local communities that utilise them. Who decides when and how such adaptations will take place and which such changes are considered necessary? The article calls for 'experts' who do not understand or respect local knowledge or culture.

Articles 20 and 21 deal with financial resources and mechanisms and call for assistance from the Global Environmental Facility (GEF) and other lending institutions, including debt swaps 'and other creative mechanisms'. Article 21.3 calls on Parties to 'utilise participatory processes involving non-governmental organisations, local groups and the private sector, in raising funds, in elaborating as well as implementing programmes and in assuring access to funding by groups at the local level'.

A 'Global Mechanism' is also established in Article 21.5 to guide, inform, advise and facilitate States in their attempts to finance relevant programs and projects. Such a mechanism should address the specific concerns of indigenous, traditional, and local communities.

One of the major criticisms of GEF is its lack of transparency and 'participatory process'. In fact, the GEF has become a target for indigenous attacks for its insensitivity to indigenous concerns, priorities, and projects. Debt-for-nature swaps have also rarely been negotiated in ways that local concerns were given priority. So it would seem that financial resources and mechanisms will have to undergo a major rethinking, followed by new institutions that reflect the participatory and democratic principles called for in the CCD and CBD.

Article 24 establishes a Committee on Science and Technology (CST) as a subsidiary body of the Conference of the Parties (the official meeting of Parties to the Convention). Article 25 specifies that one of the functions of the Committee on Science and Technology will be to 'make provision for the undertaking of a survey and evaluation of the relevant existing networks, institutions, agencies and bodies willing to become units of a network'.

These articles parallel the CBD's Article 25 that creates a Subsidiary Body on Scientific, Technical and Technological Advice (SBSTTA). The CCD Committee will need to recognise local criteria for evaluation, assessment, monitoring and advising. It should also seek collaborative research efforts with local communities and foster community-controlled research. Guidelines for model national legislation will be needed to stimulate the subordination of intellectual property rights (IPR) to traditional resource rights (TRR). It will also need to develop guidelines for the establishment of monitoring and enforcement institutions and mechanisms to ensure the respect, preservation and maintenance of local technologies, knowledge, know-how and practices.

In general, the Convention offers significant guarantees to indigenous peoples inasmuch as indigenous peoples constitute what the CBD refers to as 'local communities' or 'local populations'. These guarantees should not go unnoticed. As with the CBD, the call for wider use and application of local and traditional know-how, knowledge, and skills may be well-intentioned, but adequate provisions for protection for and equitable benefit-sharing from such use are essential.

The provisions of the Convention to Combat Desertification go further than the CBD in their calls for protection of intellectual, cultural, and scientific property rights of local communities in spite of their total absence of any reference to prior informed consent. However, no specific mechanisms are proposed, nor even any process to develop such provisions. This situation should signal to indigenous and traditional peoples an even greater and more urgent need to develop their own guidelines for technology access, transfer, and protection (see Appendix 7 for the full text of the CCD).

RECOMMENDATIONS: CONVENTION TO COMBAT DESERTIFICATION

The Convention to Combat Desertification calls for the protection of intellectual, cultural and scientific property rights, although it does not make absolutely clear how this aim could be achieved. Actions that could lead to implementation of the Convention in ways which further the interests of indigenous peoples include:

- defining 'participatory' and 'effective decision-making' processes that are appropriate to local indigenous communities, as well as regional organisations, and national alliances;
- insisting that special priority be given to conservation of indigenous lands that are not degraded;
- ensuring that effective indigenous participation is included in all stages of conceptualisation, development, and implementation of National Action Programmes, including the use of indigenous and local criteria for evaluation and monitoring;
- developing indigenous conceived and implemented 'pilot programmes' as integral parts of national action programmes;
- ensuring that local communities have effective control over information collection and data banks based on their knowledge, know-how, practices, and skills;
- insisting that exchange of information occurs only after adequate national legal mechanisms have been established to protect against illicit and unwanted expropriation, while insuring equitable sharing of benefits;
This article is based on the premise that indigenous peoples have a propietal or quasi-propietal right to their knowledge (IUCN, 1995:132). It builds upon CBD Article 8(j) because:

(a) Entitlement to equitable benefit-sharing is not qualified by its being subject to national legislation;
(b) Recognition of indigenous peoples’ rights to their knowledge are clearly stipulated;
(c) Local control of TEK is enhanced by the PIC requirement;
(d) Governments are obliged to implement appropriate benefit-sharing arrangements for local communities.

The Draft Covenant has been underestimated and little used to date, but merits considerable evaluation and discussion by indigenous and traditional peoples. It is available from the IUCN Environmental Law Centre.
Chapter 6

HERITAGE AND PROPERTY RIGHTS

Although to industrial society, intellectual, cultural and scientific property rights are not linked to genetic and natural resources, indigenous peoples, traditional societies and local communities have holistic views that make these inextricable. With increased research and commercialisation of traditional ecological knowledge and biological resources, protection of and compensation for ‘traditional technologies’ has become critical to biodiversity conservation. It has now become necessary to consider the heritage and property rights provisions and principles that can be utilised to develop sui generis systems to enhance and strengthen indigenous and local communities. The following are some of the major agreements relevant to this task.

The World Heritage Convention

The 1972, the Convention Concerning the Protection of the World Cultural and Natural Heritage, generally known as The World Heritage Convention, was negotiated to encourage international cooperation for the protection of the cultural and natural heritage of mankind. A 21 member intergovernmental World Heritage Committee has established a World Heritage List on the basis of nominations submitted by States Parties (Article 11). The Committee encourages international cooperation to prevent the deterioration and disappearance of cultural and natural heritage of ‘outstanding universal value’.

Sites considered for ‘cultural heritage’ status include:

- monuments: architectural works, works of monumental sculpture and painting, elements or structures of an archaeological nature, inscriptions, cave dwellings and combinations of features, which are of outstanding universal value from the point of view of history, art or science;
- groups of buildings: groups of separate or connected buildings which, because of their architecture, their homogeneity or their place in the landscape, are of outstanding universal value from the point of view of history, art or science;
- sites: works of man or the combined works of nature and of man, and areas including archaeological sites which are of outstanding universal value from the historical, aesthetic, ethnological or anthropological points of view. (Article 1)

Sites considered for ‘natural heritage’ status include:

- natural features consisting of physical and biological formations or groups of such formations, which are of outstanding universal value from the aesthetic or scientific point of view;
- geological and physiographical formations and precisely delineated areas which constitute the habitat of threatened species of animals and plants of outstanding universal value from the point of view of science or conservation;
- natural sites or precisely delineated natural areas of outstanding universal value from the point of view of science, conservation or natural beauty. (Article 2)

Recent Operational Guidelines for the Implementation of the World Heritage Convention (see UNESCO WHC/2/Revised, February 1996: Paragraph 24) have established certain criteria for the protection of cultural properties of ‘outstanding universal value’ (or to put more simply, World Heritage value), according to which properties should:
• represent a masterpiece of human creative genius;
• exhibit an important interchange of human values, over a span of time or within a cultural area, on developments in architecture or technology, monumental
  arts, town-planning or landscape design; or
• bear a unique or at least exceptional testimony to a cultural tradition or to a civilization
  which is living or which has disappeared; or
• be an outstanding example of a type of building or architectural or technological
  ensemble of landscape which illustrates (a) significant stages in human history; or
• be an outstanding example of a traditional human settlement or land-use which is
  representative of a culture (or cultures), especially when it has become vulnerable under
  the impact of irreversible change; or,
• be directly or tangibly associated with events or living traditions, with ideas, or with
  beliefs, with artistic and literary works of outstanding universal significance.

Of the 469 listed sites, 350 were selected for their cultural importance and 102 for their natural
significance. The other 17 are ‘mixed’ cultural and natural heritage sites recognised for their
outstanding natural and cultural values.

In 1992 the World Heritage additionally recognised ‘cultural landscapes’ as the ‘combined work(s)
of nature and of man’ mentioned in the Article 1 definition of cultural heritage. The notion of
cultural landscapes recognises: ‘the complex interrelationships between man and nature in the
construction, formation and evolution of landscapes’ (Rössler, 1993a). There are three main
categories (see UNESCO, 1996, Paragraph 30):
• clearly defined landscapes designed and created intentionally by man, such as for
  example, gardens and parks;
• organically evolved landscapes resulting from successive social and economic
  imperatives and in response to the natural environment;
• associative cultural landscapes, which have ‘powerful religious, artistic or cultural
  associations of the natural element rather than material cultural evidence, which may be
  insignificant or even absent.

Of the latter, there are two sub-categories:
• a relict (or fossil) landscape in which an evolutionary process came to an end in the past;
• the relict or continuing landscapes, ‘which retain an active social role in contemporary
  society closely associated with the traditional way of life’.

The first World Heritage cultural landscape was Tongariro National Park in New Zealand, which
was originally nominated as a ‘mixed’ natural and cultural site and was then listed as a natural site.
Tongariro’s selection for inclusion in the World Heritage List was due to the area’s importance in
Maori beliefs that honour the sacred nature of the mountains.

The Park was also the first in the world to be donated by an indigenous people to a State (to the
British Crown in 1887). At its 17th Session, the World Heritage Committee concluded that
Tongariro represents ‘an outstanding example of an associative cultural landscape tied to the
 cultural identity of the Maori people’ (Rössler, 1993b).

In addition to Tongariro there are three other cultural landscapes in the World Heritage List: Uluru-Kata Tjuta National Park (formerly known as Ayers Rock) in Australia, a sacred place to the
Anangu people; the Sintra cultural landscape in Portugal; and the Rice Terraces of the Philippine
Cordilleras.

The 1996 Operational Guidelines stated that:

Cultural landscapes often reflect specific techniques of sustainable land-use, considering
the characteristics and limits of the natural environment they are established in, and a specific
spiritual relation to nature. Protection of cultural landscapes can contribute to modern
techniques of sustainable land-use and can maintain or enhance natural values in the
landscape. The continued existence of traditional forms of land-use supports biological
diversity in many regions of the world. The protection of traditional cultural landscapes is therefore
helpful in maintaining biological diversity (Paragraph 58) (emphasis added).

The World Heritage Convention can be useful in protecting the cultural heritage of some
indigenous peoples, traditional societies and local communities, depending upon: (a) whether
governments are willing to consult indigenous peoples by involving them in World Heritage
conservation processes – such as identification, assessment, monitoring, evaluation by advisory
bodies, management, monitoring bodies, etc; and (b) whether national legislation to implement
the convention allows for a flexible or broad interpretation of ‘cultural and national heritage’, and (c)
whether the World Heritage Committee is prepared to recognise that cultural and natural properties
important to an indigenous people constitute part of the heritage of humankind of sufficient
importance to justify their protection.

New Zealand has made such a commitment with Tongariro, and Australia has already protected
Uluru-Kata Tjuta National Park, a sacred place to the Anangu people. The World Heritage
Convention has made a historical contribution to conservation by formally recognising the
inextricable link between cultural diversity and biological diversity (see Appendix 8 for the full
text of the Convention).

| Box 11

| Principal Features of the World Heritage Convention |

| Item 38 of the Revised Operational Guidelines for Implementing the Convention (UNESCO WHC/Revised, 1995) |

- Cultural landscapes often reflect specific techniques of sustainable land-use, considering the characteristics and limits of the natural environment they are established in, and a specific spiritual relation to nature.
- Protection of cultural landscapes can contribute to modern techniques of sustainable land-use and can maintain or enhance natural values in the landscape.
- The continued existence of traditional forms of land-use supports biological diversity in many regions of the world.
- The protection of traditional cultural landscapes is helpful in maintaining biological diversity.

Illicit Trade Convention

The main international legal instrument concerning cultural property is the 1970 UNESCO
Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of
Ownership of Cultural Property, referred to as the Illicit Trade Convention. Its aim is to suppress
the illegal transfer of and trade in cultural property across national boundaries. Measures to be
taken include the issuing of export certificates and prohibition of the importing of stolen cultural
property. The weaknesses of the Convention as an instrument to protect indigenous peoples’
cultural property are as follows (Posey and Dutfield, 1996):
the Convention does not apply to objects stolen before the Convention came into force;
- it does not apply to stolen objects that do not cross national boundaries; many of the major importing nations did not ratify the Convention;
- cultural property is defined as to include objects valuable for several reasons (most frequently their antiquity), but not for their direct relevance to the lives of present-day peoples;
- cultural property excludes immovable property, such as sacred sites and cultural landscapes;
- while the geographical origins and locations of cultural properties are of great importance, there is no requirement that ethnic origins be taken into account when making or considering restitution claims.

The extent to which the Convention has succeeded in stemming the flow of cultural property to dealers in ethnic artworks is not clear. For example, it has not prevented Nepal from experiencing a 'haemorrhage of its cultural property' as a result of smuggling or bribing officials (Sassoon, 1989). The restitution of sacred weavings of the Aymara people of Coromana, Bolivia, however, was certainly facilitated by the Convention (Posey and Dutfield, 1996).

The Illicit Trade Convention gives scope for imaginative interpretations of what 'cultural property' should encompass. For example, property 'created by the individual or collective genius of nations of the State' (Art. 4), 'rare collections of fauna [and] flora', 'objects of ethnological interest', even folk crop varieties and medicinal plants could be covered (Downes et al., 1993). Likewise, destruction or conversion of sacred places, such as forests, lakes, or mountains; to other uses could be compared to the destruction of a church, temple or mosque. Trade in plants, animals, minerals or even genetic materials from these sacred places could then be considered an infringement of the Convention (see Appendix 9 for the full text of the Convention).

Box 12
Principal Features of the I illicit Import Convention
- ''cultural property' is protected from illicit and illegal sale, import or export.
- all property 'created by the individual or collective genius of nations of the State' (Art. 4), including those of indigenous peoples, traditional societies, and local communities is covered by the Convention.
- 'rare collections of fauna [and] flora', 'objects of ethnological interest', even folk crop varieties and medicinal plants can be considered cultural property and, therefore, protectable.

World Intellectual Property Organization

Most international conventions pertaining to intellectual property rights are administered by the World Intellectual Property Organization (WIPO), a United Nations agency based in Switzerland. WIPO was established by a convention in 1867, although its origins can be traced to the Paris and Berne Conventions adopted in 1883 and 1886, respectively. WIPO's primary objectives are to administer international treaties on intellectual property laws; to provide assistance to parties to the treaties; to harmonize national laws, aiming to 'promote the protection of intellectual property throughout the world.' WIPO administers, inter alia, the following treaties concerning IPR:
- Paris Convention for the Protection of Industrial Property (1883, Stockholm Revision, 1967);
- Berne Convention for the Protection of Literary and Artistic Works (1886, Stockholm Revision, 1971);
- Madrid Agreement Concerning the International Registration of Trademarks (1891);
- Lisbon Agreement for the Protection of Appellations of Origin and their International Registration (1958);
- Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (1961);
- Patent Cooperation Treaty (1970);

The Paris Convention for the Protection of Industrial Property is perhaps the broadest of these Conventions in the context of IPR in that it deals with patents, utility models, industrial designs, trademarks, service marks, trade names, indications of source/appellations of origin, and the suppression of unfair competition. Its main aims are to establish general principles for IPR protection: national treatment and the right of priority.

All of these conventions were developed with 'virtually no regard for the needs of indigenous and traditional peoples for the protection of their cultural and intellectual property rights, usually embodied in their communal lifestyles' (Craig, 1994). With the exception of a joint UNESCO and WIPO attempt to develop 'Model Provisions for National Laws on Protection of Expressions of Folklore Against Illicit Exploitation and Other Prejudicial Actions' (see Section below), little attempt has been made by intergovernmental organizations to accommodate indigenous concerns either by altering these agreements or drafting sui generis alternatives.

Consequently, these conventions have been seen as more of a threat than of any utility for the protection of indigenous knowledge and biological resources. Even though some intellectual property rights instruments (patents, petty patents, trademarks, copyright, appellation of origin, trade secrets etc.) may be useful to indigenous peoples under some circumstances, their use and enforcement are difficult for indigenous, traditional, and local communities.

The International Union for the Protection of New Varieties (UPOV)

One important Convention that is not administered by WIPO is the International Convention for the Protection of New Varieties of Plants (commonly known as the UPOV22 Convention) of 1961, amended in 1971, 1978, and 1991. UPOV provides a framework for plant variety rights (often referred to as Plant Breeders' Rights), but if anything, works against traditional farmers. The 1978 version honoured the rights of farmers to resow seed harvested from protected varieties for their own use ('farmers' privilege'), but member states that ratify UPOV 1991 have the option of eliminating farmers' privilege. The latest revision extends protection to a minimum of 20 years and from the 'propagating part of the variety (the seed) to the whole plant (Overseas Development Institute, 1993). The revised Convention also reverses the 1978 provision that 'member states may not protect varieties by both patent and special rights'; thus, both patent and PBR protection can be acquired for plant varieties (see Table 3 for a comparison of UPOV 1978, 1991, and patents).

22 For a detailed discussion, see Posey and Dutfield's Beyond Intellectual Property, 1996.
23 UPOV is the International Union for the Protection of New Varieties of Plants.
Supporters of UPOV argue that the 1991 revision encourages breeders to investigate minor crops and to bring whole new species into cultivation. Opponents, however, point out that increasing costs make seeds too expensive for small farmers whose privilege of saving seed is negated. The inevitable result will be the reduction of the diversity of genetic material available to farmers and poorer countries.

Currently the effects of the UPOV Convention are somewhat limited by the small number of member states, but an increasing number of countries have joined in the past few years (30 as at 1 January 1996). Plant varieties are also covered under the Trade Related Intellectual Property Annex (TRIPS) of the agreement establishing the World Trade Organization, which allows WTO members to adopt sui generis systems of plant variety protection. It is very unclear how UPOV and TRIPS will be harmonised with each other- and more complex still, with the CBD (see Chapter 7).

| Table 3: Comparison of main provisions of PBR under UPOV 1978 and 1991 and Patent Law |
|-----------------------------------------------|------------------|------------------|
| Requirements                                  | Distinctness     | Novelty          | Novelty    |
|                                               | Uniformity       | Inventioniveness | Invention |
|                                               | Stability        | Nonobviousness   |            |
| Protection term                               | Min. 15 years    | Min. 20 years    | 17-20 yrs(OECD) |
| Protection scope                              | Commercial       | Commercial       |            |
|                                               | reproductive     | use of the variant |            |
| Breeders’ exemption                           | Yes              | Not for essentially derived varieties | No |
| Farmers’ privilege                            | In practice: Yes | Up to national laws | No |
| Protection coverage nationally defined        | Plant varieties of all genera and species | Plant varieties of species |            |
| Protection of Any app.                        | double protection | eligible for     | cannot be patented |
| (van Wijk and June, 1992)                     | PBR protection   |                  |            |

**Neighbouring Rights**

The development of the concept of neighbouring rights is closely related to the development of new technologies. Until the second half of the nineteenth century literary and artistic works were mainly conveyed to the public by the printing press, or, in the case of dramatic and musical works, by live performance and, in the case of artistic works by exhibitions. However, this drastically changed with the development of new technologies which appeared during the second half of the last century, such as photography, sound recording and film. Copyright law did not protect the rights of performers, recorders, and disseminators, who were not creators of works, but were responsible for the enormous increase in public exposure. Copyright owners therefore benefited from this increased exposure in terms of royalties, but not the performers.

Neighbouring rights developed to correct this situation, and were defined as: the rights of performers, producers of phonograms and broadcasting organisations. In a wider sense it also covers other rights similar to copyright, such as the right to photographs in certain countries, the rights of film producers in certain countries or the rights of first editions of books or typographical arrangements.

The relevance of neighbouring rights for many indigenous peoples reflects the explosion of commercial exploitation of ‘folkloric expressions’. Even as creators of such expressions, they have no control over the dissemination, form, or content of their expressions.

In 1961, the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (the Rome Convention) provided protection from the following acts carried out without the performer’s prior consent:
- broadcasting or communication to the public of a ‘live’ performance;
- recording an unfixed performance;
- reproducing a fixation of the performance, provided that the original fixation was made without the consent of the performer or the reproduction is made for purposes not permitted by the convention or the performer (Article 7).

According to Article 12, if a phonogram is made for a commercial purposes and communicated publicly, the user must pay an ‘equitable remuneration’ to the performer or to the producer of the phonogram, or to both. The minimum term of protection is 20 years from the performance, fixation, or broadcast.

According to WIPO, ‘The Convention is particularly interesting for those countries whose civilisation and tradition are oral and where the author is often the performer as well’ (WIPO 1988, p. 240). Of the more than 50 countries that have so far enacted legislation related to the Rome Convention, more than half are developing countries with strong oral traditions. Although neighbouring rights can be a useful legal tool to protect folklore in countries that legally recognise them, protection is limited in time and excludes copying what is not performed, broadcast, or contained in phonograms (WIPO 1988, p. 246).

**Model Folklore Provisions**

In 1985 UNESCO and WIPO produced their Model Provisions for National Laws on Protection of Expressions of Folklore Against Illicit Exploitation and Other Prejudicial Actions. The intention was to go beyond conventional copyright by protecting intangible expressions as well as works. The document avoids a definition of folklore, but refers to ‘expressions of folklore’ (Section 2). Any law that implements the Model Provisions could include genetic resources or ‘expressions’ of traditional ecological knowledge as constituting the ‘expressions of folklore’ to be protected.

According to the Model Provisions, certain uses of expressions of folklore are subject to prior authorisation (prior informed consent) by a competent authority or the community itself if they are: ‘made both with gainful intent and outside their traditional or customary context’ (Section 3), and would therefore constitute ‘illicit exploitation’ if used without this authorisation. ‘Traditional context’ here means remaining ‘in its proper artistic framework based on continuous usage by the community’. ‘Customary context’ means in accordance with ‘the practices of everyday life of the community’.

There are four types of ‘other prejudicial action’ which may be subject to criminal sanctions (Sections 6):

1. failure to indicate the ethnic and geographical source of an expression of folklore in printed publications and other communications to the public;
2. unauthorised utilisation of an expression of folklore where authorisation is required;
3. deliberately deceiving the public about the ethnic source of a production;
4. any kind of public use which distorts the production in a manner ‘prejudicial to cultural interests of the community concerned’.

A ‘competent authority’, which could be the communities themselves, would be set up to deal with applications for use of expressions of folklore, and perhaps to fix and collect authorisation fees for safeguarding national culture or national folklore.

The Model Provisions, when compared to copyright, have some advantages:
- They indefinitely protect unfixed works of folklore, rather than simply allowing this on an optional basis for a limited period of time;
- They recognise the need to balance protection against abuses of folklore and ‘freedom and encouragement of its further development and dissemination’.

So far a number of African countries (e.g., Nigeria) have enacted legislation based, at least in part, on the Model Provisions. Elsewhere, there has been little response from national legislatures (see Appendix 10 for the full text).

Principles and Guidelines for the Protection of the Heritage of Indigenous Peoples

At the request of the Working Group on Indigenous Populations of the Subcommission on Prevention of Discrimination and Protection of Minorities of the United Nations Commission on Human Rights, the Special Rapporteur, Erica-Jane Daes, prepared a Statement of Principles and Guidelines for the Protection of the Heritage of Indigenous People (IUCN/��/sub. 2/1995/26, 1995). The Principles and Guidelines are considered as a basic foundation for discussions between the Commission on Human Rights and other relevant UN agencies, such as WIPO and UNESCO. It is important as a UN document that may influence law in the area of intellectual and cultural property as these relate to environment and development.

The Statement begins with Items 1-10 that include the predictable requirement for self-determination and collective, permanent and inalienable ownership and control over land, territories and resources. Indigenous peoples are recognised as the guardians and interpreters of their cultures, arts, and sciences, and have the right to determine the ‘traditional owners’ of their own heritage. The following items are emphasised:

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 organisation.
3. Indigenous peoples should be recognised 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 the 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.

Items 14-18 deal with transmission of heritage, emphasising the right of indigenous peoples to their own schools, languages, and traditional means of cultural transmission. They call upon governments to provide resources for information networks for indigenous groups, as well as education and training on their own terms.

14. Indigenous peoples’ heritage should continue to be learned by the means customarily employed by their 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 recognised by the indigenous communities or peoples concerned as having specific knowledge of traditional laws.
16. Governments, international organisations 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.

17. Governments, international organisations 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.

Items 19-24 deal with recovery and restitution of heritage that has been stolen or taken without proper recorded authorisation. Unauthorised use of heritage is deemed to be equivalent to stealing and States should be asked to assist in recovery of such properties, even if they are in museums or research institutions. Traditional ecological knowledge and genetic resources would certainly be included under these Items.

19. Governments, with the assistance of competent international organisations, 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. If 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.

Items 25-31 are calls for national programmes and legislation that guarantee indigenous peoples'(images) effective access to judicial systems. Specifically countries are asked to develop national laws that protect communities from unauthorised patents, copyrights, or other claims based on indigenous 'artistic, literary and cultural works'. The Guidelines and Principles seek National laws to provide certification, labelling, trademark or an appellation of origin 'authorised by the peoples concerned'. Item 31 also requires governments to protect sacred sites, which, as seen previously, are frequently forests, mountains, streams, or other cultural landscapes.

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 authorisation of the traditional owners.

26. National laws should deny to any person or corporation the right to obtain patents, 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, authorised 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, 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 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 burial, healing places, and traditional places of teaching, and to protect them from unauthorised entry or use.

Items 32-39 call on researchers and scholarly institutions to provide indigenous peoples with inventories of cultural heritage they have in their possession, and requires them to consult the communities concerned with any heritage item in their possession is exchanged, preserved or destroyed. The concept of 'shared custody' is outlined in Item 33. Of particular interest are Items 35, 36, and 37, that require all ethnohistorical, ethnological and ethnomedical research to respect traditional owners of information and genetic resources (plant and animals), and be authorised by indigenous peoples.

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 consulting the peoples or communities directly concerned and ascertaining the wishes of the traditional owners.

35. Researchers and scholarly institutions must refrain from engaging in any study of previously undescribed species or cultivated varieties of plants, animals or microorganisms, without 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 result of research conducted on flora, fauna, microorganisms 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
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 of 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 to the development of educational and research institutions controlled by indigenous peoples and communities.

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 are called upon in Items 46-48 to respect indigenous heritage and encourage public support for indigenous 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 of greater recognition of indigenous artists, writers and performers.

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

Items 49-52 call for better media and information to education the general public understand indigenous issues, concerns, and heritage. Journalists are specifically requested to respect the privacy of indigenous peoples, while helping to expose activities that destroy or degrade indigenous heritage.

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 sensationalising 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.

The final section, Items 53-60 seek the support of international organisations in not only supporting the principles and guidelines of the Daes report, but also to encourage national laws and international conventions to support indigenous peoples and their heritage.

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

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 organisations 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 uncompensated 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.
Box 13

Summary of Principles and Guidelines for the Protection of the Heritage of Indigenous Peoples

- Indigenous peoples require self-determination and collective, permanent and inalienable ownership and control over land, territories and resources.
- Indigenous peoples are the guardians and interpreters of their cultures, arts, and sciences, and have the right to determine the “traditional owners” of their own heritage.
- Heritage of indigenous peoples includes all moveable, intellectual, cultural and scientific property.
- Scientific, agricultural, technical and ecological knowledge and resources, including culligans, comprise part of indigenous heritage.
- Protection of sacred sites is essential.
- Indigenous peoples have the right to transmit their heritage through their own schools, languages, and traditions.
- Unauthorised use of heritage, including traditional ecological knowledge and genetic resources, is theft and States must assist in recovery of stolen properties, even if they are in museums or research institutions.
- Countries are asked to develop national laws that protect communities from unauthorised patents, copyrights, or other claims based on indigenous “artistic, literary and cultural works and to provide certification, labelling, trademark or an appellation of origin ‘authorised by the peoples or communities concerned’.
- Researchers and scholarly institutions have ‘shared custody’ of indigenous heritage and should provide indigenous peoples with inventories of cultural heritage within their possession, as well as consult the communities concerned when any item is exchanged, sold, or donated.
- All scientists and research institutions should respect rights to privacy and prior informed consent and be authorised by traditional owners of information and genetic resources.
- Business and industry should respect a moratorium on all ‘rights to discover, record and use previously undescribed species or cultivated varieties of plants, animals or microbes, or naturally occurring pharmaceuticals’ until indigenous peoples and communities have control over research and legislation to guarantee adequate protection and just compensation.
- International organisations should respect the Principles and Guidelines and encourage national laws and international conventions to support indigenous peoples and their heritage.
Traditional Resource Rights

Utilisation of Plant Genetic Resources for Food and Agriculture, its Global Plan of Action, and interim report on the renegotiation of the International Undertaking on Plant Genetic Resources;

2. Knowledge, innovations and practices of indigenous and local communities and the implementation of Article 8(j);

3. Options for developing national legislative, administrative or policy measures, as appropriate, to implement Article 15 on access to genetic resources.

4. Issues related to technology to consider ways to promote and facilitate access to and transfer and development of technology, as envisaged by Articles 16 and 18 of the Convention.

These issues are all of great importance to local peoples, providing COP/II with the potential to harmonise human rights with environment and development concerns. IPR and possible sub generic systems for protection and benefit-sharing can focus discussions on both the theoretical and political problems of rights, while attempting to solve some of the complicated practical problems of implementation of the CBD.

The Subsidiary Body on Scientific, Technical and Technological Advice (SBSTTA)

SBSTTA was established to advise the Conference of the Parties on scientific, technical and technological matters (see Part 4). Part of its mandate is to identify innovative, efficient and state-of-the-art technologies and know-how (Article 25.2(c)).

SBSTTA has also undertaken to advise the COP in implementation of Article 8(j), making it particularly important for governments to include Indigenous peoples as official delegates. Without such representation, the body will suffer from lack of scientific or technical credibility. One progressive option would be to develop a special Subsidiary Body for Indigenous and Traditional Scientific and Technical Advice (see Part 5). 

The Clearing-House Mechanism (CHM)

The Clearing-House Mechanism is currently being set up to promote and facilitate technical and scientific cooperation that can be accessed through the Internet. Users without Internet can access information through print, diskette and CD-ROM formats.

During the 1996-97 pilot phase, the CBD Secretariat will assist in developing the CHM into a decentralised interactive, participatory, demand-driven information mechanism, which facilitates access to and exchange of relevant information to stimulate scientific and technological cooperation among active partners and the general public (CHM Homepage, 1996). The CBD Secretariat will coordinate the CHM and negotiate with existing databases, networks and other information providing institutions.

According to Decision II/3 of the COP, partner institutions involved in the CHM should focus initially on:

(i) developing national capabilities through exchanging and disseminating information on the experiences and lessons learned by Parties on the implementation of the Convention;

(ii) facilitating access to and dissemination of research relevant to the objectives of the Convention;

(iii) facilitating the transfer of technology through exchanging and disseminating information on experiences and technologies relevant to the conservation and sustainable use of biological diversity.

Guidelines, training programmes, seminars and workshops are envisaged by the COP as means to develop national capabilities. Given the relevance of indigenous and traditional technologies, Indigenous and local peoples are in a unique position to provide state-of-the-art training. They can also contribute valuable advice on collaborative and community-controlled research, as well as the ethical, legal and practical issues surrounding the wider use and application of traditional knowledge, innovations, and practices.

Some Indigenous peoples feel they can benefit from technical and scientific training programs, but want priority financial and logistical support for their own training projects. They insist upon the development of their own guidelines and conditions for transfer of their knowledge and technologies. They also want the right to establish their own criteria to judge the compatibility of biological resource management practices with their customary practices of conservation and sustainability.

It is important to emphasise that, given the inadequacy of IPR to protect TIK and traditional technologies, the CHM as currently conceived and set-up is a threat to the integrity of indigenous knowledge and culture. For the Mechanism to become effective, considerable transparency and Indigenous participation is required. Prior informed consent is fundamental, as are guidelines for national laws providing sui generic protection. This may require the establishment a Special Clearing House Mechanism for Traditional Technologies (see Part 5), or a Special Protocol on Traditional Technologies.

The Global Environment Facility (GEF)

The GEF was set up in 1990 to fund projects that provide global environmental benefits with reference to greenhouse gases, biological diversity, international waters, and ozone depletion. The GEF’s implementing agencies are:

- the World Bank, which is trustee for the funds, administrator of projects, and chair of the GEF;

- UNDP, which is responsible for technical assistance and administers the Small Grants Programme, the budget line for NGOs; and,

- UNEP, which supplies environmental expertise for projects and houses the secretariat of the independent Scientific and Technical Advisory Panel of 21 scientists and researchers.

The CBD decided on the GEF as an interim institution to oversee CBD financial mechanisms. The second meeting of the Conference of the Parties instructed the CBD Secretariat to continue discussions with the GEF and to produce a revised draft memorandum for consideration at COP/III.

Decision II/6 of COP/II extended the GEF as the interim CBD financial mechanism, and recommended that the GEF ‘explore the possibility of promoting diverse forms of public involvement and more effective collaboration between all tiers of government and civil society’.

A fundamental problem with GEF is that funding is limited to the additional burdens incurred by developing countries to provide benefits at the global level. Thus projects of priority to local communities that include local knowledge and community response to global problems are generally ineligible. Heavy criticism from Indigenous peoples may modify this situation and require guidelines that not only encourage local knowledge, innovations, and practices, but also require adequate protection and compensation for traditional technologies.

The URL is http://www.istar.ca/biodiv
Traditional Resource Rights

Commission On Sustainable Development (CSD)
The Commission on Sustainable Development was established in 1993 by the UN Economic and Social Council as one of its functional commissions. The CSD is an inter-governmental entity consisting of 53 UN member states elected to serve three-year terms. The CSD meets annually, and NGOs can attend the sessions as observers.

The Secretariat is located within the UN Department for Policy Co-ordination and Sustainable Development (DPCSD), which is based at the UN headquarters in New York. According to the Secretariat (http://www.un.org/DPCSD, 1995), the role of the CSD is:

- to review progress at the international, regional and national levels in the implementation of recommendations and commitments contained in the final documents of UNCED;
- to elaborate policy guidance and options for future activities to follow up UNCED and achieve sustainable development;
- to promote dialogue and build partnerships for sustainable development with governments, the international community and the major groups identified in Agenda 21 as key actors outside the central government who have a major role to play in the transition towards sustainable development including women, youth, indigenous peoples, non-governmental organisations, local authorities, workers and trade unions, business and industry, the scientific community, and farmers.

Although Indigenous peoples' have been under-represented in the CSD, an Indigenous Peoples' Preparatory Committee (IPPC) met during the Third Session in April, 1995. The IPPC called for 'the creation of new policies for environment and resource management' (Ehrenskjöld 1996). It also called upon the international community to:

- recognise, protect and support the rights of Indigenous peoples, including their cultural, territorial and human rights to own, control and manage their lands and resources and also Indigenous peoples' right to sustainable development.

It specifically asked the CSD to:

- push for the speedy adoption of the UN Draft Declaration on the Rights of Indigenous Peoples by the General Assembly as a concrete indication of its commitment to ensuring the implementation of sustainable development for Indigenous Peoples.

The IPPC Declaration also asked for:

- full participation in land, resource and development decision-making and policy development at international, regional, national and local levels, including UN processes such as the CSD and Convention on Biological Diversity.
- support and implementation of long term sustainable development, be based on Indigenous peoples' values, knowledge and technologies, to ensure full and intergenerational equity of resource allocations.
- protection for Indigenous peoples' cultural diversity, traditional values and ways of life.
- recognition that the survival and development of Indigenous peoples is directly connected to biological diversity and as such, ensuring the protection of this diversity must be a priority for the international community.
- that a new partnership be created between Indigenous peoples and the international community based on mutual respect, reciprocity and a harmonious accessible and equitable process.
- governments and UN agencies support Indigenous peoples in implementing Agenda 21, to recognise and support our rights to land, resources and development.

Indigenous peoples insist that participation be open and not restricted only to a small number of Indigenous peoples' organisations. One of the obstacles to effective participation is that Indigenous peoples have not been well informed by the CSD Secretariat and do not have funds to attend its meetings.

Nonetheless, in the Secretary-General's Report for initial discussion on implementation of UNCED decisions related to forests (E/CN.17/1996/9, 1996), a special programme element was included on 'traditional forest related knowledge'. The Report recognises that scientific evidence exists showing:

1. the language, culture and knowledge of indigenous and local communities are disappearing at alarming rates;
2. many presumed 'natural' ecosystems or wilderness areas are in fact 'human or cultural landscapes' resulting from millennia interactions with forest-dwellers;
3. traditional ecological knowledge is complex, sophisticated, and critically relevant to understanding how to conserve forest ecosystems and to utilize them sustainably;
4. indigenous and traditional forest management systems are likely to focus on the conservation of non- or semi-domesticated, non-timber species because these provide the majority of food supplies medicines, oils, essences, dyes, colours, repellents, insecticides, building materials, clothing, etc.;
5. most species associated with forests possess existence values for local communities which are often ignored, obscured, or even cancelled out by imposed conservation, development, and market schemes; and
6. as indigenous and local communities frequently integrate forest and agricultural management systems, 'foresters and 'farmers can be seen as forming part of the same continuum.

The latter point (6) links Farmers' Rights (FR) with the concerns of Article 8(g) of the Convention on Biological Diversity, and, consequently, implies harmonisation between FAO and the CBD (see section below on FAO). This link is expressed in the report (Item 14) in the following manner:

Recognition of and respect for local values, as well as landscapes modified by human activities is crucial if the vitality of forest-dwelling societies is to be enhanced rather than undermined. Unfortunately, since the complex links between biological and cultural diversity have not been generally recognized in the past, this has led to the destruction of biological diversity and the disappearance of languages, cultures, and societies.

The Secretary-General's Report suggests that effective links with local communities could be through the development of sui generis systems to protect indigenous and local communities and ensure benefit-sharing from the wider use and application of their knowledge about forest use and management-as well as of the biological resources conserved on their lands and territories.

Adequate and effective protection and benefit-sharing mechanisms would inevitably require a shift from economic or ecologically-determined legal and political frameworks to rights-driven systems. Adopting such a course would, however, enable commitments made by countries under human rights conventions, covenants and agreement to be harmonised at the national level with international commitments on environment, development, and trade (Item 15).

The Report goes on to say (Item 16) that:

the successful implementation of these mechanisms will depend, among other things, effective leadership from local people based on criteria for carrying out their own inventories, evaluations, monitoring, impact assessments, and development programmes for forest use and conservation, drawing up on their cultural aptitudes and based on their traditional knowledge and local criteria. Support from external sources will require the development of more effective tools for intercultural dialogue, information exchange,
technology training, awareness-raising, and education, as well as for interdisciplinary collaboration between the human, natural and social sciences.

Thus, the Secretary-General's Report reflects as much as any UN document to date the effective participation of indigenous and local communities, and recognition of their role in creating ecosystems and maintaining biodiversity. Of particular significance is the call for development of sui generis systems for protection within the CBD and FAO.

In June 1997 the UN General Assembly will hold a special session to review and appraise implementation of Agenda 21. Contributions will be made by the CSD, governments, UNEP, other UN agencies, regional and subregional organisations, Conferences of the Parties, and major groups, including Indigenous peoples.

The Intergovernmental Panel on Forests (IPF)

During the third meeting of the CSD in 1995 an open-ended ad hoc Intergovernmental Panel on Forests was established. Its aim is to promote international multidisciplinary action to implement the Forest Principles and Chapter 11 (and other relevant sections) of Agenda 21. The IPF is to work in an 'open, transparent and participatory manner' (ECN.17/1995/36, 1995). Such participation is to include major groups, particularly Indigenous peoples and local communities. However, although Indigenous organisations are allowed to submit statements at IPF sessions, they are restricted only to observer status.

One of the most significant tasks of the IPF is to harmonise forest policy with the CBD and to:

- encourage countries to consider ways and means for the effective protection and use of traditional forest-related knowledge, innovations and practices, as well as to fair and equitable sharing of benefits arising from such knowledge, innovations and practices.

In January 1996 the Secretariat of the Convention on Biological Diversity, as part of its mandate to provide advice and information to the IPF regarding the relationship between indigenous and local communities and forests, submitted a report to the IPF's second session in March 1996 (ECN.17/IPF/1996/9). This is a far-reaching document that calls for governments and UN agencies to take the following priority actions:

(a) Identify relevant principles, guidelines, and mechanisms for countries to develop their own appropriate and effective sui generis systems for protection and benefit-sharing, such as Traditional Resource Rights, in order to implement Article 8(j);

(b) Provide technical, technological, and scientific advice on traditional knowledge, innovations, and practices of forest use and conservation, including;

(c) Develop methods for acquisition, evaluation, and analysis of 'traditional technologies'; procedures for the storage, retrieval, and dissemination of information;

(d) Identify constituents, stakeholders, users and/or beneficiaries;

(e) Develop tools and mechanisms for protection and benefit-sharing;

(f) Identify and apply methodologies for the appropriate utilisation of indigenous and local community ethnobotanical concepts; and establishment of criteria for identification, monitoring, and environmental impact assessment; as well as enhanced public education and awareness.

(g) Identify and stimulate the creation of additional sources of funding for indigenous and local communities to finance their own forest biodiversity conservation efforts;

(h) Identify and stimulate the creation of additional sources of funding for studies and wider application of traditional knowledge, innovations and practices, including education and training to enhance application and use of such knowledge, innovations, and practices.

Some of these points were addressed in an expert consultation on 'Implementing the Forest Principles: Promotion of National Forest and Land Use Programmes' held in Feldafing, Germany, June, 1996. Experts from 31 developing and 36 developed countries produced a report indicating key aspects in the policy formulation process, including:

- forest policy formulation should be closely linked to national macroeconomic planning,
- forest, agricultural and environmental policies should be harmonised,
- private sector and NGOs should be partners in the national forest policy process,
- broad local participation should be encouraged and facilitated in forest policy dialogues,
- gender issues should be enhanced in forest policy development and related fields,
- forestry expertise and knowledge should be incorporated into environmental agencies, and
- relevant international experience and principles should be taken into account in policy formulation.

These recommendations show that forestry 'experts' support the Forest Principles for effective local participation and integration of indigenous, traditional and local knowledge into forest management practices. These recommendations and results of additional expert consultations will feed into a final IPF Report for the CSD's Fifth Session in 1997. The final Report will contain conclusions, recommendations and proposals for action. There is hope that a recommendation for the development of sui generis protection for indigenous, traditional and local knowledge and genetic resources will be included.

The United Nations Food and Agriculture Organization

In 1983, the Food and Agricultural Organization (FAO) established an intergovernmental Commission on Plant Genetic Resources (CPRG) and adopted a non-binding International Undertaking on Plant Genetic Resources (IUPGR) to 'ensure safe conservation and promote the availability and sustainable utilisation of plant genetic resources for present and future generations, by providing a flexible framework for sharing the benefits and burdens' (UNEP/CBD/RC/2/13, May 1994). The IUPGR included the concept of Farmers' Rights as an attempt to acknowledge 'the contribution farmers have made to the conservation and development of plant genetic resources, which constitute the basis of plant production throughout the world' (UNEP/CBD/RC/2/13, May 1994). Resolution 5/89 defined Farmers' Rights as:

rights arising from the past, present and future contributions of farmers in conserving, improving and making available plant genetic resources particularly those in the centres of origin/diversity. Those rights are vested in the international community, as trustees for present and future generations of farmers, and supporting the continuation of their contributions as well as the attainment of overall purposes of the International Undertaking [on Plant Genetic Resources].

The intention of Resolution 5/89 was 'to assist farmers and farming communities, in all regions of the world, but especially in the areas of origin and diversity of plant genetic resources, in the protection and conservation of their plant genetic resources. The Resolution also sought to ensure that farmers, farming communities and their countries, receive a just share of the benefits derived from plant genetic resources which they have developed, maintained and made available'.

Implementation of Farmers' Rights was principally to be through a voluntary International Fund for Plant Genetic Resources. Farmers themselves would not benefit from the FAO-administered Fund, but rather governments were to receive economic assistance in the maintenance of genetic resources. The Fund was not successful because of lack of contributions. It also suffered strong criticism and resistance from indigenous, peasant, and farmers' groups, who distrusted government
to justly administer funds. It became obvious that additional measures and redefinition of Farmers’ Rights was necessary for effective implementation.

In 1993, an FAO-organised expert consultation in Bangkok on Sustainable Agriculture and Rural Development in Asia concluded that ‘genetic materials which are provided by Third World farmers should be considered local common property, with defined rules for access, to prevent their appropriation by private enterprises’. The consultation recommended that farmers’ rights over these materials should be ‘fully recognised and supported’. It also found that ‘there should be any patenting of life-forms, such as plants, animals, micro-organisms and genetic materials. Patenting is declared to be detrimental to farmers’ and consumers’ rights in developing countries, and moreover will render sustainable agriculture extremely difficult if not impossible to achieve.’

Also in 1993, the Commission on Plant Genetic Resources adopted Resolution CPGR 93/1 calling for a revision of the IUPGR in response to the CBD Nairobi Final Act, Resolution 3 (see Chapter 5). The revision implies a reconsideration of Farmers’ Rights; this redefinition was made explicit in the 27th FAO Conference that recommended convening international negotiations to:

- harmonise the Undertaking with the CBD;
- consider the issue of access on mutually agreed terms to ex situ collections of PGR not covered by the Convention;
- realise Farmers’ Rights.

One difficulty in harmonising the IUPGR and CBD is that the former considers genetic resources as ‘common heritage of mankind’, whereas the latter recognises that States have the ‘sovereign right to exploit their own resources pursuant to their own environmental policies’ (Nijjar and Ling, 1993). FAO maintains that “the principle of common heritage is not incompatible with national sovereignty” (FAO, 1991).

This suggests promotion of national IPR (including PBR) legislation to protect national ‘common heritage’ from undesirable international exploitation. The Commission on Genetic Resources for Food and Agriculture (CGRFA, formerly the CPGR), however, is working in close cooperation with the CBD to revise the International Undertaking to conform to the CBD. If governments so decide, the revision could be converted into a legally-binding instrument or Protocol to the CBD (Glowka et al., 1994). A legally-binding IUPGR would represent considerable advances in international practice, since Plant Breeders’ Rights (PBR) are legally recognised, but Farmers’ Rights have no such status.

“The Agreed Interpretation of the Undertaking (FAO, 1991) simultaneously recognises Plant Breeders’ Rights, as provided for under UPOV, and Farmers’ Rights. A major difference between the sets of rights is that:

- PBR are incorporated in the national legislation of several industrialised countries whilst mechanisms to give practical expression to Farmers’ Rights and to provide adequate compensation to farmers have still to materialise.
- PBR are vested in individual and companies, whereas Farmers’ Rights are a collective right, vested in the International Community as trustee for present and future generations of farmers.

These are no small differences and other distinctions are apparent. For example, the current concept of ‘farmer’ within FAO is considerably more restrictive than the CBD language of ‘indigenous and local communities embarking traditional lifestyles’. The latter includes, amongst others, fisherfolk, hunters, pastoralists, nomads and gatherers, who have traditionally ‘nurtured most of the existing biodiversity upon which we depend’. As FAO increasingly recognises that forest issues overlap with agricultural concerns, ‘semi-domesticated’ and ‘wild species’ become more important – as they have always been to indigenous and local communities, many, but not all of whom, are farmers.

The need to expand or radically re-define Farmers’ Rights in order to harmonise with the CBD was recognised during the FAO IV International Technical Conference, held in Leipzig in June, 1996. The Leipzig conference provided a major forum for discussions by NGOs, indigenous and traditional peoples’ organisations on rights to and control over genetic resources. Representatives from over 120 NGOs and Peoples Organizations from over 50 countries met for three days before the convening of the FAO 4th ITC in Leipzig to prepare a Peoples’ Plan of Action on Agriculture, Food Security and Farmers’ Rights. The Plan calls for strengthening systems which promote collective rights over the individuality of IPR, and cultural and agricultural diversity by supporting women farmers, indigenous peoples, land rights issues (see Appendix 11).

An NGO Resolution specifically on Farmers’ Rights was also developed, recognising that:

- Farmers’ Rights and the Rights of Indigenous peoples are of a different nature, and should be complementary and mutually supportive. The UN Draft Declaration on the Rights of Indigenous Peoples, and ILO Convention 169 should be endorsed and implemented.
- the central objective of Farmers’ Rights is to ensure control of and access to agricultural biodiversity by local communities, so that they can continue to develop their farming systems sustainably.
- Farmers must have the right to benefit from their biological resources and related knowledge. The right to save, exchange and improve seeds is inalienable.
- Ownership and innovation at the local level are often of a collective nature. Farmers’ Rights should be based upon this principle, and should protect and promote such collectively held knowledge systems and resources. Collective knowledge is intimately linked to cultural diversity, land and biodiversity and cannot be dissociated from any of these 3 aspects.
- Farmers’ Rights should include legal recognition of land rights.
- Farmers’ Rights should include the right to appropriate and participatory research support.

This NGO Resolution reflects only some of the considerable efforts that farmers’ groups and NGOs in various parts of the world have invested in promoting an informed international debate on Farmers’ Rights. Two important sets of recommendations to advance and expand the Farmers’ Rights concept are the Recommendations (M.S. Swaminathan Foundation, 1996) produced as the result of an international consultation at the Swaminathan Foundation, and the Farmers’ Charter24. The latter is found in Appendix 12.

The IV Technical Conference could not agree on how to treat Farmers’ Rights, and left the issue with the Commission on Genetic Resources for Food and Agriculture and its revision of the IUPGR.

The Working Group on Traditional Resource Rights has argued that Farmers’ Rights should actually be considered a sui generis system of protection and follow the principles that will hopefully be provided by the CBD and its Secretariat, COP, and SBSTTA (see WOTTR Bulletin, no 3, 1996). This approach would facilitate harmonisation between FAO/Farmers’ Rights and CBD/Articles 8(j), 10(c), and 18,4, as well as with the sui generis provision within WTO/GATT.25

24 Farmers’ Rights Charter drafted by Indian Farmers’ Unions and circulated by the Third World Network, February 1996.
Traditional Resource Rights

The World Trade Organization

The World Trade Organization (WTO) was founded in 1994 at the conclusion of the Uruguay Round of the Multilateral Trade Negotiations to replace GATT (the General Agreement on Tariff and Trade). The WTO is designed to develop an integrated, more viable and durable multilateral trading system and to preserve the basic Principles and to further the objectives underlying this multilateral trading system (GATT, 1994).

Under its institutional framework, WTO set up a Council for Trade-Related Aspects of Intellectual Property Rights (TRIPS) to monitor existing agreements on IPR negotiated during the Uruguay Round. A Committee on Trade and Environment was also established to address, inter alia, the relationship between the provisions of the multilateral trading system and trade measures for environmental purposes, including those pursuant to multilateral environmental agreements.

WTO administers the TRIPS agreement that covers issues on copyrights and related rights, trademarks, geographical indications, industrial designs, patents, layout-designs (topographies) of integrated circuits, trade secrets, control of anti-competitive practices in contractual licenses, as well as provisions on enforcement, acquisition, maintenance of intellectual property rights and dispute settlement mechanisms. The section that has probably attracted the most attention is that which deals with patents. In principle, patents are to be available for any inventions, whether products or processes, in all fields of technology, provided that they are new, involve an inventive step and are capable of industrial application (Article 27).

However, certain exclusions are possible, including: inventions, the commercial exploitation of which must be prevented to protect ordre public or morality, including to protect human, animal or plant life or health or to avoid serious prejudice to the environment (27.2).

Although the terms ordre public and morality are not defined in TRIPS, there is a strong argument that for indigenous and traditional peoples, monopoly protection of seeds (in the form of patents or UPOV breeders’ rights), genetic material, or even traditional knowledge is not only socially and economically disruptive, but also immoral.

Some legal experts interpret the last exclusion in Article 27.2 on environmental grounds as grounds for establishing precedence of the CBD over WTO agreements. But Arlen-Clark (1992: 3) points out that these are only exclusions and subject to stringent conditions for implementation.

Interestingly, Article 27.3 of TRIPS requires:

The protection of plant varieties either by patents or by an effective sui generis system or by any combination thereof.

This provision has been viewed as a threat to community rights because it can lead to the creation of legal monopolies on common resources and undermines centuries-old customs of sharing seeds and community innovations (Posey and Dutfield, 1996) in favour of a system that sections of the population do not necessarily believe is to their benefit. Vandana Shiva (1994b, p. 12), a well-known critic of TRIPS, points out that: “TRIPS has failed to recognise the more informal, communal system of innovation through which third world farmers produce, select, improve and breed a plethora of diverse crop varieties.”

The possibility of developing a sui generis system in accordance with Article 27 offers additional possibilities. It may well provide an adequate loophole to introduce Traditional Resource Rights processes into WTO negotiations, and therefore become an important focal point for action by indigenous, traditional and local peoples.

Local, Institutional and National Initiatives

Although this volume is intended to survey international agreements and instruments to support indigenous peoples, traditional societies and local communities, it is important to remember that many activities are occurring at the NGO and community levels, quite independent of the United Nations and governments. These initiatives in many ways are the most useful and interesting, since they are practically oriented and unencumbered by international bureaucracy. Below are some important initiatives.

1. Self-demarcation of Indigenous peoples’ territories

Documentation of traditional land use, including knowledge and use of plants, animals, soils, water systems, forests, etc. can be fundamental to claiming rights over land, territory, and resources. Delimiting sacred sites or areas of cultural and historical significance are important to establish legal claims, as well as raising awareness of cultural heritage for local communities. Since cultural landscapes are usually difficult to detect and ‘read’ by outsiders, mapping of these territories that lands are not ‘wild’ and unclaimed, but occupied and significant. Self-mapping as a community procedure for demarcation has become an important process in Participatory Rural Appraisal (PRA). Participatory Action Research (PAR) and similar collaborative research methods of oral history and etnoscience.

2. Community registers

Community registers have been developed in India as a means of securing community control over traditional ecological knowledge. Local people document all the known plant and animal species with full details of their use. Community members are then in a position to refuse access to the register, and to set conditions under which others would be allowed access. Community registers can be used as evidence of intimate knowledge of the local environment in order to support claims to legal title of land and territory. Although community registers would be kept locally, they could be components of regional and national registers containing information freely available to communities.

3. Traditional knowledge databases and networks

Some indigenous and local communities have established databases, which they themselves control, ensuring their ability to control access and use of their knowledge and related information. For example, the Canadian Inuit of Nunavik and the Dene have their own information databases to establish a dialogue between local people and western scientists that is based on mutual respect and equality rather than to offer ‘interesting’ research topics for Western science. Community-based groups are increasingly using electronic networks to exchange information and remove the ‘middle-men’ who have controlled access and quality of information that reaches them. The Indigenous Peoples’ Biodiversity Network (IPBN), for example, is a growing global network of indigenous peoples’ organisations working for biodiversity conservation and development, and the protection of indigenous knowledge systems and biological resources. The IPBN works in the formulation of policies, laws and programmes relating to biodiversity conservation, including the development of their own guidelines for sui generis systems for protection of indigenous knowledge and genetic resources.

4. Community-Controlled Research (CCR)

Community-controlled research (CCR) is research where the objectives and methodologies are decided upon by local communities themselves. The Kuna of Panama and the Inuit have established guidelines with the intention that CCR is the only form of research allowed on their territories.

The Proyecto de Estudio para el Manejo de Areas Silvestres de Kuna Yala (PEMASKY) and the Asociacion de Empleados Kuna (AEK) of Panama have produced an information manual for researchers on scientific monitoring and cooperation. Kuna objectives are outlined with regard to forest management, conservation of biological and cultural wealth, scientific collaboration, research priorities, and guidelines for researchers. Collaboration with Western scientists is
encouraged for basic ecological research, botanical and faunal inventories, and the study and recording of Kuna traditions and culture. Research is designed to provide the Kuna with information useful to them and under their control.

The Inuit Tapirisat of Canada produced a background paper, "Negotiating research relationships in the North", containing a useful list of principles based on existing ethical guidelines and the concerns expressed by members of Inuit communities to be followed by all researchers.

5. Contracts and covenants

Contracts are legal agreements which consist of negotiated promises or actions. Contracts require limited legal assistance and may be useful mechanisms for local communities to ensure that any transfer of knowledge and resources is fairly compensated. Contracts could provide the following benefits: up-front payments, training, technology transfer, royalties and other financial and non-monetary forms of benefit sharing.

Covenants serve to establish principles that can lead to a legally-binding agreement, but they contain ethical and moral commitments beyond mere commercial agreements. The Global Coalition for Bio-Cultural Diversity developed a model "Covenant on Intellectual, Cultural and Scientific Property" (Posey, 1994a). Essential elements of the Covenant include: provisions for immediate benefits, including a trust fund for legal assistance, consultation, negotiation and possible litigation; should such become necessary; an independent monitor to effect a yearly socioeconomic audit of the agreement, and provisions for compensation, profit sharing and co-patenting.

6. Material Transfer Agreements (MTAs) and Information Transfer Agreements (ITAs)

Material Transfer Agreements (MTAs) regulate the transfer of biological resources for research and also facilitate commercialisation in exchange for benefits to the party recognised as the supplier. Suppliers might be a government, an organisation (such as a botanical garden), or even a local community if material has a commercial application. Such benefits may be in the form of up-front benefits, a trust fund, and future royalties. In exchange, MTAs usually grant the recipient of the material the right to apply for patents if any of the material has commercial potential. The patent holder can then commercialise a product based on the material.

Information Transfer Agreements (ITAs) are adaptations of MTAs negotiated between an Indigenous group and an outside organisation interested in commercial use of traditional knowledge. Since biological resources are often modified by human action, ITAs recognise the processes, preparations, and conservation practices that afford the knowledge improvements. Co-patenting would be an extension of ITAs.

7. Development of standards for best practice

IPR is seen not only by Indigenous and local communities as a serious threat, many scientists also see monopolisation of knowledge and resources as a threat to the 'free exchange' of information and resources. Such exchange has long been the cornerstone of science and is presumed to benefit humanity through research, scholarship, and development of medicines, agriculture, forest and conservation systems. Scientists and scientific institutions are finding they can no longer ignore the concerns of Indigenous and local communities, especially as science becomes increasingly involved - actively or passively - with the private sector. Plant, animal, and cultural material collected with public funds for scientific, non-profit purposes are now open for commercial exploitation. Research, even in universities and museums, is increasingly funded by corporations, leaving unresolved the disconcerting question of who controls the resulting data. 'Purer science' data banks have become the 'mines' for 'biodiversity prospecting'. Publishing of information, traditionally the hallmark of academic success, has become the superhighway for transporting restricted (or even secret) information into the unproteced 'public domain'.

Scientific and research institutions are not waiting for the development of legal requirements, but rather taking a pro-active stance toward developing their own codes of ethics and standards of practice. The International Society for Ethnobiology, for example, is developing in conjunction with indigenous peoples a Code of Ethics based on its historic Declaration of Belém (see Appendix 13). The Pew Conservation Scholars are developing biodiversity research protocols. Other scientific societies will probably follow suit (see Appendix 14). Major European institutions met in 1995 at the University of Oxford's Green College Centre for Environmental Policy and Understanding to develop recommendations and guidelines for responsible action (see Appendix 15).

8. Non-Governmental Organisations' Guidelines

Some NGO initiatives have been mentioned earlier, but additional activities deserve mention. Because law and practice are so ill-formed in the area of community rights, these efforts frequently have significant influence on government policies and legislation.

Community Intellectual Rights: A model community intellectual rights act has been suggested in a Third World Network discussion paper (Nijari 1994) as a means of bringing about the evolution of new criteria for claiming patent rights compatible with cultural values and practices of indigenous peoples. It could be used in the context of the TRIPS provision for sui generis forms of IPR protection and is in accord with the requirements of the Convention on Biological Diversity, particularly Article 8(2).

The purpose of the act is to prevent the 'privatisation and usurpation of community rights and knowledge through existing definitions of innovation.' It asserts the existence of knowledge that is communally owned and shared, given that ownership of property is not a concept accepted by many indigenous peoples.

To meet the novelty or innovation requirement of regular patent protection criteria, indigenous peoples are described as 'innovators' because the knowledge they have accumulated has been unknown to the outside world.

Section 5 of the model CIR act suggests the creation of a registry of inventions, in which a community might register its innovations as a simple method of declaring their existence to the world. The idea is similar to copyright law, in which protection generally arises with no need for formal acceptance by a registering authority, and the mechanism is more flexible than filing a patent. Failure to register does not surrender the innovation rights, but doing so may block a patent application for an identical or similar 'innovation' (see Appendix 16 for the full document).

A similar possibility is for communities to develop a community register, in which local people document all known plant and animal species with full details of their use. Community members would then be in a position to refuse access to the register or set conditions under which access would be allowed. It is even possible that a community could use a community register as evidence of intimate knowledge of the local environment to support a claim to legal title of its territory. Although community registers would be kept locally, they could be components of regional and national registers containing information freely available to communities. This would keep such information in the public domain.

In conjunction with the CIR act, the Third World Network has developed a model act to establish obligations for collectors of genetic resources and traditional knowledge. A licence would be given for a specified period, subject to conditions. The powers of the Act would be strong enough, so that directors and employees of companies contravening its conditions would be subject to penal sanctions (Nijari 1994).

The collector would be required to provide:

- plans for prospecting;
- details of types of material to be collected in terms of species and quantities;
Traditions of community. A date to regulate national initiatives to set the right to apply for IPR protection, which, in the case of collective knowledge, will be the right of prior informed consent (to be given in writing) for access to, use of and application of traditional knowledge; the right to co-ownership of research data, patents and products derived from the research but without the community having to pay patent fees; and, the right of communities to nullify patents illegally derived from their knowledge.

Conditions relating to collection and obligations related to post-collection activities would be enumerated, in order that the community or state would require fair recompense for sharing their resources. An endorsement would be required from the collector's country (an accredited representative) agreeing to indemnify the source country for any losses it may sustain should the collector breach the agreement, plus surrender of the results of any report or studies or experimentation made on the collected specimens. The obligation imposed on the collector would read:

No patent application shall be filed within or outside the country in respect of the collected specimens or any part thereof, its properties or activity or any derivatives which utilise the knowledge of indigenous groups or communities in the commercialisation of any product as well as to a more sophisticated process for extracting, isolating or synthesising the active chemical in the plant extracts or compositions used by indigenous peoples or if the same represents the intellectual right of the indigenous communities.

Discoverer's rights. Discoverer's rights have been proposed to reward any individual or community that collected a taxonomic description of a species or variety not already in the public domain (Gellin 1993). In theory, a community developing a community register could claim discoverer's rights for certain species and varieties in its register. Such a community could then share the benefits of commercial exploitation through a JTA, MTA or licensing agreement with a company, allowing the company to use the species and the community's knowledge of it in exchange for a licensing fee, royalties, patent-sharing or other benefits. Implementing discoverer's rights would be controversial and difficult, in part because neighbouring communities might also have the same knowledge of the same plant. If these were true, the community would be privatising a common resource. Nonetheless, it is one possibility of strengthening the legal claims of community resource inventories.

9. National Initiatives

A number of countries have taken significant steps toward the development of national legislation to regulate access and transfer of knowledge and genetic resources. Some of the most notable to date are:

The Brazilian Indigenous Societies Act. Proposed law (PL 2057/91) was approved in 1994 by the Chamber of Deputies of the national legislature. It has never passed into the Senate and is still under consideration for its constitutionality. The proposed law is intended to protect and assure respect for indigenous peoples' social organisation, customs, languages, beliefs and traditions, and rights over their territories and possessions.

Articles 18-29 deal with the intellectual property of indigenous peoples. Among the important provisions of potential benefit to indigenous peoples are the following:

- the right to maintain the secrecy of traditional knowledge;
- the right to refuse access to traditional knowledge;
- the right to apply for IPR protection, which, in the case of collective knowledge will be granted in the name of the community or society;
- the right of prior informed consent (to be given in writing) for access to, use of and application of traditional knowledge;
- the right to co-ownership of research data, patents and products derived from the research but without the community having to pay patent fees; and
- the right of communities to nullify patents illegally derived from their knowledge.

The Act would redefine patents and copyright by allowing community IPR to continue without time limit.

The Andean Pact. The Andean Pact countries (Bolivia, Colombia, Ecuador, Peru and Venezuela) have adopted a decision setting Pact-wide standards for access legislation in member states.

The terms include:

- sharing of benefits between receivers of biological resources, members and providers, which may be legal entities, private individuals, or indigenous or local communities;
- restrictions on transfer to third parties;
- reporting on obligations on future uses;
- obligations related to intellectual property;
- exclusivity and confidentiality;
- recognition of the Member States or provider in the publication of research results.

Member States would recognise the rights of indigenous and local communities over their knowledge, innovations and practices, and would concede to local communities the 'authority to decide whether and how to share such knowledge, innovations and practices'.

Costa Rica's 1992 Conservation of Wildlife Law. This Act declares national sovereignty over the biodiversity of the country (Laird, 1995; Salazar and Cabrera, 1996). This is not equivalent to nationalisation of all biological resources in the country. Nevertheless, the State has the exclusive right to grant permits to investigate, collect and exploit the country's biological diversity in the publicly-owned Conservation Areas, which make up 25% of the whole country. Under the Law, all wild animals wherever they are found are 'national patrimony', while plants and genetic resources are viewed as 'public interest' (Laird, 1995:12). The Ministry of Natural Resources, Energy and Mines (MIRENEM) is authorised to grant bioprospecting permits in the Conservation Areas.

However, there are Indigenous peoples in these areas whose inalienable rights to lands and resources pre-date the existence of the country. Therefore, an argument can be made that the government and those organisations which have bioprospecting permits are effectively usurping the territorial and resource rights of Indigenous peoples and other traditional communities.

The Queensland Nature Conservation Act 1992. The Australian State of Queensland enacted in 1992 (and subsequently amended) a Nature Conservation Act making all cultural and natural resources of a National Park, Conservation Park or Resources Reserve the property of the State (Article 61), as are all protected animals and plants, unless the plant or animal is taken under a licence, permit or other authority issued or given under a regulation, or under a conservation plan (Articles 62, 83, 84). Cultural resources are defined as 'places or objects that have anthropological, archaeological, historical, scientific, spiritual or sociological significance or value, including such significance or value under Aboriginal tradition or Island custom'; natural resources as 'natural and physical features of the area, including animals, plants, soil, water, minerals and air in protected areas and areas identified under a conservation plan. Again, this implies an extension of state sovereignty to the point of infringing Indigenous peoples' right to self-determination given that protected areas are likely to contain sacred places and objects of great cultural significance to present-day Aborigines.

However, there are several exceptions to state ownership, such as the preservation of existing property rights (Article 86) or property in newly protected animals (Article 85). Aboriginal and Torres Strait Islander peoples are entitled to keep protected wildlife under Aboriginal tradition or Island customs, but not in a protected area (Article 93(1)). Taking, usage and keeping is also subject to any provision of a conservation plan that expressly applies to the taking, using or keeping of protected wildlife under Aboriginal tradition or Island custom (Article 93). The Chief Executive also has power to permit certain uses of land in national parks in some circumstances (Articles 35-36).
The 1995 Philippines Executive Order No. 247, The Philippines Executive Order No. 247, prescribing Guidelines and Establishing a Regulatory Framework for the Prospecting of Biological and Genetic Resources, Their By-products and Derivatives, for Scientific and Commercial Purposes; and for Other Purposes, appears to interpret the right of national sovereignty over natural resources, including genetic resources, somewhat differently. Section 1 declares that the policy of the State is 'to regulate the prospecting of biological and genetic resources so that these resources are protected and conserved, are developed and put to the sustainable use and benefit of the national interest'. In the case of the 'indigenous lands and domains' of Indigenous peoples, Section 2 states that bioprospecting is permitted only with: 'the prior informed consent of such communities; obtained in accordance with the customary laws of the concerned community'. In this way, State sovereignty rights are strengthened, yet by recognising that control over genetic resources is most effectively established at the local level, the traditional resource rights of Indigenous peoples and local communities have, to some degree at least, been recognised.

CONCLUSIONS

The industrialised world has not adequately recognised the major contributions of indigenous, traditional and local peoples to global food, medicine, philosophy, the arts, environmental management, and biodiversity conservation. On the contrary, many countries have realised, weakened, or destroyed indigenous populations in an effort to obtain their lands, territories, and resources.

The inextricable link between cultural diversity and biological diversity means that with the loss of traditional peoples, there is a loss of valuable knowledge about the sustainable use and conservation of diverse ecosystems and genetic resources. Recent trends and growing interests in gene-hunting, or 'bioprospecting', reflect the realisation that research and development (R and D) costs can be radically cut through the use of traditional knowledge. Pharmaceutical, agricultural, and natural product industries companies are 'discovering' the important role of indigenous peoples and their knowledge in product development. Governments are realising that traditional ecological knowledge and genetic resources are the sources of their future wealth.

Indigenous peoples, traditional societies, and local farmers feel they need additional legal protection against uninvited and unwanted exploitation of their knowledge and resources. They want legal assurances that they will receive just compensation and equitable benefits from the use and application of their knowledge, innovations, and practices.

Intellectual property rights (IPR) serve to protect private, corporate property, but not the collective wisdom of the past, present, and future generations of indigenous and local communities. Thus, there is an increasingly demanding for new, alternative, or sui generis systems to enhance, protect, and honour their societies, languages, and cultures. Only with such legal support will the biological, ecological, agricultural and cultural diversity be conserved.

The United Nations has been a principal forum for the discussion of issues affecting conservation of biological and cultural diversity. The major UN forums for indigenous peoples' issues are: the International Labour Organization (ILO), The Working Group on Indigenous Populations (WGIP) within ECOSOC's Commission on Human Rights, Food and Agricultural Organization (FAO), and UNCED. Other important agencies and programmes are: UNESCO, WIPO, and ILO.

The Convention on Biological Diversity (CBD) has emerged as the most important and potentially progressive of the UN forums. The basic objective of the CBD is to guide and govern the use and conservation of biological resources. Also, Article 8(j) calls for the wider use and application of knowledge, innovations and practices of 'indigenous and local communities embodying traditional lifestyles' subject to their involvement and approval. These innovations and practices are referred to in Article 18.4 as indigenous and 'traditional technologies'.

The key to effective implementation of the CBD, according to indigenous peoples, is for nation states to re-define the concept of 'national sovereignty' to accommodate indigenous self-determination, that is full rights and control over their lands, territories, and resources. Traditional agriculturalists, pastoralists, fisherfolk, forest-dwellers, rural peasants, and other 'local communities embodying traditional lifestyles' express self-determination as secure land tenure, economic security, and local control over resources and decision-making.
Any alternative system that respects and supports the demands and requirements of indigenous peoples, traditional societies, and local communities must begin with an integrated rights approach.

This requires nation states to harmonize their environment, conservation, development and trade laws with already recognized international human rights agreements. Harmonization is taken to mean that where areas of conflict occur between different environment, trade, sustainable development and human rights agreements, these differences should be resolved giving priority to human rights principles.

This affects such critical international negotiations as those within the World Trade Organization (WTO), the World Intellectual Property Organization (WIPO), and the International Union for the Protection of New Varieties of Plants (UPOV). WTO is especially important because it assists the Agreement on Trade-Related Intellectual Property Rights (TRIPS), which is the only international agreement that specifically mentions the possibility of sui generis alternative to patents. WTO negotiations should harmonize with FAO and CBD efforts to establish effective sui generis systems that, in the face of globalization of trade, protect and enhance conservation of agricultural genetic resources and biodiversity.

Likewise, use and application of traditional ecological knowledge (TEK) will have to be adequately protected. TEK is holistic and forms the basis for local-level decision-making in areas of contemporary life, including natural resource management, nutrition, food preparation, health, education, and community and social organization. Traditional ecological knowledge is highly innovative and inherently dynamic, constantly evolving through experimentation and innovation, fresh insight, and external stimuli. It is critical to successful natural resource management and in situ conservation.

The UN Subcommission on Prevention of Discrimination and Protection of Minorities supports indigenous calls for the development of sui generis systems for protection of their societies, knowledge and natural resources. A strong international indigenous movement is developing to impose a moratorium on all future research, access or transfer of genetic resources and traditional technologies associated with their communities until adequate systems are in place.

Appropriate sui generis systems must begin by acknowledging indigenous and traditional peoples' rights to control access to traditional resources and territories. This means that each State should carry out thorough inventories of international agreements to which it is a party and seek to harmonize these unified and holistic national approaches for protection and maintenance of biological and cultural diversity – and the local and indigenous communities that support and defend them.

Traditional Resource Rights are built upon ‘bundles of rights’ found in legally-binding documents that, when taken together, provide basic principles to build sui generis systems. Non-legally binding documents, statements, declarations, codes of practice, and agreements are also important in guiding the development of law. The Universal Declaration of Human Rights and the Draft Declaration on Rights for Indigenous Peoples, as well as the Draft Declaration on Human Rights and the Environment and Principles Guidelines for the Protection of the Heritage of Indigenous Peoples are primary soft law documents.

TRR-guided negotiations and legal processes can offer opportunities and mechanisms for new partnerships based on increased respect for indigenous peoples and their knowledge. States will also find it easier to implement their international obligations on trade, environment and development, as well as their commitments to human rights covenants.

It is important to remember that new laws are not necessary to begin practical actions that implement existing programs and principles. Within the CBD, for example, the following recommendations are made:

1. NATIONAL STRATEGIES should ensure that indigenous and local communities full participation in all aspects of conceptualization, development, and implementation of national values of the components of biodiversity; insist that special priority be given to conservation of indigenous lands that are not degraded; develop indigenous conceived and implemented ‘pilot programmes’.

2. IMPLEMENTATION OF CBD ARTICLE 8 (j) should include: land demarcation; support for indigenous-based and designed conservation and sustainable development efforts; research centers to develop strategies and models to apply traditional technologies in a larger context; support for and strengthening of indigenous organizations, including local, regional, national and international indigenous alliances, councils, federations, unions, etc.

3. ENVIRONMENTAL IMPACT ASSESSMENTS (EIA) should include not only local guidance and full participation, but indigenous criteria and mechanisms for assessment. Prior Informed Consent is fundamental, meaning that local communities must be afforded full disclosure of all relevant information regarding the project, including background, technical surveys and feasibility studies, existing and final assessments.

4. CLEARING-HOUSE MECHANISMS should include: indigenous participation in all phases of conceptualization, implementation and maintenance; establishment of priorities and guidelines developed by communities; creation of community-controlled regional clearing-houses; secure intellectual property rights agreements to ensure protection and compensation for information transfer.

5. SUBSIDIARY BODY ON SCIENTIFIC, TECHNICAL AND TECHNOLOGICAL ADVICE (CBD) or COMMITTEE ON SCIENCE AND TECHNOLOGY (CCD) should include a fair representation of scientific and technical specialists from indigenous, traditional, and local communities; identify relevant traditional technologies, innovations and practices; apply and seek wider application of indigenous and traditional knowledge, innovations and practices; develop methodologies, techniques, and strategies for use of indigenous criteria for evaluation, assessment, monitoring; give priority to and develop guidelines for collaborative research and community-controlled research (CCR) with indigenous, traditional and local communities.

6. WORLD HERITAGE SITES should be established that reflect indigenous and traditional peoples' heritage and continue traditional forms of land-use.

7. USE OF THE ILLICIT IMPORT CONVENTION to protect rare collections of fauna and flora, folk crop varieties, medicinal plants and other genetic resources.

8. REDEFINITION OF FARMERS' RIGHTS should reflect CBD language on ‘indigenous and local communities embodying traditional lifestyles’, and include, amongst others, fisherfolk, hunters, pastoralists, nomads and gatherers, who have traditionally ‘tended’ most of the existing biodiversity upon which we depend’. FR should recognize that forest issues overlap with agricultural concerns, making 'semi-domesticated' and 'wild species' more important as they have always been to indigenous and local communities, many, but not all of whom, are farmers.

9. SUPPORT ON-GOING LOCAL EFFORTS, such as: self-determination of Indigenous lands and territories; establishment of community registers; development of community-generated and control knowledge databases; expansion of community communication networks; development of guidelines for community-Caused Research (CCR); joint development of contracts, covenants, material transfer agreements (MTAs) and information transfer agreements (ITAs).
10. DEVELOPMENT OF STANDARDS FOR BEST PRACTICE by business and professional organizations, as well as educational and research institutions; collaboration with indigenous and traditional peoples in development of codes of conduct; elaboration of collectors acts, and discoverer’s rights.

The burden of responsibility for implementing equitable and effective sui generis systems that support indigenous peoples, traditional societies, and local communities lies with nation states. International efforts can develop principles and guidelines, but countries are fundamentally responsible for the conservation of the cultural and ecological diversity within their borders. Although some nations, such as the Philippines, Brazil, and Andean Pact countries have taken initiatives to lead the way in this pioneering effort, most countries are still only thinking of how or if to proceed. Hopefully this book has helped to convince its readers, that further delays in protecting traditional knowledge and resources – and especially the people who embody and conserve them – only means certain loss of the greatest wealth of the planet.

REFERENCES AND FURTHER READING


Traditional Resource Rights


ACRONYMS

CBD Convention on Biological Diversity
CCD International Convention to Combat Desertification in Countries Experiencing Serious Drought and/or Desertification
CCR Community-controlled research
CHM Clearing-House Mechanism
CIR Community Intellectual Rights
COICA Coordinadora de las Organizaciones Indigenas de la Cuenca Amazonica (Coordinating Body for the Indigenous Organizations of the Amazon Basin)
COP Conference of the Parties to the Convention on Biological Diversity
CR Collaborative research
CSD Commission on Sustainable Development
DPCSD Department for Policy Co-ordination and Sustainable Development
EIA Environmental Impact Assessment
FAO Food and Agriculture Organization
FR Farmers' Rights
GATT-TRIPS Trade-Related Aspects of Intellectual Property Rights Annex of the 1994 General Agreement on Tariffs and Trade which established the World Trade Organization
GEF Global Environment Facility
ICCPPR International Covenant on Civil and Political Rights
ICESCR International Covenant on Economic, Social and Cultural Rights
ILO International Labour Organization
IPBN Indigenous Peoples Biodiversity Network
IPF Intergovernmental Panel On Forests
IPR Intellectual property rights
ITA Information Transfer Agreement
IAT-TPTF International Alliance of the Indigenous-Tribal Peoples of the Tropical Forests
MTA Material Transfer Agreement
NAP National Action Plans
PIC Prior informed consent
RAFI Rural Advancement Foundation International
SBSTTA Subsidiary Body for Scientific, Technical and Technological Advice
TEK Traditional Ecological Knowledge
TRR Traditional Resource Rights
UDHR Universal Declaration of Human Rights
UNCED United Nations Conference on Environment and Development (the Earth Summit)
UNDP United Nations Development Programme
UNESCO United Nations Educational, Scientific and Cultural Organization
UNEP United Nations Environmental Programme
UPOV International Union for the Protection of New Varieties of Plants
WGTRR Working Group on Traditional Resource Rights (of the Programme for Traditional Resource Rights)
WIPO World Intellectual Property Organization
WTO World Trade Organization
RESOURCES ON THE WORLD WIDE WEB
FOR FURTHER INFORMATION

Biodiversity Action Network – http://www.access.digex.net/~bionet
Biodiversity Coalition – http://www.bdt.org.br/bioline/webInfo?bioline.nl1=SCANC+keybcoal
Biodiversity Forum – http://www.worldcorp.com/biodiversity
Biodiversity Information Network – http://www.bdt.org.br/bin21
Bioline – http://www.bdt.org.br/bioline
Center for Indigenous Knowledge for Agriculture
and Rural Development (CIKARD) – http://www.physics.iastate.edu/cikard/cikard.html
FAO 4th International Technical Conference
on Plant Genetic Resources – http://web.icppgr.fao.org
Indigenous Peoples Biodiversity Information Network – http://www.btin.org
International Institute for Sustainable Development – http://isd1.isd.ca
International Labour Organization – http://www.unice.org/ilo/index.html
International Union for Conservation of Nature (IUCN) – http://www.IUCN.org
Programme for Traditional Resource Rights – http://units.ox.ac.uk/~wgtwr
South and Meso American Indian Rights Center (SAIC) – http://www.igc.apc.org/saic/saic.html
UNESCO World Heritage Centre – http://www.unesco.org/whc
United Nations Homepage – http://www.unice.org
World Conservation Monitoring Centre – http://www.wcmc.org.uk
World Trade Organization – http://www.unice.org/wto/Welcome.htm
Appendix 1

Universal Declaration of Human Rights

Adopted and proclaimed by General Assembly resolution 217 A (III) of 10 December 1948

PREAMBLE

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

Now, therefore,

The General Assembly

Proclames this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

Article 1

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, 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.

Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3

Everyone has the right to life, liberty and security of person.
Article 4
No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 5
No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 6
Everyone has the right to recognition everywhere as a person before the law.

Article 7
All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8
Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 9
No one shall be subjected to arbitrary arrest, detention or exile.

Article 10
Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11
1. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.
2. No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 12
No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 13
1. Everyone has the right to freedom of movement and residence within the borders of each State.
2. Everyone has the right to leave any country, including his own, and to return to his country.

Article 14
1. Everyone has the right to seek and to enjoy in other countries asylum from persecution.
2. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

Article 15
1. Everyone has the right to a nationality.
2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Article 16
1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
2. Marriage shall be entered into only with the free and full consent of the intending spouses.
3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 17
1. Everyone has the right to own property alone as well as in association with others.
2. No one shall be arbitrarily deprived of his property.

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 19
Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20
1. Everyone has the right to freedom of peaceful assembly and association.
2. No one may be compelled to belong to an association.

Article 21
1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
2. Everyone has the right to equal access to public service in his country.
3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Article 22
Everyone, as a member of society, has the right to social security and is entitled to realisation, through national effort and international co-operation and in accordance with the organisation and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 23
1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
2. Everyone, without any discrimination, has the right to equal pay for equal work.
3. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
4. Everyone has the right to form and to join trade unions for the protection of his interests.

Article 24
Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.
Article 25
1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Article 26
1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.
2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.
3. Parents have a prior right to choose the kind of education that shall be given to their children.

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.

Article 28
Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realised.

Article 29
1. Everyone has duties to the community in which alone the free and full development of his personality is possible.
2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.
3. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

Article 30
Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

Appendix 2
ILO Convention 169 Concerning Indigenous and Tribal Peoples in Independent Countries

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its 76th Session on 7 June 1989, and

Noting the international standards contained in the Indigenous and Tribal Populations Convention and Recommendation, 1957, and

Recalling the terms of the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, and the many international instruments on the prevention of discrimination, and

Considering that the developments which have taken place in international law since 1957, as well as developments in the situation of indigenous and tribal peoples in all regions of the world, have made it appropriate to adopt new international standards on the subject with a view to removing the assimilationist orientation of the earlier standards, and

Recognising the aspirations of these peoples to exercise control over their own institutions, ways of life and economic development and to maintain and develop their identities, languages and religions, within the framework of the States in which they live, and

Noting that in many parts of the world these peoples are unable to enjoy their fundamental human rights to the same degree as the rest of the population of the States within which they live, and that their laws, values, customs and perspectives have often been eroded, and

Calling attention to the distinctive contributions of indigenous and tribal peoples to the cultural diversity and social and ecological harmony of humankind and to international co-operation and understanding, and

Noting that the following provisions have been framed with the co-operation of the United Nations, the Food and Agriculture Organisation of the United Nations, the United Nations Educational, Scientific and Cultural Organisation and the World Health Organisation, as well as of the Inter-American Indian Institute, at appropriate levels and in their respective fields, and that it is proposed to continue this co-operation in promoting and securing the application of these provisions, and

Having decided upon the adoption of certain proposals with regard to the partial revision of the Indigenous and Tribal Populations Convention, 1957 (No. 107), which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention revising the Indigenous and Tribal Populations Convention, 1957:

ADOPTS this twenty-seventh day of June of the year one thousand nine hundred and eighty-nine the following Convention, which may be cited as the Indigenous and Tribal Peoples Convention, 1989:

Part I. GENERAL POLICY

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;
Appendix 2

Article 6

1. In applying the provisions of this Convention, governments shall:
   (a) consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly;
   (b) establish means by which these peoples can freely participate, to at least the same extent as other sectors of the population, in all levels of decision-making in elective institutions and administrative and other bodies responsible for policies and programmes which concern them;
   (c) establish means for the full development of these peoples’ own institutions and initiatives, and in appropriate cases provide the resources necessary for this purpose.

Article 7

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

2. The improvement of the conditions of life and work and levels of health and education of the peoples concerned, with their participation and co-operation, shall be a matter of priority in plans for the overall economic development of areas they inhabit. Special projects for development of the areas in question shall also be so designed as to promote such improvement.

3. Governments shall ensure that, whenever appropriate, studies are carried out, in co-operation with the peoples concerned, to assess the social, spiritual, cultural and environmental impact on them of planned development activities. The results of these studies shall be considered as fundamental criteria for the implementation of these activities.

4. Governments shall take measures, in co-operation with the peoples concerned, to protect and preserve the environment of the territories they inhabit.

Article 8

1. In applying national laws and regulations to the peoples concerned, due regard shall be had to their customs or customary laws.

2. These peoples shall have the right to retain their own customs and institutions, where these are not incompatible with fundamental rights defined by the national legal system and with internationally recognised human rights. Procedures shall be established, whenever necessary, to resolve conflicts which may arise in the application of this principle.

3. The application of paragraphs 1 and 2 of this Article shall not prevent members of these peoples from exercising the rights granted to all citizens and from assuming the corresponding duties.

Article 9

1. To the extent compatible with the national legal system and internationally recognised human rights, the methods customarily practised by the peoples concerned for dealing with offences committed by their members shall be respected.

2. The customs of these peoples in regard to penal matters shall be taken into consideration by the authorities and courts dealing with such cases.
Appendix 2

Part II. LAND

Article 13
1. In applying the provisions of this Part of the Convention governments shall respect the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories, or both as applicable, which they occupy or otherwise use, and in particular the collective aspects of this relationship.
2. The use of the term "lands" in Articles 15 and 16 shall include the concept of territories, which cover the total environment of the areas which the peoples concerned occupy or otherwise use.

Article 14
1. The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognised. In addition, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities. Particular attention shall be paid to the situation of nomadic peoples and shifting cultivators in this respect.
2. Governments shall take steps as necessary to identify the lands which the peoples concerned traditionally occupy, and to guarantee effective protection of their rights of ownership and possession.
3. Adequate procedures shall be established within the national legal system to resolve land claims by the peoples concerned.

Article 15
1. The rights of the peoples concerned to the natural resources pertaining to their lands shall be specially safeguarded. These rights include the right of these peoples to participate in the use, management and conservation of these resources.
2. In cases in which the State retains the ownership of mineral or sub-surface resources or rights to other resources pertaining to lands, governments shall establish or maintain procedures through which they shall consult these peoples, with a view to ascertaining whether and to what degree their interests would be prejudiced, before undertaking or permitting any programmes for the exploration or exploitation of such resources pertaining to their lands. The peoples concerned shall wherever possible participate in the benefits of such activities, and shall receive fair compensation for any damages which they may sustain as a result of such activities.

Part III. RECRUITMENT AND CONDITIONS OF EMPLOYMENT

Article 20
1. Governments shall, within the framework of national laws and regulations, and in co-operation with the peoples concerned, adopt special measures to ensure the effective protection with regard to recruitment and conditions of employment of workers belonging to these peoples, to the extent that they are not effectively protected by laws applicable to workers in general.
2. Governments shall do everything possible to prevent any discrimination between workers belonging to the peoples concerned and other workers, in particular as regards:

Article 16
1. Subject to the following paragraphs of this Article, the peoples concerned shall not be removed from the lands which they occupy.
2. Where the relocation of these peoples is considered necessary as an exceptional measure, such relocation shall take place only with their free and informed consent. Where their consent cannot be obtained, such relocation shall take place only following appropriate procedures established by national laws and regulations, including public inquiries where appropriate, which provide the opportunity for effective representation of the peoples concerned.
3. Whenever possible, these peoples shall have the right to return to their traditional lands, as soon as the grounds for relocation cease to exist.
4. When such return is not possible, as determined by agreement or, in the absence of such agreement, through appropriate procedures, these peoples shall be provided in all possible cases with lands of quality and legal status at least equal to that of the lands previously occupied by them, suitable to provide for their present needs and future development. Where the peoples concerned express a preference for compensation in money or in any appropriate guarantees.
5. Persons thus relocated shall be fully compensated for any resulting loss or injury.

Article 17
1. Procedures established by the peoples concerned for the transmission of land rights among members of these peoples shall be respected.
2. The peoples concerned shall be consulted whenever consideration is being given to their capacity to alienate their lands or otherwise transmit their interests, outside their own community.
3. Persons not belonging to these peoples shall be prevented from taking advantage of their customs or of lack of understanding of the laws on the part of their members to secure the ownership, possession or use of land belonging to them.

Article 18
Adequate penalties shall be established by law for unauthorised intrusion upon, or use of, the lands of the peoples concerned. and governments shall take measures to prevent such offences.

Article 19
National agrarian programmes shall secure to the peoples concerned treatment equivalent to that accorded to other sectors of the population with regard to:
(a) the provision of more land for these peoples when they have not the area necessary for providing the essentials of a normal existence, or for any possible increase in their numbers;
(b) the provision of the means required to promote the development of the lands which these peoples already possess. 
Part IV. VOCATIONAL TRAINING, HANDICRAFTS AND RURAL INDUSTRIES

Article 21

Members of the peoples concerned shall enjoy opportunities at least equal to those of other citizens in respect of vocational training measures.

Article 22

1. Measures shall be taken to promote the voluntary participation of members of the peoples concerned in vocational training programmes of general application.

2. Whenever existing programmes of vocational training of general application do not meet the special needs of the peoples concerned, governments shall, with the participation of these peoples, ensure the provision of special training programmes and facilities.

3. Any special training programmes shall be based on the economic environment, social and cultural conditions and practical needs of the peoples concerned. Any studies made in this connection shall be carried out in co-operation with these peoples, who shall be consulted on the organisation and operation of such programmes. Where feasible, these peoples shall progressively assume responsibility for the organisation and operation of such special training programmes, if they so decide.

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.

Part V. SOCIAL SECURITY AND HEALTH

Article 24

Social security schemes shall be extended progressively to cover the peoples concerned, and applied without discrimination against them.

Article 25

1. Governments shall ensure that adequate health services are made available to the peoples concerned, or shall provide them with resources to allow them to design and deliver such services under their own responsibility and control, so that they may enjoy the highest attainable standard of physical and mental health.

2. Health services shall, to the extent possible, be community-based. These services shall be planned and administered in co-operation with the peoples concerned and take into account their economic, geographic, social and cultural conditions as well as their traditional preventive care, healing practices and medicines.

3. The health care system shall give preference to the training and employment of local community health workers, and focus on primary health care while maintaining strong links with other levels of health care services.

4. The provision of such health services shall be co-ordinated with other social, economic and cultural measures in the country.

Part VI. EDUCATION AND MEANS OF COMMUNICATION

Article 26

Measures shall be taken to ensure that members of the peoples concerned have the opportunity to acquire education at all levels on at least an equal footing with the rest of the national community.
Article 29
The imparting of general knowledge and skills that will help children belonging to the peoples concerned to participate fully and on an equal footing in their own community and in the national community shall be an aim of education for these peoples.

Article 30
1. Governments shall adopt measures appropriate to the traditions and cultures of the peoples concerned, to make known to them their rights and duties, especially in regard to labour, economic opportunities, education and health matters, social welfare and their rights deriving from this Convention. 2. If necessary, this shall be done by means of written translations and through the use of mass communications in the languages of these peoples.

Article 31
Educational measures shall be taken among all sections of the national community, and particularly among those that are in most direct contact with the peoples concerned, with the object of eliminating prejudices that they may harbour in respect of these peoples. To this end, efforts shall be made to ensure that history textbooks and other educational materials provide a fair, accurate and informative portrayal of the societies and cultures of these peoples.

Part VII. CONTACTS AND CO-OPERATION ACROSS BORDERS

Article 32
Governments shall take appropriate measures, including by means of international agreements, to facilitate contacts and co-operation between indigenous and tribal peoples across borders, including activities in the economic, social, cultural, spiritual and environmental fields.

Part VIII. ADMINISTRATION

Article 33
1. The governmental authority responsible for the matters covered in this Convention shall ensure that agencies or other appropriate mechanisms exist to administer the programmes affecting the peoples concerned, and shall ensure that they have the means necessary for the proper fulfilment of the functions assigned to them.
2. These programmes shall include:
   (a) the planning, co-ordination, execution and evaluation, in co-operation with the peoples concerned, of the measures provided for in this Convention;
   (b) the proposing of legislative and other measures to the competent authorities and supervision of the application of the measures taken, in co-operation with the peoples concerned.

Part IX. GENERAL PROVISIONS

Article 34
The nature and scope of the measures to be taken to give effect to this Convention shall be determined in a flexible manner, having regard to the conditions characteristic of each country.

Article 35
The application of the provisions of this Convention shall not adversely affect rights and benefits of the peoples concerned pursuant to other Conventions and Recommendations, international instruments, treaties, or national laws, awards, custom or agreements.

Part X. FINAL PROVISIONS

Article 36
This Convention revises the Indigenous and Tribal Populations Convention, 1957.

Article 37
The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 38
1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.
2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.
3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

Article 39
1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.
2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 40
1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications and denunciations communicated to him by the Members of the Organisation.
2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

Article 41
The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications and acts of denunciation registered by him in accordance with the provisions of the preceding Articles.

Article 42
At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 43
1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides
   (a) the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 39 above, if and when the new revising Convention shall have come into force;
Traditional Resource Rights

(b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 44
The English and French versions of the text of this Convention are equally authoritative.

Appendix 3
Rio Declaration on Environment and Development

The United Nations Conference on Environment and Development,

Having met at Rio de Janeiro from 3 to 14 June 1992,

Reaffirming the Declaration of the United Nations Conference on the Human Environment, adopted at Stockholm on 16 June 1972, and seeking to build upon it,

With the goal of establishing a new and equitable global partnership through the creation of new levels of cooperation among States, key sectors of societies and people,

Working towards international agreements which respect the interests of all and protect the integrity of the global environmental and developmental system,

Recognizing the integral and interdependent nature of the Earth, our home,

PROCLAIMS that:

Principle 1
Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature.

Principle 2
States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.

Principle 3
The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations.

Principle 4
In order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it.

Principle 5
All States and all people shall cooperate in the essential task of eradicating poverty as an indispensable requirement for sustainable development, in order to decrease the disparities in standards of living and better meet the needs of the majority of the people of the world.

Principle 6
The special situation and needs of developing countries, particularly the least developed and those most environmentally vulnerable, shall be given special priority. International actions in the field of environment and development should also address the interests and needs of all countries.

Principle 7
States shall cooperate in a spirit of global partnership to conserve, protect and restore the health and integrity of the Earth's ecosystem. In view of the different contributions to global environmental degradation, States have common but differentiated responsibilities. The developed countries acknowledge the responsibility that they bear in the international pursuit of sustainable development in view of the pressures their societies place on the global environment and of the technologies and financial resources they command.
Appendix 3

Principle 8
To achieve sustainable development and a higher quality of life for all people, States should reduce and eliminate unsustainable patterns of production and consumption and promote appropriate demographic policies.

Principle 9
States should cooperate to strengthen endogenous capacity-building for sustainable development by improving scientific understanding through exchanges of scientific and technological knowledge, and by enhancing the development, adaptation, diffusion and transfer of technologies, including new and innovative technologies.

Principle 10
Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.

Principle 11
States shall enact effective environmental legislation. Environmental standards, management objectives and priorities should reflect the environmental and developmental context to which they apply. Standards applied by some countries may be inappropriate and of unwarranted economic and social cost to other countries, in particular developing countries.

Principle 12
States should cooperate to promote a supportive and open international economic system that would lead to economic growth and sustainable development in all countries, to better address the problems of environmental degradation. Trade policy measures for environmental purposes should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade. Unilateral actions to deal with environmental challenges outside the jurisdiction of the importing country should be avoided. Environmental measures addressing transboundary or global environmental problems should, as far as possible, be based on an international consensus.

Principle 13
States shall develop national law regarding liability and compensation for the victims of pollution and other environmental damage. States shall also cooperate in an expedient and more determined manner to develop further international law regarding liability and compensation for adverse effects of environmental damage caused by activities within their jurisdiction or control to areas beyond their jurisdiction.

Principle 14
States should effectively cooperate to discourage or prevent the relocation and transfer to other States of any activities and substances that cause severe environmental degradation or are found to be harmful to human health.

Principle 15
In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.

Principle 16
National authorities should endeavour to promote the internalization of environmental costs and the use of economic instruments, taking into account the approach that the polluter should, in principle, bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment.

Principle 17
Environmental impact assessment, as a national instrument, shall be undertaken for proposed activities that are likely to have a significant adverse impact on the environment and are subject to a decision of a competent national authority.

Principle 18
States shall immediately notify other States of any natural disasters or other emergencies that are likely to produce sudden harmful effects on the environment of those States. Every effort shall be made by the international community to help States so affected.

Principle 19
States shall provide prior and timely notification and relevant information to potentially affected States on activities that may have a significant adverse transboundary environmental effect and shall consult with those States at an early stage and in good faith.

Women have a vital role in environmental management and development. Their full participation is therefore essential to achieve sustainable development.

Principle 20
The creativity, ideals and courage of the youth of the world should be mobilized to forge a global partnership in order to achieve sustainable development and ensure a better future for all.

Principle 21
Indigenous people and their communities and other local communities have a vital role in environmental management and development because of their knowledge and traditional practices. States should recognize and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development.

Principle 22
The environment and natural resources of people under oppression, domination and occupation shall be protected.

Principle 23
Warfare is inherently destructive of sustainable development. States shall therefore respect international law providing protection for the environment in times of armed conflict and cooperate in its further development, as necessary.

Principle 24
Peace, development and environmental protection are interdependent and indivisible.

Principle 25
States shall resolve all their environmental disputes peacefully and by appropriate means in accordance with the Charter of the United Nations.

Principle 26
States and people shall cooperate in good faith and in a spirit of partnership in the fulfilment of the principles embodied in this Declaration and in the further development of international law in the field of sustainable development.
Appendix 4

Convention on Biological Diversity

PREAMBLE

The Contracting Parties,

Conscious of the intrinsic value of biological diversity and of the ecological, genetic, social, economic, scientific, educational, cultural, recreational and aesthetic values of biological diversity and its components,

Conscious also of the importance of biological diversity for evolution and for maintaining life sustaining systems of the biosphere,

Affirming that the conservation of biological diversity is a common concern of humankind,

Reaffirming that States have sovereign rights over their own biological resources,

Reaffirming also that States are responsible for conserving their biological diversity and for using their biological resources in a sustainable manner,

Concerned that biological diversity is being significantly reduced by certain human activities,

Aware of the general lack of information and knowledge regarding biological diversity and of the urgent need to develop scientific, technical and institutional capacities to provide the basic understanding upon which to plan and implement appropriate measures,

Noting that it is vital to anticipate, prevent and attack the causes of significant reduction or loss of biological diversity as source,

Noting also that where there is a threat of significant reduction or loss of biological diversity, lack of full scientific certainty should not be used as a reason for postponing measures to avoid or minimize such a threat,

Noting further that the fundamental requirement for the conservation of biological diversity is the in-situ conservation of ecosystems and natural habitats and the maintenance and recovery of viable populations of species in their natural surroundings,

Noting further that ex-situ measures, preferably in the country of origin, also have an important role to play,

Recognizing the close and traditional dependence of many indigenous and local communities embodying traditional lifestyles on biological resources, and the desirability of sharing equitably benefits arising from the use of traditional knowledge, innovations and practices relevant to the conservation of biological diversity and the sustainable use of its components,

Recognizing also the vital role that women play in the conservation and sustainable use of biological diversity and affirming the need for the full participation of women at all levels of policy-making and implementation for biological diversity conservation,

Stressing the importance of, and the need to promote, international, regional and global cooperation among States and intergovernmental organizations and the non-governmental sector for the conservation of biological diversity and the sustainable use of its components,

Acknowledging that the provision of new and additional financial resources and appropriate access to relevant technologies can be expected to make a substantial difference in the world’s ability to address the loss of biological diversity,

Acknowledging further that special provision is required to meet the needs of developing countries, including the provision of new and additional financial resources and appropriate access to relevant technologies,

Noting in this regard the special conditions of the least developed countries and small island States,

Acknowledging that substantial investments are required to conserve biological diversity and that there is the expectation of a broad range of environmental, economic and social benefits from those investments,

Recognizing that economic and social development and poverty eradication are the first and overriding priorities of developing countries,

Aware that conservation and sustainable use of biological diversity is of critical importance for meeting the food, health and other needs of the growing world population, for which purpose access to and sharing of both genetic resources and technologies are essential,

Noting that, ultimately, the conservation and sustainable use of biological diversity will strengthen friendly relations among States and contribute to peace for humankind,

Desiring to enhance and complement existing international arrangements for the conservation of biological diversity and sustainable use of its components, and

Determined to conserve and sustainability use biological diversity for the benefit of present and future generations,

HAVE AGREED as follows:

Article 1. Objectives

The objectives of this Convention, to be pursued in accordance with its relevant provisions, are the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources, including by appropriate access to genetic resources and by appropriate transfer of relevant technologies, taking into account all rights over those resources and to technologies, and by appropriate funding.

Article 2. Use of Terms

For the purposes of this Convention:

"Biological diversity" means the variability among living organisms from all sources including, inter alia, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems.

"Biological resources" includes genetic resources, species or species parts thereof, populations, or any other biotic component of ecosystems with actual or potential use or value for humanity.

"Biotechnology" means any technological application that uses biological systems, living organisms, or derivatives thereof, to modify or produce products or processes for specific use.

"Country of origin of genetic resources" means the country which possesses those genetic resources in in-situ conditions.

"Country providing genetic resources" means the country supplying genetic resources collected from in-situ sources, including populations of both wild and domesticated species, or taken from ex-situ sources, which may or may not have originated in that country.

"Domesticated or cultivated species" means species in which the evolutionary process has been influenced by humans to meet their needs.

"Ecosystem" means a dynamic complex of plant, animal and micro-organism communities and their non-living environment interacting as a functional unit.

"Ex-situ conservation" means the conservation of components of biological diversity outside their natural habitats.

"Genetic material" means any material of plant, animal, microbial or other origin containing functional units of heredity.

"Genetic resources" means genetic material of actual or potential value.
"Habitat" means the place or type of site where an organism or population naturally occurs.

"In-situ conditions" means conditions where genetic resources exist within ecosystems and natural habitats, and, in the case of domesticated or cultivated, species, in the surroundings where they have developed their distinctive properties.

"In-situ conservation” means the conservation of ecosystems and natural habitats and the maintenance and recovery of viable populations of species in their natural surroundings and, in the case of domesticated or cultivated species, in the surroundings where they have developed their distinctive properties.

"Protected area" means a geographically defined area which is designated or regulated and managed to achieve specific conservation objectives.

"Regional economic integration organization” means an organization constituted by sovereign States of a given region, to which its member States have transferred responsibility in respect of matters governed by this Convention and which has been duly authorized, in accordance with its internal procedures, to sign, ratify, accept, approve or accede to it.

"Sustainable use" means the use of components of biological diversity in a way and at a rate that does not lead to the long-term decline of biological diversity, thereby maintaining its potential to meet the needs and aspirations of present and future generations.

"Technology” includes biotechnology.

Article 3. Principle

States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.

Article 4. Jurisdictional Scope

Subject to the rights of other States, and except as otherwise expressly provided in this Convention, the provisions of this Convention apply, in relation to each Contracting Party:

(a) In the case of components of biological diversity, in areas within the limits of its national jurisdiction; and

(b) In the case of processes and activities, regardless of where their effects occur, carried out under its jurisdiction or control, within the area of its national jurisdiction or beyond the limits of national jurisdiction.

Article 5. Cooperation

Each Contracting Party shall, as far as possible and as appropriate, cooperate with other Contracting Parties, directly or, where appropriate, through competent international organizations, in respect of areas beyond national jurisdiction and on other matters of mutual interest, for the conservation and sustainable use of biological diversity.

Article 6. General Measures for Conservation and Sustainable Use

Each Contracting Party shall, in accordance with its particular conditions and capabilities:

(a) Develop national strategies, plans or programmes for the conservation and sustainable use of biological diversity or adopt for this purpose existing strategies, plans or programmes which shall reflect, inter alia, the measures set out in this Convention relevant to the Contracting Party concerned; and

(b) Integrate, as far as possible and as appropriate, the conservation and sustainable use of biological diversity into relevant sectoral or cross-sectoral plans, programmes and policies.

Article 7. Identification and Monitoring

Each Contracting Party shall, as far as possible and as appropriate, in particular for the purposes of Articles 8 to 10:

(a) Identify components of biological diversity important for its conservation and sustainable use having regard to the indicative list of categories set down in Annex I; and

(b) Monitor, through sampling and other techniques, the components of biological diversity identified pursuant to subparagraph (a) above, paying particular attention to those requiring urgent conservation measures and those which offer the greatest potential for sustainable use; and

(c) Identify processes and categories of activities which have or are likely to have significant adverse impacts on the conservation and sustainable use of biological diversity, and monitor their effects through sampling and other techniques; and

(d) Maintain and organize, by any mechanism data, derived from identification and monitoring activities pursuant to subparagraphs (a), (b) and (c) above.

Article 8. In-Situ Conservation

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

(a) Establish a system of protected areas or areas where special measures need to be taken to conserve biological diversity;

(b) Develop, where necessary, guidelines for the selection, establishment and management of protected areas or areas where special measures need to be taken to conserve biological diversity;

(c) Regulate or manage biological resources important for the conservation of biological diversity whether within or outside protected areas, with a view to ensuring their conservation and sustainable use;

(d) Promote the protection of ecosystems, natural habitats and the maintenance of viable populations of species in natural surroundings;

(e) Promote environmentally sound and sustainable development in areas adjacent to protected areas with a view to furthering protection of these areas;

(f) Rehabilitate and restore degraded ecosystems and promote the recovery of threatened species, inter alia, through the development and implementation of plans or other management strategies;

(g) Establish or maintain means to regulate, manage or control the risks associated with the use and release of living modified organisms resulting from biotechnology which are likely to have adverse environmental impacts that could affect the conservation and sustainable use of biological diversity, taking also into account the risks to human health;

(h) Prevent the introduction of, control or eradicate those alien species which threaten ecosystems, habitats or species;

(i) Endeavour to provide the conditions needed for compatibility between present uses and the conservation of biological diversity and the sustainable use of its components;

(j) Subject to its national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional livelihoods relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices;

(k) Develop or maintain necessary legislation and/or other regulatory provisions for the protection of threatened species and populations;

(l) Where a significant adverse effect on biological diversity has been determined pursuant to Article 7, regulate or manage the relevant processes and categories of activities and

(m) Cooperate in providing financial and other support for in-situ conservation outlined in subparagraphs (a) to (l) above, particularly to developing countries.
Article 9. Ex-situ Conservation

Each Contracting Party shall, as far as possible and as appropriate, and predominantly for the purpose of complementing in-situ measures:

(a) Adopt measures for the ex-situ conservation of components of biological diversity, preferably in the country of origin of such components;

(b) Establish and maintain facilities for ex-situ conservation of and research on plants, animals and micro-organisms, preferably in the country of origin of genetic resources;

(c) Adopt measures for the recovery and rehabilitation of threatened species and for their reintroduction into their natural habitats under appropriate conditions;

(d) Regulate and manage collection of biological resources from natural habitats for ex-situ conservation purposes so as not to threaten ecosystems and in-situ populations of species, except where special temporary ex-situ measures are required under subparagraph (c) above; and

(e) Cooperate in providing financial and other support for ex-situ conservation outlined in subparagraphs (a) to (d) above and in the establishment and maintenance of ex-situ conservation facilities in developing countries.

Article 10. Sustainable Use of Components of Biological Diversity

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

(a) Integrate consideration of the conservation and sustainable use of biological resources into national decision-making;

(b) Adopt measures relating to the use of biological resources to avoid or minimize adverse impacts on biological diversity;

(c) Protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements;

(d) Support local populations to develop and implement remedial action in degraded areas where biological diversity has been reduced; and

(e) Encourage cooperation between its governmental authorities and its private sector in developing methods for sustainable use of biological resources.

Article 11. Incentive Measures

Each Contracting Party shall, as far as possible and as appropriate, adopt economically and socially sound measures that act as incentives for the conservation and sustainable use of components of biological diversity.

Article 12. Research and Training

The Contracting Parties, taking into account the special needs of developing countries, shall:

(a) Establish and maintain programmes for scientific and technical education and training in measures for the identification, conservation and sustainable use of biological diversity and its components and provide support for such education and training for the specific needs of all, including developing countries;

(b) Promote and encourage research which contributes to the conservation and sustainable use of biological diversity, particularly in developing countries, in accordance with decisions of the Conference of the Parties taken in consequence of the recommendations of the Subsidiary Body on Scientific, Technical and Technological Advice; and

(c) In keeping with the provisions of Articles 16, 18 and 20, promote and cooperate in the use of scientific advances in biological diversity research in developing methods for conservation and sustainable use of biological resources.

Article 13. Public Education and Awareness

The Contracting Parties shall:

(a) Promote and encourage understanding of the importance of, and the measures required for, the conservation of biological diversity, as well as its propagation through media, and the inclusion of these topics in educational programmes; and

(b) Cooperate, as appropriate, with other States and international organizations in developing educational and public awareness programmes, with respect to conservation and sustainable use of biological diversity.

Article 14. Impact Assessment and Minimizing Adverse Impacts

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

(a) Introduce appropriate procedures requiring environmental impact assessment of its proposed projects that are likely to have significant adverse effects on biological diversity with a view to avoiding or minimizing such effects and, where appropriate, allow for public participation in such procedures;

(b) Introduce appropriate arrangements to ensure that the environmental consequences of its programmes and policies that are likely to have significant adverse impacts on biological diversity are duly taken into account;

(c) Promote, on the basis of reciprocity, notification, exchange of information and consultation on activities under their jurisdiction or control which are likely to significantly affect adversely the biological diversity of other States or areas beyond the limits of national jurisdiction, by encouraging the conclusion of bilateral, regional or multilateral arrangements, as appropriate;

(d) In the case of imminent or grave danger or damage, originating under its jurisdiction or control, to biological diversity within the area under jurisdiction of other States or in areas beyond the limits of national jurisdiction, notify immediately the potentially affected States of such danger or damage, as well as initiate action to prevent or minimize such danger or damage; and

(e) Promote national arrangements for emergency responses to activities or events, whether caused naturally or otherwise, which present a grave and imminent danger to biological diversity and encourage international cooperation to supplement such national efforts and, where appropriate and agreed by the States or regional economic integration organizations concerned, to establish joint contingency plans.

2. The Conference of the Parties shall examine, on the basis of studies to be carried out, the issue of liability and redress, including restoration and compensation, for damage to biological diversity, except where such liability is a purely internal matter.

Article 15. Access to Genetic Resources

1. Recognizing the sovereign rights of States over their natural resources, the authority to determine access to genetic resources rests with the national governments and is subject to national legislation.

2. Each Contracting Party shall endeavour to create conditions to facilitate access to genetic resources for environmentally sound uses by other Contracting Parties and not to impose restrictions that run counter to the objectives of this Convention.

3. For the purpose of this Convention, the genetic resources being provided by a Contracting Party, as referred to in this Article and Articles 16 and 19, are only those that are provided by Contracting Parties that are countries of origin of such resources or by the Parties that have acquired the genetic resources in accordance with this Convention.

4. Access, where granted, shall be on mutually agreed terms and subject to the provisions of this Article.

5. Access to genetic resources shall be subject to prior informed consent of the Contracting Party providing such resources, unless otherwise determined by that Party.
6. Each Contracting Party shall endeavour to develop and carry out scientific research based on genetic resources provided by other Contracting Parties with the full participation of, and where possible in, such Contracting Parties.

7. Each Contracting Party shall take legislative, administrative or policy measures, as appropriate, in accordance with Article 16 and 19 and, where necessary, through the financial mechanism established by Articles 20 and 21, with the aim of sharing in a fair and equitable way the results of research and development and the benefits arising from the commercial and other utilization of genetic resources with the Contracting Party providing such resources. Such sharing shall be upon mutually agreed terms.

**Article 16. Access to and Transfer of Technology**

1. Each Contracting Party, recognizing that technology includes biotechnology, and that both access to and transfer of technology among Contracting Parties are essential elements for the attainment of the objectives of this Convention, undertakes to provide and/or facilitate access for and transfer to other Contracting Parties of technologies that are relevant to the conservation and sustainable use of biological diversity or make use of genetic resources and do not cause significant damage to the environment.

2. Access to and transfer of technology referred to in paragraph 1 above to developing countries shall be provided or facilitated under fair and most favourable terms, including on concessional and preferential terms where mutually agreed and, where necessary, in accordance with the financial mechanism established by Articles 20 and 21. In the case of technology subject to patents and other intellectual property rights, such access and transfer shall be provided on terms which recognize and are consistent with the adequate and effective protection of intellectual property rights. The application of this paragraph shall be consistent with paragraphs 3, 4 and 5 below.

3. Each Contracting Party shall take legislative, administrative or policy measures, as appropriate, in order to ensure that Contracting Parties, in particular those that are developing countries, which provide genetic resources are provided access to and transfer of technology which makes use of those resources, on mutually agreed terms, including technology protected by patents and other intellectual property rights, where necessary, through the provisions of Articles 20 and 21 and in accordance with international law and consistent with paragraphs 4 and 5 below.

4. Each Contracting Party shall take legislative, administrative or policy measures, as appropriate, with the aim that the private sector facilitates access to, joint development and transfer of technology referred to in paragraph 1 above for the benefit of both governmental institutions and the private sector of developing countries and in this regard shall abide by the obligations included in paragraphs 1, 2 and 3 above.

5. The Contracting Parties, recognizing that patents and other intellectual property rights may have an influence on the implementation of this Convention, shall cooperate in this regard subject to national legislation and international law in order to ensure that such rights are supportive of and do not run counter to its objectives.

**Article 17. Exchange of Information**

1. The Contracting Parties shall facilitate the exchange of information, from all publicly available sources, relevant to the conservation and sustainable use of biological diversity, taking into account the special needs of developing countries.

2. Such exchange of information shall include exchange of results of technical, scientific and socio-economic research, as well as information on training and surveying programmes, specialized knowledge, indigenous and traditional knowledge as such and in combination with the technologies referred to in Article 16, paragraph 1. It shall also, where feasible, include repatriation of information.

---

**Article 18. Technical and Scientific Cooperation**

1. The Contracting Parties shall promote international technical and scientific cooperation in the field of conservation and sustainable use of biological diversity, where necessary, through the appropriate international and national institutions.

2. Each Contracting Party shall promote technical and scientific cooperation with other Contracting Parties, in particular developing countries, in implementing this Convention, inter alia, through the development and implementation of national policies. In promoting such cooperation, special attention should be given to the development and strengthening of national capabilities, by means of human resources development and institution building.

3. The Conference of the Parties, at its first meeting, shall determine how to establish a clearing-house mechanism to promote and facilitate technical and scientific cooperation.

4. The Contracting Parties shall, in accordance with national legislation and policies, encourage and develop methods of cooperation for the development and use of technologies, including indigenous and traditional technologies, in pursuance of the objectives of this Convention. For this purpose, the Contracting Parties shall also promote cooperation in the training of personnel and exchange of experts.

5. The Contracting Parties shall, subject to mutual agreement, promote the establishment of joint research programmes and joint ventures for the development of technologies relevant to the objectives of this Convention.

---

**Article 19. Handling of Biotechnology and Distribution of its Benefits**

1. Each Contracting Party shall take legislative, administrative or policy measures, as appropriate, to provide for the effective participation in biotechnological research activities by those Contracting Parties, especially developing countries, which provide the genetic resources for such research, and where feasible in such Contracting Parties.

2. Each Contracting Party shall take all practicable measures to promote and advance priority access on a fair and equitable basis by Contracting Parties, especially developing countries, to the results and benefits arising from biotechnologies based upon genetic resources provided by those Contracting Parties. Such access shall be on mutually agreed terms.

3. The Parties shall consider the need for and modalities of a protocol setting out appropriate procedures, including, in particular, advance informed agreement, in the field of the safe transfer, handling and use of any living modified organism resulting from biotechnology that may have adverse effect on the conservation and sustainable use of biological diversity.

4. Each Contracting Party shall, directly or by requiring any natural or legal person under its jurisdiction providing the organisms referred to in paragraph 3 above, provide any available information about the use and safety regulations required by that Contracting Party in handling such organisms, as well as any available information on the potential adverse impact of the specific organisms concerned to the Contracting Party into which those organisms are to be introduced.

---

**Article 20. Financial Resources**

1. Each Contracting Party undertakes to provide, in accordance with its capabilities, financial support and incentives in respect of those national activities which are intended to achieve the objectives of this Convention, in accordance with its national plans, priorities and programmes.

2. The developed country Parties shall provide new and additional financial resources to enable developing country Parties to meet the agreed full incremental costs to them of implemention measures which fulfil the obligations of this Convention and to benefit from its provisions and which costs are agreed between a developing country Party and the institutional structure referred to in Article 21, in accordance with policy, strategy, programme priorities and eligibility criteria and an indicative list of incremental costs established by the Conference of the Parties. Other Parties, including countries undergoing the process of transition to a market economy, may voluntarily assume the obligations of the developed country Parties. For the purpose of this Article, the Conference of the Parties,
shall at its first meeting establish a list of developed country Parties and other Parties which voluntarily assume the obligations of the developed country Parties. The Conference of the Parties shall periodically review and if necessary amend the list. Contributions from other countries and sources on a voluntary basis would also be encouraged. The implementation of these commitments shall take into account the need for adequacy, predictability and timely flow of funds and the importance of burden-sharing among the contributing Parties included in the list.

3. The developed country Parties may also provide, and developing country Parties avail themselves of, financial resources related to the implementation of this Convention through bilateral, regional and other multilateral channels.

4. The extent to which developing country Parties will effectively implement their commitments under this Convention will depend on the effective implementation by developed country Parties of their commitments under this Convention and on financial resources and transfer of technology and will take into account the fact that economic and social development and eradication of poverty are the first and overriding priorities of the developing country Parties.

5. The Parties shall take full account of the specific needs and special situation of least developed countries in their actions with regard to funding and transfer of technology.

6. The Contracting Parties shall also take into consideration the special conditions resulting from the dependence on, distribution and location of, biological diversity within developing country Parties, in particular small island States.

7. Consideration shall also be given to the special situation of developing countries, including those that are most environmentally vulnerable, such as those with arid and semi-arid zones, coastal and mountainous areas.

**Article 21. Financial Mechanism**

1. There shall be a mechanism for the provision of financial resources to developing country Parties for purposes of this Convention on a grant or concessional basis, the essential elements of which are described in this Article. The mechanism shall function under the authority and guidance of, and be accountable to, the Conference of the Parties for purposes of this Convention. The operations of the mechanism shall be carried out by such institutional structure as may be decided upon by the Conference of the Parties at its first meeting. For purposes of this Convention, the Conference of the Parties shall determine the policy, strategy, programme priorities and eligibility criteria relating to the access to and utilization of such resources. The contributions shall be such as to take into account the need for predictability, adequacy and timely flow of funds referred to in Article 20 in accordance with the amount of resources needed to be decided periodically by the Conference of the Parties and the importance of burden-sharing among the contributing Parties included in the list referred to in Article 20, paragraph 2. Voluntary contributions may also be made by the developed country Parties and by other countries and sources. The mechanism shall operate within a democratic and transparent system of governance.

2. Pursuant to the objectives of this Convention, the Conference of the Parties shall at its first meeting determine the policy, strategy and programme priorities, as well as detailed criteria and guidelines for eligibility for access to and utilization of the financial resources including monitoring and evaluation on a regular basis of such utilization. The Conference of the Parties shall decide on the arrangements to give effect to paragraph 1 above after consultation with the institutional structure entrusted with the operation of the financial mechanism.

3. The Conference of the Parties shall review the effectiveness of the mechanism established under this Article, including the criteria and guidelines referred to in paragraph 2 above, not less than two years after the entry into force of this Convention and thereafter on a regular basis. Based on such review, it shall take appropriate action to improve the effectiveness of the mechanism if necessary.

4. The Contracting Parties shall consider strengthening existing financial institutions to provide financial resources for the conservation and sustainable use of biological diversity.
Article 24. Secretariat

1. A secretariat is hereby established. Its functions shall be:
   (a) To arrange for and service meetings of the Conference of the Parties provided for in Article 23;
   (b) To perform the functions assigned to it by any protocol;
   (c) To prepare reports on the execution of its functions under this Convention and present them to the Conference of the Parties;
   (d) To coordinate with other relevant international bodies and, in particular, to enter into such administrative and contractual arrangements as may be required for the effective discharge of its functions; and
   (e) To perform such other functions as may be determined by the Conference of the Parties.

2. At its first ordinary meeting, the Conference of the Parties shall designate the secretariat from amongst those existing competent international organizations which have signified their willingness to carry out the secretariat functions under this Convention.

Article 25. Subsidiary Body on Scientific, Technical and Technological Advice

1. A subsidiary body for the provision of scientific, technical and technological advice is hereby established to provide the Conference of the Parties and, as appropriate, its other subsidiary bodies with timely advice relating to the implementation of this Convention. This body shall be open to participation by all Parties and shall be multidisciplinary. It shall comprise government representatives competent in the relevant field of expertise. It shall report regularly to the Conference of the Parties on all aspects of its work.

2. Under the authority of and in accordance with guidelines laid down by the Conference of the Parties, and upon its request, this body shall:
   (a) Provide scientific and technical assessments of the status of biological diversity;
   (b) Prepare scientific and technical assessments of the effects of types of measures taken in accordance with the provisions of this Convention;
   (c) Identify innovative, efficient and state-of-the-art technologies and know-how relating to the conservation and sustainable use of biological diversity and advise on the ways and means of promoting development and/or transferring such technologies;
   (d) Provide advice on scientific programmes and international cooperation in research and development related to conservation and sustainable use of biological diversity; and
   (e) Respond to scientific, technical, technological and methodological questions that the Conference of the Parties and its subsidiary bodies may put to the body.

3. The functions, terms of reference, organization and operation of this body may be further elaborated by the Conference of the Parties.

Article 26. Reports

Each Contracting Party shall, at intervals to be determined by the Conference of the Parties, present to the Conference of the Parties, reports on measures which it has taken for the implementation of the provisions of this Convention and their effectiveness in meeting the objectives of this Convention.

Article 27. Settlement of Disputes

1. In the event of a dispute between Contracting Parties concerning the interpretation or application of this Convention, the parties concerned shall seek solution by negotiation.

2. If the parties concerned cannot reach agreement by negotiation, they may jointly seek the good offices of, or request mediation by, a third party.

3. When ratifying, accepting, approving or acceding to this Convention, or at any time thereafter, a State or regional economic integration organization may declare in writing to the Depositary that for a dispute not resolved in accordance with paragraph 1 or paragraph 2 above, it accepts one or both of the following means of dispute settlement as compulsory:

   (a) Arbitration in accordance with the procedure laid down in Part I of Annex II;
   (b) Submission of the dispute to the International Court of Justice.

4. If the parties to the dispute have not, in accordance with paragraph 3 above, accepted the same or any procedure, the dispute shall be submitted to conciliation in accordance with Part 2 of Annex II unless the parties otherwise agree.

5. The provisions of this Article shall apply with respect to any protocol except as otherwise provided in the protocol concerned.

Article 28. Adoption of Protocols

1. The Contracting Parties shall cooperate in the formulation and adoption of protocols to this Convention.

2. Protocols shall be adopted at a meeting of the Conference of the Parties.

3. The text of any proposed protocol shall be communicated to the Contracting Parties by the Secretariat at least six months before such a meeting.

Article 29. Amendment of the Convention or Protocols

1. Amendments to this Convention may be proposed by any Contracting Party. Amendments to any protocol may be proposed by any Party to that protocol.

2. Amendments to this Convention shall be adopted at a meeting of the Conference of the Parties. Amendments to any protocol shall be adopted at a meeting of the Parties to the Protocol in question. The text of any proposed amendment to this Convention or to any protocol, except as may otherwise be provided in such protocol, shall be communicated to the Parties to the instrument in question by the secretariat at least six months before the meeting at which it is proposed for adoption. The secretariat shall also communicate proposed amendments to the signatories to this Convention for information.

3. The Parties shall make every effort to reach agreement on any proposed amendment to this Convention or to any protocol by consensus. If all efforts as consensus have been exhausted, and no agreement reached, the amendment shall as a last resort be adopted by a two-thirds majority vote of the Parties to the instrument in question present and voting at the meeting, and shall be submitted by the Depositary to all Parties for ratification, acceptance or approval.

4. Ratification, acceptance or approval of amendments shall be notified to the Depositary in writing. Amendments adopted in accordance with paragraph 3 above shall enter into force among Parties having accepted them on the ninetieth day after the deposit of instruments of ratification, acceptance or approval by at least two-thirds of the Contracting Parties to this Convention or of the Parties to the protocol concerned, except as may otherwise be provided in such protocol. Thereafter the amendments shall enter into force for any other Party on the ninetieth day after that Party deposits its instrument of ratification, acceptance or approval of the amendments.

5. For the purposes of this Article, “Parties present and voting” means Parties present and casting an affirmative or negative vote.

Article 30. Adoption and Amendment of Annexes

1. The annexes to this Convention or to any protocol shall form an integral part of the Convention or of such protocol, as the case may be, and, unless expressly provided otherwise, a reference to this Convention or its protocols constitutes at the same time a reference to any annexes thereto. Such annexes shall be restricted to procedural, scientific, technical and administrative matters.

2. Except as may be otherwise provided in any protocol with respect to its annexes, the following procedure shall apply to the proposal, adoption and entry into force of additional annexes to this Convention or of annexes to any protocol:

   (a) Annexes to this Convention or to any protocol shall be proposed and adopted according to the procedure laid down in Article 29;

154

155
(b) Any Party that is unable to approve an additional annex to this Convention or an annex to any protocol to which it is Party shall so notify the Depositary, in writing, within one year from the date of the communication of the adoption of the protocol by the Depositary. The Depositary shall without delay notify all Parties of any such notification received. A Party may at any time withdraw a previous declaration of objection and the annexes shall thereupon enter into force for that Party subject to subparagraph (c) below.

(c) On the expiry of one year from the date of the communication of the adoption by the Depositary, the annex shall enter into force for all Parties to this Convention or to any protocol concerned which have not submitted a notification in accordance with the provisions of subparagraph (b) above.

3. The proposal, adoption and entry into force of amendments to annexes to this Convention or to any protocol shall be subject to the same procedure as for the proposal, adoption and entry into force of annexes to the Convention or annexes to any protocol.

4. If an additional annex or an amendment to an annex is related to an amendment to this Convention or to any protocol, the additional annex or amendment shall not enter into force until such time as the amendment to the Convention or to the protocol concerned enters into force.

Article 31. Right to Vote

1. Except as provided for in paragraph 2 below, each Contracting Party to this Convention or to any protocol shall have one vote.

2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote with a number of votes equal to the number of their member States which are Contracting Parties to this Convention or the relevant protocol. Such organizations shall not exercise their right to vote if their member States exercise theirs, and vice versa.

Article 32. Relationship between this Convention and Its Protocols

1. A State or a regional economic integration organization may not become a Party to a protocol unless it is, or becomes at the same time, a Contracting Party to this Convention.

2. Decisions under any protocol shall be taken only by the Parties to the protocol concerned. Any Contracting Party that has not ratified, accepted or approved a protocol may participate as an observer in any meeting of the parties to that protocol.

Article 33. Signature


Article 34. Ratification, Acceptance or Approval

1. This Convention and any protocol shall be subject to ratification, acceptance or approval by States and by regional economic integration organizations. Instruments of ratification, acceptance or approval shall be deposited with the Depositary.

2. Any organization referred to in paragraph 1 above which becomes a Contracting Party to this Convention or any protocol without any of its member States being a Contracting Party shall be bound by all the obligations under the Convention or the protocol, as the case may be. In the case of such organizations, one or more of whose member States is a Contracting Party to this Convention or relevant protocol, the organization and its member States shall decide on their respective responsibilities for the performance of their obligations under the Convention or protocol, as the case may be. In such cases, the organization and the member States shall not be entitled to exercise rights under the Convention or relevant protocol concurrently.

3. In their instruments of ratification, acceptance or approval, the organizations referred to in paragraph 1 above shall declare the extent of their competence with respect to the matters governed by the Convention or the relevant protocol. These organizations shall also inform the Depositary of any relevant modification in the extent of their competence.

1. This Convention and any protocol shall be open for accession by States and by regional economic integration organizations from the date on which the Convention or the protocol concerned is closed for signature. The instruments of accession shall be deposited with the Depositary.

2. In their instruments of accession, the organizations referred to in paragraph 1 above shall declare the extent of their competence with respect to the matters governed by the Convention or the relevant protocol. These organizations shall also inform the Depositary of any relevant modification in the extent of their competence.

3. The provisions of Article 34, paragraph 2, shall apply to regional economic integration organizations which accede to this Convention or any protocol.

Article 36. Entry into Force

1. This Convention shall enter into force on the nineteenth day after the date of deposit of the thirteenth instrument of ratification, acceptance, approval or accession.

2. Any protocol shall enter into force on the nineteenth day after the date of deposit of the number of instruments of ratification, acceptance, approval or accession, specified in that protocol, has been deposited.

3. For each Contracting Party which ratifies, accepts or approves this Convention or accedes thereto after the deposit of the thirteenth instrument of ratification, acceptance, approval or accession, it shall enter into force on the ninetieth day after the date of deposit by such Contracting Party of its instrument of ratification, acceptance, approval or accession.

4. Any protocol, except as otherwise provided in such protocol, shall enter into force for a Contracting Party that ratifies, accepts or approves that protocol or accedes thereto after its entry into force pursuant to paragraph 2 above, on the ninetieth day after the date on which that Contracting Party deposits its instrument of ratification, acceptance, approval or accession, or on the date on which this Convention enters into force for that Contracting Party, whichever shall be the later.

5. For the purposes of paragraphs 1 and 2 above, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.

Article 37. Reservations

No reservations may be made to this Convention.

Article 38. Withdrawals

1. At any time after two years from the date on which this Convention has entered into force for a Contracting Party, that Contracting Party may withdraw from the Convention by giving written notification to the Depositary.

2. Any such withdrawal shall take place upon expiry of one year after the date of its receipt by the Depositary, or on such later date as may be specified in the notification of the withdrawal.

3. Any Contracting Party which withdraws from this Convention shall be considered as also having withdrawn from any protocol to which it is party.

Article 39. Financial Interim Arrangements

Provided that it has been fully restructured in accordance with the requirements of Article 21, the Global Environment Facility of the United Nations Development Programme, the United Nations Environment Programme and the International Bank for Reconstruction and Development shall be the institutional structure referred to in Article 21 on an interim basis, for the period between the entry into force of this Convention and the first meeting of the Conference of the Parties or until the Conference of the Parties decides which institutional structure will be designated in accordance with Article 21.
Article 40. Secretariat Interim Arrangements
The secretariat to be provided by the Executive Director of the United Nations Environment Programme shall be the secretariat referred to in Article 24, paragraph 2, on an interim basis for the period between the entry into force of this Convention and the first meeting of the Conference of the Parties.

Article 41. Depositary
The Secretary-General of the United Nations shall assume the functions of Depositary of this Convention and any protocols.

Article 42. Authentic Texts
The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned, being duly authorized to that effect, have signed this Convention.
Done at Rio de Janeiro on this fifth day of June, one thousand nine hundred and ninety-two.

Annex I
IDENTIFICATION AND MONITORING

1. Ecosystems and habitats: containing high diversity, large numbers of endemic or threatened species, or wilderness; required by migratory species; of social, economic, cultural or scientific importance; or, which are representative, unique or associated with key evolutionary or other biological processes;
2. Species and communities which are threatened; wild relatives of domesticated or cultivated species; of medicinal, agricultural or other economic value; or social, scientific or cultural importance; or importance for research into the conservation and sustainable use of biological diversity, such as indicator species; and
3. Described genomes and genes of social, scientific or economic importance.

Annex II
Part 1
ARBITRATION

Article 1
The claimant party shall notify the secretariat that the parties are referring a dispute to arbitration pursuant to Article 27. The notification shall state the subject-matter of arbitration and include, in particular, the articles of the Convention or the protocol, the interpretation or application of which are at issue. If the parties do not agree on the subject-matter of the dispute before the President of the tribunal is designated, the arbitral tribunal shall determine the subject matter. The secretariat shall forward the information thus received to all Contracting Parties to this Convention or to the protocol concerned.

Article 2
1. In disputes between two parties, the arbitral tribunal shall consist of three members. Each of the parties to the dispute shall appoint an arbitrator and the two arbitrators so appointed shall designate by common agreement the third arbitrator who shall be the President of the tribunal. The latter shall not be a national of one of the parties to the dispute, nor have his or her usual place of residence in the territory of one of these parties, nor be employed by any of them, nor have dealt with the case in any other capacity.

2. In disputes between more than two parties, parties in the same interest shall appoint one arbitrator jointly by agreement.

3. Any vacancy shall be filled in the manner prescribed for the initial appointment.

Article 3
1. If the President of the arbitral tribunal has not been designated within two months of the appointment of the second arbitrator, the Secretary-General of the United Nations shall, at the request of a party, designate the President within a further two-month period.

2. If one of the parties to the dispute does not appoint an arbitrator within two months of receipt of the request, the other party may inform the Secretary-General who shall make the designation within a further two-month period.

Article 4
The arbitral tribunal shall render its decisions in accordance with the provisions of this Convention, any protocols concerned, and international law.

Article 5
Unless the parties to the dispute otherwise agree, the arbitral tribunal shall determine its own rules of procedure.

Article 6
The arbitral tribunal may, at the request of one of the parties, recommend essential interim measures of protection.

Article 7
The parties to the dispute shall facilitate the work of the arbitral tribunal and, in particular, using all means at their disposal, shall:
(a) Provide it with all relevant documents, information and facilities; and
(b) Enable it, when necessary, to call witnesses or experts and receive their evidence.

Article 8
The parties and the arbitrators are under an obligation to protect the confidentiality of any information they receive in confidence during the proceedings of the arbitral tribunal.

Article 9
Unless the arbitral tribunal determines otherwise because of the particular circumstances of the case, the costs of the tribunal shall be borne by the parties to the dispute in equal shares. The tribunal shall keep a record of all its costs, and shall furnish a final statement thereof to the parties.

Article 10
Any Contracting Party that has an interest of a legal nature in the subject-matter of the dispute which may be affected by the decision in the case, may intervene in the proceedings with the consent of the tribunal.

Article 11
The tribunal may hear and determine counterclaims arising directly out of the subject-matter of the dispute.

Article 12
Decisions both on procedure and substance of the arbitral tribunal shall be taken by a majority vote of its members.

Article 13
If one of the parties to the dispute does not appear before the arbitral tribunal or fails to defend its case, the other party may request the tribunal to continue the proceedings and to make its award. Absence of a party or a failure of a party to defend its case shall not constitute a bar to
the proceedings. Before rendering its final decision, the arbitral tribunal must satisfy itself that the claim is well founded in fact and law.

Article 14
The tribunal shall render its final decision within five months of the date on which it is fully constituted unless it finds it necessary to extend the time-limit for a period which should not exceed five more months.

Article 15
The final decision of the arbitral tribunal shall be confined to the subject-matter of the dispute and shall state the reasons on which it is based. It shall contain the names of the members who have participated and the date of the final decision. Any member of the tribunal may attach a separate or dissenting opinion to the final decision.

Article 16
The award shall be binding on the parties to the dispute. It shall be without appeal unless the parties to the dispute have agreed in advance to an appellate procedure.

Article 17
Any controversy which may arise between the parties to the dispute as regards the interpretation or manner of implementation of the final decision may be submitted by either party for decision to the arbitral tribunal which rendered it.

Part 2
CONCILIATION

Article 1
A conciliation commission shall be created upon the request of one of the parties to the dispute. The commission shall, unless the parties otherwise agree, be composed of five members, two appointed by each Party concerned and a President chosen jointly by those members.

Article 2
In disputes between more than two parties, parties in the same interest shall appoint their members of the commission jointly by agreement. Where two or more parties have separate interests or there is a disagreement as to whether they are of the same interest, they shall appoint their members separately.

Article 3
If any appointments by the parties are not made within two months of the date of the request to create a conciliation commission, the Secretary-General of the United Nations shall, if asked to do so by the party that made the request, make those appointments within a further two-month period.

Article 4
If a President of the conciliation commission has not been chosen within two months of the last of the members of the commission being appointed, the Secretary-General of the United Nations shall, if asked to do so by a party, designate a President within a further two-month period.

Article 5
The conciliation commission shall take its decisions by majority vote of its members. It shall, unless the parties to the dispute otherwise agree, determine its own procedure. It shall render a proposal for resolution of the dispute, which the parties shall consider in good faith.

Article 6
A disagreement as to whether the conciliation commission has competence shall be decided by the commission.

Appendix 5

Agenda 21
Chapter 26: Recognizing and Strengthening the Role of Indigenous People and Their Communities

PROGRAMME AREA

Basis for action

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

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

Objectives

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

(a) Establishment of a process to empower indigenous people and their communities through measures that include:

(i) Adoption or strengthening of appropriate policies and/or legal instruments at the national level;

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

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

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

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

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

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

160
Tradition  

tional legislation, 

activities participation in 

measures organisations values, 

management - 

their 

26.4. Some indigenous people and 

establishment 

26.5. United Nations organizations and other international development and finance 

organizations and Governments should, drawing on the active participation of indigenous people 

and their communities, as appropriate, take the following measures, inter alia, to incorporate their 

values, views and knowledge, including the unique contribution of indigenous women, in resource 

management and other policies and programmes that may affect them: 

(a) Appoint a special focal point within each international organization, and organize 

annual interorganizational coordination meetings in consultation with Governments 

and indigenous organizations, as appropriate, and develop a procedure within and 

between operational agencies for assisting Governments in ensuring the coherent and 

coordinated incorporation of the views of indigenous people in the design and 

implementation of policies and programmes. Under this procedure, indigenous people 

and their communities should be informed and consulted and allowed to participate in 

national decision-making, in particular regarding regional and international 

cooperative efforts. In addition, these policies and programmes should take fully into 

account strategies based on local indigenous initiatives; 

(b) Provide technical and financial assistance for capacity-building programmes to 

support the sustainable self-development of indigenous people and their communities; 

(c) Strengthen research and education programmes aimed at: 

(i) Achieving a better understanding of indigenous people’s knowledge and 

management experience related to the environment, and applying this to 

temporary development challenges; 

(ii) Increasing the efficiency of indigenous people’s resource management systems, 

for example, by promoting the adaptation and dissemination of suitable 

transferable innovations; 

(d) Contribute to the endeavours of indigenous people and their communities in resource 

management and conservation strategies (such as those that may be developed under 

appropriate projects funded through the Global Environment Facility and the Tropical 

Forestry Action Plan) and other programme areas of Agenda/21, including 

programmes to collect, analyse and use data and other information in support of 

sustainable development projects.

Activities 

26.6. Governments, in full partnership with indigenous people and their communities 

should, where appropriate: 

(a) Develop or strengthen national arrangements to consult with indigenous people and 

their communities with a view to reflecting their needs and incorporating their values 

and traditional and other knowledge and practices in national policies and programmes 

in the field of natural resource management and conservation and other development 

programmes affecting them; 

(b) Cooperate at the regional level, where appropriate, to address common indigenous 

issues with a view to recognizing and strengthening their participation in sustainable 

development.

Means of implementation 

(a) Financing and cost evaluation 

26.7. The Conference secretariat has estimated the average total annual cost (1993-2000) of 

implementing the activities of this programme to be about $3/million on grant or concessional 
terms. These are indicative and order-of-magnitude estimates only and have not been reviewed by 
Governments. Actual costs and financial terms, including any that are non-concessional, will 
depend upon, inter alia, the specific strategies and programmes Governments decide upon for 
implementation. 

(b) Legal and administrative frameworks 

26.8. Governments should incorporate, in collaboration with the indigenous people affected, 

the rights and responsibilities of indigenous people and their communities in the legislation of each 
country, suitable to the country’s specific situation. Developing countries may require technical 
assistance to implement these activities. 

(c) Human resource development 

26.9. International development agencies and Governments should commit financial and 

other resources to education and training for indigenous people and their communities to develop 
their capacities to achieve their sustainable self-development, and to contribute to and participate 
in sustainable and equitable development at the national level. Particular attention should be given to 
strengthening the role of indigenous women.
Appendix 6

Non-Legally binding authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of all Types of Forests

PREAMBLE

(a) The subject of forests is related to the entire range of environmental and development issues and opportunities, including the right to socio-economic development on a sustainable basis.

(b) The guiding objective of these principles is to contribute to the management, conservation and sustainable development of forests and to provide for their multiple and complementary functions and uses.

(c) Forestry issues and opportunities should be examined in a holistic and balanced manner within the overall context of environment and development, taking into consideration the multiple functions and uses of forests, including traditional uses, and the likely economic and social stress when these uses are constrained or restricted, as well as the potential for development that sustainable forest management can offer.

(d) These principles reflect a first global consensus on forests. In committing themselves to the prompt implementation of these principles, countries also decide to keep them under assessment for their adequacy with regard to further international cooperation on forest issues.

(e) These principles should apply to all types of forests, both natural and planted, in all geographical regions and climatic zones, including austral, boreal, subtemperate, temperate, subtropical and tropical.

(f) All types of forests embody complex and unique ecological processes which are the basis for their present and potential capacity to provide resources to satisfy human needs as well as environmental values, and as such their sound management and conservation is of concern to the Governments of the countries to which they belong and are of value to local communities and to the environment as a whole.

(g) Forests are essential to economic development and the maintenance of all forms of life.

(h) Recognizing that the responsibility for forest management, conservation and sustainable development is in many States allocated among federal/national, state/provincial and local levels of government, each State, in accordance with its constitution and/or national legislation, should pursue these principles at the appropriate level of government.

PRINCIPLES/ELEMENTS

1. (a) States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies and have the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.

(b) The agreed full incremental cost of achieving benefits associated with forest conservation and sustainable development requires increased international cooperation and should be equitably shared by the international community.

2. (a) States have the sovereign and inalienable right to utilize, manage and develop their forests in accordance with their development needs and level of socio-economic development and on the basis of national policies consistent with sustainable development and legislation, including the conversion of such areas for other uses within the overall socio-economic development plan and based on rational land-use policies.

(b) Forest resources and forest lands should be sustainably managed to meet the social, economic, ecological, cultural and spiritual needs of present and future generations. These needs are for forest products and services, such as wood and woody products, water, food, fodder, medicine, fuel, shelter, employment, recreation, habitats for wildlife, landscape diversity, carbon sinks and reservoirs, and for other forest products. Appropriate measures should be taken to protect forests against harmful effects of pollution, including air-borne pollution, fires, pests and diseases, in order to maintain their full multiple value.

(c) The provision of timely, reliable and accurate information on forests and forest ecosystems is essential for public understanding and informed decision-making and should be ensured.

(d) Governments should promote and provide opportunities for the participation of interested parties, including local communities and indigenous peoples, industries, labour, non-governmental organizations and individuals, forest dwellers and women, in the development, implementation and planning of national forest policies.

3. (a) National policies and strategies should provide a framework for increased efforts, including the development and strengthening of institutions and programmes for the management, conservation and sustainable development of forests and forest lands.

(b) International institutional arrangements, building on those organizations and mechanisms already in existence, as appropriate, should facilitate international cooperation in the field of forests.

(c) All aspects of environmental protection and social and economic development as they relate to forests and forest lands should be integrated and comprehensive.

4. The vital role of all types of forests in maintaining the ecological processes and balance at the local, national, regional and global levels through, inter alia, their role in protecting fragile ecosystems, watersheds and freshwater resources and as rich storehouses of biodiversity and biological resources and sources of genetic material for biotechnology products, as well as photosynthesis, should be recognized.

5. (a) National forest policies should recognize and duly support the identity, culture and the rights of indigenous peoples, their communities and other communities and forest dwellers. Appropriate conditions should be promoted for these groups to enable them to have an economic stake in forest use, perform economic activities, and achieve and maintain cultural identity and social organization, as well as adequate levels of livelihood and well-being, through, inter alia, those land tenure arrangements which serve as incentives for the sustainable management of forest the relationships, where it exists, between the conservation, management and sustainable development of forests and all aspects related to the production, consumption, recycling and/or final disposal of forest products.

(b) The full participation of women in all aspects of the management, conservation and sustainable development of forests should be actively promoted.

6. (a) All types of forests play an important role in meeting energy requirements through the provision of a renewable source of bio-energy, particularly in developing countries, and the demands for fuelwood for household and industrial needs should be met through sustainable forest management, afforestation and reforestation. To this end, the potential contribution of plantations of both indigenous and introduced species for the provision of both fuel and industrial wood should be recognized.

(b) National policies and programmes should take into account the relationship, where it exists, between the conservation, management and sustainable development of forests and all aspects related to the production, consumption, recycling and/or final disposal of forest products.

(c) Decisions taken on the management, conservation and sustainable development of forest resources should benefit, to the extent practicable, from a comprehensive assessment of economic and non-economic values of forest goods and services and of the environmental costs and benefits. The development and improvement of methodologies for such evaluations should be promoted.

(d) The role of planted forests and permanent agricultural crops as sustainable and environmentally sound sources of renewable energy and industrial raw material should be recognized, enhanced and promoted. Their contribution to the maintenance of
Appendix 6

The problems that hinder efforts to attain the conservation and sustainable use of forest resources and that stem from the lack of alternative options available to local communities, in particular the urban poor and poor rural populations who are economically and socially dependent on forests and forest resources, should be addressed by Governments and the international community.

(c) National policy formulation with respect to all types of forests should take account of the pressures and demands imposed on forest ecosystems and resources from influencing factors outside the forest sector, and intersectoral means of dealing with these pressures and demands should be sought.

10. New and additional financial resources should be provided to developing countries to enable them to sustainably manage, conserve and develop their forest resources, including through reafforestation, reforestation and combating deforestation and forest and land degradation.

11. In order to achieve, inter alia, developing countries to enhance their endogenous capacity and to better manage, conserve and develop their forest resources, the access to and transfer of environmentally sound technologies and corresponding know-how on favourable terms, including on concessional and preferential terms, as mutually agreed, in accordance with the relevant provisions of Agenda 21, should be promoted, facilitated and financed, as appropriate.

12. (a) Scientific research, forest inventories and assessments carried out by national institutions which take into account, where relevant, biological, physical, social and economic variables, as well as technological development and its application in the field of sustainable forest management, conservation and development, should be strengthened through effective modalities, including international cooperation. In this context, attention should also be given to research and development of sustainable harvested non-wood products.

(b) National and, where appropriate, regional and international institutional capacities in education, training, science, technology, economics, anthropology and social aspects of forests and forest management are essential to the conservation and sustainable development of forests and should be strengthened.

(c) The exchange of information on the results of forest and forest research and management research should be enhanced and broadened, as appropriate, making full use of education and training institutions, including those in the private sector.

(d) Appropriate indigenous capacity and local knowledge regarding the conservation and sustainable development of forests should, through institutional and financial support and in collaboration with the people in the local communities concerned, be recognized, respected, recorded, developed and, as appropriate, integrated in the implementation of programmes. Benefits arising from the utilization of indigenous knowledge should therefore be equitably shared with such people.

13. (a) Trade in forest products should be based on non-discriminatory and multilaterally agreed rules and procedures consistent with international trade law and practices. In this context, open and free international trade in forest products should be facilitated.

(b) Reduction or removal of tariff barriers and impediments to the provision of better market access and better prices for higher value-added forest products and their local processing should be encouraged to enable producer countries to better conserve and manage their renewable forest resources.

(c) Incorporation of environmental costs and benefits into market forces and mechanisms, in order to achieve forest conservation and sustainable development, should be encouraged both domestically and internationally.

(d) Forest conservation and sustainable development policies should be integrated with economic, trade and other relevant policies.

(e) Fiscal, trade, industrial, transportation and other policies and practices that may lead to forest degradation should be avoided. Adequate policies, aimed at management, conservation and sustainable development of forests, including, where appropriate, incentives, should be encouraged.
Appendix 7

Convention to Combat Desertification in Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa

Final text of the Convention

The Parties to this Convention,

Affirming that human beings in affected or threatened areas are at the centre of concerns to combat desertification and mitigate the effects of drought,

Reflecting the urgent concern of the international community, including States and international organizations, about the adverse impacts of desertification and drought,

Aware that arid, semi-arid and dry sub-humid areas together account for a significant proportion of the Earth’s land area and are the habitat and source of livelihood for a large segment of its population,

Acknowledging that desertification and drought are problems of global dimension in that they affect all regions of the world and that joint action of the international community is needed to combat desertification and/or mitigate the effects of drought,

Noting the high concentration of developing countries, notably the least developed countries, among those experiencing serious drought and/or desertification, and the particularly tragic consequences of these phenomena in Africa,

Noting also that desertification is caused by complex interactions among physical, biological, political, social, cultural and economic factors,

Considering the impact of trade and relevant aspects of international economic relations on the ability of affected countries to combat desertification adequately,

Conscious that sustainable economic growth, social development and poverty eradication are priorities of affected developing countries, particularly in Africa, and are essential to meeting sustainability objectives,

Mindful that desertification and drought affect sustainable development through their interrelationships with important social problems such as poverty, poor health and nutrition, lack of food security, and those arising from migration, displacement of persons and demographic dynamics,

Appreciating the significance of the past efforts and experience of States and international organizations in combating desertification and mitigating the effects of drought, particularly in implementing the Plan of Action to Combat Desertification which was adopted at the United Nations Conference on Desertification in 1977,

Realizing that, despite efforts in the past, progress in combating desertification and mitigating the effects of drought has not met expectations and that a new and more effective approach is needed at all levels within the framework of sustainable development,

Recognizing the validity and relevance of decisions adopted at the United Nations Conference on Environment and Development, particularly of Agenda 21 and its chapter 12, which provide a basis for combating desertification,

Reaffirming in this light the commitments of developed countries as contained in paragraph 13 of chapter 33 of Agenda 21,

Recalling General Assembly resolution 47/188, particularly the priority in it prescribed for Africa, and all other relevant United Nations resolutions, decisions and programmes on desertification and drought, as well as relevant declarations by African countries and those from other regions.
Reaffirming the Rio Declaration on Environment and Development which states, in its Principle 2, that States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction,

Recognizing that national Governments play a critical role in combating desertification and mitigating the effects of drought and that progress in that respect depends on local implementation of action programmes in affected areas,

Recognizing also the importance and necessity of international cooperation and partnership in combating desertification and mitigating the effects of drought,

Recognizing further the importance of the provision to affected developing countries, particularly in Africa, of effective means, inter alia substantial financial resources, including new and additional funding, and access to technology, without which it will be difficult for them to implement fully their commitments under this Convention,

Expressing concern over the impact of desertification and drought on affected countries in Central Asia and the Transcaucasus,

Stressing the important role played by women in regions affected by desertification and/or drought, particularly in rural areas of developing countries, and the importance of ensuring the full participation of both men and women at all levels in programmes to combat desertification and mitigate the effects of drought,

Emphasizing the special role of non-governmental organizations and other major groups in programmes to combat desertification and mitigate the effects of drought,

Bearing in mind the relationship between desertification and other environmental problems of global dimension facing the international and national communities,

Bearing also in mind the contribution that combating desertification can make to achieving the objectives of the United Nations Framework Convention on Climate Change, the Convention on Biological Diversity and other related environmental conventions,

Believing that strategies to combat desertification and mitigate the effects of drought will be most effective if they are based on sound systematic observation and rigorous scientific knowledge and if they are continuously re-evaluated,

Recognizing the urgent need to improve the effectiveness and coordination of international cooperation to facilitate the implementation of national plans and priorities,

Determined to take appropriate action in combating desertification and mitigating the effects of drought for the benefit of present and future generations,

HAVE AGREED as follows:

PART I. INTRODUCTION

Article 1. Use of terms

For the purposes of this Convention:

(a) "desertification" means land degradation in arid, semi-arid and dry sub-humid areas resulting from various factors, including climatic variations and human activities;

(b) "combating desertification" includes activities which are part of the integrated development of land in arid, semi-arid and dry sub-humid areas for sustainable development which are aimed at:

(i) prevention and/or reduction of land degradation;

(ii) rehabilitation of partly degraded land; and

(iii) reclamation of desertified land;

(c) "drought" means the naturally occurring phenomenon that exists when precipitation has been significantly below normal recorded levels, causing serious hydrological imbalances that adversely affect land resource production systems;

(d) "mitigating the effects of drought" means activities related to the prediction of drought and intended to reduce the vulnerability of society and natural systems to drought as it relates to combating desertification;

(e) "land" means the terrestrial bio-productive system that comprises soil, vegetation, other biota, and the ecological and hydrological processes that operate within the system;

(f) "land degradation" means reduction or loss, in arid, semi-arid and dry sub-humid areas, of the biological or economic productivity and complexity of rainfall cropland, irrigated cropland, or range; pasture, forest and woodlands resulting from land use or from a process or combination of processes, including processes arising from human activities and habitation patterns, such as:

(i) soil erosion caused by wind and/or water;

(ii) desertification of the physical, chemical and biological or economic properties of soil; and

(iii) long-term loss of natural vegetation;

(g) "affected areas" means areas, other than polar and sub-polar regions, in which the ratio of annual precipitation to potential evapotranspiration falls within the range from 0.05 to 0.65;

(h) "affected areas" means arid, semi-arid and/or dry sub-humid areas threatened or affected by desertification;

(i) "affected countries" means countries whose lands include, in whole or in part, affected areas;

(j) "regional economic integration organization" means an organization constituted by sovereign States of a given region which has competence in respect of matters governed by this Convention and has been duly authorized, in accordance with its internal procedures, to sign, ratify, accede or become a party to this Convention;

(k) "developed country Parties" means developed country Parties and regional economic integration organizations constituted by developed countries.

Article 2. Objective

1. The objective of this Convention is to combat desertification and mitigate the effects of drought in countries experiencing serious drought and/or desertification, particularly in Africa, through effective action at all levels, supported by international cooperation and partnership arrangements, in the framework of an integrated approach which is consistent with Agenda 21, with a view to contributing to the achievement of sustainable development.

2. Achieving this objective will involve long-term integrated strategies that focus simultaneously, in affected areas, on improved productivity of land, and the rehabilitation, conservation and sustainable management of land and water resources, leading to improved living conditions, in particular at the community level.

Article 3. Principles

In order to achieve the objective of this Convention and to implement its provisions, the Parties shall be guided, inter alia, by the following:

(a) the Parties should ensure that decisions on the design and implementation of programmes to combat desertification and/or mitigate the effects of drought are taken with the participation of populations and local communities and that an enabling environment is created at higher levels to facilitate action at national and local levels;

(b) the Parties should, in a spirit of international solidarity and partnership, improve cooperation and coordination at subregional, regional and international levels, and better focus financial, human, organizational and technical resources where they are needed;
The Parties shall implement either through existing national and regional mechanisms, or through existing agreements and debt mobilization of new and additional funding in the fields of environmental protection and the conservation of land and water resources, as they relate to desertification and drought; promote cooperation among affected countries with regard to international trade, marketing arrangements and debt with a view to establishing an enabling international economic environment conducive to the promotion of sustainable development; integrate strategies for poverty eradication into efforts to combat desertification and mitigate the effects of drought; strengthen subregional, regional and international cooperation; cooperate within relevant intergovernmental organizations; determine institutional mechanisms, if appropriate, keeping in mind the need to avoid duplication; and promote the use of existing bilateral and multilateral financial mechanisms and arrangements that mobilize and channel substantial financial resources to affected developing countries in combating desertification and mitigating the effects of drought.

Affected developing country Parties are eligible for assistance in the implementation of the Convention.

In addition to their obligations pursuant to article 4, affected country Parties undertake to:

(a) give due priority to combating desertification and mitigating the effects of drought, and allocate adequate resources in accordance with their circumstances and capabilities;
(b) address the underlying causes of desertification and pay special attention to the socioeconomic factors contributing to desertification processes;
(c) promote awareness and facilitate the participation of local populations, particularly women and youth, with the support of non-governmental organizations, in efforts to combat desertification and mitigate the effects of drought; and
(d) provide an enabling environment by strengthening, as appropriate, relevant existing legislation and, where they do not exist, enacting new laws and establishing long-term policies and action programmes.

Part II. GENERAL PROVISIONS

Article 4. General obligations

The Parties shall implement their obligations under this Convention, individually or jointly, either through existing or prospective bilateral and multilateral arrangements or a combination thereof, as appropriate, emphasizing the need to coordinate efforts and develop a coherent long-term strategy at all levels.

In pursuing the objective of this Convention, the Parties shall:

(a) adopt an integrated approach addressing the physical, biological and socio-economic aspects of the processes of desertification and drought;
(b) give due attention, within the relevant international and regional bodies, to the situation of affected developing country Parties with regard to international trade, marketing arrangements and debt with a view to establishing an enabling international economic environment conducive to the promotion of sustainable development;
(c) integrate strategies for poverty eradication into efforts to combat desertification and mitigate the effects of drought;
(d) promote cooperation among affected countries in the fields of environmental protection and the conservation of land and water resources, as they relate to desertification and drought;
(e) determine institutional mechanisms, if appropriate, keeping in mind the need to avoid duplication; and
(f) promote the use of existing bilateral and multilateral financial mechanisms and arrangements that mobilize and channel substantial financial resources to affected developing countries in combating desertification and mitigating the effects of drought.

Article 5. Obligations of affected country Parties

In addition to their obligations pursuant to article 4, affected country Parties undertake to:

(a) actively support, as agreed, individually or jointly, the efforts of affected developing country Parties, particularly those in Africa, and the least developed countries, to combat desertification and mitigate the effects of drought;
(b) provide substantial financial resources and other forms of support to assist affected developing country Parties, particularly those in Africa, effectively to develop and implement their own long-term plans and strategies to combat desertification and mitigate the effects of drought;
(c) promote the mobilization of new and additional funding pursuant to article 20, paragraph 2 (b);
(d) encourage the mobilization of funding from the private sector and other non-governmental sources; and
(e) promote and facilitate access by affected country Parties, particularly affected developing country Parties, to appropriate technology, knowledge and know-how.

Article 7. Priority for Africa

In implementing this Convention, the Parties shall give priority to affected African country Parties, in the light of the particular situation prevailing in that region, while not neglecting affected developing country Parties in other regions.

Article 8. Relationship with other conventions

The Parties shall encourage the coordination of activities carried out under this Convention, and, if they are Parties to other relevant international agreements, particularly the United Nations Framework Convention on Climate Change and the Convention on Biological Diversity, in order to derive maximum benefits from activities under each agreement while avoiding duplication of effort. The Parties shall encourage the conduct of joint programmes, particularly in the fields of research, training, systematic observation and information collection and exchange, to the extent that such activities may contribute to achieving the objectives of the agreements concerned.

The provisions of this Convention shall not affect the rights and obligations of any Party deriving from a bilateral, regional or international agreement into which it has entered prior to the entry into force of this Convention for it.

Part III. ACTION PROGRAMMES, SCIENTIFIC AND TECHNICAL COOPERATION AND SUPPORTING MEASURES

Section 1: Action programmes

Article 9. Basic approach

In carrying out their obligations pursuant to article 5, affected developing country Parties and any other affected country Party in the framework of its regional implementation annex or, otherwise, that has notified the Permanent Secretariat in writing of its intention to prepare a national action programme, shall, as appropriate, prepare, make public and implement national action programmes, utilizing and building, to the extent possible, on existing relevant successful plans and programmes, and subregional and regional action programmes, as the central element of the strategy to combat desertification and mitigate the effects of drought. Such programmes shall be updated through a continuing participatory process on the basis of lessons from field action, as well as the results of research. The preparation of national action programmes shall be closely interlinked with other efforts to formulate national policies for sustainable development.

In the provision by developed country Parties of different forms of assistance under the terms of article 6, priority shall be given to supporting, as agreed, national, subregional and
Appendix 7

3. The Parties shall encourage organs, funds and programmes of the United Nations system and other relevant intergovernmental organizations, academic institutions, the scientific community and non-governmental organizations in a position to cooperate, in accordance with their mandates and capabilities, to support the elaboration, implementation and follow-up of action programmes.

Article 10. National action programmes

1. The purpose of national action programmes is to identify the factors contributing to desertification and practical measures necessary to combat desertification and mitigate the effects of drought.

2. National action programmes shall specify the respective roles of government, local communities and land users and the resources available and needed. They shall, inter alia:
   (a) incorporate long-term strategies to combat desertification and mitigate the effects of drought, emphasize implementation and be integrated with national policies for sustainable development;
   (b) allow for modifications to be made in response to changing circumstances and be sufficiently flexible at the local level to cope with different socio-economic, biological and geophysical conditions;
   (c) give particular attention to the implementation of preventive measures for lands that are not yet degraded or which are only slightly degraded;
   (d) enhance national climatological, meteorological and hydrological capabilities and the means to provide for drought early warning;
   (e) promote policies and strengthen institutional frameworks which develop cooperation and coordination, in a spirit of partnership, between the donor community, governments at all levels, local populations and community groups, and facilitate access by local populations to appropriate information and technology;
   (f) provide for effective participation at the local, national and regional levels of non-governmental organizations and local populations, both women and men, particularly resource users, including farmers and pastoralists and their representative organizations, in policy planning, decision-making, and implementation and review of national action programmes; and
   (g) require regular review of, and progress reports on, their implementation.

3. National action programmes may include, inter alia, some or all of the following measures to prepare for and mitigate the effects of drought:
   (a) establishment and/or strengthening, as appropriate, of early warning systems, including local and national facilities and joint systems at the subregional and regional levels, and mechanisms for assisting environmentally displaced persons;
   (b) strengthening of drought preparedness plans at the national, subregional and regional levels, which take into consideration seasonal to interannual climate predictions;
   (c) establishment and/or strengthening, as appropriate, of food security systems, including storage and marketing facilities, particularly in rural areas;
   (d) establishment of alternative livelihood projects that could provide incomes in drought prone areas; and
   (e) development of sustainable irrigation programmes for both crops and livestock.

4. Taking into account the circumstances and requirements specific to each affected country, national action programmes include, as appropriate, inter alia, measures in some or all of the following priority fields as they relate to combating desertification and mitigating the effects of drought in affected areas and to their populations: promotion of alternative livelihoods and improvement of national economic environments with a view to strengthening programmes aimed at the eradication of poverty and at ensuring food security; demographic dynamics; sustainable management of natural resources; sustainable agricultural practices; development and efficient use of various energy sources; institutional and legal frameworks; strengthening of capabilities for assessment and systematic observation, including hydrological and meteorological services, and capacity building, education and public awareness.

Article 11. Subregional and regional action programmes

Affected country Parties shall consult and cooperate to prepare, as appropriate, in programmes to harmonize, complement and increase the efficiency of national programmes. The such cooperation may include agreed joint programmes for the sustainable management of transboundary natural resources, scientific and technical cooperation, and strengthening of relevant institutions.

Article 12. International cooperation

Affected country Parties, in collaboration with other Parties and the international community, should cooperate to ensure the promotion of an enabling international environment in the implementation of the Convention. Such cooperation should also cover fields of technology transfer as well as scientific research and development, information collection and dissemination and financial resources.

Article 13. Support for the elaboration and implementation of action programmes

1. Measures to support action programmes pursuant to article 9 include, inter alia:
   (a) financial cooperation to provide predictability for action programmes, allowing for necessary long-term planning;
   (b) elaboration and use of cooperation mechanisms which better enable support at the local level, including action and non-governmental organizations, in order to promote the replicability of successful pilot programme activities; and
   (c) increased flexibility in project design, funding and implementation in keeping with the experimental, iterative approach indicated for participatory action at the local community level; and
   (d) as appropriate, administrative and budgetary procedures that increase the efficiency of cooperation and of support programmes.

2. In providing such support to affected developing country Parties, priority shall be given to African country Parties and to least developed country Parties.

Article 14. Coordination in the elaboration and implementation of action programmes

1. The Parties shall work closely together, directly and through relevant intergovernmental organizations, in the elaboration and implementation of action programmes.

2. The Parties shall develop operational mechanisms, particularly at the national and field levels, to ensure the fullest possible coordination among country Parties, developing country Parties, and significant regional organizations, in order to avoid duplication, harmonize interventions and approaches, and maximize the impact of assistance. In affected developing country Parties, priority will be given to coordinating activities related to international cooperation in order to maximize the efficient use of resources, to ensure responsive assistance, and to facilitate the implementation of national action programmes and priorities under this Convention.

Article 15. Regional implementation annexes

Elements for incorporation in action programmes shall be selected and adapted to the socioeconomic, economic and climatic factors applicable to affected country Parties or regions, as well as to their level of development. Guidelines for the preparation of action programmes and their exact focus and content for particular subregions and regions are set out in the regional implementation annexes.
Section 2: Scientific and technical cooperation

Article 16. Information collection, analysis and exchange

The Parties agree, according to their respective capabilities, to integrate and coordinate the collection, analysis and exchange of relevant short term and long term data and information to ensure systematic observation of land degradation in affected areas and to understand better and assess the processes and effects of drought and desertification. This would help accomplish, inter alia, warning and advance planning for periods of adverse climatic variation in a form suited for practical application by users at all levels, including especially local populations. To this end, they shall, as appropriate:

(a) facilitate and strengthen the functioning of the global network of institutions and facilities for the collection, analysis and exchange of information, as well as for systematic observation at all levels, which shall, inter alia:
   (i) aim to use compatible standards and systems;
   (ii) encompass relevant data and stations, including in remote areas;
   (iii) use and disseminate modern technology for data collection, transmission and assessment on land degradation; and
   (iv) link national, subregional and regional data and information centres more closely with global information sources;

(b) ensure that the collection, analysis and exchange of information address the needs of local communities and those of decision makers, with a view to resolving specific problems, and that local communities are involved in these activities;

(c) support and further develop bilateral and multilateral programmes and projects aimed at defining, conducting, assessing and financing the collection, analysis and exchange of data and information, including, inter alia, integrated sets of physical, biological, social and economic indicators;

(d) make full use of the expertise of competent intergovernmental and non-governmental organizations, particularly to disseminate relevant information and experiences among target groups in affected areas, and to integrate physical and biological data, and their integration with social and economic data;

(e) exchange and make fully, openly and promptly available information from all publicly available sources relevant to combating desertification and mitigating the effects of drought; and

(g) subject to their respective national legislation and/or policies, exchange information on local and traditional knowledge, ensuring adequate protection for it and providing appropriate return from the benefits derived from it, on an equitable basis and on mutually agreed terms, to the local populations concerned.

Article 17. Research and development

1. The Parties undertake, according to their respective capabilities, to promote technical and scientific cooperation in the fields of combating desertification and mitigating the effects of drought through appropriate national, subregional, regional and international institutions. To this end, they shall support research activities that:

(a) contribute to increased knowledge of the processes leading to desertification and drought and the impact of, and distinction between, causal factors, both natural and human, with a view to combating desertification and mitigating the effects of drought, and achieving improved productivity as well as sustainable use and management of resources;

(b) respond to well defined objectives, address the specific needs of local populations and lead to the identification and implementation of solutions that improve the living standards of people in affected areas;

(c) protect, integrate, enhance and validate traditional and local knowledge, know-how and practices, ensuring, subject to their respective national legislation and/or policies, that the owners of that knowledge will directly benefit on an equitable basis and on mutually agreed terms from any commercial utilization of it or from any technological development derived from that knowledge;

(d) develop and strengthen national, subregional and regional research capabilities in affected developing country Parties, particularly in Africa, including the development of local skills and the strengthening of appropriate capacities, especially in countries with a weak research base, giving particular attention to multidisciplinary and participative socio-economic research;

(e) take into account, where relevant, the relationship between poverty, migration caused by environmental factors, and desertification;

(f) promote the conduct of joint research programmes between national, subregional, regional and international research organizations, in both the public and private sectors, for the development of improved, affordable and accessible technologies for sustainable development through effective participation of local populations and communities; and

(g) enhance the availability of water resources in affected areas, by means of, inter alia, cloud-seeding.

2. Research priorities for particular regions and subregions, reflecting different local conditions, should be included in action programmes. The Conference of the Parties shall review research priorities periodically on the advice of the Committee on Science and Technology.

Article 18. Transfer, acquisition, adaptation and development of technology

1. The Parties undertake, as mutually agreed and in accordance with their respective national legislation and/or policies, to promote, finance and/or facilitate the financing of the transfer, acquisition, adaptation and development of environmentally sound, economically viable and socially acceptable technologies relevant to combating desertification and/or mitigating the effects of drought, with a view to contributing to the achievement of sustainable development in affected areas. Such cooperation shall be conducted bilaterally or multilaterally, as appropriate, making full use of the expertise of intergovernmental and non-governmental organizations. The Parties shall, in particular:

(a) fully utilize relevant existing national, subregional, regional and international information systems and clearing-houses for the dissemination of information on available technologies, their sources, their environmental risks and the broad terms under which they may be acquired;

(b) facilitate access, in particular by affected developing country Parties, on favourable terms, including on concessional and preferential terms, as mutually agreed, taking into account the need to protect intellectual property rights, to technologies most suitable to practical application for specific needs of local populations, paying special attention to the social, cultural, economic and environmental impact of such technology;

(c) facilitate technology cooperation among affected country Parties through financial assistance to other appropriate means;

(d) extend technology cooperation with affected developing country Parties, including, where relevant, joint ventures, especially to sectors which foster alternative livelihoods; and

(e) take appropriate measures to create domestic market conditions and incentives, fiscal or otherwise, conducive to the development, transfer, acquisition and adaptation of suitable technology, knowledge, know-how and practices, including measures to ensure adequate and effective protection of intellectual property rights.

2. The Parties shall, according to their respective capabilities, and subject to their respective national legislation and/or policies, protect, promote and use in particular relevant traditional and local technology, knowledge, know-how and practices and, to that end, they undertake to:
Section 3: Supporting measures

1. The Parties recognize the significance of capacity building that is to say, institution building, training and development of relevant local and national capacities - in efforts to combat desertification and mitigate the effects of drought. They shall promote, as appropriate, capacity-building:

(a) through the full participation at all levels of local people, particularly at the local level, especially women and youth, with the cooperation of non-governmental and local organizations;

(b) by strengthening training and research capacity at the national level in the field of desertification and drought;

(c) by establishing and strengthening support and extension services to disseminate relevant technology and methods and techniques more effectively, and by training field agents and members of rural organizations in participatory approaches for the conservation and sustainable use of natural resources;

(d) by fostering the use and dissemination of the knowledge, know-how and practices of local people in technical cooperation programmes, wherever possible;

(e) by adapting, where necessary, relevant environmentally sound technology and traditional methods of agriculture and pastoralism to modern socio-economic conditions;

(f) by providing appropriate training and technology in the use of alternative energy sources, particularly renewable energy resources, aimed particularly at reducing dependence on wood for fuel; and

(g) through cooperation, as mutually agreed, to strengthen the capacity of affected developing countries to develop and implement programmes in the field of collection, analysis and exchange of information pursuant to article 16;

(h) through innovative ways of promoting alternative livelihoods, including training in new skills;

(i) by training of decision makers, managers, and personnel who are responsible for the collection and analysis of data for the dissemination and use of early warning information on drought conditions and for food production;

(j) through more effective operation of existing international institutions and legal frameworks and, where necessary, creation of new ones, along with strengthening of strategic planning and management; and

(k) by means of exchange visitor programmes to enhance capacity building in affected countries through a long-term, interactive process of learning and study.

2. Affected developing countries shall conduct, in cooperation with other Parties and competent intergovernmental and non-governmental organizations, as appropriate, an interdisciplinary review of available capacity and facilities at the local and national levels, and the potential for strengthening them.

3. The Parties shall cooperate with each other and through competent intergovernmental organizations, as well as with non-governmental organizations, in undertaking and non-governmental organizations;

(a) organize awareness campaigns for the general public;

(b) promote, on a permanent basis, access by the public to relevant information, and wide public participation in education and awareness activities;

(c) encourage the establishment of associations that contribute to public awareness;

(d) develop and exchange educational and public awareness material, where possible in local languages, exchange and second experts to train personnel of affected developing countries Parties in carrying out relevant education and awareness programmes, and fully utilize relevant educational material available in competent international bodies;

(e) assess educational needs in affected areas, elaborate appropriate school curricula and expanded, as needed, educational and adult literacy programmes and opportunities for all, in particular for girls and women, on the identification, conservation and sustainable use and management of the natural resources of affected areas; and

(f) develop interdisciplinary participatory programmes integrating desertification and drought awareness into educational systems and in non-formal, adult, distance and practical educational programmes.

4. The Conference of the Parties shall establish and/or strengthen networks of regional education and training centres to combat desertification and mitigate the effects of drought. These networks shall be coordinated by an institution created or designated for that purpose, in order to train scientific, technical and management personnel and to strengthen existing appropriate, with a view to harmonizing programmes and to organize exchange of experience among them. These networks shall cooperate closely with relevant intergovernmental and non-governmental organizations to avoid duplication of effort.

Article 20. Financial resources

1. Given the central importance of financing to the achievement of the objective of the Convention, the Parties, taking into account their capabilities, shall make every effort to ensure that adequate financial resources are available for programmes to combat desertification and mitigate the effects of drought.

2. In this connection, developing countries Parties, while giving priority to affected African countries without neglecting affected developing countries in other regions, in accordance with article 7, undertake to:

(a) mobilize substantial financial resources, including grants and concessional loans, in order to support the implementation of programmes to combat desertification and mitigate the effects of drought;

(b) promote the mobilization of adequate, timely and predictable financial resources, including new and additional funding from the Global Environment Facility of the agreed incremental costs of those activities concerning desertification that relate to its four focal areas, in conformity with the relevant provisions of the Instrument establishing the Global Environment Facility;

(c) facilitate through international cooperation the transfer of technology, knowledge and know-how; and

(d) explore, in cooperation with affected developing country Parties, innovative methods and incentives for mobilizing and channelling resources, including those of foundations, non-governmental organizations and other private sector entities, particularly debt swaps and other innovative means which increase financing by reducing the external debt burden of affected developing countries Parties, particularly those in Africa.
3. Affected developing country Parties, taking into account their capabilities, undertake to mobilize adequate financial resources for the implementation of their national action programmes.

4. In mobilizing financial resources, the Parties shall seek full use and continued qualitative improvement of all national, bilateral and multilateral funding sources and mechanisms, using consortia, joint programmes and parallel financing, and shall seek to involve private sector funding sources and mechanisms, including those of non-governmental organizations. To this end, the Parties shall fully utilize the operational mechanisms developed pursuant to article 14.

5. In order to mobilize the financial resources necessary for affected developing country Parties to combat desertification and mitigate the effects of drought, the Parties shall:
   (a) rationalize and strengthen the management of resources already allocated for combating desertification and mitigating the effects of drought by using them more effectively and efficiently, assessing their successes and shortcomings, removing hindrances to their effective use and, where necessary, reorienting programmes in light of the integrated long-term approach adopted pursuant to this Convention;
   (b) give due priority and attention within the governing bodies of multilateral financial institutions, facilities and funds, including regional development banks and funds, to supporting affected developing country Parties, particularly those in Africa, in activities which advance implementation of the Convention, notably action programmes they undertake in the framework of regional implementation annexes; and
   (c) examine ways in which regional and subregional cooperation can be strengthened to support efforts undertaken at the national level.

6. Other Parties are encouraged to provide, on a voluntary basis, knowledge, know-how and techniques related to desertification and/or financial resources to affected developing country Parties.

7. The full implementation by affected developing country Parties, particularly those in Africa, of their obligations under the Convention will be greatly assisted by the fulfilment by developed country Parties of their obligations under the Convention, including in particular those regarding financial resources and transfer of technology. In fulfilling their obligations, developed country Parties should take fully into account that economic and social development and poverty eradication are the first priorities of affected developing country Parties, particularly those in Africa.

Article 21. Financial mechanisms

The Conference of the Parties shall promote the availability of financial mechanisms and shall encourage such mechanisms to seek to maximize the availability of funding for affected developing country Parties, particularly those in Africa, to implement the Convention. To this end, the Conference of the Parties shall consider for adoption inter alia approaches and policies that:
   (a) facilitate the provision of necessary funding at the national, subregional, regional and global levels for activities pursuant to relevant provisions of the Convention;
   (b) promote multiple-source funding approaches, mechanisms and arrangements and their assessment, consistent with article 30;
   (c) provide on a regular basis, to interested Parties and relevant intergovernmental and non-governmental organizations, information on available sources of funds and on funding patterns in order to facilitate coordination among them;
   (d) facilitate the establishment, as appropriate, of mechanisms, such as national desertification funds, including those involving the participation of non-governmental organizations, to channel financial resources rapidly and efficiently to the local level in affected developing country Parties; and
   (e) strengthen existing funds and financial mechanisms at the subregional and regional levels, particularly in Africa, to support more effectively the implementation of the Convention.

Part IV. INSTITUTIONS

Article 22. Conference of the Parties

1. A Conference of the Parties is hereby established.

2. The Conference of the Parties is the supreme body of the Convention. It shall make, within its mandate, the decisions necessary to promote its effective implementation. In particular, it shall:
   (a) regularly review the implementation of the Convention and the functioning of its institutional arrangements in the light of the experience gained at the national, subregional, regional and international levels and on the basis of the evolution of scientific and technological knowledge;
(b) promote and facilitate the exchange of information on measures adopted by the Parties, and determine the format and timetable for transmitting the information to be submitted pursuant to article 26; review the reports and make recommendations on them;
(c) establish such subsidiary bodies as are deemed necessary for the implementation of the Convention;
(d) review reports submitted by its subsidiary bodies and provide guidance to them;
(e) agree upon and adopt, by consensus, rules of procedure and financial rules for itself and any subsidiary bodies;
(f) adopt amendments to the Convention pursuant to articles 30 and 31;
(g) approve a programme and budget for its activities, including those of its subsidiary bodies, and undertake necessary arrangements for their financing;
(h) as appropriate, seek the cooperation of, and utilize the services of, and information from, national or international, governmental, non-governmental, intergovernmental or non-governmental bodies or agencies, whether national or international, provided by, competent bodies or agencies, or institutions, or persons, whether of the Parties or of any other relevant conventions while avoiding duplication of effort; and
(i) exercise such other functions as may be necessary for the achievement of the objective of the Convention.

3. The Conference of the Parties shall, at its first session, adopt its own rules of procedure, by consensus, which shall include decision-making procedures for matters not already covered by decision-making procedures stipulated in the Convention. Such procedures may include specified majorities required for the adoption of particular decisions.

4. The first session of the Conference of the Parties shall be convened by the interim secretariat referred to in article 35 and shall take place not later than one year after the date of entry into force of the Convention. Unless otherwise decided by the Conference of the Parties, the second, third and fourth ordinary sessions shall be held yearly, and thereafter, ordinary sessions shall be held every two years.

5. Ordinary sessions of the Conference of the Parties shall be held at such other times as may be decided either by the Conference of the Parties in ordinary session or at the written request of any Party, provided that, within three months of the request being communicated to the Parties by the Permanent Secretariat, it is supported by at least one third of the Parties.

6. At each ordinary session, the Conference of the Parties shall elect a Bureau. The structure and functions of the Bureau shall be determined in the rules of procedure. In appointing the Bureau, due regard shall be paid to the need to ensure equitable geographical distribution and adequate representation of affected developing country Parties, particularly those in Africa.

7. The United Nations, its specialized agencies and any State member thereof or observers thereto not Party to the Convention, or any body or agency, whether national or international, governmental or non-governmental, which is qualified in matters covered by the Convention, and which has information the Permanent Secretariat may request to be represented at a session of the Conference of the Parties as an observer, may be so admitted unless at least one third of the Parties present object. The admission and participation of observers shall be subject to the rules of procedure adopted by the Conference of the Parties.

8. The Conference of the Parties may request competent national and international organizations which have relevant expertise to provide it with information relevant to article 16, paragraph (g), article 17, paragraph 1 (c) and article 18, paragraph 2(b).

Article 23. Permanent Secretariat

1. A Permanent Secretariat is hereby established.

2. The functions of the Permanent Secretariat shall be:
   (a) to make arrangements for sessions of the Conference of the Parties and its subsidiary bodies established under the Convention and to provide them with services as required;
   (b) to compile and transmit reports submitted to it;
   (c) to facilitate assistance to affected developing country Parties, on request, particularly those in Africa, in the compilation and communication of information required under the Convention;
   (d) to coordinate its activities with the secretariats of other relevant international bodies and conventions;
   (e) to enter, under the guidance of the Conference of the Parties, into such administrative and contractual arrangements as may be required for the effective discharge of its functions;
   (f) to prepare reports on the execution of its functions under this Convention and present them to the Conference of the Parties; and
   (g) to perform such other secretariat functions as may be determined by the Conference of the Parties.

3. The Conference of the Parties, at its first session, shall designate a Permanent Secretariat and make arrangements for its functioning.

Article 24. Committee on Science and Technology

1. A Committee on Science and Technology is hereby established as a subsidiary body of the Conference of the Parties to provide it with information and advice on scientific and technological matters relating to combating desertification and mitigating the effects of drought. The Committee shall meet in conjunction with the ordinary sessions of the Conference of the Parties and shall be multidisciplinary and open to the participation of all Parties. It shall be composed of government representatives competent in the relevant fields of expertise. The Conference of the Parties shall decide, at its first session, on the terms of reference of the Committee.

2. The Conference of the Parties shall establish and maintain a roster of independent experts with expertise and experience in the relevant fields. The roster shall be based on nominations received in writing from the Parties, taking into account the need for a multidisciplinary approach and broad geographical representation.

3. The Conference of the Parties may, as necessary, appoint ad hoc panels to provide it, through the Committee, with information and advice on specific issues regarding the state of the art in fields of science and technology relevant to combating desertification and mitigating the effects of drought. These panels shall be composed of experts whose names are taken from the roster, taking into account the need for a multidisciplinary approach and broad geographical representation. These experts shall have scientific backgrounds and field experience and shall be appointed by the Conference of the Parties on the recommendation of the Committee. The Conference of the Parties shall decide on the terms of reference and the modalities of work of these panels.

Article 25. Networking of institutions, agencies and bodies

1. The Committee on Science and Technology shall, under the supervision of the Conference of the Parties, make provision for the undertaking of a survey and evaluation of the relevant existing networks, institutions, agencies and bodies willing to become units of a network. Such a network shall support the implementation of the Convention.

2. On the basis of the results of the survey and evaluation referred to in paragraph 1, the Committee on Science and Technology shall make recommendations to the Conference of the Parties on ways and means to facilitate and strengthen networking of the units at the local, national and other levels, with a view to ensuring that the thematic needs set out in articles 16 to 19 are addressed.

3. Taking into account these recommendations, the Conference of the Parties shall:
   (a) identify those national, subregional, regional and international units that are most appropriate for networking, and recommend operational procedures, and a time frame, for them; and
   (b) identify the units best suited to facilitating and strengthening such networking at all levels.
PART V. PROCEDURES

Article 26. Communication of information

1. Each Party shall communicate to the Conference of the Parties for consideration at its ordinary sessions, through the Permanent Secretariat, reports on the measures which it has taken for the implementation of the Convention. The Conference of the Parties shall determine the timetable for submission and the format of such reports.

2. Affected country Parties shall provide a description of the strategies established pursuant to article 5 and of any relevant information on their implementation.

3. Affected country Parties which implement action programmes pursuant to articles 9 to 15 shall provide a detailed description of the programmes and of their implementation.

4. Any group of affected country Parties may make a joint communication on measures taken at the subregional and/or regional levels in the framework of action programmes.

5. Developed country Parties shall report on measures taken to assist in the preparation and implementation of action programmes, including information on the financial resources they have provided, or are providing, under the Convention.

6. Information communicated pursuant to paragraphs 1 to 4 shall be transmitted by the Permanent Secretariat as soon as possible to the Conference of the Parties and to any relevant subsidiary body.

7. The Conference of the Parties shall facilitate the provision to affected developing countries, particularly those in Africa, on request, of technical and financial support in compiling and communicating information in accordance with this article, as well as identifying the technical and financial needs associated with action programmes.

Article 27. Measures to resolve questions on implementation

The Conference of the Parties shall consider and adopt procedures and institutional mechanisms for the resolution of questions that may arise with regard to the implementation of the Convention.

Article 28. Settlement of disputes

1. Parties shall settle any dispute between them concerning the interpretation or application of the Convention through negotiation or other peaceful means of their own choice.

2. When referring, accepting, approving, or according to the Convention, or at any time thereafter, a Party which is not a regional economic integration organization may declare in a written instrument submitted to the Depositary that, in respect of any dispute concerning the interpretation or application of the Convention, it recognizes one or both of the following means of dispute settlement as compulsory in relation to any Party accepting the same obligation:

(a) arbitration in accordance with procedures adopted by the Conference of the Parties in an annex as soon as practicable;

(b) submission of the dispute to the International Court of Justice.

3. A Party which is a regional economic integration organization may make a declaration with like effect in relation to arbitration in accordance with the procedure referred to in paragraph 2(a).

4. A declaration made pursuant to paragraph 2 shall remain in force until it expires in accordance with its terms or until three months after written notice of its revocation has been deposited with the Depositary.

5. The expiry of a declaration, a notice of revocation or a new declaration shall not in any way affect proceedings pending before an arbitral tribunal or the International Court of Justice unless the Parties to the dispute otherwise agree.

6. If the Parties to a dispute have not accepted the same or any procedure pursuant to paragraph 2 and if they have not been able to settle their dispute within twelve months following notification by one Party to another that a dispute exists between them, the dispute shall be submitted to conciliation at the request of any Party to the dispute, in accordance with procedures adopted by the Conference of the Parties in an annex as soon as practicable.

Article 29. Status of annexes

1. Annexes form an integral part of the Convention and, unless expressly provided otherwise, a reference to the Convention also constitutes a reference to its annexes.

2. The Parties shall interpret the provisions of the annexes in a manner that is in conformity with their rights and obligations under the articles of this Convention.

Article 30. Amendments to the Convention

1. Any Party may propose amendments to the Convention.

2. Amendments to the Convention shall be adopted at an ordinary session of the Conference of the Parties. The text of any proposed amendment shall be communicated to the Parties by the Permanent Secretariat at least six months before the meeting at which it is proposed for adoption. The Permanent Secretariat shall also communicate proposed amendments to the signatories to the Convention.

3. The Parties shall make every effort to reach agreement on any proposed amendment to the Convention by consensus. If all efforts at consensus have been exhausted and no agreement reached, the amendment shall, as a last resort, be adopted by a two-thirds majority vote of the Parties present and voting at the meeting. The adopted amendment shall be communicated by the Permanent Secretariat to the Depositary, who shall circulate it to all Parties for their ratification, acceptance, approval or accession.

4. Instruments of ratification, acceptance, approval or accession in respect of an amendment shall be deposited with the Depositary. An amendment adopted pursuant to paragraph 3 shall enter into force for those Parties having accepted it on the ninetieth day after the date of receipt by the Depositary of an instrument of ratification, acceptance, approval or accession by at least two-thirds of the Parties to the Convention which were Parties at the time of the adoption of the amendment.

5. The amendment shall enter into force for any other Party on the ninetieth day after the date on which that Party deposits with the Depositary its instrument of ratification, acceptance or approval of, or accession to, the said amendment.

6. For the purposes of this article and article 31, "Parties present and voting" means Parties present and casting an affirmative or negative vote.

Article 31. Adoption and amendment of annexes

1. Any additional annex to the Convention and any amendment to an annex shall be proposed and adopted in accordance with the procedure of amendment of the Convention set forth in article 30, provided that, in adopting an additional regional implementation annex or amendment to any regional implementation annex, the majority provided for in that article shall include a two-thirds majority vote of the Parties of the region concerned present and voting. The adoption or amendment of an annex shall be communicated by the Depositary to all Parties.

2. An annex, other than an additional regional implementation annex, or an amendment to an annex, other than an amendment to any regional implementation annex, that has been adopted in accordance with paragraph 1, shall enter into force for all Parties to the Convention six months after the date of communication by the Depositary to such Parties of the adoption of such annex or amendment, except for those Parties that have notified the Depositary in writing within that period of their non-acceptance of such annex or amendment. Such annex or amendment shall enter into force for Parties which withdraw their notification of non-acceptance on the ninetieth day after the date on which withdrawal of such notification has been received by the Depositary.

3. An additional regional implementation annex or amendment to any regional implementation annex that has been adopted in accordance with paragraph 1, shall enter into force for all Parties to the Convention six months after the date of the communication by the Depositary to such Parties of the adoption of such annex or amendment, except with respect to:
(a) any Party that has notified the Depositary in writing, within such six month period, of its non-acceptance of that additional regional implementation annex or of the amendment to the regional implementation annex, in which case such annex or amendment shall enter into force for Parties which withdraw their notification of non-acceptance on the ninetieth day after the date on which withdrawal of such notification has been received by the Depositary; and
(b) any Party that has made a declaration with respect to additional regional implementation annexes or amendments to regional implementation annexes in accordance with article 34, paragraph 4, in which case any such annex or amendment shall enter into force for such a Party on the ninetieth day after the date of deposit with the Depositary of its instrument of ratification, acceptance, approval or accession with respect to such annex or amendment.

4. If the adoption of an annex or an amendment to an annex involves an amendment to the Convention, that annex or amendment to an annex shall not enter into force until such time as the amendment to the Convention enters into force.

Article 32. Right to vote

1. Except as provided for in paragraph 2, each Party to the Convention shall have one vote.
2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote with a number of votes equal to the number of their member States that are Parties to the Convention. Such an organization shall not exercise its right to vote if any of its member States exercises its right, and vice versa.

PART VI. FINAL PROVISIONS

Article 33. Signature

This Convention shall be opened for signature at Paris, on 14-15 October 1994, by States Members of the United Nations or any of its specialized agencies or that are Parties to the Statute of the International Court of Justice and by regional economic integration organizations. It shall remain open for signature, thereafter, at the United Nations Headquarters in New York until 13 October 1995.

Article 34. Ratification, acceptance, approval and accession

1. The Convention shall be subject to ratification, acceptance, approval or accession by States and by regional economic integration organizations. It shall be open for accession from the day after the date on which the Convention is closed for signature. Instruments of ratification, acceptance, approval or accession shall be deposited with the Depositary.
2. Any regional economic integration organization which becomes a Party to the Convention without any of its member States being a Party to the Convention shall be bound by all the obligations under the Convention. Where one or more member States of such an organization are also Party to the Convention, the organization and its member States shall decide on their respective responsibilities for the performance of their obligations under the Convention. In such cases, the organization and the member States shall not be entitled to exercise rights under the Convention concurrently.
3. In their instruments of ratification, acceptance, approval or accession, regional economic integration organizations shall declare the extent of their competence with respect to the matters governed by the Convention. They shall also promptly inform the Depositary, who shall in turn inform the Parties, of any substantial modification in the extent of their competence.
4. In its instrument of ratification, acceptance, approval or accession, any Party may declare that, with respect to it, any additional regional implementation annex or any amendment to any regional implementation annex shall enter into force only upon the deposit of its instrument of ratification, acceptance, approval or accession with respect thereto.
Appendix 8

Convention Concerning the Protection of The World Cultural and Natural Heritage

The General Conference of the United Nations Educational Scientific and Cultural Organization meeting in Paris from 17 October to 21 November 1972, at its seventeenth session,

Noting that the cultural heritage and the natural heritage are increasingly threatened with destruction not only by the traditional causes of decay, but also by changing social and economic conditions which aggravate the situation with even more formidable phenomena of damage or destruction.

Considering that deterioration or disappearance of any item of the cultural or natural heritage constitutes a harmful impoverishment of the heritage of all the nations of the world,

Considering that protection of this heritage at the national level often remains incomplete because of the scale of the resources which it requires and of the insufficient economic, scientific and technical resources of the country where the property to be protected is situated,

Recalling that the Constitution of the Organization provides that it will maintain, increase and diffuse knowledge, by assuring the conservation and protection of the world's heritage, and recommending to the nations concerned the necessary international conventions,

Considering that the existing international conventions, recommendations and resolutions concerning cultural and natural property demonstrate the importance, for all the peoples of the world, of safe-guarding this unique and irreplaceable property, to whatever people it may belong,

Considering that parts of the cultural or natural heritage are of outstanding interest and therefore need to be preserved as part of the world heritage of mankind as a whole,

Considering that, in view of the magnitude and gravity of the new dangers threatening them, it is incumbent on the international community as a whole to participate in the protection of the cultural and natural heritage of outstanding universal value, by the granting of collective assistance which, although not taking the places of action by the State concerned, will serve as an effective complement thereto,

Considering that it is essential for this purpose to adopt new provisions in the form of a convention establishing an effective system of collective protection of the cultural and natural heritage of outstanding universal value, organized on a permanent basis and in accordance with modern scientific methods,

HAVING DECIDED, at its sixteenth session, that this question should be made the subject of an international convention,

ADOPTS this sixteenth day of November 1972 this Convention.

I. Definitions of the cultural and the natural heritage

Article 1
For the purposes of this Convention, the following shall be considered as 'cultural heritage':

monuments: architectural works, works of monumental sculpture and painting, elements or structures of an archaeological nature, inscriptions, cave dwellings and combinations of features, which are of outstanding universal value from the point of view of history, art or science;

groups of buildings: groups of separate or connected buildings which, because of their architecture, their homogeneity or their place in the landscape, are of outstanding universal value from the point of view of history, art or science;

sites: works of man or the combined works of nature and of man, and areas including archaeological sites which are of outstanding universal value from the historical, aesthetic, ethnological or anthropological points of view.

Article 2
For the purposes of this Convention, the following shall be considered as 'natural heritage':

natural features consisting of physical and biological formations or groups of such formations, which are of outstanding universal value from the aesthetic or scientific point of view;

geological and physiographical formations and precisely delineated areas which constitute the habitat of threatened species of animals and plants of outstanding universal value from the point of view of science or conservation;

natural sites or precisely delineated natural areas of outstanding universal value from the point of view of science, conservation or natural beauty.

Article 3
It is for each State Party to this Convention to identify and delineate the different properties situated on its territory mentioned in Articles 1 and 2 above.

II. National protection and international protection of the cultural and natural heritage

Article 4
Each State Party to this Convention recognizes that the duty of ensuring the identification, protection, conservation, presentation and transmission to future generations of the cultural and natural heritage referred to in Articles 1 and 2 and situated on its territory, belongs primarily to that State. It will do all it can to this end, to the utmost of its own resources and, where appropriate, with any international assistance and co-operation, in particular, financial, artistic, scientific and technical, which it may be able to obtain.

Article 5
To ensure that effective and active measures are taken for the protection, conservation and presentation of the cultural and natural heritage situated on its territory, each State Party to this Convention shall endeavour, in so far as possible, and as appropriate for each country:

(a) to adopt a general policy which aims to give the cultural and natural heritage a function in the life of the community and to integrate the protection of that heritage into comprehensive planning programmes;

(b) to set up within its territories, where such services do not exist, one or more services for the protection, conservation and presentation of the cultural and natural heritage with an appropriate staff and possessing the means to discharge their functions;

(c) to develop scientific and technical studies and research and to work out such operating methods as will make the State capable of countering the dangers that threaten its cultural or natural heritage;

(d) to take the appropriate legal, scientific, technical, administrative and financial measures necessary for the identification, protection, conservation, presentation and rehabilitation of this heritage; and

(e) to foster the establishment or development of national or regional centres for training in the protection, conservation and presentation of the cultural and natural heritage and to encourage scientific research in this field.
Article 6

1. Whilst fully respecting the sovereignty of the States on whose territory the cultural and natural heritage mentioned in Articles 1 and 2 is situated; and without prejudice to property rights provided by national legislation, the States Parties to this Convention recognize that such heritage constitutes a world heritage for whose protection it is the duty of the international community as a whole to co-operate.

2. The States Parties undertake, in accordance with the provisions of this Convention, to give their help in the identification, protection, conservation and presentation of the cultural and natural heritage referred to in paragraphs 2 and 4 of Article 11 if the States on whose territory it is situated so request.

3. Each State Party to this Convention undertakes not to take any deliberate measures which might damage directly or indirectly the cultural and natural heritage referred to in Articles 1 and 2 situated on the territory of other States Parties to this Convention.

Article 7

For the purpose of this Convention, international protection of the world cultural and natural heritage shall be understood to mean the establishment of a system of international co-operation and assistance designed to support States Parties to the Convention in their efforts to conserve and identify that heritage.

Intergovernmental Committee for Protection of the World Cultural and Natural Heritage

Article 8

1. An Intergovernmental Committee for the Protection of the Cultural and Natural Heritage of Outstanding Universal Value, called the World Heritage Committee, is hereby established within the United Nations Educational, Scientific and Cultural Organization. It shall be composed of 15 States Parties to the Convention, elected by States Parties to the Convention meeting in general assembly during the ordinary session of the General Conference of the United Nations Educational, Scientific and Cultural Organization. The number of States members of the Committee shall be increased to 21 as from the date of the ordinary session of the General Conference following the entry into force of this Convention for at least 40 States.

2. Election of members of the Committee shall ensure an equitable representation of the different regions and cultures of the world.

3. A representative of the International Centre for the Study of the Preservation and Restoration of Cultural Property (Rome Centre), a representative of the International Council of Monuments and Sites (ICOMOS) and a representative of the International Union for Conservation of Nature and Natural Resources (IUCN), to whom may be added, at the request of States Parties to the Convention meeting in general assembly during the ordinary session of the General Conference of the United Nations Educational, Scientific and Cultural Organization, representatives of other intergovernmental or nongovernmental organizations, with similar objectives, may attend the meetings of the Committee in an advisory capacity.

Article 9

1. The term of office of States members of the World Heritage Committee shall extend from the end of the ordinary session of the General Conference during which they are elected until the end of its third subsequent ordinary session.

2. The term of office of one-third of the members designated at the time of the first election shall, however, cease at the end of the first ordinary session of the General Conference following that at which they were elected; and the term of office of a further third of the members designated at the same time shall cease at the end of the second ordinary session of the General Conference following that at which they were elected. The names of these members shall be chosen by lot by the President of the General Conference of the United Nations Educational, Scientific and Cultural Organization after the first election.

3. States members of the Committee shall choose as their representatives persons qualified in the field of the cultural or natural heritage.

Article 10

1. The World Heritage Committee shall adopt its Rules of Procedure.

2. The Committee may at any time invite public or private organizations or individuals to participate in its meetings for consultation on particular problems.

Article 11

1. Every State Party to this Convention shall, in so far as possible, submit to the World Heritage Committee an inventory of property forming part of the cultural and natural heritage situated in its territory and suitable for inclusion in the list provided for in paragraph 2 of this Article. This inventory, which shall not be considered exhaustive, shall include documentation about the location of the property in question and its significance.

2. On the basis of the inventories submitted by States in accordance with paragraph 1, the Committee shall establish, keep up to date and publish, under the title of World Heritage List, a list of properties forming part of the cultural heritage and natural heritage, as defined in Articles 1 and 2 of this Convention, which it considers as having outstanding universal value in terms of such criteria as it shall have established. An updated list shall be distributed at least every two years.

3. The inclusion of a property in the World Heritage List requires the consent of the State concerned. The inclusion of a property situated in a territory, sovereignty or jurisdiction over which is claimed by more than one State shall in no way prejudice the rights of the parties to the dispute.

4. The Committee shall establish, keep up to date and publish, wherever circumstances shall so require, under the title of List of World Heritage in Danger, a list of the property appearing in the World Heritage List for the conservation of which major operations are necessary and for which assistance has been requested under this Convention. This list shall contain an estimate of the cost of such operations. The list may include only such property forming part of the cultural and natural heritage as is threatened by serious and specific dangers, such as the threat of disappearance caused by accelerated deterioration, large-scale public or private projects or rapid urban or tourist development projects; destruction caused by changes in the use or ownership of the land; major alterations due to unknown causes; abandonment for any reason whatsoever; the outbreak or the threat of an armed conflict; calamities and cataclysms; serious fires, earthquakes, landslides; volcanic eruptions; changes in water level, floods, and tidal waves. The Committee may at any time, in case of urgent need, make a new entry in the List of World Heritage in Danger and publicize such entry immediately.

5. The Committee shall define the criteria on the basis of which a property belonging to the cultural or natural heritage may be included in either of the lists mentioned in paragraphs 2 and 4 of this article.

6. Before refusing a request for inclusion in one of the two lists mentioned in paragraphs 2 and 4 of this article, the Committee shall consult the State Party in whose territory the cultural or natural property in question is situated.

7. The Committee shall, with the agreement of the States concerned, co-ordinate and encourage the studies and research needed for the drawing up of the lists referred to in paragraphs 2 and 4 of this article.

Article 12

The fact that a property belonging to the cultural or natural heritage has not been included in either of the two lists mentioned in paragraphs 2 and 4 of Article 11 shall in no way be construed to mean that it does not have an outstanding universal value for purposes other than those resulting from inclusion in these lists.
1. The World Heritage Committee shall receive and study requests for international assistance formulated by States Parties to this Convention with respect to property forming part of the cultural or natural heritage, situated in their territories and included or potentially suitable for inclusion in the lists referred to in paragraphs 2 and 4 of Article 11. The purpose of such requests may be to secure the protection, conservation, presentation or rehabilitation of such property.

2. Requests for international assistance under paragraph 1 of this article may also be concerned with identification of cultural or natural property defined in Articles 1 and 2, when preliminary investigations have shown that further inquiries would be justified.

3. The Committee shall decide on the action to be taken with regard to these requests. where appropriate, the nature and extent of its assistance, and authorize the conclusion, on its behalf, of the necessary arrangements with the government concerned.

4. The Committee shall determine an order of priorities for its operations. It shall in so doing bear in mind the respective importance for the world cultural and natural heritage of the property requiring protection, the need to give international assistance to the property most representative of a natural environment or of the genius and the history of the peoples of the world, the urgency of the work to be done, the resources available to the States on whose territory the threatened property is situated and in particular the extent to which they are able to safeguard such property by their own means.

5. The Committee shall draw up, keep up to date and publicize a list of property for which international assistance has been granted.

6. The Committee shall decide on the use of the resources of the Fund established under Article 15 of this Convention. It shall seek ways of increasing these resources and shall take all useful steps to this end.

7. The Committee shall co-operate with international and national governmental and non-governmental organisations having objectives similar to those of this Convention. For the implementation of its programmes and projects, the Committee may call on such organisations, particularly the International Centre for the Study of the Preservation and Restoration of Cultural Property (the Rome Centre), the International Council of Monuments and Sites (ICOMOS) and the International Union for Conservation of Nature and Natural Resources (IUCN), as well as on public and private bodies and individuals.

8. Decisions of the Committee shall be taken by a majority of two-thirds of its members present and voting. A majority of the members of the Committee shall constitute a quorum.

Article 14

1. The World Heritage Committee shall be assisted by a Secretariat appointed by the Director-General of the United Nations Educational, Scientific and Cultural Organization.

2. The Director-General of the United Nations Educational, Scientific and Cultural Organization, utilizing to the fullest extent possible the services of the International Centre for the Study of the Preservation and Restoration of Cultural Property (the Rome Centre), the International Council of Monuments and Sites (ICOMOS) and the International Union for Conservation of Nature and Natural Resources (IUCN) in their respective areas of competence and capability, shall prepare the Committee’s documentation and the agenda of its meetings and shall have the responsibility for the implementation of its decisions.

IV. Fund for the Protection of the World Cultural and Natural Heritage

Article 15

1. A Fund for the Protection of the World Cultural and Natural Heritage of Outstanding Universal Value, called 'the World Heritage Fund', is hereby established.

2. The Fund shall constitute a trust fund, in conformity with the provisions of the Financial Regulations of the United Nations Educational, Scientific and Cultural Organization.

3. The resources of the Fund shall consist of:
   (a) compulsory and voluntary contributions made by the States Parties to this Convention,
   (b) contributions, gifts or bequests which may be made by:
      (i) other States;
      (ii) the United Nations Educational, Scientific and Cultural Organization, other organisations of the United Nations system, particularly the United Nations Development Programme or other intergovernmental organisations;
      (iii) public or private bodies or individuals;
      (iv) any interest due on the resources of the Fund;
      (d) monies raised by collections and receipts from events organized for the benefit of the Fund;
      (e) all other resources authorized by the Fund’s regulations, as drawn up by the World Heritage Committee.

4. Contributions to the Fund and other forms of assistance made available to the Committee may be used only for such purposes as the Committee shall define. The Committee may accept contributions to be used only for a certain programme or project, provided that the Committee shall have decided on the implementation of such programme or project. No political conditions may be attached to contributions made to the Fund.

5. Without prejudice to any supplementary voluntary contribution, the States Parties to this Convention undertake to pay regularly, every two years, to the World Heritage Fund, contributions, the amount of which, in the form of a uniform percentage applicable to all States, shall be determined by the General Assembly of States Parties to the Convention, the implementation during sessions of the General Conference of the United Nations Educational, Scientific and Cultural Organization. This decision of the General Assembly requires the majority of the States Parties present and voting, which have not raised the declaration referred to in paragraph 2 of this Article. In no case shall the compulsory contribution of States Parties to the Convention exceed 1% of the contribution to the Regular Budget of the United Nations Educational, Scientific and Cultural Organization.

6. However, each State referred to in Article 31 or in Article 32 of this Convention may declare, at the time of the deposit of its instruments of ratification, acceptance or accession, that it shall not be bound by the provisions of paragraph 1 of this Article.

7. A State Party to the Convention which has made the declaration referred to in paragraph 2 of this Article may at any time withdraw the said declaration by notifying the Director-General of the United Nations Educational, Scientific and Cultural Organization. However, the withdrawal of the declaration shall not take effect in regard to the compulsory contribution due by the State until the date of the subsequent General Assembly of States Parties to the Convention.

8. In order that the Committee may be able to plan its operations effectively, the contributions of States Parties to this Convention which have made the declaration referred to in paragraph 2 of this Article, shall be paid on a regular basis, at least every four years, and should not be less than the contributions which they should have paid if they had been bound by the provisions of paragraph 1 of this Article.

9. Any State Party to the Convention which is in arrears with the payment of its compulsory or voluntary contribution for the current year and the calendar year immediately preceding it shall not be eligible as a Member of the World Heritage Committee, although this provision shall not apply to the first election.

The terms of office of any such State which is already a member of the Committee shall terminate at the time of the elections provided for in Article 8, paragraph 1 of this Convention.
Traditional Resource Rights

Article 17
The States Parties to this Convention shall consider or encourage the establishment of national, public and private foundations or associations whose purpose is to invite donations for the protection of the cultural and natural heritage as defined in Articles 1 and 2 of this Convention.

Article 18
The States Parties to this Convention shall give their assistance to international fund-raising campaigns organized for the World Heritage Fund under the auspices of the United Nations Educational, Scientific and Cultural Organization. They shall facilitate collections made by the bodies mentioned in paragraph 3 of Article 15 for this purpose.

V. Conditions and arrangements for international assistance

Article 19
Any State Party to this Convention may request international assistance for property forming part of the cultural or natural heritage of outstanding universal value situated within its territory. It shall submit with its request such information and documentation provided for in Article 21 as it has in its possession and as will enable the Committee to come to a decision.

Article 20
Subject to the provisions of paragraph 2 of Article 13, sub-paragraph (c) of Article 22 and Article 23, international assistance provided for by this Convention may be granted only to property forming part of the cultural and natural heritage which the World Heritage Committee has decided, or may decide, to enter in one of the lists mentioned in paragraphs 2 and 4 of Article 11.

Article 21
1. The World Heritage Committee shall define the procedure by which requests to it for international assistance shall be considered and shall specify the content of the request, which should define the operation contemplated, the work that is necessary, the expected cost thereof, the degree of urgency and the reasons why the resources of the State requesting assistance do not allow to meet all the expenses. Such requests must be supported by experts’ reports whenever possible.
2. Requests based on disasters or natural calamities should, by reasons of the urgent work which they may involve, be given immediate, priority consideration by the Committee, which should have a reserve fund at its disposal against such contingencies.
3. Before coming to a decision, the Committee shall carry out such studies and consultations as it deems necessary.

Article 22
Assistance granted by the World Heritage Committee may take the following forms:
(a) studies concerning the artistic, scientific and technical problems raised by the protection, conservation, presentation and rehabilitation of the cultural and natural heritage, as defined in paragraphs 2 and 4 of Article 11 of this Convention;
(b) provision of experts, technicians and skilled labour to ensure that the approved work is correctly carried out;
(c) training of staff and specialists at all levels in the field of identification, protection, conservation, presentation and rehabilitation of the cultural and natural heritage;
(d) supply of equipment which the State concerned does not possess or is not in a position to acquire;
(e) low-interest or interest-free loans which might be repayable on a long-term basis;
(f) the granting, in exceptional cases and for special reasons, of non-repayable subsidies.

Article 23
The World Heritage Committee may also provide international assistance to national or regional centres for the training of staff and specialists at all levels in the field of identification, protection, conservation, presentation and rehabilitation of the cultural and natural heritage.

Article 24
International assistance on a large scale shall be preceded by detailed scientific, economic and technical studies. These studies shall draw upon the most advanced techniques for the protection, conservation, presentation and rehabilitation of the cultural and natural heritage and shall be consistent with the objectives of this Convention. The studies shall also seek means of making rational use of the resources available in the State concerned.

Article 25
As a general rule, only part of the cost of work necessary shall be borne by the international community. The contribution of the State benefiting from international assistance shall constitute a substantial share of the resources devoted to each programme or project, unless its resources do not permit this.

Article 26
The World Heritage Committee and the recipient State shall define in the agreement they conclude the conditions in which a programme or project for which international assistance under the terms of this Convention is provided, shall be carried out. It shall be the responsibility of the property so safeguarded, in observance of the conditions hid down by the agreement.

VI. Educational programmes

Article 27
1. The States Parties to this Convention shall endeavour by all appropriate means, and in particular by educational and information programmes, to strengthen appreciation and respect by their peoples of the cultural and natural heritage defined in Article 1 and 2 of the Convention.
2. They shall undertake to keep the public broadly informed of the dangers threatening this heritage and of activities carried on in pursuance of this Convention.

Article 28
States Parties to this Convention which receive international assistance under the Convention shall take appropriate measures to make known the importance of the property for which assistance has been received and the role played by such assistance.

VII. Reports

Article 29
1. The States Parties to this Convention shall, in the reports which they submit to the General Conference of the United Nations Educational, Scientific and Cultural Organization on dates and in a manner to be determined by it, give information on the legislative and administrative provisions which they have adopted and other action which they have taken for the application of this Convention, together with details of the experience acquired in this field.
2. These reports shall be brought to the attention of the World Heritage Committee.
3. The Committee shall submit a report on its activities at each of the ordinary sessions of the General Conference of the United Nations Educational, Scientific and Cultural Organization.
VIII. Final clauses

Article 30

This Convention is drawn up in Arabic, English, French, Russian and Spanish, the five texts being equally authoritative.

Article 31

1. This Convention shall be subject to ratification or acceptance by States members of the United Nations Educational, Scientific and Cultural Organization in accordance with their respective constitutional procedures.
2. The instruments of ratification or acceptance shall be deposited with the Director-General of the United Nations Educational, Scientific and Cultural Organization.

Article 32

1. This Convention shall be open to accession by all States not members of the United Nations Educational, Scientific and Cultural Organization which are invited by the General Conference of the Organization to accede to it.
2. Accession shall be effected by the deposit of an instrument of accession with the Director-General of the United Nations Educational, Scientific and Cultural Organization.

Article 33

This Convention shall enter into force three months after the date of the deposit of the twentieth instrument of ratification, acceptance or accession, but only with respect to those States which have deposited their respective instruments of ratification, acceptance or accession on or before that date. It shall enter into force with respect to any other State three months after the deposit of its instrument of ratification, acceptance or accession.

Article 34

The following provisions shall apply to those States Parties to this Convention which have a federal or non-unitary constitutional system:

(a) with regard to the provisions of this Convention, the implementation of which comes under the legal jurisdiction of the federal or central legislative power, the obligations of the federal or central government shall be the same as for those States Parties which are not federal States;
(b) with regard to the provisions of this Convention, the implementation of which comes under the legal jurisdiction of individual constituent States, countries, provinces or cantons that are not obliged by the constitutional system of the federation to take legislative measures, the federal government shall inform the competent authorities of such States, countries, provinces or cantons of the said provisions, with its recommendation for their adoption.

Article 35

1. Each State Party to this Convention may denounce the Convention.
2. The denunciation shall be notified by an instrument in writing, deposited with the Director-General of the United Nations Educational, Scientific and Cultural Organization.
3. The denunciation shall take effect twelve months after the receipt of the instrument of denunciation. It shall not affect the financial obligations of the denouncing State until the date on which the withdrawal takes effect.

Article 36

The Director-General of the United Nations Educational, Scientific and Cultural Organization shall inform the States members of the Organization, the States not members of the Organization which are referred to in Article 32, as well as the United Nations, of the deposit of all the instruments of ratification, acceptance, or accession provided for in Articles 31 and 32, and of the denunciations provided for in Article 35.
Appendix 9

Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property

Adopted by the General Conference at its 16th Session
UNESCO, Paris, 14 November 1970

The General Conference of the United Nations Educational, Scientific and Cultural Organization, meeting in Paris from 12 October to 14 November 1970, at its sixteenth session,

Recalling the importance of the provisions contained in the Declaration of the Principles of International Cultural Co-operation, adopted by the General Conference at its fourteenth session,

Considering that the interchange of cultural property among nations for scientific, cultural and educational purposes increases the knowledge of the civilization of Man, enriches the cultural life of all peoples and inspires mutual respect and appreciation among nations,

Considering that cultural property constitutes one of the basic elements of civilization and national culture, and that its true value can be appreciated only in relation to the fullest possible information regarding its origin, history and traditional setting,

Considering that it is incumbent upon every State to protect the cultural property existing within its territory against the dangers of theft, clandestine excavation, and illicit export,

Considering that, to avert these dangers, it is essential for every State to become increasingly alive to the moral obligations to respect its own cultural heritage and that of all nations,

Considering that, as cultural institutions, museums, libraries and archives should ensure that their collections are built up in accordance with universally recognized moral principles,

Considering that the illicit import, export and transfer of ownership of cultural property is an obstacle to that understanding between nations which it is part of Unesco's mission to promote by recommending to interested States, international conventions to this end,

Considering that the protection of cultural heritage can be effective only if organized both nationally and internationally among States working in close co-operation,

Considering that the Unesco General Conference adopted a Recommendation to this effect in 1964,

Having before it further proposals on the means of prohibiting and preventing the illicit import, export and transfer of ownership of cultural property, a question which is on the agenda for the session as item 19.

Having decided, at its fifteenth session, that this question should be the subject of an international convention,

ADOPTS this Convention on the fourteenth day of November 1970.

Article 1

For the purposes of this Convention, the term 'cultural property' means property which, on religious or secular grounds, is specifically designated by each State as being of importance for archaeology, prehistory, history, literature, art or science and which belongs to the following categories:

(a) Rare collections and specimens of fauna, flora, minerals and anatomy, and objects of palaeontological interest;
(b) property relating to history, including the history of science and technology and military and social history, to the life of national leaders, thinkers, scientists and artists and to events of national importance;
(c) products of archaeological excavations (including regular and clandestine) or of archaeological discoveries;
(d) elements of artistic or historical monuments or archaeological sites which have been dismembered;
(e) antiquities more than one hundred years old, such as inscriptions, coins and engraved seals;
(f) objects of ethnological interest;
(g) property of artistic interest, such as:
(i) pictures, paintings and drawings produced entirely by hand on any support and in any material (excluding industrial designs and manufactured articles decorated by hand);
(ii) original works of stationary art and sculpture in any material;
(iii) original engravings, prints and lithographs;
(iv) original artistic assemblages and montages in any material;

(h) rare manuscripts and incunabula, old books, documents and publications of special interest (historical, artistic, scientific, literary, etc.) singly or in collections;
(i) archives, including sound, photographic and cinematographic archives;
(k) articles of furniture more than one hundred years old and old musical instruments.

Article 2

1. The States Parties to this Convention recognize that the illicit import, export and transfer of ownership of cultural property is one of the main causes of the impoverishment of the cultural heritage of the countries of origin of such property and that international co-operation constitutes one of the most efficient means of means of protecting each country's cultural property against all the dangers resulting therefrom.

2. To this end, the States Parties undertake to oppose such practices with the means at their disposal, and particularly by removing their causes, putting a stop to current practices, and by helping to make the necessary reparations.

Article 3

The import, export or transfer of ownership of cultural property effected contrary to the provisions adopted under this Convention by the States Parties thereto, shall be illicit.

Article 4

The States Parties to this Convention recognize that for the purpose of the Convention property which belongs to the following categories forms part of the cultural heritage of each State:

(a) Cultural property created by the individual or collective genius of nationals of the State concerned, and cultural property of importance to the State concerned created within the territory of that State by foreign nationals or stateless persons resident within such territory;
(b) cultural property found within the national territory;
(c) cultural property acquired by archaeological, ethnological or natural science missions;
(d) cultural property which has been the subject of a freely agreed exchange;
(e) cultural property received as a gift or purchased legally with the consent of the competent authorities of the country of origin of such property.

Article 5

To ensure the protection of their cultural property against illicit import, export and transfer of ownership, the States Parties to this Convention undertake, as appropriate for each country, to
Traditions set up within their territories one or more national services, where such services do not already exist, for the protection of the cultural heritage, with a qualified staff sufficient in number for the effective carrying out of the following functions:

(a) contributing to the formation of draft laws and regulations designed to secure the protection of the cultural heritage and particularly prevention of the illicit import, export and transfer of ownership of important cultural property;

(b) establishing and keeping up to date, on the basis of a national inventory of protected property, a list of important public and private cultural property whose export would constitute an appreciable impoverishment of the national cultural heritage;

(c) promoting the development or the establishment of scientific and technical institutions (museums, libraries, archives, laboratories, workshops...). required to ensure the preservation and presentation of cultural property;

(d) organizing the supervision of archaeological excavations, ensuring the preservation ‘in situ’ of certain cultural property, and protecting certain areas reserved for future archaeological research;

(e) establishing, for the benefit of those concerned (curators, collectors, antique dealers, etc.) rules in conformity with the ethical principles set forth in this Convention; and taking steps to ensure the observance of those rules;

(f) taking educational measures to stimulate and develop respect for the cultural heritage of all States and spreading knowledge of the provisions of this Convention;

(g) seeking that appropriate publicity is given to the disappearance of any items of cultural property.

Article 6

The States Parties to this Convention undertake:

(a) To introduce an appropriate certificate in which the exporting State would specify that the export of the cultural property in question is authorised. The certificate should accompany all items of cultural property exported in accordance with the regulations;

(b) to prohibit the exportation of cultural property from their territory unless accompanied by the above-mentioned export certificate;

(c) to publicize this prohibition by appropriate means, particularly among persons likely to export or import cultural property.

Article 7

The States Parties to this Convention undertake:

(a) To take the necessary measures, consistent with national legislation, to prevent museums and similar institutions within their territories from acquiring cultural property originating in another State Party which has been illegally exported after entry into force of this Convention, in the States concerned. Whenever possible, to inform a State of origin Party to this Convention of an offer of such cultural property illegally removed from that State after the entry into force of this Convention in both States;

(b) (i) to prohibit the import of cultural property stolen from a museum or a religious or secular public monument or similar institution in another State Party to this Convention after the entry into force of this Convention in the States concerned, provided that such property is documented as appertaining to the inventory of that institution;

(ii) at the request of the State of origin Party, to take appropriate steps to recover and return any such cultural property imported after the entry into force of this Convention in both States concerned, provided, however, that the requesting State shall pay just compensation to an innocent purchaser or to a person who has valid title to that property. Requests for recovery and return shall be made through diplomatic offices. The requesting Party shall furnish, at its expense, the documentation and other evidence necessary to establish its claim for recovery and return. The Parties shall impose no customs duties or other charges upon cultural property returned pursuant to this Article. All expenses incident to the return and delivery of the cultural property shall be borne by the requesting Party.

200
Nothing in this Convention shall prevent States Parties thereto from concluding special agreements among themselves or from continuing to implement agreements already concluded regarding the restitution of cultural property removed, whatever the reason, from its territory of origin, before the entry into force of this Convention for the States concerned.

The States Parties to this Convention shall in their periodic reports submitted to the General Conference of the United Nations Educational, Scientific and Cultural Organization on dates and in a manner to be determined by it, give information on the legislative and administrative measures which they have adopted and other action which they have taken for the application of this Convention, together with details of the experience acquired in this field.

1. The States Parties to this Convention may call on the technical assistance of the United Nations Educational, Scientific and Cultural Organization, particularly as regards:
   (a) information and education;
   (b) consultation and expert advice;
   (c) co-ordination and good offices.
2. The United Nations Educational, Scientific and Cultural Organization may, on its own initiative conduct research and publish studies on matters relevant to the illicit movement of cultural property.
3. To this end, the United Nations Educational, Scientific and Cultural Organization may also call on the co-operation of any competent non-governmental organization.
4. The United Nations Educational, Scientific and Cultural Organization may, on its own initiative, make proposals to States Parties to this Convention for its implementation.

At the request of at least two States Parties to this Convention which are engaged in a dispute over its implementation, Unesco may extend its good offices to reach a settlement between them.

This Convention is drawn up in English, French, Russian and Spanish, the four texts being equally authoritative.

1. This Convention shall be subject to ratification or acceptance by States members of the United Nations Educational, Scientific and Cultural Organization in accordance with their respective constitutional procedures.
2. The instruments of ratification or acceptance shall be deposited with the Director-General of the United Nations Educational, Scientific and Cultural Organization.

1. This Convention shall be open to accession by all States not members of the United Nations Educational, Scientific and Cultural Organization which are invited to accede to it by the Executive Board of the Organization.
2. Accession shall be effected by the deposit of an instrument of accession with the Director-General of the United Nations Educational, Scientific and Cultural Organization.

This Convention shall enter into force three months after the date of the deposit of the third instrument of ratification, acceptance or accession, but only with respect to those States which have deposited their respective instruments on or before that date. It shall enter into force with respect to any other State three months after the deposit of its instrument of ratification, acceptance or accession.

The States Parties to this Convention recognize that the Convention is applicable not only to their metropolitan territories but also to all territories for the international relations of which they are responsible; they undertake to consult, if necessary, the governments or other competent authorities of these territories on or before ratification, acceptance or accession with a view to the United Nations Educational, Scientific and Cultural Organization of the territories to which it is applied, the notification to take effect three months after the date of its receipt.

1. Each State Party to this Convention may denounce the Convention on its own behalf or on behalf of any territory for whose international relations it is responsible.
2. The denunciation shall be notified by an instrument in writing, deposited with the Director-General of the United Nations Educational, Scientific and Cultural Organization.
3. The denunciation shall take effect twelve months after the receipt of the instrument of denunciation.

The Director-General of the United Nations Educational, Scientific and Cultural Organization shall inform the States members of the Organization, the States not members of the Organization which are referred to in Article 20, as well as the United Nations, of the deposit of all the instruments of ratification, acceptance and accession provided for in Articles 19 and 20, and of the notifications and denunciations provided for in Articles 22 and 23 respectively.

1. This Convention may be revised by the General Conference of the United Nations Educational, Scientific and Cultural Organization. Any such revision shall, however, bind only the States which shall become Parties to the revising convention.
2. If the General Conference should adopt a new convention revising this Convention in whole or in part, then, unless the new convention otherwise provides, this Convention shall cease to be open to ratification, acceptance or accession, as from the date on which the new revising convention enters into force.

In conformity with Article 102 of the Charter of the United Nations, this Convention shall be registered with the Secretariat of the United Nations at the request of the Director-General of the United Nations Educational, Scientific and Cultural Organization.

Done in Paris this seventeenth day of November 1970, in two authentic copies bearing the signature of the President of the sixteenth session of the General Conference of the Director-General of the United Nations Educational, Scientific and Cultural Organization, which shall be deposited in the archives of the United Nations Educational, Scientific and Cultural Organization, and certified true copies of which shall be delivered to all the States referred to in Articles 19 and 20 as well as to the United Nations.

The foregoing is the authentic text of the Convention duly adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization during its sixteenth session, which was held in Paris and declared closed the fourteenth day of November 1970.

IN FAITH WHEREOF we have appended our signatures this seventeenth day of November 1970.

The President of the General Conference
The Director-General
Appendix 10

**Model Provisions for National Laws on the Protection of Expressions of Folklore Against Illicit Exploitation and Other Prejudicial Actions**

[Considering that folklore represents an important part of the living cultural heritage of the nation, developed and maintained by the communities within the nation, or by individuals reflecting the expectations of those communities;]

[Considering that the dissemination of various expressions of folklore may lead to improper exploitation of the cultural heritage of the nation;]

[Considering that any abuse of commercial or other nature or any distortion of expressions of folklore is prejudicial to the cultural and economic interests of the nation;]

[Considering that expressions of folklore constituting manifestations of intellectual creativity deserve to be protected in a manner inspired by the protection provided for intellectual productions;]

[Considering that such a protection of expressions of folklore has become indispensable as a means of promoting further development, maintenance and dissemination of those expressions, both within and outside the country, without prejudice to related legitimate interests:

The following provisions shall be given effect:]

**SECTION 1: Principle of Protection**

Expressions of folklore developed and maintained in [insert the name of the country] shall be protected by this [law] against illicit exploitation and other prejudicial actions as defined in this [law].

**SECTION 2: Protected Expressions of Folklore**

For the purposes of this [law], “expressions of folklore” means productions consisting of characteristic elements of the traditional artistic heritage developed and maintained by a community of [name of the country] or by individuals reflecting the traditional artistic expectations of such a community, in particular:

(i) verbal expressions, such as folk tales, folk poetry and riddles;

(ii) musical expressions, such as folk songs and instrumental music;

(iii) expressions by action, such as folk dances, plays and artistic forms or rituals whether or not reduced to a material form; and

(iv) tangible expressions, such as:

(a) productions of folk art, in particular, drawings, paintings, carvings, sculptures, pottery, terracotta, mosaic, woodwork, metalware, jewellery, basket weaving, needlework, textiles, carpets, costumes;

(b) musical instruments;

(c) architectural forms;

**SECTION 3: Utilizations Subject to Authorization**

Subject to the provisions of Section 4, the following utilizations of the expressions of folklore are subject to authorization by the [competent authority mentioned in Section 9, paragraph 1,] [community concerned] when they are made both with gainful intent and outside their traditional or customary context:

(i) any publication, reproduction and any distribution of copies of expressions of folklore;

(ii) any public recitation or performance, any transmission by wireless means or by wire, and any other form of communication to the public, of expressions of folklore.

**SECTION 4: Exceptions**

1. The provisions of Section 3 shall not apply in the following cases:

(i) utilisation for purposes of education;

(ii) utilisation by way of illustration in the original work of an author or authors, provided that the extent of such utilisation is compatible with fair practice;

(iii) borrowing of expressions of folklore for creating an original work of an author or authors;

2. The provisions of Section 3 shall not apply also where the utilisation of the expressions of folklore is incidental. Incidental utilisation includes, in particular:

(i) utilization of any expression of folklore that can be seen or heard in the course of a current event for the purposes of reporting on that current event by means of photography, broadcasting or sound or visual recording, provided that the extent of such utilization is justified by the informative purpose;

(ii) utilization of objects containing the expressions of folklore which are permanently located in a place where they can be viewed by the public, if the utilization consists in including their image in a photograph, in a film or in a television broadcast.

**SECTION 5: Acknowledgement of Source**

1. In all printed publications, and in connection with any communications to the public, of any identifiable expression of folklore, its source shall be indicated in an appropriate manner, by mentioning the community and/or geographic place from where the expression utilized has been derived.

2. The provisions of paragraph 1 shall not apply to utilizations referred to in Section 4, paragraphs 1(iii) and 2.

**SECTION 6: Offences**

1. Any person who wilfully (or negligently) does not comply with the provisions of Section 5, paragraph 1, shall be liable to ...

2. Any person who, without the authorization of the [competent authority referred to in Section 9, paragraph 1] [community concerned] wilfully (or negligently) utilizes an expression of folklore in violation of the provisions of Section 3, shall be liable to ...

3. Any person wilfully deceiving others in respect of the source of artefacts or subject matters of performance or recitations made available to the public by him in any direct or indirect manner, presenting such artefacts or subject matters as expressions of folklore of a certain community, from where, in fact, they have not been derived, shall be punishable by ...

4. Any persons who publicly uses, in any direct or indirect manner, expressions of folklore wilfully distorting the same in a way prejudicial to the cultural interests of the community concerned, shall be punishable by ...

**SECTION 7: Seizure or Other Actions**

Any object which was made in violation of this [law] and any receipts of the person violating it and corresponding to such violations, shall be subject to [seizure] [applicable actions and remedies].
SECTION 8: Civil Remedies

The sanctions provided for in [Section 6] [Sections 6 and 7] shall be applied without prejudice to damages or other civil remedies as the case may be.

SECTION 9: Authorities

[1.] For the purpose of this [law], the expression “competent authority” means ...
[2.] For the purpose of this [law], the expression “supervisory authority” means ...

SECTION 10: Authorisation

1. Applications for individual or blanket authorisation of any utilisation of expressions of folklore subject to authorisation under this [law] shall be made [in writing] to the [competent authority][community concerned].
2. Where the [competent authority][community concerned] grants authorization, it may fix the amount of and collect fees [corresponding to a tariff established][approved] by the supervisory authority. The fees collected shall be used for the purpose of promoting or safeguarding national [culture] [folklore].
3. Appeals against the decisions of the competent authority may be made by the person applying for the authorisation and/or the representative of the interested community.

SECTION 11: Jurisdiction

[1.] Appeals against the decisions of the [competent authority] [supervisory authority] are admissible to the Court of ...
[2.] In case of any offence under Section 6, the Court of ... has jurisdiction.

SECTION 12: Relation to Other Forms of Protection

This [law] shall in no way limit or prejudice any protection applicable to expressions of folklore under the copyright law, the law protecting performers, producers of phonograms and broadcasting organisations, the laws protecting industrial property, or any other law or international treaty to which the country is party; nor shall it in any way prejudice other forms of protection provided for the safeguard and preservation of folklore.

SECTION 13: Interpretation

The protection granted under this [law] shall in no way be interpreted in a manner which could hinder the normal use and development of expressions of folklore.

SECTION 14: Protection of Expression of Folklore of Foreign Countries

Expressions of folklore developed and maintained in a foreign country are protected under this [law]
(i) subject to reciprocity, or
(ii) on the basis of international treaties or other agreements.

Appendix 11

In Safe Hands: Communities Safeguard Biodiversity for Food Security

Leipzig, Germany, 14-16 June 1996

Representatives from over 120 NGOs and Peoples Organisations from over 50 countries met for three days before the convening of the FAO 4th ITC in Leipzig to prepare a Peoples' Plan of Action on Agriculture, food security and Farmers' Rights. In a statement circulated to delegates at ITC4 the Peoples' Plan of Action declared the need to build a new paradigm centred on diversity.

The Peoples' Plan of Action calls for strengthening systems which promote collective rights over the individuality of IPR, and cultural and agricultural diversity by supporting women farmers, indigenous peoples, land rights issues.

The Peoples' Plan declares:

- We commit ourselves to the implementation of Farmers' rights in South and North as the fundamental prerequisite to the conservation of agricultural biodiversity;
- We commit ourselves to the rights of women farmers who have been the true custodians and creators of agricultural diversity;
- We commit ourselves to the creation of alternatives to intellectual property systems that safeguard the rights of farming and indigenous communities.

Community Conservation:

- We commit ourselves to building community and grassroots initiatives for the strengthening of agricultural diversity;
- We commit ourselves to continuing the transformation of the current conservation ex situ dominated system toward one based upon community conservation;
- We commit ourselves to ensuring the long-term security of critical gene banks and their accessions under the legal framework of the CBD to be implemented by the UN FAO;
- We commit ourselves to ensuring farmers' access to national and international ex situ collections, including their right to repatriate farmers' varieties;
- We commit ourselves to preparing and publishing an independent status report on ex situ collections held by national and international public sector institutions that evaluates costs, effectiveness in terms of conservation, and benefits derived through enhancement, and adherence to Farmers' Rights.

Diversity and Food Security: 'We commit ourselves to

- the promotion of the consumption of locally produced foods and the generation of information to the consumer of the importance of agricultural biodiversity;
- continue opposition to transnational agribusiness monopolies on the production, processing and distribution of food;
- retraining of the formal sector to enable them to recognise the value of farmers and indigenous peoples' knowledge and practice in conserving and strengthening agricultural biodiversity;
- restructuring of the CGIAR under the UN system and the redirection of support for agricultural research toward community and national research systems;
- ensuring the WTO review process in 1999-2000 removes agriculture from the Uruguay Round agreement and the elimination of TRIPS;
Traditi

importance o

halting public section subsidies to the private sector, including the use of aid money and market monopolisation mechanisms;

a moratorium on the release of GMOs unless and until a broadly debated and popularly accepted legally-binding international biosafety protocol, addressing social and economic as well as environmental impacts, is in place. Communities have the right to veto at all levels.

Consumer sovereignty and the right to information through labelling of genetically-engineered foods, so that consumers have the choice to boycott such products;

ensuring public support for community-based, grassroots and national programmes promoting food security;

pressuring governments, the IMF, World Bank and WTO, as well as all other relevant institutions to establish mechanisms and structures that support food self-sufficiency;

strengthening systems of decentralised food reserves at the household and community levels, creating a system of publicly-controlled food reserves at the national, regional and international levels.

creating a monitoring mechanism on the activities of TNCs, and conducting a global social and ecological audit of their activities, including the impacts of IPR;

promoting direct links between consumers and farmers for the consumption of locally-produced foods;

building upon existing networks of NGOs and POs to pool and circulate information about these issues and to build ever broader popular support for our campaigns.

An NGO Resolution on Farmers' Rights, also circulated to delegates at ITC4 emphasised the importance of recognising:

that Farmers' Rights and the Rights of Indigenous Peoples are of a different nature, and should be complementary and mutually supportive. The UN Draft Declaration on the Rights of Indigenous Peoples, and ILO Convention 169 should be endorsed and implemented.

the central objective of Farmers' Rights is to ensure control of and access to agricultural biodiversity by local communities, so that they can continue to develop their farming systems sustainably.

Farmers must have the right to benefit from their biological resources and related knowledge. The right to save, exchange and improve seeds is inalienable.

Ownership and innovation at the local level are often of a collective nature. Farmers' Rights should be based upon this principle, and should protect and promote such collectively held knowledge systems and resources. Collective knowledge is intimately linked to cultural diversity, land and biodiversity and cannot be dissociated from either of these 3 aspects.

Farmers' Rights should include legal recognition of land rights.

Farmers' Rights should include the right to appropriate and participatory research support.

Appendix 12

Farmers Rights Charter
(draft charter by Indian Farmers Unions, circulated by Third World Network, February 1996)

Farmers of the World, including women farmers, landless farmers, have a duty and a right to self determination including the right to choose their agricultural systems, protect their livelihoods and their resources. The sustainability of livelihoods depends on the sustainable use of the natural wealth - land, water and biodiversity - as well as on the economic viability of a sustainable agricultural production.

The fundamental and inalienable right to a sustainable livelihood includes: resource rights to land, water and biological diversity; intellectual rights to peoples' own knowledge and innovation of this biological diversity; producer rights to determine what and how to cultivate and breed; and consumer rights arising from the farmers' role as consumers of seed, plant and animal products, and associated inputs.

Farmers' innovation in plant and animal breeding takes place collectively and cumulatively. Hence, farmers' rights arising from their role as conservers and breeders are community rights, and not individual rights.

Farmers varieties and breeds are not merely raw material for the seed and livestock industry: they embody the intellectual contribution of farming communities. Farmers are the original breeders and through their breeding science and technology, they have produced the rich diversity of crop varieties and animal breeds as a gift to the World. Their rights are ownership rights arising from this contribution to the conservation, evolution and multiplication of biological diversity.

As conservers and breeders, farmers state that their resources and intellectual rights are prior to and set the limits for corporate monopolies derived from any intellectual property rights regime covering crop varieties and animal breeds and their genes. This further includes the fundamental right to exclude patents on plants and other life forms because they violate ethical values and cultural traditions.

Farmers and other producers have a duty to provide food security and ecological security. They therefore have a right to ensure that our agricultural systems are based on crop and animal diversity, sustainable practices and nutritious and healthy food production.

To ensure that their practice contributes to sustainable agriculture, farmers have a right to reject genetically engineered seed and breeds on the grounds of biosafety because of risks from biological and chemical pollution.

The survival of the small farmers of the World is necessary for the survival of the planet. The farmers of the World, pledge themselves to protecting the biological and cultural diversity of the World, and the intellectual capacities and livelihoods of farmers.

We believe that farmers should have fundamental and inalienable rights to:

- The communal ownership of the plant genetic diversity and domestic animal breeds, whose rich diversity embodies the knowledge and innovation of farming communities in the conservation, evolution and multiplication of this diversity.

- Participate fully in any benefits derived from the improved use of these genetic resources.

- Control access to land, water and genetic resources needed to sustain their livelihoods and provide for universal food security.
Traditional Resource Rights

- Determine their own diverse production, and consumption patterns, protected from the impact of corporate monopolies and their monocultural influence; and
- Reject any form of patents on, or genetically engineered seeds and breeds of food plants and domestic animal breeds as this violates ethical values and cultural traditions of biological diversity, and can threaten the existence of biological diversity.

Appendix 13

The Declaration of Belém

This Declaration was adopted at the First International Congress of Ethnobiology in Belém, Brazil in 1988.

As ethnobiologists, we are alarmed that:

SINCE
- tropical forests and other fragile ecosystems are disappearing,
- many species, both plant and animal, are threatened with extinction,
- indigenous cultures around the world are being disrupted and destroyed;

and GIVEN
- that economic, agricultural, and health conditions of people are dependent on these resources,
- that native peoples have been stewards of 99% of the world’s genetic resources, and
- that there is an inextricable link between cultural and biological diversity

We, members of the International Society of Ethnobiology, strongly urge action as follows:

1) henceforth, a substantial proportion of development aid be devoted to efforts aimed at ethnobiological inventory, conservation, and management programs;

2) mechanisms be established by which indigenous specialists are recognized as proper authorities and are consulted in all programs affecting them, their resources, and their environment;

3) all other inalienable human rights be recognized and guaranteed, including cultural and linguistic identity;

4) procedures be developed to compensate native peoples for the utilization of their knowledge and their biological resources;

5) educational programs be implemented to alert the global community to the value of ethnobiological knowledge for human well-being;

6) all medical programs include the recognition of and respect for traditional healers and the incorporation of traditional health practices that enhance the health status of these populations;

7) ethnobiologists make available the results of their research to the native peoples with whom they have worked, especially including dissemination in the native language;

8) exchange of information be promoted among indigenous and peasant peoples regarding conservation, management, and sustained utilization of resources.
Appendix 14

Suggested Ethical Guidelines for Accessing and Exploring Biodiversity
By the Pew Conservation Scholars

(Based on a Pew Conservation Scholars Initiative to develop ethical guidelines to access Biological Diversity)

Guidelines

In cases where local communities have their own guidelines these may have precedence over what we discuss below. Guidelines under sections 1 and 2 apply to all researchers and explorers with or without commercial motives. However, sections 3 and 4 apply more particularly to those researchers who have commercial interests and motives. Section 5 deals with the obligations of professional societies and academic institutions.

1. Approval

In most cases the researchers should obtain clearance from the appropriate central or state government authority and, where applicable, from institutions of indigenous peoples.

2. Initial disclosure of information

When first contacting a community or individual to seek access, the researcher:
- should carry out all communications in the local language
- must explain the nature and purpose of the proposed research, including its duration, the geographic area in which research would take place, and research and the collecting methods
- must explain the foreseeable consequences of the research for resources, people, and accessors, including potential commercial value
- should explain the potential non-commercial values, such as academic recognition and advancement for the researcher
- should explain any social and/or cultural risks
- must notify the community at large by some means, e.g., public meeting
- should consider explaining the guidelines that the researcher is following, as well as his/her practice in previous similar research projects
- should be willing to provide copies of relevant project documents, or summaries thereof, preferably including the project budget, in the local language. In the case of commercial prospecting, researchers must share such documents.
- must agree on a protocol of acknowledgements, citation, authorship, inventornship as applicable, either citing local innovators or conservators, or respecting request for anonymity
- must share findings at different stages with the providers
- must not engage in bribery or making false promises.

3. Involvement/Negotiation

In negotiations, the researcher:
- must make a reasonable effort to identify and negotiate with those with the proper authority to negotiate
- should conduct initial discussions with small groups (but obtain final approval from higher legitimate authority wherever applicable)

... should consider, where there is no existing authority or capacity for such negotiations, helping the community develop the institutional capacity to appraise and (if it chooses) enter into such agreements.
... should be willing to provide copies of relevant project documents, preferably including the project budget
... must disclose commercial interest or other possible interest of present or future third parties
... should include a local institution as partner in research, where an appropriate one exists
... should consider drawing up a collaborative agreement
... if such an agreement is made, the researcher should consider depositing a copy of it with a relevant regional/sub-regional body
... should ensure that the actual entity that is directing the research is a party to the agreement whether they are carrying out the work themselves or through contractors.

4. Compensation and Other Terms of Access

The researcher:
- must make every effort to ensure that providing communities and counterpart institutions will share equitably in the benefits
- shall make every effort to develop effective mechanisms for benefit-sharing, recognizing that no proven universal methods exist, and that cultural and other circumstances will vary widely from one case to the next.

Parties should arrive at a scale, extent and form of compensation keeping all the following stages in mind:
- a. when accessing is done
- b. when a new use is discovered
- c. when a product is developed
- d. when commercialization is done

Arrangements for compensation should incorporate the following obligations:
- The community’s right to any organism or part thereof extracted by any biotechnological or other method must not be exhausted merely by publication or collection. The community can assign these rights or associated intellectual property rights (IPRs) to anyone if feels appropriate.
- The community has the right to refuse collection by any researcher even after the initial research has shown its utility.
- Any research collecting from an alternative location/community/species/country should take into account the contribution of the original source in generating commercial returns.
- The period of production should be considered to be valid as per the law in force for the property or form of accessed material being commercialized.
- At stage 'b' or 'c' above, researchers must negotiate with the source community the terms of profit-sharing from commercialization, even when knowledge is provided by an emigrant belonging to that community.
- Researchers should consider helping to set up local/community-managed institutional funds or other augmentative mechanisms for local community development in cases where individuals/communities refuse(s) monetary compensation.
5. **Professional Societies, Academic Institutions and Funding Agencies**
   
   - should encourage citation of intellectual contributions of local innovators, communities and groups
   - should ensure sharing in the local language the insights gained from local communities or innovators either by the prior agreement or by the time of publication, or within reasonable time but not beyond one year of publication
   - should help set up a system of registration of innovations/practices so that IPRs of local communities or innovators are not exhausted
   - should set up rules of good conduct and practice by researchers
   - should recognize, support and reward ethical practices in research
   - should set up bioethics committees to protect the rights of researchers, communities and individuals contributing to the conservation of biodiversity.

---

**Appendix 15**

**Conclusions, Findings and Recommendations From The Green College Workshop on Indigenous Peoples and Traditional Resource Rights**

Green College Centre for Environmental Policy and Understanding
Oxford

June 1995

Access to, protection of, and benefit sharing from wider use and application of traditional technologies and biogenetic resources are essential elements of the CBD. Intellectual property rights are considered the principal mechanisms available to facilitate the sustainable use of the "components of biological diversity". IPR has also become important to global economic and commercial debates in part because of the perceived potential for exploitation of biogenetic resources for biotechnology. Similarly, traditional knowledge is expected to drastically cut research and development costs, while stimulating *in situ* conservation. A "bioprospecting" feeding-frenzy has resulted and IPR has become a code for unethical and unsustainable exploitation of local communities and their resources.

IPR is seen by indigenous and traditional peoples – as well as many environmental and human rights groups – as serious threats to local economies, cultures, and biodiversity. Many indigenous groups have become well-informed, articulate and effective spokespersons for more general concerns of indigenous and non-indigenous communities around the world that despair at the loss of local autonomy and control, increasing commoditisation of common resources, and loss of biological and cultural diversity. Re-thinking "top-down" development, documentation of anthropogenic landscapes, recognition of traditional ecological knowledge, and a surge of "biodiversity prospecting" have accentuated indigenous points of view, while highlighting potential value of traditional knowledge and biogenetic resources.

IPR is seen by scientists to threaten the "free exchange" of information and resources that has presumed to benefit humanity through research, scholarship, and development of medicines, agriculture, forest and conservation systems. Scientists and scientific institutions can no longer ignore the concerns of Indigenous Peoples, especially as science becomes increasingly involved – actively or passively – with the private sector. Plant, animal, and cultural material collected with public funds for scientific, non-profit purposes are now open for commercial exploitation. Research, even in universities and museums, is increasingly funded by corporations, leaving unresolved the disconcerting question of who controls the resulting data. "Purely scientific" data banks have become the "mines" for "biodiversity prospecting". Publishing of information, traditionally the hallmark of academic success, has become the superhighway for transporting restricted (or even sacred) information into the unprotectable "public domain".

Nation States find themselves proclaiming major expansions of sovereignty over traditional resources, but with no means to implement or exercise the responsibility that increased sovereignty demands. Frequently, neither technical capacity nor capital potential are adequate to develop the knowledge or genetic materials that are claimed. Furthermore, valuing indigenous technologies threatens the ideological base build upon an assumed "need for development" and characterisations of "primitive" and "backward", historically utilised to marginalise and exploit Indigenous communities and their resources. It is, therefore, problematic that benefits to Nation States will ever "trickle-down" to local communities.

International law, where it exists, favours industrialised nations rather than bio-culturally rich nations (UNDP, 1994). For existing Western legal structures to be adapted to enhance conservation of biological diversity and local communities, human rights and environmental concerns will have to balance economic interests. "Bundles of rights" from a wide-range of international agreements

---

214

---

215
will be needed to guide newly emerging systems of national and international law. Traditional Resource Rights (TRR) may be useful as a set of principles to guide the process for dialogue between Indigenous, traditional, local communities with governmental and non-governmental institutions.

**Findings and Recommendations from the Workshop held at Green College**

<table>
<thead>
<tr>
<th>FINDING 1</th>
<th>RECOMMENDATIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Indigenous rights are based on concepts of self-determination as defined in relevant declarations. These should guide science, research and development policy as well as efforts to protect traditional resources and intellectual property rights (IPRs). They include: • territorial and resource rights; • respect for cultural differences and Indigenous Peoples' own institutions and efforts; • prior informed consent; • veto power over research and development projects;</td>
<td>That governmental and non-governmental institutions: • follow principles already established in indigenous rights documents; • support, disseminate and integrate these principles into policy guidelines and operations.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>FINDING 2</th>
<th>RECOMMENDATIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Traditional and Indigenous Peoples: • well express concerns around the world about loss of local autonomy and control, erosion of common resources, and destruction of biological and cultural diversity; • have inadequate opportunities for dialogue with institutional representatives; • are under-represented at all levels of governmental and non-governmental decision-making.</td>
<td>That scientists, government and non-governmental representatives; UN agencies; government departments; scientific and professional institutions: • recognize and value indigenous knowledge as a basis for new models of development and environmental conservation; • establish means to facilitate dialogue and form alliances with indigenous leaders; • strengthen and support local institutions; • involve Indigenous Peoples in planning and executing projects and policies affecting them and the environments in which they live, and let their knowledge guide all levels of decision-making; • ensure transparency in all negotiations of research, results, data management, and benefit-sharing; • establish centres and programmes to guide and facilitate this process.</td>
</tr>
</tbody>
</table>

---

6 Several of these are included in the appendices, as is the UN Draft Declaration on the Rights of Indigenous Peoples.

---

<table>
<thead>
<tr>
<th>FINDING 3</th>
<th>RECOMMENDATIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Modifications of existing practice are necessary to meet the concerns of Indigenous Peoples.</td>
<td>• ensure in situ programmes strengthen local livelihoods; • make community-controlled research standard practice; • give local communities prior informed consent and right of veto regarding projects taking place on their lands or territories or that affect them; • that determination of the common good should reflect indigenous and traditional values.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>FINDING 4</th>
<th>RECOMMENDATIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Research and scientific research organizations do not have adequate operational guidelines to reflect the principles of the Convention on Biological Diversity and indigenous rights.</td>
<td>Form a consortium of institutions to: • establish codes and standards for conduct and policies to reflect indigenous rights and the Convention on Biological Diversity; • identify gaps between policies and practices, and correct these deficiencies; • ensure that scientists, government officials, and non-governmental representatives are properly informed of indigenous rights and views.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>FINDING 5</th>
<th>RECOMMENDATIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Existing IPR instruments are inadequate and new mechanisms must be developed.</td>
<td>• to pursue the “bundles of rights” approach, to develop Traditional Resource Rights and to look into other legal systems; • to investigate other ways of protecting intellectual, cultural and scientific resources, including customary practice; • to observe a moratorium on “biodiversity prospecting” unless and until adequate and effective mechanisms for protection and compensation have been established.</td>
</tr>
</tbody>
</table>

---

6 Research in which communities control research priorities based on their own criteria. These include self-demarcation, inventories of traditional resources, environmental/social impact assessments, and resource management plans.
FINDING 6
Institutions may not be able to ensure rights are respected in the countries where Indigenous Peoples reside, but guidelines for institutions can define partners and funding priorities that will affect recognition of indigenous rights.

RECOMMENDATIONS
that as criteria for collaboration:

- indigenous rights, including intellectual property rights are recognized;
- indigenous rights are guaranteed in countries of activity;
- mechanisms are provided to ensure community decision-making, traditional resource rights protection, and benefit-sharing.

FINDING 7
Concerns about biosafety are intricately related with concerns about IPRs and TRRs, as release of genetically modified organisms can affect the well-being and livelihoods of local communities.

RECOMMENDATIONS

- to include local communities in the monitoring and evaluation of genetically modified organisms;
- for institutions to exercise the "precautionary principle" in releasing modified organisms into the environment;
- to look into the concept of "Life Patent-free Zones" for indigenous lands.

Appendix 16
Community Intellectual Rights Act
Third World Network
1994

An act to provide for the establishment of a sui generis system in respect of plant varieties

Interpretation

In this Act the following terms shall bear the following meanings:

(a) "commercial utilization" occurs when the innovation and any process relating to it or product embodying it is made available for sale in the modern market sector.

(b) "innovator" shall mean the local community responsible for the innovation.

(c) "innovation" shall include any collective and cumulative knowledge or technology of the use, properties, values and processes of any plant variety and any plant or part thereof rendered of any or enhanced use or value as a result of the said cumulative knowledge or technology whether documented, recorded, oral, written or however otherwise existing including any alteration, modification, improvement thereof and shall also include derivatives which utilise the knowledge of indigenous groups or communities in the commercialisation of any product as well as to a more sophisticated process for extracting, isolating, or synthesizing the active chemical in the plant extracts or compositions used by the indigenous people.

(d) "local community" refers to a group of people having a long standing social organisation that binds them together whether in a defined area or however otherwise and shall include indigenous peoples, and local populations, and shall where appropriate refer to any organisation duly registered under the provisions of this Act to represent its interest.

(e) "plant variety" shall include a plant species or category of a lower level or any part thereof or germplasm therein whether domesticated or not used in accordance with established customs practices laws by local communities for a particular purpose that requires a prior knowledge of a particular property of the plant such as food, medicine and dye.

(f) the "State" shall refer to the appropriate government ministries or the government as a whole where the context so admits.

1. Custodianship

1.1 The local community shall at all times and in perpetuity be the lawful and sole custodians and stewards of all innovation.

1.2 No innovation shall be sold assigned transferred or dealt with in any way whereby the status of the local community as custodians and stewards of the innovation is impaired.

2. Free exchange amongst communities

2.1 There shall be free access to, and the local communities shall make available, its innovation and practices in relation thereof to other communities wherever situate without any payment or reward provided always that such innovation is not acquired for commercial utilisation.

2.2 Such acquire shall make the said innovation available to any other community on the same basis and terms as set out in section 3.1 hereof.
3. **Use for Commercial purposes**

3.1 Any person, body, organisation or corporation using any innovation or any part thereof for commercial utilisation shall pay to the local community which is the custodian or steward of the said innovation a sum representing not less than per centum of the gross sales of any product or process incorporating the said innovation.

3.2 Any local community may opt to be paid a non-monetary equivalent as may be determined by the local community in accordance with its customs, practices and usages.

3.3 Nothing in this section, shall prevent more than one person, body, organisation or corporation from using any innovation or any part thereof for commercial utilisation and at the same or any other time.

3.4 The payment shall be made:

(a) to an organisation duly registered under the provisions of this Act as representing the local communities

(b) where no such organisation exists, to the State which shall hold it in trust for the local community pending its registration under the provisions of this Act

(c) in respect of an innovation which is, as at the date of the coming into force of this Act, developed by any community, to the State which shall then apply any such monies for the protection, development and maintenance of its genetic resources.

All monies or their equivalent received by the local community or the State as its trustee shall be applied for such purpose as the local community may decide including but not limited to the protection, development and maintenance of its genetic resources.

4. **Registration of local community**

4.1 Any local community may apply to be registered as an organisation to represent its interests provided that its failure to do so will not prejudice its status as custodian or steward of its innovation under Section 1.1 hereof.

4.2 Registration shall be affected by the duly authorised representative of the local community attending at the Registry set up under this Act and providing and completing particulars as set out in Form 1.

4.3 The Community may change the particulars by attending at the Registry and filing Form II.

5. **The Registry of Invention (ROI)**

The Community may register its innovation in the ROI provided always that non-registration will not mean that the community was/is not the custodian or steward of the invention under the innovation under Clause 1 hereof.

6. **Proof of Invention**

6.1 Upon the duly constituted representatives of the Community declaring in a form or manner valid by their laws, customs or practices that they have been using and are the custodians or stewards of an innovation, the innovation shall be deemed to vest in the Community.

6.2 Anyone wishing to challenge this will bear the legal and evidentiary burden of proof for doing so.

7. **Technical Institution**

There shall be nominated by the State in consultation with the communities, technical-institutions to assist the community to identify and characterise their innovation.

8. **Co-ownership**

8.1 Nothing in this Act shall prevent any other community or Communities wherever situate from establishing their rights to the custodianship or stewardship of an innovation.

8.2 In such event, the community shall be co-stewards or custodians of the innovation.
IUCN - The World Conservation Union

Founded in 1948, The World Conservation Union brings together States, government agencies and a diverse range of non-governmental organizations in a unique world partnership: over 800 members in all, spread across some 136 countries.

As a Union, IUCN seeks to influence, encourage and assist societies throughout the world to conserve the integrity and diversity of nature and to ensure that any use of natural resources is equitable and ecologically sustainable. A central secretariat coordinates the IUCN Programme and serves the Union membership, representing their views on the world stage and providing them with the strategies, services, scientific knowledge and technical support they need to achieve their goals. Through its six Commissions, IUCN draws together over 6000 expert volunteers in project teams and action groups, focusing in particular on species and biodiversity conservation and the management of habitats and natural resources. The Union has helped many countries to prepare National Conservation Strategies, and demonstrates the application of its knowledge through the field projects it supervises. Operations are increasingly decentralized and are carried forward by an expanding network of regional and country offices, located principally in developing countries.

The World Conservation Union builds on the strengths of its members, networks and partners to enhance their capacity and to support global alliances to safeguard natural resources at local, regional and global levels.

IUCN Biological Diversity Programme

The IUCN Biological Diversity Programme (BDP) focuses on biodiversity issues at the global level and facilitating actions taken at regional and national levels. It supports the IUCN mission by promoting the development of policies, technical capacities and economic tools to influence, encourage and assist societies to use biological resources in a sustainable manner which does not reduce the overall diversity of the biological systems involved. Its objectives are: to assist countries in preparing and implementing national planning efforts and carrying out activities in support of biodiversity conservation and sustainable use; to integrate biodiversity considerations into public and private sectoral plans and activities, for key sectors relevant to biodiversity conservation and sustainable use, such as agriculture, forestry, fisheries and tourism; to facilitate and influence key global processes relevant to biodiversity, including the Convention on Biological Diversity and other global instruments that have impacts on biodiversity; to broaden the constituency for conserving biodiversity, using biological resources sustainably, and equitably sharing the benefits arising from such use; and to further develop and expand understanding and information on biodiversity. BDP also serves as the secretariat for the Global Biodiversity Forum.