

**INDIGENOUS PEOPLES AND TRADITIONAL RESOURCE
RIGHTS:
A BASIS FOR EQUITABLE RELATIONSHIPS?**

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Executive Summary and Conclusions

Indigenous Peoples have increasingly become the focus of international interest in debates on human rights, biodiversity conservation, environment and development. The United Nations has emerged as a primary forum for the discussion of their problems through ECOSOC's Working Group on Indigenous Populations, the Year and Decade of Indigenous People, the proposed Permanent Forum for Indigenous People, and the Commission on Sustainable Development. It is through the Earth Summit agreements--Earth Charter, the Convention on Biological Diversity (CBD), Agenda 21, Commission on Sustainable Development--that traditional and Indigenous Peoples' issues have received the greatest global attention.

Access to, protection of, and benefit sharing from wider use and application of traditional technologies and genetic resources are essential elements of the CBD. So far it has been thought that the extension of Intellectual Property Rights (IPRs) would be the mechanism by which these issues could be resolved. Many also have seen IPRs as a means to facilitate exploitation of genetic resources for biotechnology. Better use of traditional knowledge could significantly reduce the research and development costs of new products. This is used as an additional argument to justify and attract funds for *in situ* conservation of biodiversity.

These views are not shared by traditional and Indigenous Peoples, nor by many environmental and human rights groups. For them IPRs represent a serious threat to local economies, cultures, and biodiversity. Many indigenous groups have become well-informed, articulate and effective in representing concerns around the world about the loss of local autonomy; loss of biological and cultural diversity; and the increasing tendency for common property resources¹ to be seen and treated as commodities. Such thinking coincides with wider recognition of the limitations of "top-down" development; better appreciation of traditional systems which use resources sustainably and maintain the diversity and health of ecosystems; and deeper understanding of the potential value of traditional knowledge and genetic resources.

Another source of criticism of IPRs is that they can threaten the free exchange of information and resources that has benefited humanity through research, scholarship, and development of medicines, agriculture, forest and bioresources generally. Yet the present free-for-all is also unsatisfactory, and grossly inequitable for Indigenous Peoples. Few companies which exploit their bioresources accept pre-contract and post-profit responsibilities to local communities. In many cases even the most ethically-minded companies find it hard to identify legally-constituted entities, bona fide community representatives, and the form and distribution of benefits.

Another problem arises from the use of public funds to collect plant, animal, and cultural material for scientific purposes. Research, even in universities and museums, is increasingly funded by commercial interests, leaving unresolved the disconcerting question of who controls the resulting data. Purely scientific data banks have become the mines for "biodiversity prospecting,"² Publishing of information, traditionally the hallmark of academic success, has become a means for conveying restricted (or even sacred) information into the unprotectable public domain.

Governments are eager to exert control over traditional resources, but often do not have the means to exercise the responsibility that this demands. Even the valuation of indigenous technologies makes assumptions about a "need for development" which has been historically used to marginalize and exploit indigenous communities and their resources. The likelihood that benefits will ever "trickle-down" to local communities is remote.

International law hardly exists in this area, It seems unlikely that existing legal structures built on or around IPRs could be adapted to enhance the conservation of biological diversity or to empower indigenous, traditional, and local communities. A more promising approach would be to combine systems from a wide-range of international agreements to identify "bundles of rights", which could be brought together to establish Traditional Resource Rights (TRRs) within a new system of national and international law. This will require a process of dialogue between indigenous, local

¹ Resources held in common for the good of all

² Searching for species whose genes can provide the raw materials for biotechnology.

communities and governmental and non-governmental institutions on an agenda which includes local economic interests, accountability, human rights and environmental concerns for long-term sustainability.

It should also recognise that old notions of sovereignty are being eroded as authority disperses upwards to international institutions to cope with global problems, downwards to local organizations, and sideways in direct communication between individuals anywhere in the world. The result should lead to new attitudes towards indigenous peoples and their knowledge, new codes of ethics and standards of conduct, socially and ecologically responsible business practices, and new concepts of property, ownership, and value.

Museums, research institutes and universities are in an excellent position to push forward the debate on IPRs, TRRs and the creation of new and more equitable systems. They should seize the opportunity with urgency and vigour.

Findings and Recommendations from the Workshop held at Green College

FINDING 1	RECOMMENDATIONS
<p>Indigenous rights are based on concepts of self-determination as defined in relevant declarations³. These should guide science, research and development policy as well as efforts to protect traditional resources and intellectual property rights (IPRs). They include:</p> <ul style="list-style-type: none"> • 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; 	<p>That governmental and non-governmental institutions:</p> <ul style="list-style-type: none"> • follow principles already established in indigenous rights documents; • support, disseminate and integrate these principles into policy guidelines and operations.

FINDING 2	RECOMMENDATIONS
<p>Traditional and Indigenous Peoples:</p> <ul style="list-style-type: none"> • 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. 	<p>That scientists, government and non-government representatives; UN agencies; government departments; scientific and professional institutions:</p> <ul style="list-style-type: none"> • 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.

³ Several of these are included in the appendices, as is the UN Draft Declaration on the Rights of Indigenous Peoples.

FINDING 3	RECOMMENDATIONS
<p>Modifications of existing practice are necessary to meet the concerns of Indigenous Peoples.</p>	<ul style="list-style-type: none"> • ensure <i>in situ</i> programmes strengthen local livelihoods; • make community-controlled research⁴ 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 <i>common good</i> should reflect indigenous and traditional values.

FINDING 4	RECOMMENDATIONS
<p>Research and scientific research organizations do not have adequate operational guidelines to reflect the principles of the Convention on Biological Diversity and indigenous rights.</p>	<p>Form a consortium of institutions to:</p> <ul style="list-style-type: none"> • 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-government representatives are properly informed of indigenous rights and views.

FINDING 5	RECOMMENDATIONS
<p>Existing IPR instruments are inadequate and new mechanisms must be developed.</p>	<ul style="list-style-type: none"> • 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.

⁴ 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	RECOMMENDATIONS
<p>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.</p>	<p>that as criteria for collaboration:</p> <ul style="list-style-type: none"> • 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	RECOMMENDATIONS
<p>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.</p>	<ul style="list-style-type: none"> • 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.

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This is the executive summary of a revised paper presented to a workshop chaired by Sir Crispin Tickell and Darrell Posey at Green College, Oxford, on 28th June 1995. There were some thirty-five participants from around the world, all experts in their field.

Full copies of the paper are available from the Green College Centre at a cost of £7.50 including postage.

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INDIGENOUS PEOPLES AND TRADITIONAL RESOURCE RIGHTS

SUMMARY

Over the past 20 years, Indigenous peoples have become the focus of increasing interest and international debate. The United Nations has been a primary forum for these discussions through ECOSOC's Working Group on Indigenous Populations, the Year-- and subsequently Decade-- of Indigenous People, the proposed Permanent Forum for Indigenous People, and the Commission on Sustainable Development. Indigenous and traditional communities figure prominently in the Earth Charter, the Convention on Biological Diversity (CBD), Agenda 21, and the Convention on Desertification.

The CBD particularly raises questions of access to and benefit sharing from wider use and application of traditional technologies and biogenetic resources. Intellectual property rights (IPRs) are considered the principal mechanisms available to facilitate the sustainable use of the "components of biological diversity" and thereby link Indigenous and sustainability issues with biotechnology and global trade through GATT/TRIPs. IPR is seen by Indigenous, traditional and local communities--as well as many environmental and human rights groups--as a serious threat 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 the erosion 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.

IPRs, however, 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. A new dialogue is necessary that establishes equitable relationships between Indigenous, traditional and local communities, and the scientific research institutions that increasingly provide the intellectual and informational underpinnings for international trade and development.

Existing legal and non-legal mechanisms are inadequate to insure the equity of partnerships, pointing to the necessity of developing additional and alternative strategies that are built more upon human rights and environmental concerns than upon economic considerations. The negotiations of the terms of--and the mechanisms and methodologies for--this dialogue will dominate debates until sufficient consensus can be attained to insure trust from all partners. The process will undoubtedly include re-evaluation of Nation State sovereignty, the role of science and scientists, international monitoring and enforcement structures, business ethics and practice, and transparency, accountability, and control of trade.

1. **Indigenous Peoples in International Fora**

1.1 **Indigenous peoples and the right to self-determination**

Although defining "Indigenous" has proven problematic for international organisations (Clay 1991), Indigenous peoples themselves offer several definitions. For example, the World Council of Indigenous Peoples provides the following definition:

Indigenous peoples are such population groups who from ancient times have inhabited the lands where we live, who are aware of having a character of our own, with social traditions and means of expression that are linked to the country inherited from our ancestors, with a language of our own, and having certain essential and unique characteristics which confer upon us the strong conviction of belonging to a people, who have an identity in ourselves and should be thus regarded by others.

A definition of Indigenous peoples which has gained broad international acceptance is that of the 1989 International Labour Organisation *Indigenous and Tribal Peoples Convention (ILO 169)*, which is the only international legal agreement specifically on Indigenous peoples. It states that people are considered Indigenous if they are:

- a) tribal peoples in countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations
- b) peoples in countries who are regarded by themselves or others as Indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization or the establishment of present state boundaries and who, irrespective of their legal status, retain, or wish to retain, some or all of their own social, economic, spiritual, cultural and political characteristics and institutions.

In addition, the Convention establishes another important principle:

Self-identification as Indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this convention apply.

The "S" on Indigenous peoples is very significant, because it implies collective rights as ethnic nations. These rights are subsumed under the **right to self-determination**, that includes rights to land, territory, and resources. Most Nation States have resisted recognition of self-determination, and subsequently, the term "peoples" (Clay 1991, 1994; Kingsbury 1992a,b,1994). Official UN documents use "people", or even the weaker term "populations" that implies lack of collective rights altogether.

Indigenous peoples interpret the right to self-determination to include rights to tangible and intangible cultural, scientific and intellectual resources. The 1994 Statement from the International Consultation on Intellectual Property Rights and Biodiversity, organised by the Coordinating Body of Indigenous Peoples of the Amazon Basin (COICA) states:

All aspects of the issue of intellectual property (determination of access to natural resources, control of the knowledge or cultural heritage of peoples, control of the use of their resources and regulation of the terms of exploitation) are aspects of self-determination. For Indigenous peoples, accordingly, the ultimate decision on this issue is dependent on self-determination.

1.2 The UN Conference on Environment and Development (The Earth Summit)

The UN Conference on Environment and Development (UNCED) produced a number of international agreements that highlight the importance of Indigenous peoples and their role in the conservation and sustainable use of the components of biological diversity (Gray 1990a; Mead 1994b). For example, the Preamble of the 1992 Convention on Biodiversity Diversity (CBD) recognises the

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

Article 8.j, which is concerned with Indigenous peoples and *in situ* conservation, calls on States to:

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 utilization of such knowledge, innovations and practices.

In Article 18.4, knowledge, innovations, and practices are referred to as "traditional and indigenous technologies". This is a curious usage of the term because as such they are presumably subject to the relevant agreements on transfer, access, and IPR protection. On the one hand, recognition of traditional knowledge as technology elevates Indigenous knowledge to an internationally recognised category; on the other hand, Indigenous technologies are subsumed under laws which uphold Nation State sovereignty.

Agenda 21 devotes entire Chapter (26) to "Recognising and Strengthening the Role of Indigenous People and their Communities". Item 26.4b proposes that governments should:

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.

Indigenous peoples are actively involved in discussions at the Commission on Sustainable Development (CSD), which was set up to monitor and coordinate the CBD and other environmental conventions and agreements. Currently the CSD is evaluating Agenda 21, including Chapter 26. Issues of access and benefit-sharing, focusing upon IPRs, are becoming high-profile.

2. **Biogenetic Resources and Knowledge Systems**

2.1 **Historic interactions**

Despite international recognition, Indigenous peoples' roles in biodiversity conservation have been underestimated. One reason is a failure to perceive the **anthropogenic** (i.e. human-created) or **humanised** (i.e. human-modified) nature of apparently "pristine" landscapes. As scientific documentation and understanding improve, "wild" resources and areas are increasingly found to be the result of co-evolutionary relationships between humans and nature. This inter-dependence is now recognised by UNESCO in its World Heritage Convention as "Cultural Landscapes" (UNESCO, 1994; also see O'Keefe 1992, 1993, 1994).

Recognition of anthropogenic landscapes has important implications for ownership, and consequently, IPRs. "Wild" species are products of nature and, presumably, human societies have no special claim to them. Species or landscapes that have been moulded or modified by human presence, however, are not automatically in the public domain and, consequently, local communities may claim special rights over them.

This extends the implications of IPRs for communities beyond the recognised categories of use, extraction, processing, and preservation. The Covenant on Intellectual, Cultural and Scientific Property Rights (see Appendix 1) outlines the following categories of protection:

1. Sacred property (images, sounds, knowledge, material, culture or anything that is deemed sacred and, thereby, not commoditisable).
2. Knowledge of current use, previous use, and/or potential use of plant and animal species, as well as soils and minerals;
3. Knowledge of preparation, processing, or storage of useful species;
4. Knowledge of formulations involving more than one ingredient;
5. Knowledge of individual species (planting methods, care for, selection criteria, etc.);
6. 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);
7. Biogenetic resources that originate (or originated) on Indigenous lands and territories;
8. Cultural Property (images, sounds, crafts, arts and performances);

9. Classificatory systems of knowledge, such as traditional plant taxonomies.

All of these are protected as part of the larger need to protect land, territory and resources and to stimulate self-determination for Indigenous and traditional peoples.

2.2 Knowledge and conservation

Many of the world's richest areas of biological diversity have for millenia been--and continue to be--inhabited, managed, maintained and defended against destruction by Indigenous peoples (Clay 1988; Colchester 1994a; Colchester & Lohman 1993; Pimbert & Pretty 1995). The twelve *megadiversity countries* also have some of the most diverse Indigenous societies, within whose territories much of the biodiversity is still conserved.

The term, Indigenous Knowledge System (IKS), is used by scientists to describe the totality of information, practice, belief and philosophy that is unique to each Indigenous culture. An IKS may be commonly held within a community or Indigenous society, or it may be known only to specialists, tribal elders, lineage or gender groups.

Traditional Ecological Knowledge (TEK) is another term used to describe those aspects of IKS that are directly related to management and conservation of the environment. Johnson (1992:4) defines TEK as "a body of knowledge built by a group of people through generations living in close contact with nature. It includes a system of classification, a set of empirical observations about the local environment, and a system of self-management that governs resource use."

Indigenous knowledge is being increasingly utilised to identify useful species and methods for preservation, processing, and application of those species. Research and development costs can be significantly reduced using traditional knowledge that has been "extracted" or "mined" from Indigenous Knowledge Systems. Once bits of knowledge have been removed from the local *in situ* system, local communities lose control over the information because mechanisms are inadequate to effectively protect their rights (Gray 1991; Mead 1994).

The Convention on Biological Diversity provides for two quite distinct approaches to Indigenous peoples: (1) *in situ* conservation utilising knowledge, innovation and practices of local communities embodying traditional lifestyles, and (2) wider use and application of Indigenous technologies. The latter amounts to a global call to extricate aspects of knowledge from its systems context without providing appropriate mechanisms for protection and equitable benefit-sharing. It should not be of any surprise, therefore, that Indigenous peoples are suspicious of the CBD and its expansion of Nation State sovereignty over their knowledge and biogenetic resources.

2.3 Biotechnology and "biodiversity prospecting"

Biodiversity prospecting is the exploration of biodiversity for commercially valuable genetic and biochemical resources, with particular reference to the pharmaceutical, biotechnological and agricultural industries (Reid *et al* 1993). Recent advances in biotechnology have increased the ability of scientists to investigate organisms at the genetic level and to find ways to commercialise products developed from such investigations. Expectation of profits from these new products has stimulated biodiversity prospecting that, according to some, will in turn stimulate conservation through the profit motive (Joyce 1994).

It is difficult to estimate the commercial promise of biodiversity prospecting. Appendix 2 shows the quantity and value of natural products that biodiversity-rich countries have provided over the centuries. Given that to date only a small proportion of biodiversity has been exploited, economic potential is thought to be enormous.

For medicines alone, the 1985 market value of plant-based medicines sold in developed countries was estimated at a total of \$43 billion (Principe 1989). This frequently cited estimate is unreliable, but

whatever the true amount might be, only a minuscule proportion of profits have been returned to Indigenous peoples from whom much of the original knowledge came (I have estimated less than 0.001%; Posey 1990).

Companies that produce seeds and agrochemicals benefit substantially from the free flow of germplasm from Indigenous lands. The market value of the seed germplasm utilising traditional landraces is estimated by RAFI at \$50 billion per year in the US alone (UNDP 1994: 19). Consequently, Indigenous peoples are providing subsidies to a modern agricultural system that barely recognises their contributions. Similar situations exist with timber and non-timber forest products (Burley 1987 1994), as well as other natural product markets, such as personal care, foods, industrial oils, essences, pesticides, and preservatives.

Biodiversity prospectors assume that organisms and ecosystems are "wild" and, therefore, part of "the common heritage of humankind". Even when "leads", or even processed materials, are provided by Indigenous peoples, it is the company that makes the protectable "discovery". Indigenous peoples see this situation as being parallel to the Europeans' "discovery" of the New World and are understandably weary of biodiversity prospecting (see Section 4).

In Costa Rica, for example, INBio, an NGO closely linked with the government, was given rights to commercialise biogenetic resources to Merck Pharmaceuticals. The agreement included collections on national lands, including those of eight Indigenous peoples, none of which was ever consulted nor named as beneficiary.

Indigenous peoples are particularly disturbed about the "discoveries" made from blood samples (Mead 1994a). Under the guise of "good science", the Human Genome Organisation (HUGO) and one of its subsidiary projects (the Human Genome Diversity Project), coordinates the collection of blood samples from isolated communities "threatened with extinction". The results will supposedly reveal evolutionary links and identify genetic sequences for gene therapy to improve human health (Cavalli Sforza *et al* 1991).

The "Human Vampire Project", as it is known by Indigenous peoples, has brought much discredit to scientific research because, once collected, data and cells are available for commercial exploitation. Collections are also made without the Prior Informed Consent of the sample groups.

At least three patent applications have been made for cell lines developed from blood "donated" by Indigenous peoples, including one from a member of a recently-contacted group of 260 hunter-cultivators in New Guinea. The patent holder is the US Department of Commerce, with the US government scientists involved in the project and the anthropologist who introduced the research team to the tribe designated as inventors.

New Guinea has shown no concern over this situation. Indeed, most Nation States show concern over exportation of traditional genetic resources or knowledge. This may be because the image of Indigenous peoples as primitive and savage has been essential for the historic takeover of their lands and resources. Thus, by recognising the value of traditional resources, the philosophical underpinnings of colonisation and domination are challenged. Predictably this process is slow and meets opposition at all levels of society and government.

3. Intellectual Property Rights and Ownership of Knowledge

3.1 Intellectual property rights as legal instruments

Patents are perhaps the most famous of these and discussions of intellectual, cultural and scientific property usually degenerate into the legal quagmire of patentability. Patents are of very limited interest to most Indigenous peoples because of difficulties in documenting "inventions" and identifying individual inventors. Since Indigenous knowledge is considered in the "public domain", then "uniqueness" is also problematic.

Even if technical requirements for patents were satisfied, costs of filing, maintaining, monitoring, legally implementing and enforcing would be prohibitively expensive for most Indigenous groups (Colchester 1994b). The same can be said for Plant Breeders' Rights (PBRs), whose requirements for varietal protection can in principle be met by Indigenous farmers, but only after considerable laboratory and research investments.

Know-how and trade secrets have potentially greater applicability, but also entail specialised legal advice and corresponding expenses. Appellation of origin and trademarks are relatively accessible IPR tools and can be effectively applied to products coming from Indigenous lands or produced under Indigenous auspices or licensing agreements.

Copyright is easily obtained and is helpful in the protection of written texts, works of art and databases. Enforcement and monitoring of copyright can be difficult, time-consuming and costly. Scientists regularly depend upon copyright protection for protection of their own works and are increasingly extending that protection through co-publishing with Indigenous collaborators.

Copyright-like mechanisms are being attempted in some countries with Community Inventories (see Section 6.1) of useful plant varieties and species. Inventories may be kept by the community under strict rules of access, or published to put registered materials into the public domain in hopes of impeding patent applications by others. This strategy is a form of "defensive publication", which argues that information in the public domain should not be protectable by IPRs. This is a dangerous tack, since most patents are on processes of extraction, purification, or synthesis, not on the original product or compound itself (Gannon, Guthrie & Laurie 1993). Publication itself may actually facilitate commercial exploitation of knowledge and resources, given the inequity of IPR application.

Such a case came from the description of *tiki uba*, an anti-coagulant used by the Amazonian Urueu-Wau-Wau tribe, published in an article in a well-known magazine (McIntyre 1988: 807). Based on the published information, Merck Pharmaceuticals "discovered" that the plant extract was indeed effective and might therefore be useful in heart surgery (Jacobs et al 1990: 31). Merck attempted to develop a new pharmaceutical product without any consideration for the Urueu-Wau-Wau, who were by then threatened with extinction (Posey, Dutfield, Plenderleith, in press).

Appendix 3 provides a profile of major IPR instruments.

3.2 Indigenous problems with IPRs

IPRs are problematic for Indigenous peoples for the following reasons:

(i) they 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 (Boyle 1992, 1993, in press). As the Bellagio Declaration 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 practicing traditional artistic and musical forms, or peasant cultivators of valuable seed varieties, for example--are denied intellectual property protection.

(ii) they 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. It is considered to be in the "public domain" and, therefore, unprotectable.

(iii) they 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) they serve to stimulate commercialisation and distribution, whereas Indigenous concerns may be primarily to prohibit commercialisation 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) they recognise only market economic values, failing to consider 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) they are subject to manipulation to economic interests that wield political power. *Sui generis* protection has been obtained for semi-conductor chips and "literary works" generated by computers, whereas Indigenous peoples have insufficient power to protect even their most sacred plants, places, or artefacts.

(vii) they are expensive, complicated, and time-consuming to obtain, and even more difficult to defend.

3.3 Intellectual property rights in the global economy

The Trade-Related Aspects of Intellectual Property Rights (TRIPs) section of the GATT Treaty is intended to harmonise national IPR regimes and create what Northern countries call a "level playing field". Assuming all Nation States comply fully with TRIPs, national regimes will be virtually identical to the current United States system. Opponents feel that this will allow the United States, Europe and Japan to dictate trading rules.

GATT, and the new World Trade Organisation (WTO) that will implement it, have served to stimulate interest in IPRs. Article 27 ("Patentable Subject Matter") provides for one interesting option, that of an "effective" *sui generis* system for plant variety protection. The call for countries to define their own system of protection is an opportunity to introduce a community-based rather than individual-based system. It is unclear what "effective" means, although some countries are making efforts to define their own alternative systems (e.g. Brazil, India, the Andean Pact).

Indigenous peoples are vociferous in their opposition to GATT/TRIPs with or without a *sui generis* option (see 4.3). They feel that the globalisation of trade weakens even further their political and economic influence, while undermining traditional systems of biodiversity conservation (Gray 1990b; Mead 1993).

3.4 Biopiracy

Northern governments and multinational corporations have been successful in pressuring the rest of the world to accept the argument that extended and strictly-enforced IPR regimes are necessary and mutually beneficial. Sometimes by persuasion--and at other times by threats--Southern governments have acquiesced to this view. Piracy of books, designs, trademarks, recordings, and computer programs, as well as illicit sales of pharmaceuticals, have been major targets for attack.

Recently, the Rural Advancement Foundation International (RAFI) has shown how corporations themselves have pirated biogenetic resources and knowledge. Small farmers and Indigenous peoples have

begun to attack institutions and companies involved in this "biopiracy".

Use and abuse of IPRs show that:

- (i) Although industries seek legal monopoly for their applications of traditional knowledge and resources, Indigenous peoples cannot obtain the same protection.
- (ii) Well-meaning scientists involved in non-commercial research become implicated when their data are published or collections made available for commercial interest.
- (iii) Many biodiversity-rich countries lack the capacity to adequately exploit the commercial potential of their most valuable resources.
- (iv) Even when governments or national scientists benefit from new product development, local communities rarely see even "trickle down" benefits.
- (v) "Free access" has a negative effect on the environment as well, since local communities have no control over exploitation.

4. **Indigenous Views**

In recent years Indigenous peoples have become well organised, articulate and politically astute. Their views are widely cited and have come to represent the concerns of local communities -- Indigenous and non-Indigenous-- around the world. Sometimes the term "broader alliance" is used in reference to a political coalition with traditional farmers, foresters, gatherers, fisherfolk, and herders. Increasingly, however, the alliance is growing to include other citizens worried about biosafety, erosion of local institutions, loss of freedom, and environmental degradation.

Indigenous peoples feel that "development" has been imposed upon them in ways that violate their rights and damage the environment. According to the (1992) *Indigenous Peoples' Earth Charter*:

The concept of development has meant the destruction of our lands. We reject the current definition of development as being useful to our peoples.

They also believe that they have an important role to play in conservation. According to the (1995) *Final Statement of the Regional Consultation on Indigenous Peoples' Knowledge and Intellectual Property Rights*, Suva, Fiji:

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.

However, they demand that recognition of this role be used to support territorial and other rights. 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.

Indigenous societies honour the principle of free exchange and do not necessarily want to close themselves off from others. *The CITP* 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 condemns:

those who use our biological diversity for commercial and other purposes without our full knowledge and consent.

The (1993) *Mataatua Declaration on the Cultural and Intellectual Property Rights of Indigenous Peoples adds further restrictions to use of traditional resources:*

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.

Existing IPRs are not viewed by Indigenous peoples as adequate to implement "appropriate protection measures". According to the Statement from the (1994) *COICA Regional Meeting on Intellectual Property Rights and Biodiversity* in Santa Cruz, Bolivia:

For Indigenous peoples, the intellectual property system means legitimization of the misappropriation of our peoples' knowledge and resources for commercial purposes.

Therefore:

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.

As regards biodiversity prospecting and patenting life, the *Pacific Regional Consultation's Final Statement* calls for **"a moratorium on bioprospecting in the Pacific"** and urges Indigenous peoples **"not to cooperate 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."**

Indigenous peoples feel threatened by the world trade system, especially since the Uruguay Round negotiations first included discussions on trade-related IPR. Shiva (1994b) observes that GATT/TRIPs:

has failed to recognize the more informal, communal system of innovation through which Third World farmers produce, select, improve and breed a plethora of diverse crop varieties.

The *Pacific Regional Meeting* urges:

those Pacific governments who have not signed the General Agreement on Tariffs and Trade (GATT) [should] refuse to do so, and encourage those governments who have already signed to protest against any provisions which facilitate the expropriation of Indigenous peoples' knowledge and resources and the patenting of life forms.

According to M. Idris, Chairman of Third World Network (1995), a grouping of organisations and individuals involved in Third World issues:

Our governments must oppose the TRIPs agreement of the Uruguay Round...that protects the intellectual pirates by giving them the title "intellectual property owners".

5. Confronting the issues

As institutions involved in conservation, exchange, and use of biogenetic resources and Indigenous knowledge come under closer scrutiny, new guidelines for collection, storage, transfer, and access are being developed. This process is made complicated by a **lack of clarity in what are legal obligations as opposed to what are desirable ethical and moral standards**. In this vacuum, some institutions find themselves unexpectedly in pioneering roles of developing the standards and mechanisms that will guide international law and practice.

5.1 The Food and Agriculture Organisation (FAO) and the Consultative Group for International Agricultural Research (CGIAR)

(a) Farmers' Rights and *ex situ* conservation

Third World countries and farmers' groups feel strongly that free access by industry to their resources is inherently unfair. The FAO, and subsequently the Conference of the Parties to the CBD, have become fora for discussions on how to implement Farmers' Rights, defined by FAO 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.

Farmers' Rights have been proposed as a way to recognise, protect, and compensate traditional farmers for their contributions to world agriculture. But no terms of recognition have been agreed on.

Discussions on Farmers' Rights, biosafety, IPR, and access to genetic resources, which were supposed to have taken place at the first meeting of the Conference of the Parties were postponed until the second meeting in Penang later this year. FAO has undertaken a major revision of the International Undertaking on Plant Genetic Resources (IUPGR) to make it more compatible with the CBD. This will be presented in Germany in 1996 at the Fourth International Conference on Plant Genetic Resources, and will take the form of the FAO's first report on the State of the World's Plant Genetic Resources and a Global Plan of Action. The terms of access to agricultural genetic resources and the concept and implementation of Farmers' Rights are to be renegotiated (GRAIN, 1995b).

In preparation for 1996, FAO is canvassing for country-driven advisory documents for the ITC. This is being effected by a series of meetings taking place at a sub-regional level at which members of NGOs and Indigenous organisations have the opportunity to discuss country reports and provide major inputs on Farmers' Rights and access to genetic resources and related questions of IPR on plant materials.

(b) Reform of the Consultative Group for International Agricultural Research (CGIAR)

After 25 years, the CGIAR is in crisis. It has no long-term stability because of falling donations and it is a victim of the debate over free access to germplasm held in its collections. The CGIAR's Technical Advisory Committee's Stripe Study continued to question the in trust status of its collections, which have been placed under the auspices of FAO. Administration by the International Plant Genetic Resources Institute (IPGRI) still supposedly ensures the neutrality of the collections. NGOs led by GRAIN and RAFI have formed a Task Force on International Agricultural Research to insure that research and governance are based on true consultation with all involved sectors, including farming communities and Indigenous peoples.

Five principles have been offered to guide the "rebirth" of the CGIAR: i) political commitment to the well-being of the farm community; ii) broadening of research from commodity-based research to ensuring food security and livelihood systems; iii) involvement of a wider range of institutions and individuals to provide input from not only hard science, but social, political, ecological and economic fields as well; iv) full participation of the South so that Indigenous peoples' rights and Farmers' Rights are fully considered; v) adoption of a broader mandate so that financial support can be given to initiatives that do not involve the CGIAR Centres.

5.2 NGOs, networks and Indigenous alliances

NGOs like RAFI, GRAIN, and Third World Network provide valuable information on biopiracy, corporate behaviour, and political activities. Since the Earth Summit, NGOs have become active in lobbying activities and "pro-active" development of policy statements and model laws (e.g., Nijar, 1994). Groups that have worked mostly in Indigenous human rights issues, such as Cultural Survival, Survival International, and the International Work Group for Indigenous Affairs (IWGIA) have shown greater interest in IPR issues as they relate to Indigenous peoples. Increased monitoring activities have been somewhat effective in checking unauthorised exploitation of community resources.

Likewise, Indigenous peoples have set up their own national and international organisations, such as the World Council of Indigenous Peoples (WCIP), World Rainforest Movement (WRM), Coordinating Body of Indigenous Organisations of the Amazon Basin (COICA), Indigenous Peoples' Biodiversity Network (IPBN), and The Mataatua Conference Secretariat.

5.3 Governments and Nation States

Some Nation States are responding through discussions on appropriate legislation intended to establish equitable terms for granting access to biogenetic resources and sharing benefits with Indigenous peoples.

(a) The Andean Pact

Model laws are being considered by the Andean Pact countries (Bolivia, Colombia, Ecuador, Peru and Venezuela) for the conservation and sustainable use of biological material used as a source of genetic resources. Member States are permitted to set terms for access to their biological resources that may include the following: sharing of benefits between receivers of biological resources, members states 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. When the provider is an Indigenous or local community, member states may take measures to enable them to enter into access agreements.

(b) The Brazilian Indigenous Societies Act

This proposed law was approved in 1994 by the House of Deputies of the National Legislature. It has never passed into the Senate and is still under consideration for its legality.

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 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; and, the right of communities to nullify patents illegally derived from their knowledge.

(c) Indian Parliamentary Debates

The government of India has attempted to amend the 1970 Patent Act in conformity with the requirements of GATT-TRIPs, thereby fulfilling part of India's obligations for WTO membership. However, the Upper House of the Indian Parliament, in response to mass protests by farmers groups and opposition parties has voted for a deferment of the amendment. It remains to be seen whether the government will use

undemocratic means to push through the Patents Bill (Shiva 1995). A strong traditional and tribal movement in India is pressing for Community Intellectual Rights (CIRs) similar to that proposed by Nijar (1994) and described below.

(d) Model Community Intellectual Rights (CIRs)

CIRs are intended "to prevent the privatisation and usurpation of community rights and knowledge through existing definitions of innovation" (Nijar 1994). Model legislation asserts the existence of knowledge that is communally owned and shared, with "innovators" being Indigenous peoples who have not heretofore revealed their knowledge or resources to the outside world. Local communities are vested with "custodianship rights of innovation" in two ways:

- i) Constructive Trustee: local community leaders are nominated or appointed to act for the whole community as trustees for the beneficiaries (the community);
- ii) Higher Trust: builds on the concept that governments claiming sovereign rights are, in fact, holding those rights in trust for the community.

Section 5 of the CIR Act calls for a **Registry of Invention** (similar to the Community Register described above). Here a community may register its innovations simply by declaring their existence. The idea is similar to copyright law, whereby "protection generally arises with no need for formal acceptance by a registering authority". Failure to register does not surrender innovation rights, but by making such a register, patent application by others may become more difficult or impossible (see also Section 3.1 on Defensive Publication).

5.4 Institutions and professional societies

Several institutions and professional societies have taken the initiative by drawing up ethical guidelines and declarations. Although they are not legally-binding, they are often the result of consensus among concerned scientists, and it is expected that the guidelines will be complied with. Whereas ethical guidelines (or codes of ethics) outline proper conduct for individual scientists, declarations contain more general principles. At its 1994 Congress, the International Society for Ethnobiology agreed to develop a code of ethics, to be completed in 1995. Both the code of ethics and the ISE's new constitution are being co-written with Indigenous peoples.

Appendix 4 provides a list of professional and scientific societies that have developed ethical guidelines and declarations.

6. Mechanisms and Solutions

6.1 Indigenous efforts

Indigenous peoples are making invaluable contributions to debates on IPRs, but are also taking practical initiatives to confront problems in the field.

(a) Self-demarcation of Indigenous peoples' territories

Legal title to lands and territories is primary for Indigenous peoples. Documentation of traditional land use, including knowledge and use of plants, animals, soils, water systems, forests, etc. can be fundamental to claiming rights. Delimiting sacred sites or areas of cultural and historical significance become not only legal acts, but also awareness-raising exercises for local communities. Since cultural landscapes are usually difficult to detect and "read" by outsiders, mapping of these notifies others that lands are not "wild" and unclaimed, but occupied and significant.

Self-demarcation is a strategy that several Indigenous peoples have decided to pursue, such as the

Ye'kuana in Venezuela. 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 ethnoscience.

(b) Community databases of Indigenous knowledge and local biodiversity

Community registers

Community registers have been developed in India as a means of securing community control over TEK. Local people document all the known plant and animal species with full details of their uses. 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. This would keep such information in the public domain.⁵

Indigenous knowledge databases

Some Indigenous peoples 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:

create a dialogue based on respect and equality, not to create a catalogue and make it 'available' to the 'real scientists'. We must not allow indigenous knowledge to be reduced solely to an interesting research topic for Western science. (Simon & Brook, in press).

c) Community-Controlled Research (CCR)

Community-Controlled Research (CCR) is research where the objectives and methodologies are decided upon by Indigenous peoples 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.

(i) The Proyecto de Estudio para el Manejo de Areas Silvestres de Kuna Yala (PEMASKY) and the Asociacion de Empleados Kunas (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.

(ii) 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. Appendix 5 provides a list of basic principles to guide Community-Controlled Research.

6.2 Legal agreements

⁵ For information on community registers contact: Navdanya, A-60, 2nd Floor, Hauz Khas, New Delhi-110016, India.

(a) **Contracts**

Contracts are legal agreements which consist of negotiated promises or actions. Contracts require quite limited legal assistance and may be useful mechanisms for Indigenous peoples 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 (Laird 1993; Posey & Dutfield, in press).

(b) **Covenants**

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 (GCBCD) developed a model *Covenant on Intellectual, Cultural and Scientific Property* (see Appendix 1) that has been used to guide equitable relationships between the Body Shop, International and various Indigenous groups. 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 socio-environmental audit of the agreement, and provisions for **compensation and profit sharing**.

(c) **Material Transfer Agreements**

Material Transfer Agreements (MTAs) regulate the transfer of biological resources for research and possible commercialisation in exchange for benefits to the party recognised as the supplier. Suppliers might be a government, a collecting 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 (Lesser 1994).

(d) **Information Transfer Agreements**

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

6.3 **Traditional Resource Rights (TRR)**

Given that knowledge and traditional resources are central to the maintenance of identity for Indigenous peoples, the control over these resources is of central concern in their struggle for self-determination. Following COICA:

A system of protection and recognition of our resources and knowledge must be designed which is in conformity with our world view and contains formulas that...will prevent appropriation of our resources and knowledge.

Traditional Resource Rights (TRR) has emerged as a concept that more accurately reflects Indigenous and traditional peoples' views and concerns. TRR amasses "bundles of rights" already widely recognised by international legally and non-legally binding agreements in an effort to build a solid foundation for more equitable systems of protection and benefit sharing.

Basic principles upon which TRR is based include: basic human rights, right to development, rights to environmental integrity, religious freedom, land and territorial rights, right to privacy, prior informed consent and full disclosure, farmers' rights, intellectual property rights, neighbouring rights, cultural property rights, cultural heritage recognition, rights of customary law and practice.

Appendix 6 lists "bundles of rights" and their location within international agreements. Although general principles can be found in these agreements, they are on very different political footings. Some are enshrined in legally-binding Conventions, while others are found in non-legally binding documents or model proposals.

Thus, existing "bundles of rights" are wide-ranging, but still inadequate. **TRR is more of a process than a product.** The concept can grow as additional rights accrue and adapted through the development of national and international legislation. It goes beyond other *sui generis* models in that it seeks to protect not only knowledge relating to biological resources; it also asserts the right of peoples to self-determination and the right to safeguard "culture" in its broadest sense.

TRR is rights driven, not economically motivated. Yet by prioritising Indigenous peoples' rights to say NO to exploitation and by acknowledging their basic rights to control access over and receive benefits from traditional resources, commercial and research institutions should find equitable agreements and partnerships more easily attainable.

MILLENNIAL DILEMMAS AND UNCERTAIN CONCLUSIONS

Intellectual Property Rights (IPRs) have become important to global economic and commercial debates in part because of the massive **perceived** potential for exploitation of biogenetic resources for biotechnology. Similarly, traditional knowledge is expected to drastically cut Research and Development costs. The resulting bioprospecting feeding-frenzy may attenuate when, as many experts predict, the highly exaggerated hype converts to disappointing profits. In the mean time, however, expectations are exalted and IPRs have become a code for unethical and unsustainable exploitation of local communities and their resources.

Scientists and scientific institutions are affected by this situation as they become 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, raising questions 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 a superhighway for transporting restricted (or even sacred) information into the unprotectable "public domain".

Companies that seek ethical and equitable relationships with Indigenous peoples find their efforts undermined by exploitative practices of unethical corporations. Identification of legally-constituted entities and *bona fide* community representatives may be harrowingly difficult, as can be the form and distribution of benefits. Existing business standards and philosophy exclude any obligations to pre-contract and post-profit responsibilities that have become necessary to insure long-term social and ecological commitments.

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 that has historically been used to marginalise and exploit local community resources. It is, therefore, problematic that benefits to Nation States will ever "trickle-down" to local communities.

International law hardly exists, and where it does--as in the case of IPRs--it favours industrialised nations rather than bio-culturally rich nations. There is little evidence that existing Western legal structures can be adapted to enhance conservation of biological diversity or empowerment of Indigenous, traditional, and local communities. Any attempts will need to combine "bundles of rights" from a wide-range of

agreements to guide a newly emerging system of international law.

The Convention on Biological Diversity, and related UNCED agreements, call for access to, protection of and benefit sharing from the use and wider application of traditional technologies. However, enforcement mechanisms--nor, indeed, even the general basis of agreement as to what to enforce--are far from appearing on the international scene. The fundamental question of what are legal requirements versus moral and ethical responsibilities portends many difficulties for all "stakeholders".

Rather than looking hopelessly on, one hopes that the situation will provide opportunities for new dialogues, increased recognition of Indigenous peoples and their knowledge, new codes of ethics and standards of conduct, socially ecologically responsible business practices, holistic approaches to sustainability, and alternative concepts of property, ownership, and value. IPRs--replaced by a rights-based Traditional Resource Rights concept--can serve to catalyse this dialogue, and, indeed, may be one of the most fruitful debates of the next millennium.

Museums, research institutes and universities are in excellent positions to lead these debates. Sizeable scientific collections and databases, strong interdisciplinary expertise, and cross-cultural experience provide them with the resources necessary to spearhead the dialogue. Given that one of the honoured principles of these institutions, free exchange of information, is in jeopardy--as is the credibility of science itself in the post-Earth Summit situation--this leadership opportunity should be seized with urgency and vigour.

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APPENDIX 1

A COVENANT ON INTELLECTUAL, CULTURAL AND SCIENTIFIC PROPERTY:

A BASIC CODE OF ETHICS AND CONDUCT FOR EQUITABLE PARTNERSHIPS BETWEEN RESPONSIBLE CORPORATIONS, SCIENTISTS OR INSTITUTIONS, AND INDIGENOUS GROUPS

Prologue

Indigenous peoples are unanimous in identifying their primary concern as being *self-determination*, which subsumes such basic rights as recognition of and respect for their cultures, societies, and languages, as well as ownership over their own lands and territories, and control over the resources that are associated with those lands and territories. Intellectual, cultural and scientific property rights are seen as a starting point to defining a more useful category of traditional values, knowledge, and resources that have often been used and misused without authorization, recognition of origin, or just compensation.

This *Covenant* should in *no way* be construed as being a call for commoditization/commercialization of culture, biogenetic resources, or knowledge; nor is it a justification for bringing indigenous peoples *unwillingly* into commercial relationships with other societies. The *Covenant* recognizes that trade relationships have been generally harmful to local communities in the past. It is exactly for this reason, together with the fact that an increasing number of indigenous and traditional communities are opting for or are being forced into dangerous trade relationships, that a *Covenant* is necessary. This is an attempt to provide a basic code of ethics and conduct that will hopefully form the basis for equitable partnerships that lead to economic independence for local communities, while providing for the conservation of natural resources.

Practically, the *Covenant* is proposed as a model that can be tried in many parts of the world by many partners. There will undoubtedly be failures, but hopefully there will be many successes. The accumulation of these experiences will produce a new category that will replace IPR with a more powerful and decisive concept that, ideally, will catalyze the replacement of markets for temporary gain with trade based upon long term commitments that result in mutual advantages--turning businesses from being vanguards of destruction into equitable partners with local communities in the conservation of biological and cultural diversity.

Implementation of the *Covenant* will be a long-term process that will require nurturing, patience, and tolerance. The process can only work successfully if both parties come to understand and appreciate the other, and if both see the relationship as a means to improving not just their own lots, but the whole of the Earth.

Spirit of the Covenant

This Covenant is celebrated in order to:

Support indigenous and traditional peoples in their fight against genocide and for their land, territory, and control over their own resources, while strengthening the culture and local community through recognition and support of the groups' own goals, values, and objectives, by helping to find ways of responsibly utilizing, while conserving the biological/ecological/cultural richness of the region, through equitable and responsible trade, sourcing, research and development, thereby establishing a long term relationship built through joint decision-making based upon the principles of equality of relationships and protection of traditional values, knowledge and culture; if these basic elements are not respected, then the *Covenant* is endangered, and along with it, the spirit of trust and partnership between responsible businesses/scientists/institutions and local communities that is essential for the future well-being of the planet.

What is being protected

Although the essence of this *Covenant* is about the development of responsible research and

equitable trade, any Intellectual Property Rights agreement must inevitably deal with protection. The first concern of indigenous peoples is their right NOT *to sell, commoditize or have expropriated from them certain domains of knowledge and certain sacred places, plants, animals and objects*. All other elements of the *Covenant* are preconditioned by this basic right, which is considered a fundamental element of self-determination.

Thus, the first category for protection is

- 1 Sacred property (images, sounds, knowledge, material, culture or anything that is deemed sacred and, thereby, not commoditizable).

The following categories are recognized as providing the basis for protection and just compensation, if, and only if authorized by the community, society and cultural group.

- 2 Knowledge of current use, previous use, and/or potential use of plant and animal species, as well as soils and minerals;
- 3 Knowledge of preparation, processing, or storage of useful species;
- 4 Knowledge of formulations involving more than one ingredient;
- 5 Knowledge of individual species (planting methods, care for, selection criteria, etc.);
- 6 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);
- 7 Biogenetic resources that originate (or originated) on Indigenous lands and territories;
- 8 Cultural Property (images, sounds, crafts, arts and performances);
- 9 Classificatory systems of knowledge, such as traditional plant taxonomies.

All of these are protected as part of the larger need to protect land, territory and resources and to stimulate self-determination for indigenous/traditional peoples.

Basic principles to be exercised by all Partners

- I Equity of Partners, including profit-sharing, joint planning and goal-setting, informed consent and full disclosure in all aspects of the project, including results;
- II Working to insure that compensation is equitably shared within and among groups, and that compensation is in a form that strengthens the community and ethnic group;
- III Non-exclusivity of relationships, meaning that both parties are free to enter into agreements with other parties; priority for exchange will obviously be between Partners;
- IV Confidentiality of information and resources, meaning that information imparted by the indigenous group to the Partner cannot be passed on to others without the consent of the Giver;
- V Continual dialogue and mutual review, supported by independent monitoring and, if necessary, mediation by a third party (as agreed by Partners); mandatory review is required if there is a change of status of either Party or in the law;
- VI Diversification of the economic base through diversification of collecting, ingredients and products based upon traditional knowledge, cultural practice and local resources, as well as diversification of markets;
- VII Cooperation with local (indigenous and non-indigenous) educational, health, research and non-governmental institutions;
- VIII Insuring ecological and cultural sensitivity in all phases of any project, including collecting,

screening, sourcing, production and manufacture;

- IX Encouragement of community autonomy and control over all aspects of the projects as early as possible.

Additional principles to be observed by the company, scientist or institution

- X Responsibility to be informed about local, regional and national laws, customs and cultures.
- XI Judicial recognition and registration of this agreement, followed by appropriate legal protection to enable the indigenous group to protect its knowledge and biogenetic resources.

Additional principles to be observed by the indigenous group

- XII Establishment of a consensus on representation, group participation, ethnic boundaries and "legal personality(ies) of Partner(s)";
- XIII Commitment to work toward assuming legal, economic and financial independence.

Additional principles for independent monitors

- XIV Must have no conflict of interests and be able to act as arbitrators or mediators for all parties.
- XV Must have the professional qualifications and relevant experiences to represent all parties equitably.
- XVI Must practice full information disclosure and provide a public statement of working procedures and principles.
- XVII Must serve as the guardian of the Covenant, providing audits when requested by either party, but at least once annually, on actual practice in all areas of the agreement.

APPENDIX 2

THE PAST AND PRESENT CONTRIBUTION OF BIODIVERSITY-RICH COUNTRIES TO HUMANITY

Pharmacy	Industry	Agriculture and food
<p>Anti-cancer drugs: <i>the vinca alkaloids</i></p> <p>Tranquilizers and heart drugs: <i>reserpine</i></p> <p>Birth control: <i>Dioscorea</i> (source of many steroidal drugs)</p> <p>Anaesthetics and surgical aids: <i>cocaine, teterodoxin, d-tubocurarine, picrotoxin, madecassol, gum gutta percha</i></p> <p>Ophthalmology and neurology: <i>physostigmine, pilocarpine, atropine, hyoscine</i></p> <p>Respiratory disorders: <i>emetine, tolu balsam, benzoin tincture, l-dopa, sarsapogenine, catechin, camphor</i></p>	<p>Wild relatives of plantation and other species for "improvement"/protection</p> <p>Exudates: <i>latexes, waxes, resins, tanins, dyes, insecticides (neem, pyrethrins, rotenone)</i></p> <p>Fibres and canes: <i>rattan, bamboos, jute, sisal, kapok</i></p> <p>Edible and industrial oils: <i>palm oils, castor oil</i></p> <p>Essential oils: <i>sandalwood, ylang ylang, sassafras, camphor, anise, nutmeg, vanilla, cinnamon, clove, patchouli, cassia</i></p> <p>Energy plants/biomass conversion: <i>biomethanation, fermentation to produce ethanol, pyrolysis</i></p>	<p>Wild relatives of crops for "improvement"/protection</p> <p>Beverages, sugar, natural sweeteners: <i>coffee, cocoa, sugar cane, thaumatin</i></p> <p>Beans</p> <p>Roots and tubers: <i>cassava, yam, sweet potato</i></p> <p>Fruits</p> <p>Vegetables: <i>tomato, avocado, sweet pepper, aubergine, cucumber, breadfruit, okra</i></p> <p>Spices: <i>cloves, nutmeg, black pepper, allspice, cardamon, vanilla, cinnamon</i></p> <p>Nuts: <i>brazil, peanut, cashew, kola, sesame, macadamia</i></p> <p>Animals: <i>chickens, wild pigs, water buffalo</i></p>

Dutfield, 1993 (Based on information in Friends of the Earth, 1992).

APPENDIX 3

SUMMARY OF PRINCIPAL INTELLECTUAL PROPERTY RIGHTS INSTRUMENTS

Intellectual property rights have a variety of forms. The following four are the most important in the context of this discussion.

(a) Patents

A patent gives an inventor exclusive rights to prevent others from producing, using, selling or importing the invention for a fixed time period (usually 17–20 years). Legal action can be taken against those who infringe the patent. To be a patentable "invention" the application must satisfy the patent examiners that it is:

useful: it must have industrial application;

novel: it should be recent and original, but perhaps most importantly it should not already be known (in the public domain). In most countries (except the USA) the patent is awarded to the first person to apply, whether or not this person was the first to invent;

non-obvious: not obvious to a person skilled in the technology, and more inventive than a mere discovery of what already exists in nature (such as a gene with no known function). In the case of an invented *process*, the patent can cover a "non-obvious" way of making something already known (i.e. previously invented or discovered). In the case of an invented *product*, the non-obvious requirement does not require it to be made by a novel method.

Patents of the following types may be granted (Lesser, 1991):

products per se: covers any use of the product including those as yet undiscovered. For example, a new drug patented as a cure for cancer may later be found to cure heart disease, and the patent will cover this new use;

uses: covers a specific use only. Thus, it would cover the above drug only as a cure for cancer, and not for any uses that are found later;

processes: protects the process when used with *any* product, but it does not protect the invention when it can be manufactured by a different process;

products-by-process: covers only products made by the process described in the application. Therefore, it would cover the drug, but only when made by a specified process.

(b) Copyright

Copyright gives authors legal protection for several types of work, such as:

- × literary works;
- × dramatic and musical works;
- × artistic works and works of applied art;
- × motion pictures and sound recordings;
- × computer programs and databases

Copyright law is intended to protect authors by granting them exclusive rights to sell copies of their work in whatever *tangible* form (printed publication, sound recording, film, broadcast, etc.) is being used to convey

his or her creative expressions to the public. Legal protection covers the "expression" of the ideas contained, not the ideas themselves, which are not actually required to be novel at all. Copyright gives owners exclusive rights, usually for the life of the author plus 50 years. Copyright owners have the legal right to stop others from:

- × copying or reproducing the work;
- × performing the work in public;
- × making a sound recording or motion picture of the work;
- × broadcasting, translating and adapting the work.

(c) Trade Secrets

Know-how is information that may give a person or company a competitive advantage yet fail to fulfil the criteria of patentability. Nevertheless, if the information is known only to a few people it can still have legal recognition and protection as a trade secret. The claim for protection as a trade secret requires that efforts be made to prevent disclosure. Agreements between Indigenous peoples and others to respect the confidential nature of information disclosed, and strictly enforced access restrictions are examples of such efforts. Trade secret law makes the taking without permission of a trade secret an illegal act, but not the discovery by proper means i.e. by independent discovery, accidental or actual disclosure, or by reverse engineering.

(d) Plant Breeders' Rights

The UPOV (Union for the Protection of New Varieties of Plants) Convention provides for rights commonly known as Plant Breeders' Rights (PBR). According to the latest 1991 revision of the Convention, breeders are people who breed, discover or develop crop varieties. These rights prevent other breeders from breeding and selling the same plant varieties. The UPOV Convention only has force in its 20 member countries. To be eligible for protection the plant variety must be:

- × *distinct*: distinguishable by one or more characteristics from any other variety whose existence is a matter of common knowledge
- × *stable*: remain true to its description after repeated reproduction or propagation
- × *uniform*: homogeneous with regard to the particular feature of its sexual reproduction or vegetative propagation
- × *novel*: not have been offered for sale or marketed, with the agreement of the breeder or his successor in title, in that country, or for longer than four years in any other country.

APPENDIX 4

SCIENTIFIC AND PROFESSIONAL SOCIETIES THAT HAVE DEVELOPED GUIDELINES ON INTELLECTUAL PROPERTY RIGHTS

1988: *Declaration of Belém* from the International Society for Ethnobiology

1988: *The Chiang Mai Declaration for Conservation of Medicinal Plants* by WWF/IUCN/WHO

1990: *The Code of Ethics for Foreign Collectors of Biological Samples* developed at the Botany 2000 Herbarium Curation Workshop

1990: *The first Code of Ethics on Obligations to Indigenous Peoples of the World Archaeological Congress*

1991: *Professional Ethics in Economic Botany: A Preliminary Draft of Guidelines of the Society of Economic Botany*

1992: *Conclusions of the Workshop on Drug Development, Biological Diversity and Economic Growth* of the National Institutes of Health/National Cancer Institute

1992: *Williamsburg Declaration* of the American Society of Pharmacognosy

1992: *The Bukittinggi Declaration* at the UNESCO Seminar on the Chemistry of Rainforest Plants

1992: *The Manila Declaration*, developed at the Seventh Asian Symposium on Medicinal Plants, Spices and Other Natural Products (ASOMPS VII)

1993: *Guidelines for Equitable Partnerships in New Natural Products Development* of the People and Plants Initiative of WWF, UNESCO and Kew Gardens.

APPENDIX 5

RESEARCH PRINCIPLES FOR COMMUNITY-CONTROLLED RESEARCH WITH THE TAPIRISAT INUIT OF CANADA (selected principles)

1. Informed consent should be obtained from the community and from any individuals involved in research.
2. In seeking informed consent the researcher should at least explain the purpose of the research; sponsors of research; the person in charge; potential benefits and possible problems associated with the research for people and the environment; research methodology; participation of or contact with residents of the community.
3. Anonymity and confidentiality must be offered and, if accepted, guaranteed except where this is legally precluded.
4. On-going communication of research objectives, methods, findings and interpretation from inception to completion of project should occur.
9. Research must respect the privacy, dignity, cultures, traditions and rights of aboriginal people.
10. Written information should be available in the appropriate language(s).
12. Aboriginal people should have access to research data, not just receive summaries and research reports. The extent of data accessibility that participants/communities can expect should be clearly stated and agreed upon as part of any approval process.

APPENDIX 6

TRADITIONAL RESOURCE RIGHTS

TRR is based on the following bundles of rights (Posey, 1994a; Posey, 1994b):

RIGHT (bundle)	SUPPORTING AGREEMENTS: legally binding	SUPPORTING AGREEMENTS: non legally binding
Human rights	ICESCR, ICCPR	UDHR, DDRIP, VDPA
Right to Self-determination	ILO169, ICESCR, ICCPR	DDRIP, VDPA
Collective rights	ILO169, ICESCR, ICCPR	DDRIP, VDPA
Land & territorial rights	ILO169	DDRIP
Right to religious freedom	ICCPR, NLs	UDHR
Right to development	ICESCR, ICCPR, ILO169	DDRIP, DHRD, VDPA
The right to privacy	ICCPR, NLs	UDHR
Prior informed consent	CBD, NLs	DDRIP
Environmental integrity	CBD	RD
Intellectual property rights	WIPO, GATT, UPOV, NLs, CBD	
Neighbouring rights	RC	
Right to enter into legal agreements, such as contracts and covenants	NLs	
Cultural property rights	UNESCO-CCP, UNESCO-WHC, NLs	
Right to protection of folklore		UNESCO-WIPO, UNESCO-F
Right to protection of cultural heritage		
Recognition of cultural landscapes	UNESCO-WHC	
Recognition of customary law and practice	ILO169, NLs	DDRIP
Farmers' Rights		FAO-IUPGR

KEY

Legally binding agreements

CBD	=	Convention on Biological Diversity (1992) <i>Status:</i> in force <i>States Parties:</i> 108 as at 31 Dec. 1994
GATT	=	Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations (1994) <i>Status:</i> in force
ICESCR	=	UN International Covenant on Economic, Social and Cultural Rights (1966) <i>Status:</i> in force <i>States Parties:</i> 131 as at 31 Dec. 1994
ICCPR	=	UN International Covenant on Civil and Political Rights (1966) <i>Status:</i> in force <i>States Parties:</i> 129 as at 31 Dec. 1994
ILO169	=	International Labour Organization Convention 169: Convention Concerning Indigenous and Tribal Peoples in Independent Countries (1989) <i>Status:</i> in force <i>States Parties:</i> 7
NLs	=	National laws
RC	=	Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (1961) <i>Status:</i> in force <i>States Parties:</i> 47 as at 31 December 1994
UNESCO-WHC	=	UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage (1972) <i>Status:</i> in force <i>States Parties:</i> 135 as at 1 Jan. 1994
UNESCO-CCP	=	UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970) <i>Status:</i> in force <i>States Parties:</i> 79 as at 1 Jan. 1994
UPOV	=	International Union for the Protection of New Varieties of Plants (1961, revised in 1972, 1978 and 1991) <i>Status:</i> in force <i>States Parties:</i> 27 as at 31 Dec. 1994
WIPO	=	The World Intellectual Property Organisation, which administers international IPR agreements, such as:

The Convention of Paris for the Protection of Industrial Property (1883, revised most recently in 1967)

States Parties: 129 as at 31 Dec. 1994

The Berne Convention for the Protection of Literary and Artistic Works (1886, revised most recently in 1971)

States Parties: 111 as at 31 Dec. 1994

The Madrid Agreement Concerning the International Registration of Trademarks (1891, revised most recently in 1967)

State Parties: 43 as at 31 Dec. 1994

The Lisbon Agreement for the Protection of Appellations of Origin and their International Registration (1958, revised most recently in 1967) *State Parties:* 17 as at 31 Dec. 1994

The Patent Cooperation Treaty (1970)

States Parties: 77 as at 31 Dec. 1994

Non legal agreements

DDRIP	=	UN Draft Declaration on the Rights of Indigenous Peoples (formally adopted by the UN Working Group on Indigenous Populations in July 1994)
DHRD	=	UN Declaration on the Human Right to Development (1986)
FAO-IUPGR	=	FAO International Undertaking on Plant Genetic Resources (1987 version)
RD	=	Rio Declaration (1992)
UDHR	=	Universal Declaration of Human Rights (1948)
UNESCO-F	=	UNESCO Recommendations on the Safeguarding of Traditional Culture and Folklore (1989)
UNESCO-WIPO	=	UNESCO-WIPO Model Provisions for National Laws on Protection of Expressions of Folklore Against Illicit Exploitation and Other Prejudicial Actions (1985)
VDPA	=	UN Vienna Declaration and Programme of Action (1993)

APPENDIX 7

WORLD COUNCIL OF INDIGENOUS PEOPLES:

DECLARATION OF PRINCIPLES

(Ratified by the IV General Assembly of the World Council of Indigenous Peoples)

1. All human rights of indigenous peoples must be respected. No form of discrimination against indigenous peoples shall be allowed.
2. All indigenous peoples have the right to self-determination. By virtue of this right they can freely determine their political, economic, social, religious and cultural development in agreement with the principles stated in this declaration.
3. Every nation-state within which indigenous peoples live shall recognise the population, territory and institutions belonging to said peoples.
4. The culture of indigenous peoples is part of mankind's cultural patrimony.
5. The customs and usages of the indigenous peoples must be respected by the nation-states and recognized as a legitimate source of rights.
6. Indigenous peoples have the right to determine which person(s) or group(s) is (are) included in its population.
7. Indigenous peoples have the right to determine the form, structure and jurisdiction of their own institutions.
8. The institutions of indigenous peoples, like those of a nation-state, must conform to internationally recognized human rights, both individual and collective.
9. Indigenous peoples and their individual members have the right to participate in the political life of the nation-state in which they are located.
10. Indigenous peoples have inalienable rights over their traditional lands and over the use of their natural resources which have been usurped, or taken away without the free and knowledgeable consent of indigenous peoples, shall be restored to them.
11. The rights of the indigenous peoples to their lands includes: the soil, the sub-soil, coastal territorial waters in the interior and coastal economic zones all within the limits specified by international legislation.
12. All indigenous peoples have the rights to freely use their natural wealth and resources in order to satisfy the needs and in agreement with principles 10 and 11 above.
13. No action or process shall be implemented which directly and/or indirectly would result in the destruction of land, air, water, glaciers, animal life, environment, or natural resources, without the free and well informed consent of the affected indigenous peoples.
14. Indigenous peoples will reassume original rights over their material culture, including archaeological zones, artifacts, designs and other artistic expressions.
15. All indigenous peoples have the rights to be educated in their own language and to establish their own educational institutions. Indigenous peoples' languages shall be respected by nation-states in all dealings between them on the basis of equality and non-discrimination.
16. All treaties reached through agreement between indigenous peoples and representatives of the nation-states will have total validity before national and international law.

17. Indigenous peoples have the rights by virtue of their traditions, to freely travel across international boundaries, to conduct traditional activities and maintain family links.

18. Indigenous peoples and their designated authorities have the right to be consulted and to authorize the implementation of technological and scientific research conducted within their territories and the right to be informed about the results of such activities.

19. The aforementioned principles constitute the minimal rights to which indigenous peoples are entitled and must be complemented by all nation-states.

APPENDIX 8
KARI-OCA DECLARATION AND
INDIGENOUS PEOPLES EARTH CHARTER
(25-30 May 1992)

Preamble

The World Conference of Indigenous Peoples on Territory, Environment and Development. (25-30 May. 1992)

The Indigenous Peoples of the Americas, Asia, Africa, Australia, Europe and the Pacific, united in one voice at Kari-Oca Villages express our collective gratitude to the indigenous peoples of Brazil. Inspired by this historical meeting, we celebrate the spiritual unity of the indigenous peoples with the land and ourselves. We continue building and formulating our united commitment to save our Mother the Earth. We, the indigenous peoples, endorse the following declaration as our collective responsibility to carry our indigenous minds and voices into the future.

Declaration

We the Indigenous Peoples, walk to the future in the footprints of our ancestors.

From the smallest to the largest living being, from the four directions, from the air, the land and the mountains, the creator has placed us, the indigenous peoples upon our Mother the Earth.

The footprints of our ancestors are permanently etched upon the land of our peoples.

We the Indigenous Peoples, maintain our inherent rights to self-determination.

We have always had the right to decide our own forms of government, to use our own laws to raise and educate our children, to our own cultural identity without interference.

We continue to maintain our rights as peoples despite centuries of deprivation, assimilation and genocide.

We maintain our inalienable rights to our lands and territories, to all our resources - above and below - and to our waters. We assert our ongoing responsibility to pass these onto the future generations.

We cannot be removed from our lands. We the Indigenous Peoples, are connected by the circle of life to our land and environments.

We the indigenous peoples, walk to the future in the footprints of our ancestors.

Signed at Kari-Oca, Brazil on the 30th day of May, 1992.

Indigenous Peoples Earth Charter

Human Rights and International Law

1. We demand the right to life.
2. International law must deal with the collective human rights of indigenous peoples.
3. There are many international instruments which deal with the rights of individuals but there are no declarations to recognize collective human rights. Therefore, we urge governments to support the United Nations Working Group on Indigenous Peoples' (UNWGIP) Universal Declaration of Indigenous Rights, which is presently in draft form.
4. There exist many examples of genocide against indigenous peoples. Therefore, the convention against genocide must be changed to include the genocide of indigenous peoples.

5. The United Nations should be able to send indigenous peoples' representatives, in a peace keeping capacity, into indigenous territories where conflicts arise. This would be done at the request and consent of the indigenous peoples concerned.
6. The concept of **Terra Nullius** must be eliminated from international law usage. Many state governments have used internal domestic laws to deny us ownership of our own lands. These illegal acts should be condemned by the World.
7. Where small numbers of indigenous peoples are residing within state boundaries, so-called democratic countries have denied indigenous peoples the right of consent about their future, using the notion of majority rules to decide the future of indigenous peoples. Indigenous peoples' right of consent to projects in their areas must be recognized.
8. We must promote the term "indigenous peoples" at all fora. The use of the term "indigenous peoples" must be without qualifications.
9. We urge governments to ratify International Labour Organisation (ILO) Convention 169 to guarantee an international legal instrument for indigenous peoples. (Group 2 only)
10. Indigenous peoples' distinct and separate rights within their own territories must be recognised.
11. We assert our rights to free passage through state imposed political boundaries dividing our traditional territories. Adequate mechanisms must be established to secure this right.
12. The colonial systems have tried to dominate and assimilate our peoples. However, our peoples remain distinct despite these pressures.
13. Our indigenous governments and legal systems must be recognized by the United Nations, State governments and International legal instruments.
14. Our right to self-determination must be recognized.
15. We must be free from population transfer.
16. We maintain our right to our traditional way of life.
17. We maintain our right to our spiritual way of life.
18. We maintain the right to be free from pressures from multinational (transnational) corporations upon lives and lands. All multinational (transnational) corporations which are encroaching upon indigenous lands should be reported to the United Nations Transnational Office.
19. We must be free from racism.
20. We maintain the right to decide the direction of our communities.
21. The United Nations should have a special procedure to deal with issues arising from violations of indigenous treaties.
22. Treaties signed between indigenous peoples and non-indigenous peoples must be accepted as treaties under international law.
23. The United Nations must exercise the right to impose sanctions against governments that violate the rights of indigenous peoples.
24. We urge the United Nations to include the issue of indigenous peoples in the agenda of the World Conference of Human Rights to be held in 1993. The work done so far by The United Nations Inter-American Commission of Human Rights and the Inter-American Institute of Human Rights should be taken into consideration.

25. Indigenous peoples should have the right to their own knowledge, language, and culturally appropriate education, including bicultural and bilingual education. Through recognizing both formal and informal ways, the participation of family and community is guaranteed.
26. Our health rights must include the recognition and respect of traditional knowledge held by indigenous healers. This knowledge, including our traditional medicines and their preventive and spiritual healing power, must be recognized and protected against exploitation.
27. The World Court must extend its powers to include complaints by indigenous peoples.
28. There must be a monitoring system from this conference to oversee the return of delegates to their territories. The delegates should be free to attend and participate in International Indigenous Conferences.
29. Indigenous Women's Rights must be respected. Women must be included in all local, national, regional and international organisations.
30. The above mentioned historical rights of indigenous peoples must be guaranteed in national legislation.

(*Please note for the purposes of the Declaration and this statement any use of the term "Indigenous Peoples" also includes Tribal Peoples.)

Land and Territories

31. Indigenous peoples were placed upon our Mother, the earth by the Creator. We belong to the land. We cannot be separated from our lands and territories.
32. Our territories are living totalities in permanent vital relation between human beings and nature. Their possession produce the development of our culture. Our territorial property should be inalienable, unceasable and not denied title. Legal, economic and technical back up are needed to guarantee this.
33. Indigenous peoples' inalienable rights to land and resources confirm that we have always had ownership and stewardship over our traditional territories. We demand that these be respected.
34. We assert our rights to demarcate our traditional territories. The definition of territory includes space (air), land, and sea. We must promote a traditional analysis of traditional land rights in all our territories.
35. Where indigenous territories have been degraded, resources must be made available to restore them. The recuperation of those affected territories is the duty of the respective jurisdiction in all nation states which can not be delayed. Within this process of recuperation the compensation for the historical ecological debt must be taken into account. Nation states must revise in depth the agrarian, mining and forestry policies.
36. Indigenous peoples reject the assertion of non-indigenous laws onto our lands States cannot unilaterally extend their jurisdiction over our lands and territories. The concept of **Terra Nullius** should be forever erased from the law books of states.
37. We, as indigenous peoples, must never alienate our lands. We must always maintain control over the land for future generations.
38. If a non indigenous government, individual or corporation wants to use our lands, then there must be a formal agreement which sets out the terms and conditions. Indigenous peoples maintain the right to be compensated for the use of their lands and resources.
39. Traditional indigenous territorial boundaries, including the waters, must be respected.

40. There must be some control placed upon environmental groups who are lobbying to protect our territories and the species within those territories. In many instances, environmental groups are more concerned about animals than human beings. We call for indigenous peoples to determine guidelines prior to allowing environmental groups into their territories.
41. Parks must not be created at the expense of indigenous peoples. There is no way to separate indigenous peoples from their lands.
42. Indigenous peoples must not be removed from their lands in order to make it available to settlers or other forms of economic activity on their lands.
43. In many instances, the numbers of indigenous peoples have been decreasing due to encroachment by non-indigenous peoples.
44. Indigenous peoples should encourage their peoples to cultivate their own traditional forms of products rather than to use imported exotic crops which do not benefit local peoples.
45. Toxic wastes must not be deposited in our areas. Indigenous peoples must realize that chemicals, pesticides and hazardous wastes do not benefit the peoples.
46. Traditional areas must be protected against present and future forms of environmental degradation.
47. There must be a cessation of all uses of nuclear material. 48. Mining of products for nuclear production must cease.
49. Indigenous lands must not be used for the testing or dumping of nuclear products.
50. Population transfer policies by state governments in our territories are causing hardship. Traditional lands are lost and traditional livelihoods are being destroyed.
51. Our lands are being used by state governments to obtain funds from the World Bank, the International Monetary Fund, the Asian Pacific Development Bank and other institutions which have led to a loss of our lands and territories.
52. In many countries our lands are being used for military purposes. This is an unacceptable use of the lands.
53. The colonizer governments have changed the names of our traditional and sacred areas. Our children learn these foreign names and start to lose their identity. In addition, the changing of the name of a place diminishes respect for the spirits which reside in those areas.
54. Our forests are not being used for their intended purposes. The forests are being used to make money.
55. Traditional activities, such as making pottery, are being destroyed by the importation of industrial goods. This impoverishes the local peoples.

Biodiversity and Conservation

56. The Vital Circles are in a continuous interrelation in such a way that the change of one of its elements affects the whole.
57. Climatic changes affect indigenous peoples and all humanity. In addition ecological systems and their rhythms are affected which contributes to the deterioration of our quality of life and increases our dependency.
58. The forests are being destroyed in the name of development and economical gains without

considering the destruction of ecological balance. These activities do not benefit human beings, animals, birds and fish. The logging concessions and incentives to the timber, cattle and mining industries affecting the ecosystems and the natural resources should be cancelled.

59. We value the efforts of protection of the Biodiversity but we reject to be included as part of an inert diversity which pretend to be maintained for scientific and folkloric purposes.
60. The indigenous peoples strategies should be kept in a reference framework for the formulation and application of national policies on environment and biodiversity.

Development Strategies

61. Indigenous peoples must consent to all projects in our territories. Prior to consent being obtained the peoples must be fully and entirely involved in any decisions. They must be given all the information about the project and its effects. Failure to do so should be considered a crime against the indigenous peoples. The person or persons who violate this should be tried in a world tribunal within the control of indigenous peoples set for such a purpose. This could be similar to the trials held after World War II.
62. We have the right to our own development strategies based on our cultural practices and with a transparent, efficient and viable management and with economical and ecological viability.
63. Our development and life strategies are obstructed by the interests of the government and big companies and by the neoliberal policies. Our strategies have, as a fundamental condition, the existence of International relationships based on justice, equity and solidarity between the human beings and the nations.
64. Any development strategy should prioritise the elimination of poverty, the climatic guarantee, the sustainable manageability of natural resources, the continuity of democratic societies and the respect of cultural differences.
65. The global environmental facility should assign at best 20% for indigenous peoples' strategies and programs of environmental emergency, improvement of life quality, protection of natural resources and rehabilitation of ecosystems. This proposal in the case of South America and the Caribbean should be concrete in the Indigenous development fund as a pilot experience in order to be extended to the indigenous peoples of other regions and continents.
66. The concept of development has meant the destruction of our lands. We reject the current definition of development as being useful to our peoples. Our cultures are not static and we keep our identity through a permanent recreation of our life conditions; but all of this is obstructed in/the name of so-called developments.
67. Recognizing indigenous peoples' harmonious relationship with Nature, indigenous sustainable development strategies and cultural values must be respected as distinct and vital sources of knowledge.
68. Indigenous peoples have been here since the time before time began. We have come directly from the Creator. We have lived and kept the Earth as it was on the First Day. Peoples who do not belong to the land must go out from the lands because those things (so called "Development" on the land) are against the laws of creator.
69. (a) In order for indigenous peoples to assume control, management and administration of their resources and territories, development projects must be based on the principles of self-determination and self-management.
(b) Indigenous peoples must be self-reliant.

70. If we are going to grow crops, we must feed the peoples. It is not appropriate that the lands be used to grow crops which do not benefit the local peoples.
- (a) Regarding indigenous policies, State Government must cease attempts of assimilation and integration.
- (b) Indigenous peoples must consent to all projects in their territories. Prior to consent being obtained, the peoples must be fully and entirely involved in any decisions. They must be given all the information about the project and its effects. Failure to do so should be considered a crime against indigenous peoples. The person or persons responsible should be tried before a World Tribunal, with a balance of indigenous peoples set up for such a purpose. This could be similar to the Trials held after the second World War.
71. We must never use the term "land claims". It is the non-indigenous peoples which do not have any land. All the land is our land. It is non-indigenous peoples who are making claims to our lands. We are not making claims to our lands.
72. There should be a monitoring body within the United Nations to monitor all the land disputes around the World prior to development.
73. There should be a United Nations' Conference on the topic of "Indigenous Lands and Development".
74. Non-indigenous peoples have come to our lands for the purpose of exploiting these lands and resources to benefit themselves, and to the impoverishment of our peoples. Indigenous peoples are victims of development. In many cases indigenous peoples are exterminated in the name of a development program. There are numerous examples of such occurrences.
75. Development that occurs on indigenous lands, without the consent of indigenous peoples, must be stopped.
76. Development which is occurring on indigenous lands is usually decided without local consultation by those who are unfamiliar with local conditions and needs.
77. The eurocentric notion of ownership is destroying our peoples. We must return to our own view of the world, of the land and of development. The issue cannot be separated from indigenous peoples' rights.
78. There are many different types of so-called development: road construction, communication facilities such as electricity, telephones. These allow developers easier access to the areas, but the effects of such industrialisation destroy the lands.
79. There is a world wide move to remove indigenous peoples from their lands and place them in villages. The relocation from the traditional territories is done to facilitate development.
80. It is not appropriate for governments or agencies to move into our territories and to tell our peoples what is needed.
81. In many instances, the state-governments have created artificial entities such as "district council" in the name of the state-government in order to deceive the international community. These artificial entities then are consulted about development in the area. The state-government, then, claim that indigenous peoples were consulted about the project. These lies must be exposed to the international community.
82. There must be an effective network to disseminate material and information between indigenous peoples. This is necessary in order to keep informed

- about the problems of other indigenous peoples.
83. Indigenous peoples should form and direct their own environmental network.

Culture, Science and Intellectual Property

84. We feel the Earth as if we are within our mother. When the Earth is sick and polluted, human health is impossible. To heal ourselves, we must heal the Planet and to heal the Planet, we must heal ourselves.
85. We must begin to heal from the grassroots level and work towards the international level.
86. The destruction of the culture has always been considered an internal, domestic problem within national states. The United Nation must set up a tribunal to review the cultural destruction of the indigenous peoples.
87. We need to have foreign observers come into our indigenous territories to oversee national state elections to prevent corruption.
88. The human remains and artifacts of indigenous peoples must be returned to their original peoples.
89. Our sacred and ceremonial sites should be protected and considered as the patrimony of indigenous peoples and humanity. The establishment of a set of legal and operational instruments at both national and international levels would guarantee this.
90. The use of existing indigenous languages is our right. These languages must be protected.
91. States that have outlawed indigenous languages and their alphabets should be censored by United Nations.
92. We must not allow tourism to be used to diminish our culture. Tourists come into the communities and view the people as if indigenous peoples were part of a zoo. Indigenous peoples have the right to allow or to disallow tourism within their areas.
93. Indigenous peoples must have the necessary resources and control over their own education systems.
94. Elders must be recognized and respected as teachers of the young people.
95. Indigenous wisdom must be recognized and encouraged.
96. The traditional knowledge of herbs and plants must be protected and passed onto future generations.
97. Traditions cannot be separated from land, territory or science.
98. Traditional knowledge has enabled indigenous peoples to survive.
99. The usurping of traditional medicines and knowledge from indigenous peoples should be considered a crime against peoples.
100. Material culture is being used by the non-indigenous to gain access to our lands and resources, thus destroying our cultures.
101. Most of the media at this conference were only interested in the pictures which will be sold for profit. This another case of exploitation of indigenous peoples. This does not advance the cause of indigenous peoples.
102. As creators and carriers of civilizations 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.
103. We should list the suspect museums and institutions that have misused our cultural and intellectual properties.
 104. The protection, norms and mechanisms of artistic and artisan creation of our peoples must be established and implemented in order to avoid plunder, plagiarism, undue exposure and use.
 105. When indigenous peoples leave their communities, they should make every effort to return to the community.
 106. In many instances, our songs, dances and ceremonies have been viewed as the only aspects of our lives. In some instances, we have been asked to change a ceremony or a song to suit the occasion. This is racism.
 107. At local, national, international levels, governments must commit funds to new and existing resources to education and training for indigenous peoples, to achieve their sustainable development, to contribute and to participate in sustainable and equitable development at all levels. Particular attention should be given to indigenous women, children and youth.
 108. All kinds of folkloric discrimination must be stopped and forbidden.
 109. The United Nations should promote research into indigenous knowledge and develop a network of indigenous sciences.

APPENDIX 9
CHARTER OF THE INDIGENOUS TRIBAL PEOPLES OF
THE TROPICAL FORESTS

Article 1

We, the indigenous tribal peoples of the tropical forests, present this charter as a response to hundreds of years of continual encroachment and colonisation of our territories and the undermining of our lives, livelihoods and cultures caused by the destruction of the forests that our survival depends on.

Article 2

We declare that we are the original peoples, the rightful owners and the cultures that defend the tropical forests of the world.

Article 3

Our territories and forests are to us more than an economic resource. For us, they are life itself and have an integral and spiritual value for our communities. They are fundamental to our social, cultural, spiritual, economic and political survival as distinct peoples.

Article 4

The unity of people and territory is vital and must be recognised.

Article 5

All policies towards the forests must be based on a respect for cultural diversity, for a promotion of indigenous models of living, and an understanding that our peoples have developed ways of life closely attuned to our environment.

THEREFORE WE DECLARE THE FOLLOWING PRINCIPLES, GOALS AND DEMANDS:

RESPECT FOR OUR RIGHTS

Article 6

Respect for our human, political, social, economic and cultural rights, respect for our right to self-determination, and to pursue our own ways of life.

Article 7

Respect for our autonomous forms of self-government, as differentiated political systems at the community, regional and other levels. This includes our right to control all economic activities in our territories.

Article 8

Respect for our customary laws and that they be incorporated in national and international law.

Article 9

Where the peoples so demand, nation states must comply with the different treaties, agreements, covenants, awards and other forms of legal recognition that have been signed with us indigenous peoples in the past, both in the colonial period and since independence, regarding our rights.

Article 10

An end to violence, slavery, debt-peonage and land grabbing; the disbanding of all private armies and militias and their replacement by the rule of law and social justice; the means to use the law in our own defence, including the training of our people in the law.

Article 11

The approval and application of the Universal Declaration of Indigenous Peoples, which must affirm and guarantee our right to self-determination, being developed by the United Nations, and the setting up of an effective international mechanism and tribunal to protect us against the violation of our rights and guarantee the application of the principles set out in this charter.

Article 12

There can be no rational or sustainable development of the forests and of our peoples until our fundamental rights as peoples are respected.

TERRITORY

Article 13

Secure control of our territories, by which we mean a whole living system of continuous and vital connection between man and nature; expressed as our right to the unity and continuity of our ancestral domains; including the parts that have been usurped, those being reclaimed and those that we use; the soil, subsoil, air and water required for our self-reliance, cultural development and future generations.

Article 14

The recognition, definition and demarcation of our territories in accordance with our local and customary systems of ownership and use.

Article 15

The form of land tenure will be decided by the people themselves, and the territory should be held communally, unless the people decide otherwise.

Article 16

The right to the exclusive use and ownership of the territories which we occupy. Such territories should be inalienable, not subject to distraint and unnegotiable.

Article 17

The right to demarcate our territories ourselves and that these areas be officially recognised and documented.

Article 18

Legalise the ownership of lands used by non-indigenous peoples who live within and on the forests' margins in the areas that are available once title has been guaranteed to the indigenous peoples.

Article 19

Land reforms and changes in land tenure to secure the livelihoods of those who live outside the forests and indigenous territories, because we recognise that landlessness outside the forests puts heavy pressure on our territories and forests.

DECISION-MAKING

Article 20

Control of our territories and the resources that we depend on: all development in our areas should only go ahead with the free and informed consent of the indigenous people involved or affected.

Article 21

Recognition of the legal personality of our representative institutions and organisations, that defend our rights, and through them the right to collectively negotiate our future.

Article 22

The right to our own forms of social organisation; the right to elect and revoke the authorities and government functionaries who oversee the territorial areas within our jurisdiction.

DEVELOPMENT POLICY

Article 23

The right to be informed, consulted and, above all, to participate in the making of decisions on legislation or policies: and in the formulation, implementation or evaluation of any development project, be it at local, national or international levels, whether private or of the state, that may affect our futures directly or indirectly.

Article 24

All major development initiatives should be preceded by social, cultural and environmental impact assessments, after consultation with local communities and indigenous peoples. All such studies and projects should be open to public scrutiny and debate especially the indigenous peoples affected.

Article 25

National or international agencies considering funding development projects which may affect us, must set up tripartite commissions – including the funding agency, government representatives and our own communities as represented through our representative organisations – to carry through the planning implementation, monitoring and evaluation of the projects.

Article 26

The cancellation of all mining concessions in our territories imposed without the consent of our representative organisations. Mining policies must prioritise, and be carried out under, our control, to guarantee rational management and a balance with the environment. In the case of the extraction of strategic minerals (oil and radioactive minerals) in our territories, we must participate in making decisions during planning and implementation.

Article 27

An end to imposed development schemes and fiscal incentives or subsidies that threaten the integrity of our forests.

Article 28

A halt to all imposed programmes aimed at resettling our peoples away from their homelands.

Article 29

A redirection of the development process away from large-scale projects towards the promotion of small-scale, initiatives controlled by our peoples. The priority for such initiatives is to secure our control over our territories and resources on which our survival depends. Such projects should be the cornerstone of all future development in the forests.

Article 30

The problems caused in our territories by international criminal syndicates trafficking in products from plants like poppy and coca must be confronted by effective policies which involve our peoples in decision-making.

Article 31

Promotion of the health systems of the indigenous peoples, including the revalidation of traditional medicine, and the promotion of programmes of modern medicine and primary health care. Such programmes should allow us to have control over them, providing suitable training to allow us to manage them ourselves.

Article 32

Establishment of systems of bilingual and intercultural education. These must revalidate our beliefs, religious traditions, customs, and knowledge; allowing our control over these programmes, by the provision of suitable training, in accordance with our cultures; in order to achieve technical and scientific advances for our peoples, in tune with our own cosmovisions, and as a contribution to the world community.

Article 33

Promotion of alternative financial policies that permit us to develop our community economies and develop mechanisms to establish fair prices for the products of our forests.

Article 34

Our policy of development is based, first, on guaranteeing our self-sufficiency and material welfare, as well as that of our neighbours; a full social and cultural development based on the values of equity, justice, solidarity and reciprocity, and a balance with nature. Thereafter, the generation of a surplus for the market must come from a rational and creative use of natural resources developing our own traditional technologies and selecting appropriate new ones.

FOREST POLICY

Article 35

Halt all new logging concessions and suspend existing ones, that affect our territories. The destruction of forests must be considered a crime against humanity and a halt must be made to the various anti-social consequences, such as, roads across indigenous cultivations, cemeteries and hunting zones; the destruction of areas used for medicinal plants and crafts; the erosion and compression of soil; the pollution of our environment; the corruption and enclave economy generated by the industry; the increase of invasions and settlement in our territories.

Article 36

Logging concessions on lands adjacent to our territories, or which have an impact on our environment, must comply with operating conditions – ecological, social, of labour, transport, health and others – laid down by the indigenous peoples, who should participate in ensuring that these are complied with. Commercial timber extraction should be prohibited in strategic and seriously degraded forests.

Article 37

The protection of existing natural forests should take priority over reforestation.

Article 38

Reforestation programmes should be prioritised on degraded lands, giving priority to the regeneration of native forests, including the recovery of all the functions of tropical forests, and not being restricted only to timber values.

Article 39

Reforestation programmes on our territories should be developed under the control of our communities. Species should be selected by us in accordance with our needs.

BIODIVERSITY AND CONSERVATION

Article 40

Programmes related to biodiversity must respect the collective rights of our peoples to cultural and intellectual property, genetic resources, gene banks, biotechnology and knowledge of biological diversity; this should include our participation in the management of any such project in our territories, as well as control of any benefits that

derive from them.

Article 41

Conservation programmes must respect our rights to the use and ownership of the territories we depend on. No programmes to conserve biodiversity should be promoted on our territories without our free and informed consent as expressed through our representative organisations.

Article 42

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.

Article 43

Environmental policies and legislation should recognise indigenous territories as effective 'protected areas', and give priority to their legal establishment as indigenous territories .

INTELLECTUAL PROPERTY

Article 44

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

RESEARCH

Article 45

All investigations in our territories should be carried out with our consent and under joint control and guidance according to mutual agreement; including the provision for training, publication and support for indigenous institutions necessary to achieve such control.

INSTITUTIONS

Article 46

The international community, particularly the United Nations, must recognise us indigenous peoples as peoples, as distinct from other organised social movements, non-governmental organisations and independent sectors, and respect for our right to participate directly and on the basis of equality, as indigenous peoples, in all fora, mechanisms, processes and funding bodies so as to promote and safeguard the future of the tropical forests.

EDUCATION

Article 47

The development of programmes to educate the general public about our rights as indigenous peoples and about the principles, goals and demands in this charter. For this we call on the international community for the necessary recognition and support.

Article 48

We indigenous peoples will use this charter as a basis for promoting our own local strategies for action.

Penang, Malaysia

15 February 1992

APPENDIX 10

UN DRAFT DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

As Agreed Upon By Members Of The Working Group on Indigenous Populations

At Its Eleventh Session - 1993

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 civilizations 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 colonization 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,

Recognizing 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 institutions, cultures and traditions, and to promote their development in accordance with their aspirations and needs,

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

Emphasizing the need for demilitarization 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,

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

Recognizing 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

Emphasizing 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,

Solemnly proclaims the following United Nations Declaration on the Rights of Indigenous Peoples:

ARTICLES

PART I

1. Indigenous peoples have the right to the full and effective enjoyment of all human rights and fundamental freedoms recognized 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

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 recognized 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 such a 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

12. Indigenous peoples have the right to practice and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artifacts, designs, ceremonies, technologies and visual and performing arts and literature, as well as the right to the restitution of cultural, intellectual, religious and spiritual property taken without their free and informed consent or in violation of their laws, traditions and customs.

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 revitalize, 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

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

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 means of subsistence and development, and to engage freely in all their traditional and other economic activities. Indigenous peoples who have been deprived of their means of subsistence and development are entitled to just and fair compensation.

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 medicines and health practices, including the right to the protection of vital medicinal plants, animals and minerals.

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

medical care.

PART VI

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

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

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, utilization or exploitation of mineral, water or other resources. Pursuant to agreement with the indigenous peoples concerned, just and fair compensation shall be provided for any such activities and measures taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

PART VII

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.

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

33. 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 recognized human rights standards.

34. Indigenous peoples have the collective right to determine the responsibilities of individuals to their communities.

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

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 recognized 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 recognized 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 shall take into consideration the customs, traditions, rules and legal systems of the indigenous peoples concerned.

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

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

42. The rights recognized 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 recognized 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.

APPENDIX 11
FIRST INTERNATIONAL CONFERENCE ON THE CULTURAL & INTELLECTUAL
PROPERTY RIGHTS OF INDIGENOUS PEOPLES
WHAKATANE, 12-18 JUNE 1993 AOTEAROA NEW ZEALAND
THE MATAATUA DECLARATION ON CULTURAL AND
INTELLECTUAL PROPERTY RIGHTS OF INDIGENOUS PEOPLES
JUNE 1993

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

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

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

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

PREAMBLE

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

Reaffirming the undertaking of United Nations Member States to:

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

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

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

WE

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

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

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

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

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

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

1. RECOMMENDATIONS TO INDIGENOUS PEOPLES

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

- 1.1 Define for themselves their own intellectual and cultural property.
- 1.2 Note that existing protection mechanisms are insufficient for the protection of Indigenous Peoples Intellectual and Cultural Property Rights.
- 1.3 Develop a code of ethics which external users must observe when recording (visual, audio, written) their traditional and customary knowledge.
- 1.4 Prioritise the establishment of indigenous education, research and training centres to promote their knowledge of customary environmental and cultural practices.
- 1.5 Reacquire traditional indigenous lands for the purpose of promoting customary agricultural production.
- 1.6 Develop and maintain their traditional practices and sanctions for the protection, preservation and revitalisation of their traditional intellectual and cultural properties.
- 1.7 Assess existing legislation with respect to the protection of antiquities.
- 1.8 Establish an appropriate body with appropriate mechanisms to:
 - a) preserve and monitor the commercialism or otherwise of indigenous cultural properties in the public domain
 - b) generally advise and encourage indigenous peoples to take steps to protect their cultural heritage
 - c) allow a mandatory consultative process with respect to any new legislation affecting indigenous peoples cultural and intellectual property rights.
- 1.9 Establish international indigenous information centres and networks.
- 1.10 Convene a Second International Conference (Hui) on the Cultural and Intellectual Property Rights of Indigenous Peoples to be hosted by the Coordinating Body for the Indigenous Peoples Organisations of the Amazon Basin (COICA).

2. RECOMMENDATIONS TO STATES, NATIONAL AND INTERNATIONAL AGENCIES

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

- 2.1 Recognise that indigenous peoples are the guardians of their customary knowledge and have the right to protect and control dissemination of that knowledge.
- 2.2 Recognise that indigenous peoples also have the right to create new knowledge based on cultural traditions.
- 2.3 Note that existing protection mechanisms are insufficient for the protection of Indigenous Peoples Cultural and Intellectual Property Rights.
- 2.4 Accept that the cultural and intellectual property rights of indigenous peoples are vested with those who created them.
- 2.5 Develop in full cooperation with indigenous peoples an additional cultural and intellectual property rights regime incorporating the following:
 - collective (as well as individual) ownership and origin - retroactive coverage of historical as well as contemporary works

- protection against debasement of culturally significant items
- co-operative rather than competitive framework
- first beneficiaries to be the direct descendants of the traditional guardians of that knowledge
- multi-generational coverage span

BIODIVERSITY AND CUSTOMARY ENVIRONMENTAL MANAGEMENT

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

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

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

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

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

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

CULTURAL OBJECTS

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

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

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

3. RECOMMENDATIONS TO THE UNITED NATIONS

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

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

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

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

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

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

4. CONCLUSION

The United Nations, International and National Agencies and States must provide additional funding to

indigenous communities in order to implement these recommendations.

APPENDIX 12

STATEMENT: BASIC POINTS OF AGREEMENT FROM THE COICA/UNDP REGIONAL MEETING: INTELLECTUAL PROPERTY RIGHTS AND BIODIVERSITY

Santa Cruz de la Sierra, Bolivia, 28-30 September 1994

BASIC POINTS OF AGREEMENT

1. Emphasis is placed on the significance of the use of intellectual property systems as a new formula for regulating North-South economic relations in pursuit of colonialist interests.
2. For indigenous peoples, the intellectual property system means legitimization of the misappropriation of our peoples' knowledge and resources for commercial purposes.
3. All aspects of the issue of intellectual property (determination of access to national resources, control of the knowledge or cultural heritage of peoples, control of the use of their resources and regulation of the terms of exploitation) are aspects of self-determination. For indigenous peoples, accordingly, the ultimate decision on this issue is dependent on self-determination. Positions adopted under a trusteeship regime will be of a short-term nature.
4. Biodiversity and a people's knowledge are concepts inherent in the idea of indigenous territoriality. Issues relating to access to resources have to be viewed from this standpoint.
5. Integral indigenous territoriality, its recognition (or restoration) and its reconstitution are prerequisites for enabling the creative and inventive genius of each indigenous people to flourish and for it to be meaningful to speak of protecting such peoples. The protection, reconstitution and development of indigenous knowledge systems call for additional commitments to the effort to have them reappraised by the outside world.
6. Biodiversity and the culture and intellectual property of a people are concepts that mean indigenous territoriality. Issues relating to access to resources and others have to be viewed from this standpoint.
7. For members of indigenous peoples, knowledge and determination of the use of resources are collective and intergenerational. 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.
8. Prevailing intellectual property systems reflect a conception and practice that is:
 - colonialist, in that the instruments of the developed countries are imposed in order to appropriate the resources of indigenous peoples;
 - racist, in that it belittles and minimizes the value of our knowledge systems;
 - usurpatory, in that it is essentially a practice of theft.
9. Adjusting indigenous systems to the prevailing intellectual property systems (as a world-wide concept and practice) changes the indigenous regulatory systems themselves.
10. Patents and other intellectual property rights to forms of life are unacceptable to indigenous peoples.
11. It is important to prevent conflicts that may arise between communities from the transformation of intellectual property into a means of dividing indigenous unity.
12. There are some formulas that could be used to enhance the value of our products (brand names, appellations of origin), but on the understanding that these are only marketing possibilities, not entailing

monopolies of the product or of collective knowledge. There are also some proposals for modifying prevailing intellectual property systems, such as the use of certificates of origin to prevent use of our resources without our prior consent.

13. The prevailing intellectual property systems must be prevented from robbing us, through monopoly rights, of resources and knowledge in order to enrich themselves and build up power opposed to our own.

14. Work must be conducted on the design of a protection and recognition system which is in accordance with the defence of our own conception, and mechanisms must be developed in the short and medium term which will prevent appropriation of our resources and knowledge.

15. A system of protection and recognition of our resources and knowledge must be designed which is in conformity with our world view and contains formulas that, in the short and medium term, will prevent appropriation of our resources by the countries of the North and others.

16. 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.

17. There is a need to maintain the possibility of denying access to indigenous resources and contesting patents or other exclusive rights to what is essentially indigenous.

18. Discussions regarding intellectual property should take place without distracting from priorities such as the struggle for the right to territories and self-determination, bearing in mind that the indigenous population and the land form an indivisible unity.

II SHORT-TERM RECOMMENDATIONS

1. Identify, analyse and systematically evaluate from the standpoint of the indigenous world view different components of the formal intellectual property systems, including mechanisms, instruments and forums, among which we have:

Intellectual property mechanisms

- * Patents
- * Trademarks
- * Authors' rights
- * Rights of developers of new plant varieties
- * Commercial secrets
- * Industrial designs
- * Labels of origin

Intellectual property instruments

* The Agreement on Trade-Related Intellectual Property Rights (TRIPS) of the General Agreement on Tariffs and Trade (GATT)

* The Convention on Biological Diversity, with special emphasis on the following aspects: environmental impact assessments, subsidiary scientific body, technological council, monitoring, national studies and protocols, as well as on rights of farmers and ex situ control of germplasm, which are not covered under the Convention.

Intellectual property forums

Define mechanisms for consultation and exchange of information between the indigenous organizational

universe and international forums such as:

- * The Treaty for Amazonian Cooperation
- * The Andean Pact
- * The General Agreement on Tariffs and trade
- * The European Patent Convention
- * The United Nations Commission on Sustainable Development
- * The Union for the Protection of New Varieties of Plants
- * The World Intellectual Property Organization (WIPO)
- * The International Labour Organization (ILO)
- * The United Nations Commission of Human Rights

2. Evaluate the possibilities offered by the international instruments embodying cultural, political, environmental and other rights that could be incorporated into a sui generis legal framework for the protection of indigenous resources and knowledge.

3. Define the content of consultation with such forums.

4. Define the feasibility of using some mechanisms of the prevailing intellectual property systems in relation to:

- * Protection of biological/genetic resources
- * Marketing of resources

5. Study the feasibility of alternative systems and mechanisms for protecting indigenous interests in their resources and knowledge.

Sui generis systems for protection of intellectual property:

- * Inventor's certificates
- * Model legislation on folklore
- * New deposit standards for material entering germplasm banks
- * Commissioner for intellectual property rights
- * Tribunals
- * Bilateral and multilateral contracts or conventions
- * Material Transfer Agreements
- * Biological prospecting
- * Defensive publication
- * Certificates of origin

6. Seek to make alternative systems operational within the short term, by establishing a minimal regulatory framework (for example bilateral contracts).

7. Systematically study, or expand studies already conducted of, the dynamics of indigenous peoples, with emphasis on:

- * Basis of sustainability (territories, culture, economy)

* Use of knowledge and resources (collective ownership systems, community use of resources)

* Community, national, regional and international organizational bases

That will make it possible to create mechanisms within and outside indigenous peoples capable of assigning the same value to indigenous knowledge, arts and crafts as to western science.

8. Establish regional and local indigenous advisory bodies on intellectual property and biodiversity with functions involving legal advice, monitoring, production and dissemination of information and production of materials.

9. Identify national intellectual property organizations, especially in areas of biodiversity

10. Identify and draw up a timetable of forums for discussion and exchange of information on intellectual property and/or biodiversity. Seek support for sending indigenous delegates to participate in such forums. An effort will be made to obtain information with a view to the eventual establishment of an Information, Training and Dissemination Centre on Indigenous Property and Ethical Guidelines on contract negotiation and model contracts.

III MEDIUM-TERM STRATEGIES

1. Plan, programme, establish timetables and seek financing for the establishment of an indigenous programme for the collective use and protection of biological resources and knowledge. This programme will be developed in phases in conformity with areas of geographical coverage.

2. Plan, draw up timetables for and hold seminars and workshops at the community, national and regional levels on biodiversity and prevailing intellectual property systems and alternatives.

3. Establish a standing consultative mechanism to link community workers and indigenous leaders, as well as an information network.

4. Train indigenous leaders in aspects of intellectual property and biodiversity.

5. Draw up a Legal Protocol of Indigenous Law on the use and community knowledge of biological resources.

6. Develop a strategy for dissemination of this Legal Protocol at the national and international levels.

APPENDIX 13
CONSULTATION ON INDIGENOUS PEOPLES' KNOWLEDGE AND INTELLECTUAL
PROPERTY RIGHTS

Final Statement

Suva April 1995

Preamble

We the participants at the Regional Consultation on Indigenous Peoples' Knowledge and Intellectual Property Rights held in April 1995 in Suva, Fiji, from independent countries and from non-autonomous colonised territories hereby:

Recognise that the Pacific Region holds a significant proportion of the world's indigenous cultures, languages and biological diversity,

Support the initiatives of the Mataatua Declaration (1993), the Kari-Oca Declaration (1992), Julayabinul Statement (1993), and the South American and Asian Consultation Meetings,

Declare the right of indigenous peoples of the Pacific to self-governance and independence and ownership of our lands, territories and resources as the basis for the preservation of indigenous peoples' knowledge,

Recognise that indigenous peoples of the Pacific exist as unique and distinct peoples irrespective of their political status,

Acknowledge that the most effective means to fulfill our responsibilities to our descendants is through the customary transmission and enhancement of our knowledge,

Reaffirm that imperialism is perpetuated through intellectual property rights systems, science and modern technology to control and exploit the lands, territories and resources of indigenous peoples,

Declare 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 recognise or respect our past, present and potential contributions,

Assert our inherent right to define who we are. We do not approve of any other definition,

Condemn attempts to undervalue indigenous peoples traditional science and knowledge,

Condemn those who use our biological diversity for commercial and other purposes without our full knowledge and consent,

Propose and seek support for the following plan of action:

1. **Initiate the establishment of a treaty declaring the Pacific Region to be a life forms patent-free zone**
 - 1.1 Include in the treaty protocols governing bioprospecting, human genetic research, *in situ* conservation by indigenous peoples, *ex situ* collections and relevant international instruments.
 - 1.2 Issue a statement announcing the treaty and seeking endorsement by the South Pacific Forum and other appropriate regional and international fora.
 - 1.3 Urge Pacific governments to sign and implement the treaty.

- 1.4 Implement an educational awareness strategy about the treaty's objectives.
2. **Call for a moratorium on bioprospecting in the Pacific and urge indigenous peoples not to cooperate in bioprospecting activities until appropriate protection mechanisms are in place**
 - 2.1 Bioprospecting as a term needs to be clearly defined to exclude indigenous peoples' customary harvesting practices.
 - 2.2 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.
 - 2.3 Encourage indigenous peoples to maintain and expand our knowledge of local biological resources.
3. **Commit ourselves to raising public awareness of the dangers of expropriation of indigenous knowledge and resources**
 - 3.1 Encourage chiefs, elders and community leaders to play a leadership role in the protection of indigenous peoples' knowledge and resources.
4. **Recognise the urgent need to identify the extent of expropriation that has already occurred and is continuing in the Pacific**
 - 4.1 Seek repatriation of indigenous peoples' resources already held in external collections, and seek compensation and royalties from commercial developments resulting from these resources.
5. **Urge governments who have not signed the General Agreement on Tariffs and Trade (GATT) to refuse to do so, and encourage those governments who have already signed to protest against any provisions which facilitate the expropriation of indigenous peoples' knowledge and resources and the patenting of life forms**
 - 5.1 Incorporate the concerns of indigenous peoples to protect their knowledge and resources into legislation by including "Prior Informed Consent or No Informed Consent" (PICNIC) procedures and exclude the patenting of life forms.
6. **Encourage the South Pacific Forum to amend its rules of procedure to enable accreditation of indigenous peoples and NGOs as observers to future Forum officials meetings**
7. **Strengthen indigenous networks. Encourage the United Nations Development Programme (UNDP) and regional donors to continue to support discussions on indigenous peoples' knowledge and intellectual property rights**
8. **Strengthen the capacities of indigenous peoples to maintain their oral traditions, and encourage initiatives by indigenous peoples to record their knowledge in a permanent form according to their customary access procedures.**
9. **Urge universities, churches, governments, non-governmental organizations, and other institutions to reconsider their roles in the expropriation of indigenous peoples' knowledge and resources and to assist in their return to their rightful owners**
10. **Call on the governments and corporate bodies responsible for the destruction of Pacific biodiversity to stop their destructive practices and to compensate the affected communities and rehabilitate the affected environment**
 - 10.1 Call on France to stop definitively its nuclear testing in the Pacific and repair the damaged biodiversity.