

# **THE LIVING CONVENTION**

**A COMPENDIUM OF INTERNATIONALLY RECOGNISED RIGHTS  
THAT SUPPORT THE INTEGRITY AND RESILIENCE OF INDIGENOUS  
PEOPLES' AND LOCAL COMMUNITIES' TERRITORIES AND OTHER  
SOCIAL-ECOLOGICAL SYSTEMS**

**SECOND EDITION OF**

**'THE LIVING CONVENTION ON BIOCULTURAL DIVERSITY'**

# THE LIVING CONVENTION

## A COMPENDIUM OF INTERNATIONALLY RECOGNISED RIGHTS THAT SUPPORT THE INTEGRITY AND RESILIENCE OF INDIGENOUS PEOPLES' AND LOCAL COMMUNITIES' TERRITORIES AND OTHER SOCIAL-ECOLOGICAL SYSTEMS

AUTHORS: Harry Jonas, J. Eli Makagon and Holly Shrumm

LEGAL SUPPORT: Misha Plagis, Edward Davenport and João Paulo Oliveira Miranda

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ARTWORK: Priya Kuriyan

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CONTACT: [harry@naturaljustice.org](mailto:harry@naturaljustice.org)

# DEDICATION

*The Living Convention* is dedicated to all Indigenous peoples and local communities striving to realize the right to self-determination and to maintain the integrity and resilience of their territories, landscapes and ways of life. It is also in memory of Dr. Darrell Addison Posey, whose collaborative work on Traditional Resource Rights inspired the methodological approach adopted by the authors in this volume.

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# PREFACE

*The Living Convention* has emerged from Natural Justice's work with Indigenous peoples, local communities and their local organizations. It is a response to an important and often-asked question, namely: "What are our rights at the international level?" For reasons more fully discussed below, this question does not have a straightforward answer. The inaccessibility of international law amounts to a procedural injustice, denying Indigenous peoples and local communities absolute clarity about their rights and responsibilities, as well as those of other actors, under international law. In this context, *The Living Convention* is designed to democratize international law, and in doing so, better enable Indigenous peoples and local communities to assert and affirm their international rights and local responsibilities.

*The Living Convention* is an easy-to-use resource on the full spectrum of international law relating – broadly put – to the links between humans and nature. The first edition was distributed to interested individuals in person at the 11<sup>th</sup> meeting of the Conference of the Parties to the Convention on Biological Diversity in October 2012 and by email to a range of other people whose views we highly respect. We are very grateful to all of the contributors and value the many comments we received.

The comments fell into two broad categories. The first group focused on the contents of the publication. We have subsequently undertaken a rigorous revision of the text, which has undergone a further peer review process. Like the first edition, this second edition should be read as a work in progress. It is intended to generate debate about the larger issues, and will itself benefit greatly from further discussion about its conceptual framework, methodology and the structure and content of the Compendium. Please be in touch with your thoughts.

The second set of comments moved beyond international instruments to call for a more information about international redress mechanisms and related jurisprudence. This work is in its early stages and we welcome individuals or organizations who would like to collaborate with us on this important next phase.

In particular, we would like to thank the Indigenous peoples, local communities and supporting organisations with whom Natural Justice has had the privilege of working. Our partnerships have spurred us to think about how international law can be made more accessible and therefore more useful to the stewards of biological and cultural diversity. We are also grateful to the many practitioners who have given their time to discuss these issues with us. Just as your ideas have helped us in our work, we hope this publication is useful in yours.

Harry Jonas, J. Eli Makagon and Holly Shrumm

20 May, 2013

# OVERVIEW

## INTRODUCTION AND QUICK GUIDE

## INTRODUCTION

Indigenous peoples have fought hard for the rights they have secured at the international level. Decades of commitment, tenacity, personal sacrifices, and well-executed negotiating strategies have led to important rights gains and legal recognition, perhaps most significantly in the United Nations Declaration on the Rights of Indigenous Peoples (2007). In addition to this landmark instrument, Indigenous peoples have also engaged in a wide range of international negotiations and processes to secure rights in other instruments such as the UN Convention on Biological Diversity. Local communities have also successfully advocated for the development of a significant body of rights relating to their role in protecting and conserving biological diversity.<sup>1</sup> Today, Indigenous peoples' and local communities' rights are enshrined in a wide range of international instruments. The distinct bodies of rights continue to grow as new instruments are negotiated and adopted, as progressive jurisprudence is developed through regional and national courts, and as countries enact law that respect the rights of Indigenous peoples and local communities.<sup>2</sup>

Forty years after the UN Conference on the Human Environment, and in the wake of the 'Rio+ 20' Conference on Sustainable Development, this publication takes stock of the breadth and depth of the provisions at the international level that support Indigenous peoples' and local communities' rights to maintain the integrity and resilience of their territories and social-ecological systems.<sup>3</sup> *The Living Convention* is directed primarily towards Indigenous peoples and local communities, as well as their supporting organisations and other stakeholders and interested parties. This volume on international instruments, constitutes an easily accessible resource for exploring the full range of provisions in international law that address the interrelationships between, among other things: individuals, communities and peoples; livelihoods, culture and spirituality; territories, landscapes and seascapes; fauna, flora and other natural resources; knowledge, innovations and practices;

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<sup>1</sup> Reference to 'local communities' throughout the text infers: "local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biodiversity" (Article 8j of the Convention on Biological Diversity). This issue is further discussed in Part I.

<sup>2</sup> See Part II for further discussion about the distinction between Indigenous peoples' and local communities' rights.

<sup>3</sup> Throughout this document, a number of different formulations are used to refer to, among other things, territories, land, landscapes and seascapes, natural and biological resources, traditional knowledge, biocultural diversity, integrity, and resilience. We cannot and do not attempt to fully encapsulate the myriad ways in which specific Indigenous peoples or local communities define their unique biological and cultural heritage. Rather than potentially restricting the scope by setting out specific definitions or terms, this publication attempts to focus instead on enabling a range of peoples and communities to engage with international law on their own terms and in pursuit of their self-determined priorities

agricultural systems, including crops and livestock; climate change; and legislative and judicial systems.

It aims to further empower Indigenous peoples and local communities to articulate, affirm and assert their roles, responsibilities and rights in maintaining the integrity and resilience of their social-ecological systems. It underscores the legal and ethical obligations of governments, the private sector and other actors to uphold the substantive and procedural standards that are clearly elaborated in internationally agreed instruments.<sup>4</sup> It is also hoped that this publication will invigorate debate about why - despite the wealth of supportive international law - we are witnessing unprecedented levels of damage to the integrity and resilience of social-ecological systems across the globe,<sup>5</sup> and how this can be effectively addressed.

## CONTENTS

This publication consists of three parts. **Part I** sets out the rationale and methodology. It illustrates how the research has rendered a comprehensive and integrated body of international legal provisions that are supportive of Indigenous peoples' and local communities' rights to protect their physical, cultural and spiritual relationships with their territories, areas, and related resources.

**Part II** contains a compendium of internationally recognised rights that support the integrity and resilience of indigenous peoples' and local communities' territories and other social-ecological systems (the Compendium). As an example, all provisions that deal with free, prior and informed consent (FPIC), regardless of whether they are located in human rights instruments or multilateral environmental agreements, are grouped under the heading 'FPIC'. The same is the case for provisions relating to a range of relevant rights, including: cultural traditions; land tenure; customary and sustainable uses of biodiversity; farming and livestock keeping; public participation in decision-making; and access to justice.

**Part III** sets out a number of key questions raised by the Compendium, concerning, for example, the utility of integrated rights approaches, how international law can be reformed to better reflect local realities, and how national governments can better uphold their internationally agreed commitments. It then suggests a range of activities that could further deepen the analysis and better address the current weaknesses in the development and implementation of international law to promote more just relations between humans and nature.

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<sup>4</sup> This will be addressed further in the sibling document that will deal with redress mechanisms.

<sup>5</sup> Global Biodiversity Outlook (GBO), Report 3. Page 3. Available at: <http://www.cbd.int/gbo3>.

Read as a whole, *The Living Convention* aspires to build awareness around a wide range of international law, help identify gaps, empower Indigenous peoples and local communities, and ultimately provide a basis for initiating legal reform. It also aims to spur renewed interest in the question of national implementation of international obligations and catalyse an urgent reengagement with the question of the legal weight of international law.

## QUICK GUIDE TO USING THE COMPENDIUM

The Compendium provides a comprehensive and approachable guide to international legal provisions that support the integrity of Indigenous peoples' and local communities' relationships with their territories, landscapes and seascapes.

Indigenous peoples and local communities can use the Compendium for various purposes, for example, when:

- Framing a local development plan or '*plan de vida*' and proposing new self-defined initiatives such as a land claim;
- Engaging a range of governmental and non-governmental proponents of projects proposed to take place on or that will affect their territories, community conserved areas, waters, and/or natural resources, among other things;
- Negotiating with government agencies and/or the private sector; and
- Drafting petitions and advocacy strategies or articulating community protocols.<sup>6</sup>

Government agencies, the private sector and NGOs, among others, can use the Compendium to determine their obligations in international law that establish substantive and procedural standards for engaging with Indigenous peoples and local communities and the territories, areas and resources upon which their cultures and ways of life depend.

Before reading the Compendium, it is important to note three things. First, notwithstanding the discussion in Part I and Annex VIII about the legal weight of international law, the reader should always consult the original instrument from which specific provisions were sourced in order to contextualize them and access more information on the source's legal weight. Second, where the specific provision referenced is from an instrument dedicated to Indigenous peoples only, those paragraphs are identified with an asterisk (\*) for the avoidance of doubt. Third, all of

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<sup>6</sup> For more information on community protocols, see: <http://www.community-protocols.org>.

the provisions are directly quoted from the international instruments in which they are found.

### How to Use the Compendium

1. Identify the issue (i.e. land rights).
2. Read Part I, especially Methodology and Legal Weights sections to contextualize the Compendium.
3. Identify the most relevant categories of procedural and substantive rights and consult the relevant provisions.<sup>7</sup>
4. Explore other related provisions. For example, a denial of land rights may also involve infringements of other rights, such as the right to FPIC or to social/environmental impact assessment.
5. See Annex III to see whether the provisions you want to rely on are contained in instruments that are applicable in your State.<sup>8</sup>

Further supportive information is provided in the Annexes.

## THE TITLE

The title has been deliberately chosen to engage people in the discussion about how the natural rights of Indigenous peoples and local communities are currently represented in the international legal framework. A number of reviewers of the first edition suggested that the use of the word ‘Convention’ could be misleading. While we recognize their concerns, we have chosen to retain it because a greater number of people agreed with our original rationale. As explained in the first edition, the Compendium is an up to date and comprehensive snapshot of international law relevant to maintaining the integrity and resilience of the links between humans and nature, and in this sense constitutes a *de facto* Convention. Because it is subject to

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<sup>7</sup> Please consult the legal weight section for the distinction between ‘hard law’ and ‘soft law’.

<sup>8</sup> Also, see section Annex VI (Abbreviations) for a discussion of ratification and other methods States use to bind themselves under particular instruments.

change as the international legal landscape evolves, we refer to it as a *Living Convention*.<sup>9</sup>

This fact highlights the point that while the international community has never established a process to elaborate and negotiate an international instrument relating to the full spectrum of the relationships between humans and nature, there is nevertheless a body of internationally negotiated law relating to the rights of Indigenous peoples and local communities to maintain the integrity and resilience of their social and ecological systems. But it has been hidden from view due to the dispersed nature of the provisions from which it is constituted. By drawing the otherwise disparate provisions together, the ‘Living Convention’ comes into focus. Thus, for total clarity, Part II is not a new international instrument but merely the imaginative reformulation of existing international law to make it more accessible.

At its core, this publication is directed towards Indigenous peoples and local communities whose identities, ways of life, and cultures are rooted in particular territories or areas. There are many ways to describe this relationship and it is acknowledged that some of the terms that might be used to describe these dynamics have also become politically laden. As far as possible, the Compendium should be developed in parallel to these important discussions, and should serve as a resource to a range of peoples and communities who remain entitled to describe their ways of life and relationships in a variety of ways. In this context, a number of people suggested that focusing on ‘biocultural diversity’<sup>10</sup> in the title could limit the Compendium’s use as the concept could be considered to be “abstract” or “imposed from outside”. For this reason we simplified the title to the present formulation that is more straightforward and does not require prior knowledge of the literature on biocultural diversity.

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<sup>9</sup> It is important to note that there is a wide range of provisions supportive of the rights of Indigenous peoples and local communities within numerous instruments, including, for example, in decisions of the Conference of the Parties to the Convention on Biological Diversity. While not all of these provisions could be covered in this second edition, the scope of the Compendium is intended to expand in subsequent editions and in the online version to include more provisions.

<sup>10</sup> Biocultural diversity is defined in the [International Conference on Biological and Cultural Diversity: Diversity for Development – Development for Diversity Working Document \(8-10 June 2010\)](#) as: “[...] the total sum of the world’s differences, no matter what their origin. This concept encompasses biological diversity at all its levels and cultural diversity in all its manifestations. Biocultural diversity is derived from the myriad ways in which humans have interacted with their natural surroundings. Their co-evolution has generated local ecological knowledge and practices: a vital reservoir of experience, methods and skills that help different societies to manage their resources. Diverse worldviews and ethical approaches to life have emerged in tandem with this co-evolution of nature and culture. The biocultural concept is critical to making progress on building mutual understanding and support between these two diversities.” The links between biological and cultural diversity and the relevance of “social-ecological systems” are further discussed below.

## THANKS

The authors would like to wide range of people who provided comments on the first edition. We are particularly grateful for the insights from members of the International Indigenous Forum on Biodiversity in the corridors of the 11<sup>th</sup> meeting of the Conference of the Parties to the Convention on Biological Diversity (Hyderabad, 2012) as well as a range of other people over email and Skype. These include: Kelly Bannister, Grazia Borrini-Feyerabend, Peter Burdon, Jeff Campbell, Lorenzo Cotula, Cormac Cullinan, Iain Davidson-Hunt, Louisa Denier, Natasha Duarte, Graham Dutfield, Ron Engel, Taghi Farvar, Thomas Greiber, Elaine Hsiao, Mike Jones, Daniel King, Rachael Knight, Ashish Kothari, Vincenzo Lauriola, Ina Lehmann, Simone Lovera, Michelle Maloney, Elisa Morgera, Carine Nadal, Max Ooft, Gonzalo Oviedo, Ana di Pangraccio, Samson Pedragosa, Alessandro Pelizzon, Sonia Peña Moreno, Ana Persic, Krishna Prasad Oli, Ramya Rajagopalan, Dilys Roe, Annalisa Savaresi, Tui Shortland, Tristan Simpson, Maui Solomon, Brendan Tobin, Yvonne Vezina, Marie Wilke, Nick Winer, and Tomme Young.

Notably, we were not able to include all the comments received during the peer review process in this edition, and we will further develop this publication ahead of the 12<sup>th</sup> Conference of the Parties to the Convention on Biological Diversity in 2014. Notwithstanding the invaluable support we have received from so many people, any errors or omissions remain those of the authors alone.

## LOOKING AHEAD

Many reviewers suggested that an online version would greatly enhance the Compendium's accessibility, and that resource is currently a work in progress with our partners the Legal Atlas.<sup>11</sup> One significant benefit of the online version will be the ease with which users will be able to ascertain which of the international instruments are relevant in their national context, which can help them to identify areas in which their respective government is either meeting or falling below internationally agreed standards.<sup>12</sup>

Reviewers also called for more information on international redress mechanisms and related jurisprudence. The first drafts of these companion publications are underway, and will provide information on how to assert international rights through the use of

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<sup>11</sup> Legal Atlas: <http://www.umt.edu/mansfield/Legal-Atlas/>.

<sup>12</sup> Presently, this information is contained in Annex II.

a range of mechanisms including courts and tribunals, complaints procedures and other means such as special rapporteurs and independent experts.

# **PART I**

**RATIONALE, METHODOLOGY, AND POINTS FOR  
FURTHER DISCUSSION**

## RATIONALE

Members of Indigenous peoples and local communities – and the community-based and non-governmental organizations that support them – often ask what their international rights are. It is a complex answer for at least three reasons:<sup>13</sup>

- The sources of the rights are diffuse. ‘Rights’ appear in specific provisions from across a range of instruments that are themselves located within distinct categories of laws such as human rights, environment, intellectual property, and culture;
- An individual’s or a group’s specific rights will depend on, among other things: a) whether they are Indigenous peoples or from other marginalised or minority groups; b) the uniqueness of their ways of life, for example, whether they are farmers, livestock keepers, forest-dependent, or fisher folk; and c) the nature of their self-defined territories and areas on which they depend, for example, whether they are coastal or marine areas, mountains, living in or near externally-defined protected areas; and
- International instruments are of differing legal weight and each is signed, adopted or ratified by a different list of countries, which has a direct bearing on the value of the rights they provide for at the national and local levels.

As one of the responses to this, Natural Justice recently undertook research on the full spectrum of international law and jurisprudence relating to Indigenous peoples and local communities who strive – broadly speaking – to protect the integrity of their biological diversity and cultural heritage.<sup>14</sup> That report’s section on international law is ordered according to categories of laws such as human rights, biodiversity and climate change. Under those broad headings, the report details the relevant provisions in each instrument.

Although it is an effective way to comprehensively identify the full spectrum of relevant law at the international level, its accessibility to non-lawyers is inherently weak. For example, an individual or a community or people who would like to know

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<sup>13</sup> This is a significant simplification, but highlights the point that as a group of lawyers, we are unable to provide a concise answer to an important question.

<sup>14</sup> Jonas, H., J. E. Makagon, S. Booker, and H. Shrumm, 2012. *An Analysis of International Law, National Legislation, Judgements, and Institutions as they Interrelate with Territories and Areas Conserved by Indigenous Peoples and Local Communities: International Law and Jurisprudence. (International Law and Jurisprudence Report)*. Natural Justice and Kalpavriksh, Bangalore and Pune. The report was produced as part of a larger project to explore the international, regional and national laws and jurisprudence that support or hinder the ability of Indigenous peoples and local communities to govern their territories, areas and natural resources. Available at: <http://naturaljustice.org/library/our-publications/legal-analysis>.

more about their rights to free, prior and informed consent (FPIC) over activities relating to, among other things, their lands, natural resources and knowledge would not find any easy answers in the report. Instead, they would be compelled to work through the whole document to pull together the provisions relevant to FPIC that, in this case, are contained in at least the following international instruments:

- UN Declaration on the Rights of Indigenous Peoples;
- ILO Convention Concerning Indigenous and Tribal Peoples in Independent Countries (commonly referred to as ILO Convention No. 169);
- FAO Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security;
- Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization;
- Tkarhwaí:ri Code of Ethical Conduct to Ensure Respect for the Cultural and Intellectual Heritage of Indigenous and Local Communities; and
- Akwé: Kon Voluntary Guidelines for the Conduct of Cultural, Environmental and Social Impact Assessments Regarding Developments Proposed to Take Place on, or which are Likely to Impact on, Sacred Sites and on Lands and Waters Traditionally Occupied or Used by Indigenous and Local Communities.

The answers are there, but the format is cumbersome and hinders the accessibility of the information to the very individuals, communities and peoples it is intended to support. It became apparent that a more innovative approach would be required; one that built on previous work on integrated rights approaches.

## INTEGRATED RIGHTS APPROACHES

In the 1990s, together with Graham Dutfield, Alejandro Argumedo, and many others,<sup>15</sup> Darrell Posey<sup>16</sup> drew on a range of Indigenous concepts and movements to develop the concept of *traditional resource rights* (TRRs) as a political, juridical and ecological project to more accurately reflect Indigenous and traditional peoples' views and concerns in law.<sup>17</sup>

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<sup>15</sup> In respective works over the years, Posey and his co-authors acknowledge the inputs of a wide range of people who provided inspiration on which the theory is based.

<sup>16</sup> More information about the life and work of Darrell Posey is available online: [http://en.wikipedia.org/wiki/Darrell\\_A.\\_Posey](http://en.wikipedia.org/wiki/Darrell_A._Posey). The authors consider him, among other things, a pioneering political *and* juridical ecologist who combined empathy, intellectual rigour and innovation to challenge established approaches to the issues to which he committed his life's work.

<sup>17</sup> See, for example: Posey, D., and G. Dutfield, 1996. *Beyond Intellectual Property Rights: Towards Traditional Resource Rights for Indigenous Peoples and Local Communities*. IDRC: Ottawa. For an overview of the full literature on traditional resource rights, see: Jonas, H., and H. Shrumm, 2012.

In the seminal paper *Indigenous Peoples and Traditional Resource Rights*, Posey describes TRRs as constituting “bundles of rights” already widely recognized by legally and non-legally binding international agreements, which include individual and collective human rights, and land and territorial rights.<sup>18</sup> TRRs take into account the spiritual, aesthetic, cultural, and economic values of traditional resources, knowledge and technologies, and accordingly recognize the rights of Indigenous peoples and local communities to control their use. In this context, TRRs is an integrated rights concept that recognizes the “inextricable link between cultural and biological diversity and sees no contradiction between the human rights of Indigenous and local communities, including the right to development, and environmental conservation.”<sup>19</sup>

TRRs emerged as the result of an explicitly *political* legal project to more accurately reflect Indigenous peoples’ and local communities’ views and concerns, and focused on integrating otherwise disparate legal regimes, instruments and provisions. The framework is founded on four processes:

1. Identifying bundles of rights expressed in existing moral and ethical principles;
2. Recognizing rapidly evolving soft law influenced by the customary practice of states and legally non-binding agreements;
3. Harmonizing existing legally binding international agreements signed by States, whereby areas of conflict between different agreements should be resolved, giving priority to human rights concerns; and
4. “Equitizing” the law to provide marginalized Indigenous peoples and traditional and local communities with favourable conditions to influence all levels and aspects of policy planning and implementation.<sup>20</sup>

The first two processes required what might be referred to as *legal mapping* (‘lexography’), followed by what is referred to as *bundling*. By finding individual provisions that support Indigenous peoples’ and local communities’ rights from across a range of legal instruments and reordering them in a locally relevant and

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*Recalling Traditional Resource Rights: An Integrated Rights Approach to Biocultural Diversity*. Natural Justice: Malaysia.

<sup>18</sup> Posey, D., 1995. *Indigenous Peoples and Traditional Resource Rights: a Basis for Equitable Relationships?* A paper prepared for a workshop on Indigenous Peoples and Traditional Resource Rights at the Green College Centre for Environmental Policy and Understanding, University of Oxford. Page 20.

<sup>19</sup> Posey, D., and G. Dutfield, 1996. Page 77.

<sup>20</sup> Posey, D., 1996. *Traditional Resource Rights: International Instruments for Protection and Compensation for Indigenous Peoples and Local Communities*. IUCN: Gland. Pages 16-18.

comprehensive manner, TRRs integrate an otherwise fragmented<sup>21</sup> international framework of rights relating to the links between biological and cultural diversity. Using this methodology, Posey sets out a range of relevant binding and non-binding instruments from across a broad spectrum, bundled under the basic principles upon which TRRs are based.<sup>22</sup> In effect, this approach attempts to counter the abovementioned inherent challenges that international law poses for Indigenous peoples and local communities. By reading and effectively reordering the pages of the legal landscape in an innovative way, like the cutting of an onion, Posey *et al.* reveal a novel formulation of an existing internal structure.

Looking at existing laws from a new integrated perspective enables a paradigm shift towards more comprehensive assertions of Indigenous peoples' and local communities' rights, and provides a conceptual framework for proposing systemic changes to the way laws are developed and implemented. Posey also felt that TRRs could serve a useful purpose at the local level. Specifically, he argued that “[b]y prioritising Indigenous peoples’ rights to say NO to exploitation”<sup>23</sup> and “by acknowledging communities’ rights to control access to traditional resources and territories,”<sup>24</sup> TRRs could guide negotiations and legal processes towards new partnerships based on increased respect for traditional communities. TRRs could also guide governments in more effectively implementing their international obligations and responsibilities relating to human rights, trade, environment, and development.<sup>25</sup>

When looking into the future in the late 1990s, Posey surmised that proper development of TRRs would require “a process of dialogue” between Indigenous

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<sup>21</sup> An interesting future question relates to whether the notion of self-contained regimes and *lex specialis* has any application in this context. Koskenniemi, M. 2006. *Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law*. International Law Commission. UN Document A/CN.4/L.682.

<sup>22</sup> These bundles of rights and their location within international agreements, identified by the Working Group on Traditional Intellectual, Cultural and Scientific Resource Rights, 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; and rights of customary law and practice. Posey, 1995. Page 17. Also reproduced in Posey, D., 1997. *International Agreements Affecting Indigenous Local Knowledge: Conflict or Conciliation*, Working Paper of the Avenir des Peuples des Forêts Tropicales, Whitstable. Notably, the Working Group also carried out a survey of 63 statements and declarations made by Indigenous peoples from which they identified 80 common demands. From these, they elaborated six main topic areas, namely: self-determination; territory; free, prior and informed consent; human rights; cultural rights; and treaties. Posey, 1996. Page 16.

<sup>23</sup> Posey, 1997. Page 15, original emphasis.

<sup>24</sup> Posey, 1997. Page 15. Posey suggested that this requires proactive and practical approaches by communities that could include: self-demarcation of Indigenous peoples' territories; community databases of traditional knowledge; and community-controlled research. Posey, 1997. Page 14.

<sup>25</sup> Posey, 1997. Page 14.

peoples, local communities and governmental and non-governmental institutions on a wide range of issues, including local economic interests, accountability, human rights, and environmental concerns for long-term sustainability.<sup>26</sup> That mantle has been carried by a number of organizations<sup>27</sup> and by practitioners and academics in various settings.<sup>28</sup> The approach has not, however, been applied to the international instruments that have been agreed in the meantime, including the watershed UN Declaration on the Rights of Indigenous Peoples. This publication undertakes that task, applying the TRR methodology to the full spectrum of contemporary international law of relevance to the protection of Indigenous peoples' territories and other social-ecological systems.

## METHODOLOGY

Drawing on the above methodology, we undertook the following steps:

- Critiqued international law from a local perspective;
- Reconsidered the current international legal framework in the context of the interconnectedness of territories and ways of life;
- Comprehensively reviewed the full spectrum of potentially relevant international law;<sup>29</sup>
- Selected specific types of instruments, guidelines and decisions (among other types of hard and soft international law) for inclusion in the Compendium;
- Identified the most relevant provisions within each selected instrument;
- Reviewed these provisions to distil their essence to a number of categories of rights that would (at this stage) adequately encompass all of the provisions;
- Grouped or 'bundled' the provisions under the relevant categories of rights; and
- Listed the rights in the Compendium in accordance with a generalized territory or landscape.

The next sub-sections set out these steps in more detail to provide clarity about what is and is not included in the Compendium and how the information is

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<sup>26</sup> Posey, 1995. Page 19.

<sup>27</sup> See, for example: Argumedo, A., and M. Pimbert, 2005, *Traditional Resource Rights and Indigenous Peoples in the Andes*. IIED, London; and Argumedo, A., and M. Pimbert, 2007, *Protecting Indigenous Knowledge Against Biopiracy in the Andes*. IIED, London.

<sup>28</sup> See, for example, Villalba, F., 2010, "Un-discovering Wilderness: Protecting Traditional Resource Rights in U.S. National Parks". *IUCN-CEESP Policy Matters 17*: 126-134; and Union of BC Indian Chiefs, *Protecting Knowledge: Traditional Resource Rights in the New Millennium*. Session outlines available online at: <http://www.ubcic.bc.ca/Resources/conferences/PK.htm#axzz1lIktrnCl>.

<sup>29</sup> See Annex I for the full list of instruments that were considered, as well as those included in the Compendium.

presented. It is hoped that this will better enable others to engage critically with the methodology and in doing so, lead to the improvement and more effective use of the Compendium.

## A. CRITIQUE OF INTERNATIONAL LAW

Many laws directly undermine Indigenous peoples and local communities.<sup>30</sup> And even where laws are *prima facie* supportive, they can still be inherently challenging to Indigenous peoples and local communities intent on using them to protect their ways of life. These challenges manifest themselves in at least three ways.

First, laws have a tendency to compartmentalize otherwise interdependent aspects of social-ecological landscapes. While communities govern and manage integrated territories and land- and seascapes, States tend to view each type of resource and associated traditional knowledge through a narrow lens, drawing legislative borders around them and addressing them in isolation.

Second, the fragmentary nature of the law is compounded by the fact that they are implemented by state agencies focusing on particular issues such as biodiversity, forests, agriculture, or Indigenous knowledge systems.<sup>31</sup> The result is that communities' lives are disaggregated in law and policy, forcing their claims to self-determination into issue-specific sites of struggle.

Third, positive law (both international and State) often conflicts with the customary laws that govern communities' stewardship of natural resources.<sup>32</sup> For example, the understanding of 'property' under positive law is based on the private rights of a person (human or corporate) to appropriate and alienate physical and intellectual property. In contrast, communities' property systems tend to emphasize relational and collective values of resources.<sup>33</sup> Furthermore, the implementation of positive

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<sup>30</sup> For example, the Philippine Mining Act (1995) is shown to be in direct opposition to Indigenous peoples' and local communities' interests. Pedragosa, S., 2012. *An Analysis of International Law, National Legislation, Judgements, and Institutions as they Interrelate with Territories and Areas Conserved by Indigenous Peoples and Local Communities: The Philippines*. Natural Justice and Kalpavriksh, Bangalore and Pune.

<sup>31</sup> For example, in some countries, different departments deal with genetic resources and traditional knowledge, respectively.

<sup>32</sup> Cotula and Mathieu, 2008, page 11.

<sup>33</sup> Tobin, B., and E. Taylor 2009. "Across the Great Divide: A Case Study of Complementarity and Conflict Between Customary Law and TK Protection Legislation in Peru". *Initiative for the Prevention of Biopiracy*, Year IV: 11, page 10. Such systems have been described as "...commonly characterized by collective ownership (where the community owns a resource, but individuals may acquire superior rights to or responsibilities for collective property), and communal ownership (where the property is indivisibly owned by the community)." See Tsosie, R., 2007. "Cultural challenges to biotechnology: Native American cultural resources and the concept of cultural harm". *Journal of Law, Medicine & Ethics*, 35: 396, cited in Tobin and Taylor, 2009, page 36.

law tends to overpower and contravene customary law. A system that denies legal pluralism<sup>34</sup> has direct impacts on communities' lives, for example, by undermining the cultural practices and institutions that underpin sustainable ecosystem management.<sup>35</sup>



**Figure 1:** The fragmentary nature of State law stands in stark contrast to the integrated nature of customary law.

These three challenges, among others,<sup>36</sup> highlight the fact that the imposition of international and national laws, which are inherently fragmentary and based on static misperceptions of local realities, is likely to undermine the integrity and internal resilience of social-ecological systems. The implementation of such laws compounds these challenges by requiring communities to engage with disparate stakeholders<sup>37</sup> according to a variety of disconnected regulatory frameworks, many

<sup>34</sup> This type of system could be referred to as a 'legal monoculture'.

<sup>35</sup> Sheleef, L., 2000. *The Future of Tradition: Customary Law, Common Law and Legal Pluralism*. Frank Cass: London, England, and Portland, Oregon.

<sup>36</sup> Others include the fact that for many Indigenous peoples and local communities, legislative and judicial processes can be particularly disempowering. With regard to international law, many communities simply do not know (or know how to find out) what rights and responsibilities are being agreed at the international, regional or national levels, or what precedents are being handed down by a range of courts.

<sup>37</sup> Examples include government agencies and officials, conservation and development NGOs, private sector companies, the media, and researchers.

of which may conflict with their customary laws, institutions and decision-making processes.

Notably, the reiteration of these rights and laws set out in Part II has no intention of reinforcing the original limitations of international law in this area. Rather, it is to make the respective provisions more accessible and in doing so also to highlight the law's current shortcomings.

## **B. REIMAGINING THE LAW**

In this light, the existing international legal system requires reconstitution in order to support the integrity and resilience of local systems, not *vice versa*. By rejecting the orthodox and fragmentary approach to the constituent elements of a social-ecological landscape and replacing it with a framework modelled on the way Indigenous peoples and local communities interact with their territories, natural resources and knowledge, *integration* – not fragmentation – becomes the new organizing principle.

While this study cannot change the deep structure of the international legal framework, it can *reimagine* the shape of those laws and the relationships between provisions that address similar issues, albeit in separate international instruments. Developing a new reading of the current legal landscape fundamentally changes people's perceptions of the law and opens up new legal and political possibilities therein.

As Figure 2 below illustrates, this exercise can be thought of as 'counter-mapping the law'. Just as participatory mapping practitioners have enabled Indigenous peoples and local communities to map areas from their own perspectives,<sup>38</sup> this approach counter-maps the law to make it more relevant to the localities to which it is intended to apply. Thus, while the actual topography of the international legal landscape remains unchanged, it is hoped that the Compendium illustrates a novel way of reading the 'lay of the law'. In this light, the law is divested of its current shape and reapplied to Indigenous territories and other social-ecological landscapes.

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<sup>38</sup> Taylor, J., 2008. "Naming the Land, San Counter-mapping in Namibia's West Caprivi". *Geoforum*, 39: 1766-1775.

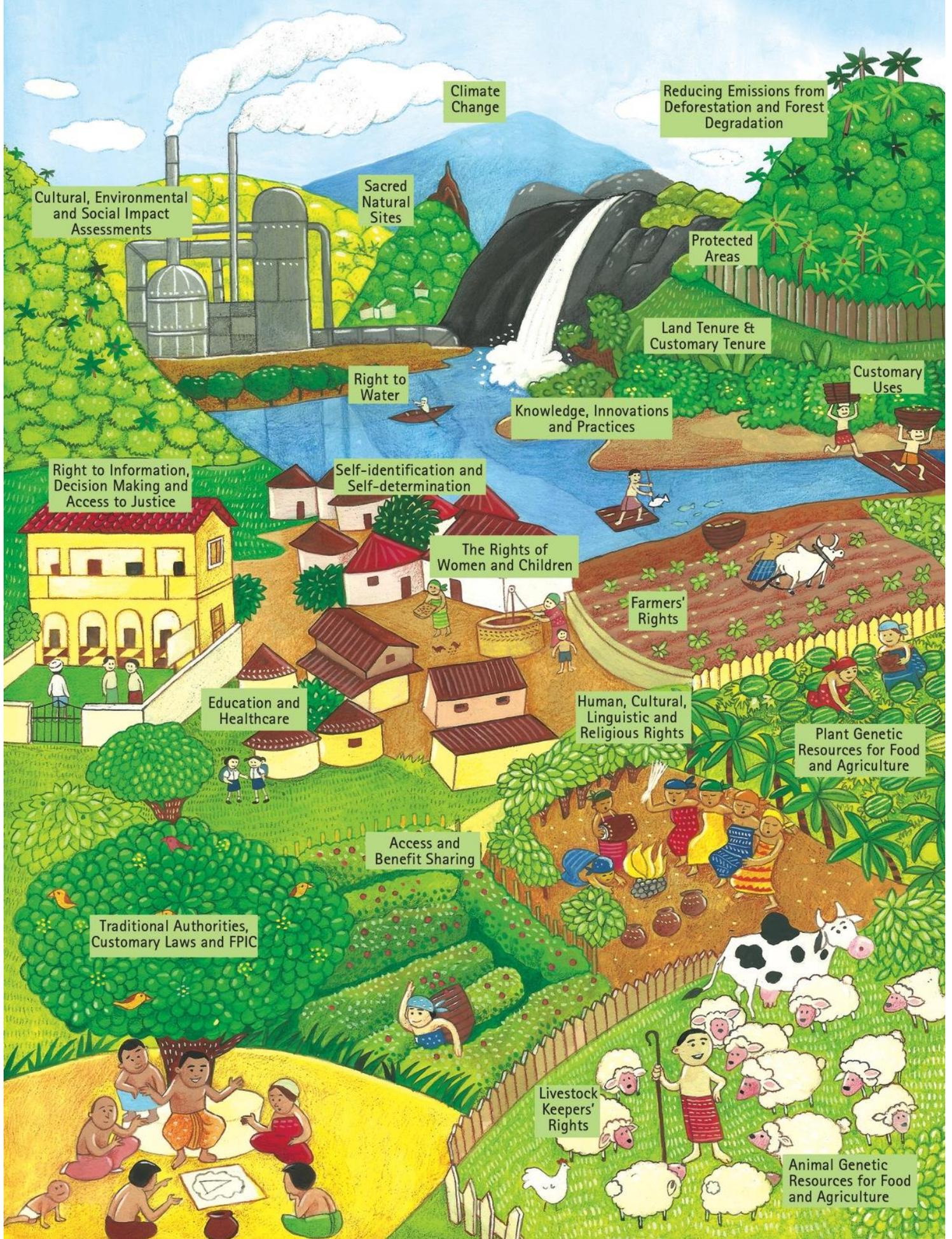


Figure 2: The legal landscape.

## **C. COMPREHENSIVE REVIEW OF INTERNATIONAL LAW**

The following areas of international law and policy were exhaustively researched for any references to the rights of individuals, communities and peoples as they relate to territories and social-ecological systems (writ large):

- Human rights, including Indigenous peoples' rights;
- Cultural heritage under the auspices of UNESCO;
- Spiritual and religious integrity;
- Education and languages;
- Development;
- Rio Conventions (climate change, biodiversity and desertification), their subsidiary protocols, and important decisions of the Conferences of the Parties, including guidelines and codes of ethical conduct;
- Other biodiversity-related conventions related to wetlands and endangered species;
- Forests;
- Intellectual property;
- Land rights, including tenure, non-removal, governance, customary and sustainable use;
- Water rights;
- Food sovereignty;
- Agriculture and other relevant instruments under the FAO;
- IUCN Resolutions and Recommendations from the first four World Conservation Congresses and the Fifth World Parks Congress;
- Emerging joint work on biocultural diversity; and
- Procedural rights, including free, prior and informed consent, impact assessments, access to justice, and benefit sharing.

Annex I sets out the full list of instruments and other relevant documents that were reviewed.

## **D. SELECTING ELEMENTS OF INTERNATIONAL LAW**

### ***Inclusions***

The Compendium could have included every possible provision relevant to the rights of Indigenous peoples and local communities from the full body of hard and soft law. However, this was considered too broad an approach. Instead, criteria were developed to decide which instruments qualified for inclusion in the Compendium. The overriding rule applied to each international instrument, subsidiary protocol, guideline, or decision (etc.) was whether it was negotiated within the UN system and

confers a degree of legal obligation on States with regard to the rights of Indigenous peoples and local communities. As per the TRR approach, both hard and soft law instruments are included in the Compendium. Annex I illustrates which of the reviewed instruments are included in this second edition of the Compendium.

The Compendium also contains rights related to issues such as labour, employment and social and health services. While these issues could be considered peripheral to the focus of this work, they are in fact critical to Indigenous peoples' futures and are included for this reason.

### ***Exclusions***

Notably, while instruments such as the Tkarihwaí:ri Code of Ethical Conduct and the Akwé: Kon Guidelines were included, the Compendium does not yet contain decisions of the Conference of the Parties to the Convention on Biological Diversity that are not standalone documents.<sup>39</sup> It was also decided that while this second edition of the Compendium would not include all of the Rio Conventions' programmes of work, the CBD Programme of Work on Protected Areas (PoWPA) would be included to garner feedback on how such an exercise would work in practice. Similarly, while it excludes a range of voluntary guidelines developed under the auspices of the Food and Agriculture Organization, for example, on fire management<sup>40</sup> and responsible management of planted forests,<sup>41</sup> it does include the Voluntary Guidelines on the Tenure of Land Fisheries and Forests in the context of National Food Security, for the same reason as PoWPA. It also omits IUCN Resolutions and Recommendations from World Conservation Congresses and World Parks Congresses because IUCN does not operate within the UN system of international law making.<sup>42</sup>

Although the authors are aware of the critical developments and interpretations of non-treaty law relating to Indigenous peoples' rights, the Compendium does not yet include reports issued by the following mechanisms, primarily because such reports

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<sup>39</sup> One exception to this is to include UNFCCC COP, "Decision 1/CP.16, The Cancun Agreements: Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention" (Cancun, 29 November-10 December 2010) FCCC/CP/2010/7/Add.1.

<sup>40</sup> FAO Voluntary Guidelines on Fire Management: Principles and Strategic Actions, 2006. Available at: <http://www.fao.org/docrep/009/j9255e/j9255e00.htm>.

<sup>41</sup> FAO Voluntary Guidelines on Responsible Management of Planted Forests, 2006. Available at: <http://www.fao.org/docrep/009/j9256e/j9256e00.htm>.

<sup>42</sup> However, IUCN Resolutions and Recommendations remain important for their contributions to international policy and discussion about their inclusion is warranted.

are directed towards UN bodies,<sup>43</sup> international organizations or States and do not confer rights:

- UN Permanent Forum on Indigenous Issues;
- Expert Mechanism on the Rights of Indigenous Peoples;
- Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples; and
- Other relevant Special Rapporteurs such as those on Adequate Housing, on Right to Food, on Cultural Rights, on Minority Issues, on Human Rights Defenders, and on Human Rights of Internally Displaced Persons.<sup>44</sup>

Similarly, because of their non-binding nature, the Compendium also omits references to any sustainable development-related documents such as the Stockholm Declaration (1972), the Rio Declaration on Environment and Development (1992), Agenda 21 (1992), and the recent outcome document of Rio+20, *The Future We Want* (2012).<sup>45</sup>

In the same vein, important Indigenous peoples' declarations such as the (Rio+20) Indigenous Peoples International Declaration on Self-Determination and Sustainable Development are not included because they are not yet considered to have legal weight at the international level.<sup>46</sup> While the Compendium currently omits otherwise important international and regional judgements<sup>47</sup> work has begun to develop a publication to include this critical element of the normative international framework.<sup>48</sup>

The Compendium does not include any reference to regional human rights conventions<sup>49</sup> because they are not considered to be internationally applicable. It also excludes the operational policies and guidance documents of multilateral development banks and financial institutions such as the World Bank because they were not adopted through international negotiations.<sup>50</sup> Although the

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<sup>43</sup> For example, at its Tenth Session in 2011, the Permanent Forum voiced its support for recognition of Indigenous peoples as "peoples" and called for a change in the terminology used by the Convention on Biological Diversity to reflect this recognition. Tenth Session Report, at Paragraph 26.

<sup>44</sup> See Annex I.

<sup>45</sup> See Annex I. For more on the UN conferences on sustainable development, see Doran, P., D. Paul, K. Ripley, N. Risse, J. Van Alstine, and L. Wagner (2012). Summary of the UN Conference on Sustainable Development, 13-22 June 2012. Available at: <http://www.iisd.ca/download/pdf/enb2751e.pdf>.

<sup>46</sup> See Annex III.

<sup>47</sup> See Annex II. For a recent example, see the recent Inter-American Court of Human Rights Case (No. 12,465) *Kichwa Indigenous People of Sarayaku and its Members*.

<sup>48</sup> Lynch, O., 2011. *Mandating Recognition: International Law and Aboriginal/Native Title*. Rights and Resources Initiative: Washington D.C.

<sup>49</sup> See Annex I.

<sup>50</sup> See Annex IV.

abovementioned bodies, declarations, reports, and judgements (among other instruments) may fall outside of this publication's current purview, they are referenced in the annexes because they remain integral elements of an evolving political and legal landscape and should be consulted when considering the incumbent issues.

## **E. IDENTIFYING RELEVANT PROVISIONS**

The provisions of most relevance to the protection of Indigenous peoples' territories and other social-ecological systems were chosen from the selected instruments and subsidiary protocols, guidelines and decisions. This process could be described as 'mapping' or 'harvesting' relevant rights from across a legal landscape.

While the Compendium tends to err on the side of inclusivity, the list of provisions it contains is not exhaustive. With reference to the selection of instruments (Step D) and within those the selection of provisions (Step E), it is not the intention of the Compendium to draw a stark line across swathes of law, forever including some instruments of provisions and excluding others. Instead, by bringing attention to the volumes of relevant instruments and supportive provisions and presenting the body of law in an integrated manner, this publication promotes a process of legal exploration beyond any perceived boundaries drawn either by an orthodox understanding of the law or by the Compendium (as currently articulated). In this way, dialogue about the key issues is promoted between a range of groups, and the body of work can continue to be developed over time.

## **F. IDENTIFYING THE CATEGORIES OF RIGHTS**

Through careful review and deliberation of the full extent of the provisions, it was possible to identify a number of categories of rights. These rights were judged to encompass adequately the provisions identified in the mapping process. For example, the following categories of procedural rights were identified:

- Precautionary approach
- Free, prior and informed consent in the context of
  - Land, waters and natural resources
  - Genetic resources
  - Traditional knowledge, innovations and practices
- Cultural, environmental and social impact assessments
- Access to information
- Public participation in decision making
- Equality before the law and access to justice
- Capacity building and awareness

Nevertheless, these categories are not intended to crystallize into an authoritative list and would benefit greatly from further refinement.

## **G. BUNDLING PROVISIONS UNDER THE CATEGORIES OF RIGHTS**

Each individual provision was considered in the context of these categories of rights and included under the most relevant one. For example, ILO Convention No. 169's relevant provisions were included under the following categories of rights:

- Overarching Indigenous peoples' rights
- Traditional governance systems and customary laws
- Knowledge, innovations and practices
- Education and languages
- Development
- Non-removal from lands or territories
- Governance of territories, lands and natural resources
- Benefit sharing
- Local agricultural systems
- Free, prior and informed consent relating to lands, waters and natural resources
- Information, decision making and access to justice
  - Participation and decision making
  - Equality before the law and access to justice

Within each category, it was initially considered useful to have the hard law provisions at the top, followed by non-binding provisions. However, due to the challenge related to legal weight (see Annex VIII), this approach was *not* adopted, and the order in which the provisions appear does not intend to communicate anything about their relative importance or legal weight. Instead, any relevant targets (such as the Aichi Biodiversity Targets) are privileged within each category and appear at the top of the section. These are followed by provisions from instruments relating only to Indigenous peoples and finally, by all other provisions. This order (as per Figure 3 below) was accepted by the reviewers of the first edition, but remains open to discussion.



**Figure 3:** The internal structure of each category of right.

Importantly, even though some provisions could clearly have been put under more than one category, for this publication, the provisions were not duplicated because it would greatly increase the length of the Compendium. In this light, the categories under which specific provisions are placed are merely indicative and are not intended to ascribe categorical labels. This highlights the utility of an online version of the Compendium, which will be able to concisely include provisions in more than one rights category where relevant.

## **H. DEVELOPING THE COMPENDIUM**

In the context of what is described above, the Compendium's internal logic is designed according to an actual territory or landscape. With reference to Figure 2 above, it begins with the substantive human rights of individuals, communities and peoples. It then works outwards to substantive rights relating to land tenure and non-removal from lands and territories, then across agricultural fields and into forests and dry lands. Finally, it enters the realm of legislatures and judicial systems by addressing the procedural rights afforded to individuals, communities and peoples. In this light, the Compendium's internal structure, illustrated in Figure 4 below, is a case of form following function.<sup>51</sup> Both the preamble and operative

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<sup>51</sup> Phraseology adapted from: "It is the pervading law of all things organic and inorganic, of all things physical and metaphysical, of all things human and all things super-human, of all true manifestations of the head, of the heart, of the soul, that the life is recognizable in its expression, that form ever follows function. This is the law." Sullivan L., "The Tall Office Building Artistically Reconsidered." Published Lippincott's Magazine (March 1896).

provisions of the Compendium are implicitly structured in this way.<sup>52</sup> Despite the blurring between the two categories, to assist the accessibility of the document it is divided into two categories: substantive rights and procedural rights.<sup>53</sup>



**Figure 4:** The internal structure of the Compendium.

## **I. THE COMPENDIUM'S TEXT**

While the methodology draws heavily on Posey *et al.*'s integrated rights approach, the Compendium *integrates* but does not intend to *merge* the referenced provisions. The rights of Indigenous peoples, for example, are found in a number of focused and hard-fought instruments (such as the UN Declaration on the Rights of Indigenous Peoples), as well as in specific provisions from other international instruments (such as Article 8(j) of the Convention on Biological Diversity). To merge them with a number of other less specific rights runs the risk of diluting their significance. Nothing in this document should be used in any way to undermine the fundamental rights codified in instruments such as the UNDRIP or the CBD. To underscore this point, all provisions that appear in the Compendium from instruments solely relating to Indigenous peoples (i.e. ILO Convention No. 169 and the UN Declaration on the Rights of Indigenous Peoples) are identified with an asterisk (\*).

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<sup>52</sup> Notably, the authors considered organizing it along the same lines as the UN Declaration on the Rights of Indigenous Peoples, but felt that using that framework could be critiqued for trying to “extend” Indigenous peoples’ rights to local communities. The landscape approach seemed more appropriate. As per the thrust of this section, there is nothing fixed about the framework used, and debate about the most useful way to structure the Compendium in the future is welcome.

<sup>53</sup> The authors hope that providing clarity about the underlying structure of the Compendium will foster discussion about ways to improve this aspect of the methodology.

Critical to the Compendium’s credibility is its objectivity. The document is a statement of fact and represents the relevant law as it exists at the international level. Accordingly, the Compendium does not contain any new language. Each of its provisions is reproduced directly from the original international instrument, with two possible additions. In the first instance, footnotes are inserted in the provisions to provide cross-references and commentary where deemed useful. In the second instance, where a provision cites either the document from which it is taken or another international instrument without providing sufficient clarity about the specific instrument to which it refers, the name has been added in italics to increase the document’s readability. The example in Box 2 illustrates the approach.

**Box 2:** Illustrative example of a situation where an addition to the text was necessary to ensure clarity

**Original:** *Recalling* that the fair and equitable sharing of benefits arising from the utilization of genetic resources is one of three core objectives of the Convention, and recognizing that this Protocol pursues the implementation of this objective within the Convention.

**Edited:** *Recalling* that the fair and equitable sharing of benefits arising from the utilization of genetic resources is one of three core objectives of the *Convention on Biological Diversity*, and recognizing that this *Nagoya Protocol* pursues the implementation of this objective within the *Convention on Biological Diversity*.

Notably, there is variance in the terminology used throughout the Compendium. For example, provisions from ILO 169 refer to “tribal and indigenous peoples”, the UN Declaration on the Rights of Indigenous Peoples refers to “indigenous peoples”, and the Convention on Biological Diversity and its subsidiary instruments refer to “indigenous and local communities”. While Indigenous peoples have been calling for all international instruments to recognize them as ‘peoples’, not all have yet done so.<sup>54</sup>

Following from the above point, the law is inherently political. For this reason, it is important to avoid decontextualizing provisions from the broader social, political and economic contexts within which the respective instruments were developed. The role of such movements and larger processes in shaping each instrument is critical to achieving a nuanced understanding of the actual provisions and in

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<sup>54</sup> This is the case with regard to the Convention on Biological Diversity that references “indigenous and local communities”, for example.

understanding the trajectory of the law.<sup>55</sup> Referring to the original instrument to contextualize each provision is therefore important.

In the same vein, international law is to a great extent State-centric, with primacy generally given to state sovereignty and economic interests. The majority of instruments reviewed are the outcomes of inter-governmental negotiations that often lack the full and effective participation of Indigenous peoples or local communities.<sup>56</sup> As a result, the overall rights-centric approach and language are at odds with many Indigenous peoples' and local communities' worldviews. Thus, while international law is setting an increasingly high standard for upholding the rights of Indigenous peoples and local communities - indeed, the provisions in the Compendium represent a high-water mark in this regard - the current standards do not necessarily represent a zenith in real terms.<sup>57</sup>

## RECENTERING INTERNATIONAL LAW

The Compendium promotes an overall methodological approach to the law that can be visually represented in a Venn diagram, as set out in Figure 5 below. The Compendium should be seen as constituting the core of a number of areas of international law that are relevant to maintaining the integrity and resilience of Indigenous peoples' territories and other social-ecological systems. Rather than continuing to see the bodies of law as separate, they can be re-conceptualized in terms of their common but differentiated recognition of the rights of Indigenous peoples and local communities to protect their territories, natural resources, and cultures.

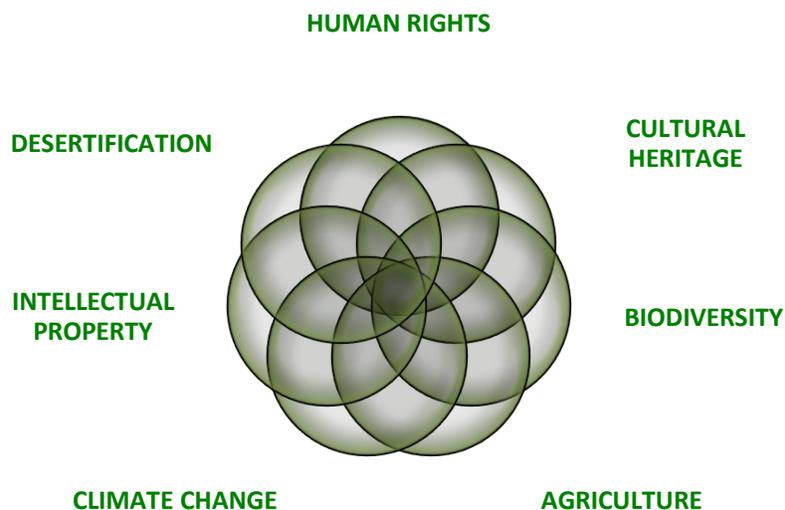
The diagram below underscores this point, with the centre representing the provisions in each category of law of *most relevance* to humanity's relationship with nature, working out to less directly relevant provisions at the periphery of each.

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<sup>55</sup> Bavikatte, K., and D. Robinson, 2011. "Towards a peoples history of the law: Biocultural jurisprudence and the Nagoya Protocol on access and benefit sharing." *The Law, Environment and Development Journal* 7(1). Available at: <http://www.lead-journal.org/content/11035.pdf>.

<sup>56</sup> ILO Convention No. 169 and the UN Declaration on the Rights of Indigenous Peoples are notable exceptions. Also see: Expert Mechanism on the Rights of Indigenous Peoples, 2011. *Final Report of the Study on Indigenous Peoples and the Right to Participate in Decision-making*, UN General Assembly, A/HRC/18/42, Annex Paragraph 1 (noting that "Indigenous peoples are among the most excluded, marginalized and disadvantaged sectors of society. This has had a negative impact on their ability to determine the direction of their own societies, including in decision-making on matters that affect their rights and interests.").

<sup>57</sup> In jurisprudential terms, this exercise presents the law as it stands (a positivist approach) and not what many Indigenous peoples or local communities may consider to be the optimum substantive or procedural standards (a natural law approach), which have been practicably unattainable due to the state-centric nature of international law.



**Figure 5:** Bodies of law presented as intersecting circles.

Studying the diagram leads to the emergence of a deeper point. For the first time, the rights of Indigenous peoples and local communities to protect their territories and landscapes are posited at the centre of the framework, forming the axis around which a range of instruments revolves. It begins to shift the emphasis away from the established way of thinking about the law as blocks of distinct instruments, within which Indigenous peoples and local communities find rights of relevance to themselves, to one where their rights to protect humans' connection with nature becomes the fundamental determinant of the law's function, and thus its form. It is a case of reimagining or recentering the law to privilege local social-ecological relationships and enshrine an ethic of reciprocal responsibilities between humans and nature.

## POINTS FOR FURTHER DISCUSSION

A number of reviewers of the first edition asked for greater clarity about three main issues, namely: a) biocultural diversity as it relates to other concepts such as social-ecological resilience, b) the distinction between Indigenous peoples and local communities, and c) the legal weight of international law at the national and local levels. This section builds on the commentary previously provided as a way to further stimulate debate about these important issues.

## A. BIOCULTURAL DIVERSITY AND SOCIAL-ECOLOGICAL SYSTEMS

For tens of thousands of years, diverse systems of values, beliefs, practices, languages, institutions, social norms, and worldviews have mediated the interrelationships between humans and our natural surroundings.<sup>58</sup> The close relationship among biological, cultural and linguistic diversity also means that they are subject to many common threats, ranging from privatization of natural resources to culturally inappropriate forms of education and healthcare. In this light, ‘biocultural diversity’ is described as the “inextricable link”<sup>59</sup> and interaction between biological, cultural and linguistic diversity. Yet ‘biocultural diversity’ is an evolving and contested term.<sup>60</sup> Recent literature on biocultural diversity suggests that in order to avoid essentialising certain peoples or ways of life, the concept should also be extended to non-indigenous communities as well as people in urban and industrialized areas.<sup>61</sup>

However, given that both natural and cultural systems are dynamic processes with great capacity for change, adaptation and renewal, interaction with dominant external forces does not necessarily result in homogenization. Important elements of cultures can still transcend social, economic and political upheaval and enable peoples and communities to interact with the environment within natural limits. To reflect this dimension of the interaction between humans and nature, resilience thinkers have been developing the idea of social-ecological resilience<sup>62</sup> as part of a larger project to develop innovative forms of governance and management for social-ecological landscapes and seascapes. Recently, legal theorists have drawn on resilience theory<sup>63</sup> to explore a range of issues. These include: panarchy;<sup>64</sup> design

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<sup>58</sup> See footnote 1 for definition.

<sup>59</sup> International Society of Ethnobiology, 1988. *Declaration of Belém*. Available at: <http://ethnobiology.net/docs/DeclarationofBelem.pdf>.

<sup>60</sup> For more on biocultural diversity, heritage and systems, see: <http://biocultural.iied.org/>. As noted in footnote 3, some people may prefer the term ‘ecocultural’, as ‘biocultural’ may be perceived as referring only to biological diversity (the variety of life at the genetic, species and ecosystem levels), rather than the full extent of ecological diversity (which includes both biotic and abiotic components).

<sup>61</sup> Cocks, M., 2006. “Biocultural Diversity: Moving Beyond the Realm of ‘Indigenous’ and ‘Local People’”. *Human Ecology*, 34(2): 185-200.

<sup>62</sup> Social-ecological resilience is measured by the amount or magnitude of disturbance a system can absorb without having its fundamental behavioral structure redefined, a property known as resistance. Adapted from Ruhl J. B. 2011. General design Principles for Resilience and Adaptive Capacity in Legal Systems – With Applications to Climate Change and Adaptation. *North Carolina Law Review*, pp.1374-1401 vol 89. M. Benson adds to this, explaining that “within a social-ecological system, resilience reflects a system’s capacity to absorb recurrent disturbances so as to retain essential structures, processes, and feedbacks.” Benson, M. H. 2012. Intelligent tinkering: the Endangered Species Act and resilience. *Ecology and Society* 17(4): 28. Available at: <http://dx.doi.org/10.5751/ES-05116-170428>.

<sup>63</sup> Resilience is defined as “the capacity of a system to experience shocks while retaining essentially the same function, structure, feedbacks, and therefore identity”. Walker B. et al., *A Handful of*

principles for resilience and adaptive capacity in legal systems;<sup>65</sup> the rule of law in governance of complex socio-ecological changes;<sup>66</sup> adaptive governance in the context of river systems;<sup>67</sup> and in relation to legislating for and managing endangered species.<sup>68</sup> Both bodies of work are evolving and provide important insights.

## **B. INDIGENOUS PEOPLES' AND LOCAL COMMUNITIES' RIGHTS**

This short note sets out the latest thinking in the on-going debate about the distinction between the rights of Indigenous peoples and local communities *in international law*. It then briefly proposes new thinking on the rights of local communities and suggests that this area is in need of greater focus to ensure that international law better reflects local and national realities.

### **Indigenous Peoples**

Indigenous peoples are recognised as having particular characteristics by various documents and bodies. Although there is no single definition, James Anaya, the UN Special Rapporteur on the Rights of Indigenous Peoples, argues that Indigenous peoples are "*indigenous*, because their ancestral roots are embedded in the lands in which they live, or would like to live, much more deeply than the roots of more powerful sectors of society living on the same lands of in close proximity."<sup>69</sup> The key characteristics of Indigenous peoples, as enunciated by José R. Martínez Cobo, the Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, in his Study on the Problem of Discrimination Against

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*Heuristics and Some Propositions for Understanding Resilience in Social-Ecological Systems*, ECOLOGY & SOCIETY (June 2006), <http://www.ecologyandsociety.org/vol11/iss1/art13/ES-2005-1530.pdf>.

<sup>64</sup> Benson M. explains that panarchy is an element of resilience theory that acknowledges and provides a basis for understanding the complex interplay of system dynamics and regime change across multiple scales. See: Benson, M. H. 2012. J. B. Ruhl argues that panarchy is a call for the multi-scalar use of adaptive management in environmental and natural resources policy. Ruhl, J. B. 2012. Panarchy and the law. *Ecology and Society* 17(3): 31. <http://dx.doi.org/10.5751/ES-05109-170331>. See also: Holling, C. S. 2012. Response to "Panarchy and the Law". *Ecology and Society* 17(4): 37. Available at: <http://dx.doi.org/10.5751/ES-05402-170437>.

<sup>65</sup> Ruhl J. B. 2011.

<sup>66</sup> Ebbesson J. 2010. The rule of law in governance of complex socio-ecological changes. *Global Environmental Change* 20 414–422

<sup>67</sup> Cosens, B. A., and M. K. Williams. 2012. Resilience and water governance: adaptive governance in the Columbia River basin. *Ecology and Society* 17(4): 3. Available at: <http://dx.doi.org/10.5751/ES-04986-170403>.

<sup>68</sup> Benson, M. 2012.

<sup>69</sup> Anaya S., 2004. *Indigenous Peoples in International Law*. Oxford: Oxford University Press, 2nd ed., page 3, original emphasis.

Indigenous Populations, is set out in the box below.<sup>70</sup> The source of Indigenous peoples' rights, therefore, is an extensive connection to the land of their ancestors and the critical importance that has for their identities and contemporary ways of life.<sup>71</sup>

### **Key Characteristics of Indigenous Peoples**

Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems. This historical continuity may consist of the continuation, for an extended period reaching into the present, of one or more of the following factors:

- Occupation of ancestral lands, or at least of part of them;
- Common ancestry with the original occupants of these lands;
- Culture in general, or in specific manifestations (such as religion, living under a tribal system, membership of an indigenous community, dress, means of livelihood, lifestyle, etc.);
- Language (whether used as the only language, as mother-tongue, as the habitual means of communication at home or in the family, or as the main, preferred, habitual, general or normal language);
- Residence in certain parts of the country, or in certain regions of the world;
- Other relevant factors.<sup>72</sup>

Today, Indigenous peoples' rights are enshrined in a recognized body of human rights law and are the focus of two major international instruments, namely, ILO Convention No. 169 and the UN Declaration on the Rights of Indigenous Peoples.<sup>73</sup> Importantly, the rights of Indigenous peoples were developed within the framework of general human rights, which are considered inherent, indivisible, interrelated, and

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<sup>70</sup> See Cobo report submitted to the UN Subcommittee on the Prevention of Discrimination of Minorities (1986), UN Doc. E/CN.4/Sub.2/1986/7 and Add. 1-4. The information in the box is taken from paras 379-382.

<sup>71</sup> Cobo report submitted to the UN Subcommittee on the Prevention of Discrimination of Minorities (1986). Martinez de Cobo (1986), UN Doc. E/CN.4/Sub.2/1986/7

<sup>72</sup> United Nations Department of Economic and Social Affairs, Division for Social Policy and Development Secretariat of the Permanent Forum on Indigenous Issues, *The Concept of Indigenous Peoples*, PFII/2004/WS.1/3, page 2, para. 2.

<sup>73</sup> There were initially four States against the adoption of UNDRIP (Canada, the USA, New Zealand, and Australia), however, each has since reversed this position endorsed UNDRIP.

inalienable.<sup>74</sup> Therefore, they should be considered as human rights that are clearly elaborated for the special circumstances of Indigenous peoples.

The rights of Indigenous peoples has also been on the agenda of other international bodies, like the Rio Summit Agenda 21 (Section III 23.3), which devotes a whole chapter to Indigenous peoples,<sup>75</sup> and more recently in the Rio+20 outcome document, The Future We Want. Indigenous peoples' rights are also invoked in a number of statements and declarations made by Indigenous peoples, including the Indigenous Peoples International Declaration on Self-Determination and Sustainable Development (2012).<sup>76</sup>

### Self-Identification

On an individual basis, an indigenous person is one who belongs to these indigenous peoples through self-identification as indigenous (group consciousness) and is recognized and accepted by the group as one of its members (acceptance by the group). This preserves for these communities the sovereign right and power to decide who belongs to them, without external interference.

### Local Communities

The term "local communities" is not defined in international law. It appears for the first time in an international treaty in Article 8(j) of the Convention on Biological Diversity (CBD), which calls on Parties 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."<sup>77</sup> Despite this prominent reference, the definition of a 'local community'

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<sup>74</sup> 'The UN Declaration on Indigenous Peoples Rights, when adopted in 2007, was considered a non-binding text (see <http://www.un.org/News/Press/docs/2007/ga10612.doc.htm>). However, in 2010 the Third Committee stated that the Declaration "should be regarded as a 'political, moral and legal imperative' without qualification" (see <http://www.un.org/News/Press/docs/2010/gashc3982.doc.htm>).

<sup>75</sup> See Chapter 26.

<sup>76</sup> Available at: [http://www.iwgia.org/news/search-news?news\\_id=542](http://www.iwgia.org/news/search-news?news_id=542).

<sup>77</sup> CBD Article 8(j). Emphasis added. At the tenth CBD Conference of the Parties, the COP decided to hold an "ad hoc expert group meeting of *local-community representatives* ... with a view to identifying common characteristics of local communities, and gathering advice on how local communities can more effectively participate in Convention processes, including at the national level, as well as how to develop targeted outreach, in order to assist in the implementation the Convention and achievement of its goals." Para 21, decision X/43 on the multi-year programme of work on the implementation of Article 8(j) and related provisions of the Convention on Biological Diversity Decision available here: <http://www.cbd.int/decision/cop/?id=12309>.

remains “ambiguous”<sup>78</sup> and is not as well developed or widely accepted at the international level as that of ‘Indigenous peoples’. This issue became the subject of a dedicated meeting held under the auspices of the CBD in July 2011.<sup>79</sup>

At the meeting, a group of representatives of local communities and experts on the related-issues agreed that any list of defining characteristics of local communities should be broad and inclusive, and allow for a clustering of unique cultural, ecological and social circumstances to each community.<sup>80</sup> In their recommendations, they underscore that identity is a “complex and multi-dimensional issue”,<sup>81</sup> and as a result, self-identification as a local community should be foremost and essential in any list of characteristics. Other characteristics include:

- Lifestyles linked to traditions associated with natural cycles (symbiotic relationships or dependence), the use of and dependence on biological resources and linked to the sustainable use of nature and biodiversity;
- The community occupies a definable territory traditionally occupied and/or used, permanently or periodically. These territories are important for the maintenance of social, cultural, and economic aspects of the community;
- Traditions (often referring to common history, culture, language, rituals, symbols and customs) and are dynamic and may evolve;
- Technology/knowledge/innovations/practices associated with the sustainable use and conservation of biological resources;
- Social cohesion and willingness to be represented as a local community;
- Traditional knowledge transmitted from generation to generation including in oral form;
- A set of social rules (e.g., that regulate land conflicts/sharing of benefits) and organizational-specific community/traditional/customary laws and institutions;
- Expression of customary and/or collective rights; and
- Self-regulation by their customs and traditional forms of organization and institutions.<sup>82</sup>

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<sup>78</sup> UNEP/CBD/AHEG/LCR/INF/1, page 4. This document contains a background paper produced by the Secretariat of the Permanent Forum on Indigenous Issues on the concept of local communities for an expert workshop on the disaggregation of data.

<sup>79</sup> Expert Group Meeting of Local Community Representatives Within the Context of Article 8(j) and Related Provisions of the Convention on Biological Diversity, 14-16 July 2011. UNEP/CBD/WG8J/7/8/Add.1.

<sup>80</sup> UNEP/CBD/WG8J/7/8/Add.1, page 12.

<sup>81</sup> UNEP/CBD/AHEG/LCR/1/2, page 2.

<sup>82</sup> UNEP/CBD/WG8J/7/8/Add.1, page 12.

Beyond the CBD,<sup>83</sup> courts are also recognizing non-Indigenous communities as deserving of particular rights in relation to their lands and natural resources, as exemplified in the Saramaka judgement handed down by the Inter-American Court of Human Rights.<sup>84</sup> In the context of the increased global focus on biodiversity, food sovereignty and ecosystem processes, local communities' rights are gaining prominence at all levels of law and policy.<sup>85</sup>

### **Do Indigenous Peoples and Local Communities Have Different Rights under International Law?**

As demonstrated in the above discussion, once a person identifies him or herself as Indigenous,<sup>86</sup> they can exercise certain rights under international law regardless of the type of lifestyle they lead. Indigenous peoples do not have to show that they are conserving and sustainably using biodiversity as a prerequisite for being able to claim Indigenous peoples' rights. In contrast, the rights of "local communities" are generally dependent, as in CBD Article 8(j), on whether their lifestyles are "relevant for the conservation and sustainable use of biological diversity". A core element of the definition of a 'local community' in international law, therefore, relates to the positive relationship between their ways of life, including culture and spirituality, and biodiversity.

Two points emerge. First, this is an important distinction and one that may have unexplored ramifications for individuals and peoples asserting the right to protect the integrity of their localities. Second, it is arguable that because local communities are claiming a bundle of rights to support these biocultural or social-ecological relationships, it seems appropriate to talk of local communities' 'biocultural rights' or 'social-ecological rights'. This approach better describes the claim they are making and consequently the specific rights for which they are calling.

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<sup>83</sup> It should also be noted that ILO 169 applies to "tribal peoples" as well as Indigenous peoples. ILO 169 Article 1(a).

<sup>84</sup> *Saramaka v Suriname*, Inter-American Court of Human Rights (Ser. C) No. 172 (28 November 2007) (IACHR No. 172). For further information, see Jonas H., et al. 2012. International Law and Jurisprudence Report.

<sup>85</sup> To read the evolving discussion and different viewpoints about biocultural rights, see: Jonas, H., K. Bavikatte & H. Shrumm, 2010. "Community Protocols and Access and Benefit Sharing" in *Asia Biotechnology and Development Review*, 12(3); Bavikatte, K., and D. Robinson, 2011. Bavikatte, K., 2011. "Stewarding the Commons: Rethinking Property and the Emergence of Biocultural Rights" in *Common Voices*, Volume 7; and Bavikatte, K., *Stewarding the Earth: Rethinking Property and the Emergence of Biocultural Rights*, thesis submitted for the Degree of Doctor of Philosophy, University of Cape Town, September 2011.

<sup>86</sup> *Who are the indigenous peoples?*. (n.d.). Retrieved from: <http://www.iwgia.org/culture-and-identity/identification-of-indigenous-peoples>. Referring to the definitions of the ILO Convention No. 169, the Martínez Cobo Report to the UN Sub-Commission on the Prevention of Discrimination of Minorities (see box above), as well as Chairperson of the UN Working Group on Indigenous Populations Mme. Erica-Irene Daes.

## **Comment**

It is clear that this issue requires further engagement by Indigenous peoples, local communities and a range of supportive actors. While an internationally accepted definition of a particular group is not a prerequisite for protection,<sup>87</sup> ambiguity about key concepts does in fact impinge upon the clarity of the debate about the larger issues. The CBD meeting referenced above represents a notable level of engagement with regard to local communities' rights, from an international perspective. Nevertheless, further work is required to evaluate how this evolving definition manifests itself in the lives of local communities at the local level, and whether it is a useful approach to this multifaceted issue. This is especially relevant in contexts where the notion of who is Indigenous is highly contested, such as in many sub-Saharan countries.

In this context, it is interesting to note that despite numerous calls from a range of quarters, Indigenous peoples and local communities are still referred to as "indigenous and local communities" under the CBD. The International Indigenous Forum on Biodiversity (IIFB) underscores the importance of addressing this terminology, because in their view, this imprecise referencing could also result in the rights of Indigenous peoples being diluted.<sup>88</sup> Interestingly, parties at COP10 decided to hold the above mentioned ad hoc expert group meeting of local-community representatives "with a view to identifying common characteristics of local communities, and gathering advice on how local communities can more effectively participate in Convention processes, including at the national level...".<sup>89</sup> The CBD therefore has recognized the distinctive nature of indigenous peoples and local communities in real terms, yet continues to conflate the groups in references in text.

## **C. A NOTE ON LEGAL WEIGHT**

As the creation of international law has proliferated and evolved over the years, a perceived dichotomy has emerged between so-called "hard" (binding) and "soft" (non-binding) international law. The Compendium consists of provisions from international instruments that fall within both of these categories. However, the Compendium at this stage does not provide the reader with insight into the binding nature, i.e. legal weight, of each of those provisions. To do so would greatly complicate the text and, as discussed below, many questions surrounding the binding nature of international law remain unresolved. Nevertheless, we recognize

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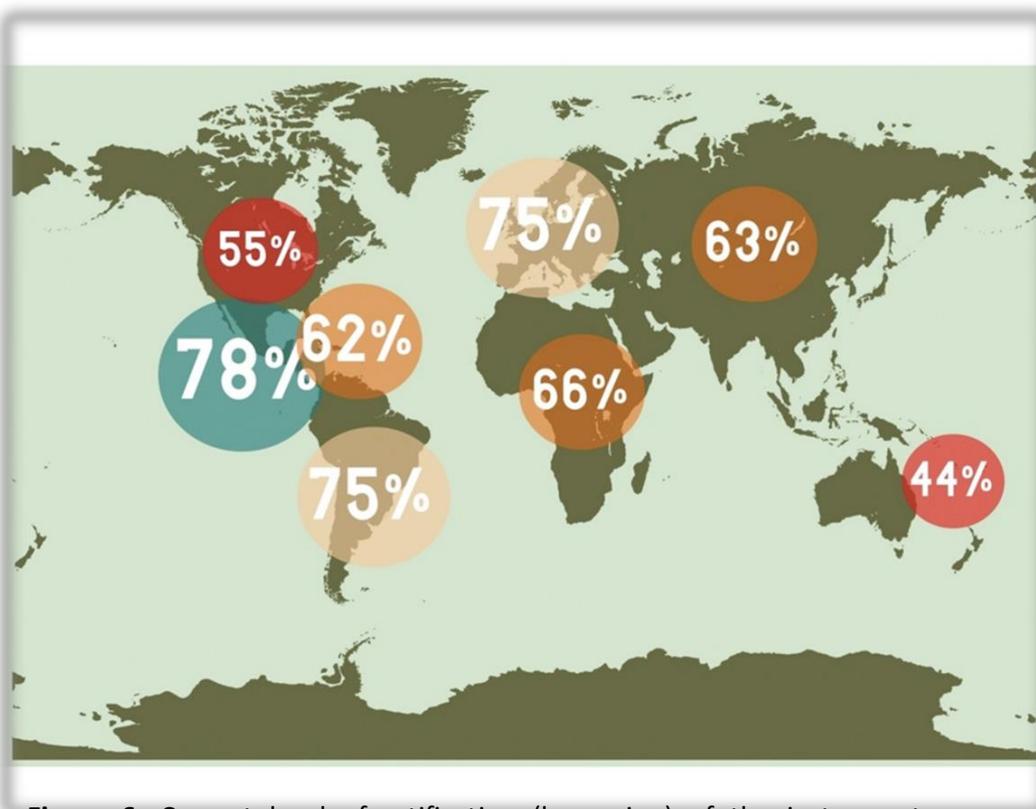
<sup>87</sup> UNEP/CBD/AHEG/LCR/1/2, page 2.

<sup>88</sup> Indigenous Peoples and Local Communities at the CBD, Briefing Note Prepared for COP XI, Hyderabad, India, October 2012.

<sup>89</sup> Decision X/43, paragraph 21.

this as an important issue, and are working to address it comprehensively in the online version of the Compendium. Additionally, Annex VIII provides a detailed analysis of the question in the context of the Convention on Biological Diversity (CBD). This section provides a brief synopsis of the issues.

Hard law is generally created by treaties that are adopted and enter into force pursuant to the Vienna Convention on the Law of Treaties (Vienna Convention) and customary international law. Soft law, on the other hand, is often created by instruments that are explicitly voluntary and thus non-binding. It is not considered to be “law” in the classical sense and does not bind parties / States.<sup>90</sup> Although soft law does not create legal obligations, it is often based on moral norms and can be used to influence the course of international politics. Over time, soft law can also become binding through formal acceptance or by it becoming customary international law.<sup>91</sup>



**Figure 6:** Current level of ratification (by region) of the instruments included in this Compendium (see Annex IV for data)

Increasingly, international obligations are being created not through the Vienna Convention’s treaty-making process, but rather through decisions issued by Conferences of the Parties (COP) to international treaties such as the Convention on

<sup>90</sup> Shaw, M., *International Law*. 6<sup>th</sup> ed. Cambridge University Press (2008), 118.

<sup>91</sup> Shaw M., at 118.

Biological Diversity. There is much debate over the legal weight of such decisions. Arguably, because they were not created strictly pursuant to the Vienna Convention, such decisions cannot be called hard law.<sup>92</sup> However, some commentators have suggested that if Parties understand obligations contained in COP decisions to be mandatory and agree to abide by those terms, legal obligations can be created outside of the formal treaty-making process.<sup>93</sup>

Although at present there is little clarity on the precise legal weight of COP decisions, it is hoped that State practice in response to such decisions and continuing legal analysis by commentators and practitioners will help clarify where COP decisions fit within the hard/soft law continuum – or whether an entirely new way of understanding and describing the legal nature of international law may be necessary.

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<sup>92</sup> Brunee, J., *COPing with Consent: Law Making Under Multilateral Environmental Agreements* (2002) 15 *Leiden Journal of International Law* 1, 32.

<sup>93</sup> Brunee, at 32, 33.

## **PART II**

A COMPENDIUM OF INTERNATIONAL RIGHTS  
THAT SUPPORT THE INTEGRITY AND RESILIENCE  
OF INDIGENOUS PEOPLES' AND LOCAL  
COMMUNITIES' TERRITORIES AND OTHER  
SOCIAL-ECOLOGICAL SYSTEMS

# PREAMBULAR PROVISIONS

## ***Overarching Human Rights***

*We the peoples of the United Nations determined ... to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small.*<sup>94</sup>

*Whereas* recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.<sup>95</sup>

*Considering that*, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.<sup>96</sup>

*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, as well as the Vienna Declaration and Programme of Action, affirm the fundamental importance of the right to self-determination of all peoples, by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development.<sup>97\*</sup>

*Recognising* the aspirations of these peoples to exercise control over their own institutions, ways of life and economic development and to maintain and develop their identities, languages and religions, within the framework of the States in which they live.<sup>98\*</sup>

*Celebrating* the importance of cultural diversity for the full realization of human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights and other universally recognized instruments.<sup>99</sup>

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<sup>94</sup> Charter of the United Nations Preamble.

<sup>95</sup> Universal Declaration of Human Rights (UDHR).

<sup>96</sup> International Covenant on Economic, Social and Cultural Rights (ICESCR) Preamble.

<sup>97</sup> United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) Preamble.

<sup>98</sup> Indigenous and Tribal Peoples Convention No. 169 (ILO Convention No. 169) Preamble. The use of the phrase “these peoples” in this provision of ILO Convention No. 169 is a reference to “indigenous and tribal peoples in all regions of the world.”

<sup>99</sup> UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions (Convention on Cultural Expressions) Preamble.

*Recognizing* that adequate protection of the environment is essential to human well-being and the enjoyment of basic human rights, including the right to life itself.<sup>100</sup>

### ***Right to a Healthy Environment***

*Recognizing also* that every person has the right to live in an environment adequate to his or her health and well-being, and the duty, both individually and in association with others, to protect and improve the environment for the benefit of present and future generations.<sup>101</sup>

### ***Cultural and Natural Heritage***

*Considering* that deterioration or disappearance of any item of the cultural or natural heritage constitutes a harmful impoverishment of the heritage of all the nations of the world.<sup>102</sup>

*Considering* that, in view of the magnitude and gravity of the new dangers threatening them, it is incumbent on the international community as a whole to participate in the protection of the cultural and natural heritage of outstanding universal value, by the granting of collective assistance which, although not taking the place of action by the State concerned, will serve as an efficient complement thereto.<sup>103</sup>

*Being aware* that cultural diversity creates a rich and varied world, which increases the range of choices and nurtures human capacities and values, and therefore is a mainspring for sustainable development for communities, peoples and nations.<sup>104</sup>

*Being aware* of the universal will and the common concern to safeguard the intangible cultural heritage of humanity.<sup>105</sup>

*Recognizing* that communities, in particular indigenous communities, groups and, in some cases, individuals, play an important role in the production, safeguarding,

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<sup>100</sup> Convention on Access to Information, Public Participation In Decision-Making, and Access to Justice In Environmental Matters (Aarhus Convention) Preamble. Please note that the Aarhus is now open to all UNECE members.

<sup>101</sup> Aarhus Convention Preamble.

<sup>102</sup> UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage (World Heritage Convention) Preamble.

<sup>103</sup> World Heritage Convention Preamble.

<sup>104</sup> Convention on Cultural Expressions Preamble.

<sup>105</sup> UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage (Convention on Intangible Cultural Heritage) Preamble.

maintenance and re-creation of the intangible cultural heritage, thus helping to enrich cultural diversity and human creativity.<sup>106</sup>

*Affirming* also that all peoples contribute to the diversity and richness of civilizations and cultures, which constitute the common heritage of humankind.<sup>107</sup>

*Taking into account* the importance of the vitality of cultures, including for persons belonging to minorities and indigenous peoples, as manifested in their freedom to create, disseminate and distribute their traditional cultural expressions and to have access thereto, so as to benefit them for their own development.<sup>108</sup>

### ***Education and Languages***

*Recalling* that linguistic diversity is a fundamental element of cultural diversity, and reaffirming the fundamental role that education plays in the protection and promotion of cultural expressions.<sup>109</sup>

### ***Knowledge, Innovations and Practices***

*Recognizing* the importance of traditional knowledge as a source of intangible and material wealth, and in particular the knowledge systems of indigenous peoples, and its positive contribution to sustainable development, as well as the need for its adequate protection and promotion.<sup>110</sup>

*Recognizing* the importance of intellectual property rights in sustaining those involved in cultural creativity.<sup>111</sup>

*Recognizing* that respect for indigenous knowledge, cultures and traditional practices contributes to sustainable and equitable development and proper management of the environment.<sup>112\*</sup>

### ***Development***

*Convinced* that control by indigenous peoples over developments affecting them and their lands, territories and resources will enable them to maintain and strengthen

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<sup>106</sup> Convention on Intangible Cultural Heritage Preamble.

<sup>107</sup> UNDRIP Preamble.

<sup>108</sup> Convention on Cultural Expressions Preamble.

<sup>109</sup> Convention on Cultural Expressions Preamble.

<sup>110</sup> Convention on Cultural Expressions Preamble.

<sup>111</sup> Convention on Cultural Expressions Preamble.

<sup>112</sup> UNDRIP Preamble.

their institutions, cultures and traditions, and to promote their development in accordance with their aspirations and needs ...<sup>113\*</sup>

*Concerned* that indigenous peoples have suffered from historic injustices as a result of, inter alia, their colonization and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests.<sup>114\*</sup>

### ***Land, Natural Resources, Customary Uses and Conservation***

*Recognizing* the urgent need to respect and promote the inherent rights of indigenous peoples which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies, especially their rights to their lands, territories and resources.<sup>115\*</sup>

*Recalling* that access by indigenous and local communities to lands and waters traditionally occupied or used by indigenous and local communities, together with the opportunity to practice traditional knowledge on those lands and waters, is paramount for the retention of traditional knowledge, and the development of innovations and practices relevant for the conservation and sustainable use of biological diversity.<sup>116\*</sup>

### ***Agriculture***

*Aware* of their responsibility to past and future generations to conserve the World's diversity of plant genetic resources for food and agriculture.<sup>117</sup>

### ***Climate Change***

*Concerned* that human activities have been substantially increasing the atmospheric concentrations of greenhouse gases, that these increases enhance the natural greenhouse effect, and that this will result on average in an additional warming of the Earth's surface and atmosphere and may adversely affect natural ecosystems and humankind.<sup>118</sup>

*Recognizing further* that low-lying and other small island countries, countries with low-lying coastal, arid and semi-arid areas or areas liable to floods, drought and

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<sup>113</sup> UNDRIP Preamble.

<sup>114</sup> UNDRIP Preamble.

<sup>115</sup> UNDRIP Preamble.

<sup>116</sup> The Tkarihwaïé:ri Code of Ethical Conduct to Ensure Respect for the Cultural and Intellectual Heritage of Indigenous and Local Communities (Tkarihwaïé:ri Code of Ethical Conduct) Preamble.

<sup>117</sup> International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) Preamble.

<sup>118</sup> United Nations Framework Convention on Climate Change (UNFCCC) Preamble.

desertification, and developing countries with fragile mountainous ecosystems are particularly vulnerable to the adverse effects of climate change.<sup>119</sup>

### ***Desertification***

*Acknowledging* that desertification and drought are problems of global dimension in that they affect all regions of the world and that joint action of the international community is needed to combat desertification and/or mitigate the effects of drought.<sup>120</sup>

### ***Free, Prior and Informed Consent***

*Recalling* that the fair and equitable sharing of benefits arising from the utilization of genetic resources is one of three core objectives of the *Convention on Biological Diversity*, and recognizing that this *Nagoya Protocol* pursues the implementation of this objective within the *Convention on Biological Diversity*.<sup>121</sup>

*Recalling* the relevance of Article 8(j) of the *Convention on Biological Diversity* as it relates to traditional knowledge associated with genetic resources and the fair and equitable sharing of benefits arising from the utilization of such knowledge.<sup>122</sup>

*Noting* the interrelationship between genetic resources and traditional knowledge, their inseparable nature for indigenous and local communities, the importance of the traditional knowledge for the conservation of biological diversity and the sustainable use of its components, and for the sustainable livelihoods of these communities.<sup>123</sup>

*Recognizing* the diversity of circumstances in which traditional knowledge associated with genetic resources is held or owned by indigenous and local communities.<sup>124</sup>

*Mindful* that it is the right of indigenous and local communities to identify the rightful holders of their traditional knowledge associated with genetic resources, within their communities.<sup>125</sup>

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<sup>119</sup> UNFCCC Preamble.

<sup>120</sup> United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa (Convention on Desertification) Preamble.

<sup>121</sup> Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity (Nagoya Protocol) Preamble.

<sup>122</sup> Nagoya Protocol Preamble.

<sup>123</sup> Nagoya Protocol Preamble.

<sup>124</sup> Nagoya Protocol Preamble.

<sup>125</sup> Nagoya Protocol Preamble.

### ***Information, Decision Making, Implementation, and Access to Justice***

*Aiming ...* to further the accountability of and transparency in decision-making and to strengthen public support for decisions on the environment.<sup>126</sup>

*Recognizing* the importance of fully integrating environmental considerations in governmental decision-making and the consequent need for public authorities to be in possession of accurate, comprehensive and up-to-date environmental information.<sup>127</sup>

*Considering that,* to be able to assert this right and observe this duty, citizens must have access to information, be entitled to participate in decision-making and have access to justice in environmental matters, and acknowledging in this regard that citizens may need assistance in order to exercise their rights.<sup>128</sup>

*Recognizing* that, in the field of the environment, improved access to information and public participation in decision-making enhance the quality and the implementation of decisions, contribute to public awareness of environmental issues, give the public the opportunity to express its concerns and enable public authorities to take due account of such concerns.<sup>129</sup>

*Recognizing also* that the public needs to be aware of the procedures for participation in environmental decision-making, have free access to them and know how to use them.<sup>130</sup>

### ***Capacity Building and Awareness***

*Considering* the need to build greater awareness, especially among the younger generations, of the importance of the intangible cultural heritage and of its safeguarding.<sup>131</sup>

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<sup>126</sup> Aarhus Convention Preamble.

<sup>127</sup> Aarhus Convention Preamble.

<sup>128</sup> Aarhus Convention Preamble.

<sup>129</sup> Aarhus Convention Preamble.

<sup>130</sup> Aarhus Convention Preamble.

<sup>131</sup> Convention on Intangible Cultural Heritage Preamble.

# OPERATIVE PROVISIONS

## I. SUBSTANTIVE RIGHTS

### OVERARCHING HUMAN RIGHTS

All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.<sup>132</sup>

All human being are afforded human rights, civil and political rights, economic social and cultural rights, and to be free from all forms of racial discrimination.<sup>133</sup>

States should ensure that all actions are consistent with their existing obligations under national and international law, and with due regard to voluntary commitments under applicable regional and international instruments. In the case of indigenous peoples, States should meet their relevant obligations and voluntary commitments to protect, promote and implement human rights, including as appropriate from the International Labour Organization Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries, the Convention on Biological Diversity and the United Nations Declaration on the Rights of Indigenous Peoples.<sup>134</sup>

States shall take resolute steps to eliminate the massive and flagrant violations of the human rights of peoples and human beings affected by situations such as those resulting from apartheid, all forms of racism and racial discrimination, colonialism, foreign domination and occupation, aggression, foreign interference and threats against national sovereignty, national unity and territorial integrity, threats of war and refusal to recognize the fundamental right of peoples to self-determination.<sup>135</sup>

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<sup>132</sup> International Covenant on Civil and Political Rights (ICCPR), ICESCR, UNDRIP. This provision is explicitly reaffirmed in UNDRIP Article 3 that states: Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development

<sup>133</sup> Charter of the United Nations, UDHR, ICCPR, ICESCR, International Convention on the Elimination of All Forms of Racial Discrimination (CERD).

<sup>134</sup> FAO Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (FAO Tenure Guidelines) No. 9(3).

<sup>135</sup> United Nations Declaration on the Right to Development (Declaration on the Right to Development) Article 5.

States shall take measures where required to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law.<sup>136</sup>

## **WOMEN'S RIGHTS**

States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.<sup>137</sup>

## **CHILDREN'S RIGHTS**

1.[<sup>138</sup>] States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference. 2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.<sup>139</sup>

## **INDIGENOUS PEOPLES' RIGHTS**

### ***Overarching Rights***

Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law.<sup>140\*</sup>

Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.<sup>141\*</sup>

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<sup>136</sup> Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (Declaration on the Rights of Minorities) Article 4(1).

<sup>137</sup> Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) Article 3.

<sup>138</sup> In certain instances, numbering from provisions has been included for purposes of clarity.

<sup>139</sup> Convention on the Rights of the Child Article 8.

<sup>140</sup> UNDRIP Article 1.

<sup>141</sup> UNDRIP Article 2.

Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.<sup>142\*</sup>

Every indigenous individual has the right to a nationality.<sup>143\*</sup>

1. Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person. 2. Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.<sup>144\*</sup>

Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.<sup>145\*</sup>

Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security.<sup>146\*</sup>

Indigenous peoples have the right to determine the responsibilities of individuals to their communities.<sup>147\*</sup>

1. Indigenous peoples, in particular those divided by international borders, have the right to maintain and develop contacts, relations and cooperation, including activities for spiritual, cultural, political, economic and social purposes, with their own members as well as other peoples across borders. 2. States, in consultation and cooperation with indigenous peoples, shall take effective measures to facilitate the exercise and ensure the implementation of this right.<sup>148\*</sup>

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<sup>142</sup> UNDRIP Article 4.

<sup>143</sup> UNDRIP Article 6.

<sup>144</sup> UNDRIP Article 7.

<sup>145</sup> UNDRIP Article 20(1).

<sup>146</sup> UNDRIP Article 21(1).

<sup>147</sup> UNDRIP Article 35.

<sup>148</sup> UNDRIP Article 36.

The rights recognized herein *in the UN Declaration on the Rights of Indigenous Peoples* constitute the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world.<sup>149\*</sup>

1. Governments shall have the responsibility for developing, with the participation of the peoples concerned, coordinated and systematic action to protect the rights of these peoples and to guarantee respect for their integrity. 2. Such action shall include measures for: (a) ensuring that members of these peoples benefit on an equal footing from the rights and opportunities which national laws and regulations grant to other members of the population; (b) promoting the full realisation of the social, economic and cultural rights of these peoples with respect for their social and cultural identity, their customs and traditions and their institutions; (c) assisting the members of the peoples concerned to eliminate socio-economic gaps that may exist between indigenous and other members of the national community, in a manner compatible with their aspirations and ways of life.<sup>150\*</sup>

1. Indigenous and tribal peoples shall enjoy the full measure of human rights and fundamental freedoms without hindrance or discrimination. The provisions of the Convention shall be applied without discrimination to male and female members of these peoples. 2. No form of force or coercion shall be used in violation of the human rights and fundamental freedoms of the peoples concerned, including the rights contained in this Convention.<sup>151\*</sup>

1. Special measures shall be adopted as appropriate for safeguarding the persons, institutions, property, labour, cultures and environment of the peoples concerned. 2. Such special measures shall not be contrary to the freely-expressed wishes of the peoples concerned. 3. Enjoyment of the general rights of citizenship, without discrimination, shall not be prejudiced in any way by such special measures.<sup>152\*</sup>

Governments shall take appropriate measures, including by means of international agreements, to facilitate contacts and co-operation between indigenous and tribal peoples across borders, including activities in the economic, social, cultural, spiritual and environmental fields.<sup>153\*</sup>

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<sup>149</sup> UNDRIP Article 43. As discussed below in Part II, Clarifications, the full names of instruments have been inserted into provisions in italics in order to improve readability.

<sup>150</sup> ILO Convention No. 169 Article 2.

<sup>151</sup> ILO Convention No. 169 Article 3.

<sup>152</sup> ILO Convention No. 169 Article 4.

<sup>153</sup> ILO Convention No. 169 Article 32.

### ***Recognition and Observance of Treaties***

1. Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors and to have States honour and respect such treaties, agreements and other constructive arrangements. 2. Nothing in this *UN Declaration on the Rights of Indigenous Peoples* may be interpreted as diminishing or eliminating the rights of indigenous peoples contained in treaties, agreements and other constructive arrangements.<sup>154\*</sup>

### ***Labour and Employment***

1. Indigenous individuals and peoples have the right to enjoy fully all rights established under applicable international and domestic labour law. 2. States shall in consultation and cooperation with indigenous peoples take specific measures to protect indigenous children from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development, taking into account their special vulnerability and the importance of education for their empowerment. 3. Indigenous individuals have the right not to be subjected to any discriminatory conditions of labour and, inter alia, employment or salary.<sup>155\*</sup>

The exaction from members of the peoples concerned of compulsory personal services in any form, whether paid or unpaid, shall be prohibited and punishable by law, except in cases prescribed by law for all citizens.<sup>156\*</sup>

Governments shall, within the framework of national laws and regulations, and in co-operation with the peoples concerned, adopt special measures to ensure the effective protection with regard to recruitment and conditions of employment of workers belonging to these peoples, to the extent that they are not effectively protected by laws applicable to workers in general.<sup>157\*</sup>

Governments shall do everything possible to prevent any discrimination between workers belonging to the peoples concerned and other workers, in particular as regards: (a) admission to employment, including skilled employment, as well as measures for promotion and advancement; (b) equal remuneration for work of equal value; (c) medical and social assistance, occupational safety and health, all

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<sup>154</sup> UNDRIP Article 37.

<sup>155</sup> UNDRIP Article 17. For other rights related to labour and employment see ILO Convention No. 169 Articles 11 and 20.

<sup>156</sup> ILO Convention No. 169 Article 11.

<sup>157</sup> ILO Convention No. 169 Article 20(1).

social security benefits and any other occupationally related benefits, and housing; (d) the right of association and freedom for all lawful trade union activities, and the right to conclude collective agreements with employers or employers' organisations.<sup>158\*</sup>

3. The measures taken shall include measures to ensure: (a) that workers belonging to the peoples concerned, including seasonal, casual and migrant workers in agricultural and other employment, as well as those employed by labour contractors, enjoy the protection afforded by national law and practice to other such workers in the same sectors, and that they are fully informed of their rights under labour legislation and of the means of redress available to them; (b) that workers belonging to these peoples are not subjected to working conditions hazardous to their health, in particular through exposure to pesticides or other toxic substances; (c) that workers belonging to these peoples are not subjected to coercive recruitment systems, including bonded labour and other forms of debt servitude; (d) that workers belonging to these peoples enjoy equal opportunities and equal treatment in employment for men and women, and protection from sexual harassment.<sup>159\*</sup>

Particular attention shall be paid to the establishment of adequate labour inspection services in areas where workers belonging to the peoples concerned undertake wage employment, in order to ensure compliance with the provisions of this Part of this *ILO Convention No. 169*.<sup>160\*</sup>

### ***Social and Health Services***

Indigenous peoples have the right to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, animals and minerals. Indigenous individuals also have the right to access, without any discrimination, to all social and health services.<sup>161\*</sup>

Indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health. States shall take the necessary steps with a view to achieving progressively the full realization of this right.<sup>162\*</sup>

Social security schemes shall be extended progressively to cover the peoples concerned, and applied without discrimination against them.<sup>163\*</sup>

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<sup>158</sup> ILO Convention No. 169 Article 20(2).

<sup>159</sup> ILO Convention No. 169 Article 20(3).

<sup>160</sup> ILO Convention No. 169 Article 20(4).

<sup>161</sup> UNDRIP Article 24(1).

<sup>162</sup> UNDRIP Article 24(2).

<sup>163</sup> ILO Convention No. 169 Article 24.

1. Governments shall ensure that adequate health services are made available to the peoples concerned, or shall provide them with resources to allow them to design and deliver such services under their own responsibility and control, so that they may enjoy the highest attainable standard of physical and mental health. 2. Health services shall, to the extent possible, be community-based. These services shall be planned and administered in co-operation with the peoples concerned and take into account their economic, geographic, social and cultural conditions as well as their traditional preventive care, healing practices and medicines. 3. The health care system shall give preference to the training and employment of local community health workers, and focus on primary health care while maintaining strong links with other levels of health care services. 4. The provision of such health services shall be co-ordinated with other social, economic and cultural measures in the country.<sup>164\*</sup>

### ***Freedom from Discrimination***

States shall provide effective mechanisms for prevention of, and redress for: ... Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them.<sup>165\*</sup>

Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No discrimination of any kind may arise from the exercise of such a right.<sup>166\*</sup>

States shall seek to enable the access and/or repatriation of ceremonial objects and human remains in their possession through fair, transparent and effective mechanisms developed in conjunction with indigenous peoples concerned.<sup>167\*</sup>

States shall take effective measures, in consultation and cooperation with the indigenous peoples concerned, to combat prejudice and eliminate discrimination and to promote tolerance, understanding and good relations among indigenous peoples and all other segments of society.<sup>168\*</sup>

1. Indigenous peoples have the right to establish their own media in their own languages and to have access to all forms of non-indigenous media without discrimination. 2. States shall take effective measures to ensure that State-owned media duly reflect indigenous cultural diversity. States, without prejudice to ensuring

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<sup>164</sup> ILO Convention No. 169 Article 25.

<sup>165</sup> UNDRIP Article 8(2)(e).

<sup>166</sup> UNDRIP Article 9.

<sup>167</sup> UNDRIP Article 12(2).

<sup>168</sup> UNDRIP Article 15(2).

full freedom of expression, should encourage privately owned media to adequately reflect indigenous cultural diversity.<sup>169\*</sup>

1. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities in the implementation of this *UN Declaration on the Rights of Indigenous Peoples*. 2. States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.<sup>170\*</sup>

All the rights and freedoms recognized herein the *UN Declaration on the Rights of Indigenous Peoples* are equally guaranteed to male and female indigenous individuals.<sup>171\*</sup>

### **Implementation of Rights**

States, in consultation and cooperation with indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this *UN Declaration on the Rights of Indigenous Peoples*.<sup>172\*</sup>

Indigenous peoples have the right to have access to financial and technical assistance from States and through international cooperation, for the enjoyment of the rights contained in this *UN Declaration on the Rights of Indigenous Peoples*.<sup>173\*</sup>

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 *UN Declaration on the Rights of Indigenous Peoples* 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.<sup>174\*</sup>

The United Nations, its bodies, including the Permanent Forum on Indigenous Issues, and specialized agencies, including at the country level, and States shall promote respect for and full application of the provisions of this *UNDRIP* and follow up the effectiveness of this *UN Declaration on the Rights of Indigenous Peoples*.<sup>175\*</sup>

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<sup>169</sup> UNDRIP Article 16.

<sup>170</sup> UNDRIP Article 22.

<sup>171</sup> UNDRIP Article 44.

<sup>172</sup> UNDRIP Article 38.

<sup>173</sup> UNDRIP Article 39.

<sup>174</sup> UNDRIP Article 41.

<sup>175</sup> UNDRIP Article 42.

Nothing in this *UN Declaration on the Rights of Indigenous Peoples* may be construed as diminishing or extinguishing the rights indigenous peoples have now or may acquire in the future.<sup>176\*</sup>

1. Nothing in this *UN Declaration on the Rights of Indigenous Peoples* may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States. 2. In the exercise of the rights enunciated in the present Declaration, human rights and fundamental freedoms of all shall be respected. The exercise of the rights set forth in this Declaration shall be subject only to such limitations as are determined by law and in accordance with international human rights obligations. Any such limitations shall be non-discriminatory and strictly necessary solely for the purpose of securing due recognition and respect for the rights and freedoms of others and for meeting the just and most compelling requirements of a democratic society. 3. The provisions set forth in this Declaration shall be interpreted in accordance with the principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance and good faith.<sup>177\*</sup>

1. The governmental authority responsible for the matters covered in this *ILO Convention No. 169* shall ensure that agencies or other appropriate mechanisms exist to administer the programmes affecting the peoples concerned, and shall ensure that they have the means necessary for the proper fulfilment of the functions assigned to them. 2. These programmes shall include: (a) the planning, co-ordination, execution and evaluation, in co-operation with the peoples concerned, of the measures provided for in this Convention; (b) the proposing of legislative and other measures to the competent authorities and supervision of the application of the measures taken, in co-operation with the peoples concerned.<sup>178\*</sup>

## **TRADITIONAL GOVERNANCE SYSTEMS AND CUSTOMARY LAWS**

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to

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<sup>176</sup> UNDRIP Article 45.

<sup>177</sup> UNDRIP Article 46.

<sup>178</sup> ILO Convention No. 169 Article 33. Article 34 provides that “[t]he nature and scope of the measures to be taken to give effect to this *ILO Convention No. 169* shall be determined in a flexible manner, having regard to the conditions characteristic of each country” and Article 35 states that “[t]he application of the provisions of this *ILO Convention No. 169* shall not adversely affect rights and benefits of the peoples concerned pursuant to other Conventions and Recommendations, international instruments, treaties, or national laws, awards, custom or agreements.”

participate fully, if they so choose, in the political, economic, social and cultural life of the State.<sup>179\*</sup>

In applying the provisions of this *ILO Convention No. 169*: (a) the social, cultural, religious and spiritual values and practices of these peoples shall be recognised and protected, and due account shall be taken of the nature of the problems which face them both as groups and as individuals; (b) the integrity of the values, practices and institutions of these peoples shall be respected; (c) policies aimed at mitigating the difficulties experienced by these peoples in facing new conditions of life and work shall be adopted, with the participation and co-operation of the peoples affected.<sup>180\*</sup>

1. In applying national laws and regulations to the peoples concerned, due regard shall be had to their customs or customary laws. 2. These peoples shall have the right to retain their own customs and institutions, where these are not incompatible with fundamental rights defined by the national legal system and with internationally recognised human rights. Procedures shall be established, whenever necessary, to resolve conflicts which may arise in the application of this principle. 3. The application of paragraphs 1 and 2 of this Article shall not prevent members of these peoples from exercising the rights granted to all citizens and from assuming the corresponding duties.<sup>181\*</sup>

1. To the extent compatible with the national legal system and internationally recognised human rights, the methods customarily practised by the peoples concerned for dealing with offences committed by their members shall be respected. 2. The customs of these peoples in regard to penal matters shall be taken into consideration by the authorities and courts dealing with such cases.<sup>182\*</sup>

## **CULTURAL, SPIRITUAL AND RELIGIOUS INTEGRITY**

Indigenous peoples have the right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.<sup>183\*</sup>

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<sup>179</sup> UNDRIP, Article 5.

<sup>180</sup> ILO Convention No. 169 Article 5.

<sup>181</sup> ILO Convention No. 169 Article 8.

<sup>182</sup> ILO Convention No. 169 Article 9.

<sup>183</sup> UNDRIP Article 12(1).

Indigenous peoples have the right to the dignity and diversity of their cultures, traditions, histories and aspirations which shall be appropriately reflected in education and public information.<sup>184\*</sup>

Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.<sup>185\*</sup>

1. Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of indigenous individuals to obtain citizenship of the States in which they live. 2. Indigenous peoples have the right to determine the structures and to select the membership of their institutions in accordance with their own procedures.<sup>186\*</sup>

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.<sup>187\*</sup>

In applying the provisions of this Part of the *ILO Convention No. 169* governments shall respect the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories, or both as applicable, which they occupy or otherwise use, and in particular the collective aspects of this relationship.<sup>188\*</sup>

Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.<sup>189</sup>

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.<sup>190</sup>

1. The States Parties to the *International Covenant on Civil and Political Rights* recognize the right of everyone: (a) To take part in cultural life; ... 2. The steps to be

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<sup>184</sup> UNDRIP Article 15(1).

<sup>185</sup> UNDRIP Article 25.

<sup>186</sup> UNDRIP Article 33.

<sup>187</sup> UNDRIP Article 34.

<sup>188</sup> ILO Convention No. 169 Article 13(1).

<sup>189</sup> UDHR Article 27(1).

<sup>190</sup> ICCPR Article 27.

taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.<sup>191</sup>

States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity.<sup>192</sup>

The States Parties to the *International Covenant on Civil and Political Rights* recognize the right of everyone: (a) To take part in cultural life; (b) To enjoy the benefits of scientific progress and its applications; (c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.<sup>193</sup>

Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.<sup>194</sup>

States Parties shall respect the right of the child to freedom of thought, conscience and religion.<sup>195</sup>

## **NO FORCED ASSIMILATION**

Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.<sup>196\*</sup>

States shall provide effective mechanisms for prevention of, and redress for: ... Any form of forced assimilation or integration ...<sup>197\*</sup>

States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.<sup>198</sup>

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<sup>191</sup> ICESCR Article 15.

<sup>192</sup> Declaration on the Rights of Minorities Article 1.

<sup>193</sup> ICESCR Article 15(1).

<sup>194</sup> ICCPR Article 18.

<sup>195</sup> Convention on the Rights of the Child Article 14(1).

<sup>196</sup> UNDRIP Article 8(1).

<sup>197</sup> UNDRIP Article 8(2)(d).

<sup>198</sup> Convention on the Rights of the Child Article 8(1).

## CULTURAL TRADITIONS

1. Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature. 2. In conjunction with indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.<sup>199\*</sup>

1. Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons. 2. States shall take effective measures to ensure that this right is protected and also to ensure that indigenous peoples can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means.<sup>200\*</sup>

Persons belonging to national or ethnic, religious and linguistic minorities (hereinafter referred to as persons belonging to minorities) have the right to enjoy their own culture, to profess and practise their own religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination.<sup>201</sup>

States shall take measures to create favourable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs, except where specific practices are in violation of national law and contrary to international standards.<sup>202</sup>

In compliance with the fundamental obligations laid down in article 2 of this *International Convention on the Elimination of All Forms of Racial Discrimination*, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: ... (d) Other civil rights, in particular: ... (vii) The right to freedom

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<sup>199</sup> UNDRIP Article 11 and 31(2).

<sup>200</sup> UNDRIP Article 13.

<sup>201</sup> Declaration on the Rights of Minorities Article 2(1).

<sup>202</sup> Declaration on the Rights of Minorities Article 4(2).

of thought, conscience and religion; (viii) The right to freedom of opinion and expression; ... (e) ... (vi) The right to equal participation in cultural activities; ...<sup>203</sup>

## **DIVERSITY OF CULTURAL EXPRESSIONS**

The protection and promotion of the diversity of cultural expressions presuppose the recognition of equal dignity of and respect for all cultures, including the cultures of persons belonging to minorities and indigenous peoples.<sup>204</sup>

Cultural diversity is a rich asset for individuals and societies. The protection, promotion and maintenance of cultural diversity are an essential requirement for sustainable development for the benefit of present and future generations.<sup>205</sup>

The Parties, in conformity with the Charter of the United Nations, the principles of international law and universally recognized human rights instruments, reaffirm their sovereign right to formulate and implement their cultural policies and to adopt measures to protect and promote the diversity of cultural expressions and to strengthen international cooperation to achieve the purposes of this *Convention on Cultural Expressions*.<sup>206</sup>

Within the framework of its cultural policies and measures as defined in Article 4.6 and taking into account its own particular circumstances and needs, each Party may adopt measures aimed at protecting and promoting the diversity of cultural expressions within its territory.<sup>207</sup>

Parties shall endeavour to create in their territory an environment which encourages individuals and social groups: (a) to create, produce, disseminate, distribute and have access to their own cultural expressions, paying due attention to the special circumstances and needs of women as well as various social groups, including persons belonging to minorities and indigenous peoples; (b) to have access to diverse cultural expressions from within their territory as well as from other countries of the world.<sup>208</sup>

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<sup>203</sup> CERD Article 5. For ease of reference: Article 2 of the CERD states that “States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races ...” and sets forth several specific duties on the part of the States Parties.

<sup>204</sup> Convention on Cultural Expressions Article 2(3).

<sup>205</sup> Convention on Cultural Expressions Article 2(6).

<sup>206</sup> Convention on Cultural Expressions Article 5(1).

<sup>207</sup> Convention on Cultural Expressions Article 6(1).

<sup>208</sup> Convention on Cultural Expressions Article 7(1).

... [A] Party may determine the existence of special situations where cultural expressions on its territory are at risk of extinction, under serious threat, or otherwise in need of urgent safeguarding.<sup>209</sup>

Parties may take all appropriate measures to protect and preserve cultural expressions ... in a manner consistent with the provisions of this *Convention on Cultural Expressions*.<sup>210</sup>

Parties acknowledge the fundamental role of civil society in protecting and promoting the diversity of cultural expressions. Parties shall encourage the active participation of civil society in their efforts to achieve the objectives of this *Convention on Cultural Expressions*.<sup>211</sup>

Parties shall endeavour to integrate culture in their development policies at all levels for the creation of conditions conducive to sustainable development and, within this framework, foster aspects relating to the protection and promotion of the diversity of cultural expressions.<sup>212</sup>

## **KNOWLEDGE, INNOVATIONS AND PRACTICES**

1. Handicrafts, rural and community-based industries, and subsistence economy and traditional activities of the peoples concerned, such as hunting, fishing, trapping and gathering, shall be recognised as important factors in the maintenance of their cultures and in their economic self-reliance and development. Governments shall, with the participation of these people and whenever appropriate, ensure that these activities are strengthened and promoted. 2. Upon the request of the peoples concerned, appropriate technical and financial assistance shall be provided wherever possible, taking into account the traditional technologies and cultural characteristics of these peoples, as well as the importance of sustainable and equitable development.<sup>213\*</sup>

Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and

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<sup>209</sup> Convention on Cultural Expressions Article 8(1). This provision is without prejudice to Articles 5 and 6.

<sup>210</sup> Convention on Cultural Expressions Article 8(2). This provision relates to situations referred to in paragraph 1, that states "where cultural expressions on its territory are at risk of extinction, under serious threat, or otherwise in need of urgent safeguarding ..."

<sup>211</sup> Convention on Cultural Expressions Article 11.

<sup>212</sup> Convention on Cultural Expressions Article 13.

<sup>213</sup> ILO Convention No. 169 Article 23.

flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.<sup>214\*</sup>

Each Contracting Party to the *Convention on Biological Diversity* shall, as far as possible and as appropriate: ... Subject to its national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices.<sup>215</sup>

By 2020, the traditional knowledge, innovations and practices of indigenous and local communities relevant for the conservation and sustainable use of biodiversity, and their customary use of biological resources, are respected, subject to national legislation and relevant international obligations, and fully integrated and reflected in the implementation of the *Convention on Biological Diversity* with the full and effective participation of indigenous and local communities, at all relevant levels.<sup>216</sup>

Consistent with the ecosystem approach, proponents of development proposals should recognize the importance of understanding and applying the values and knowledge, where relevant, of use of biological diversity held by indigenous and local communities and their application for sustainable development.<sup>217</sup>

41. ... [G]uidelines should assist Parties and stakeholders in the development of mutually agreed terms to ensure the fair and equitable sharing of benefits. ... 44. The following provides an indicative list of typical mutually agreed terms: ... (g) Whether the knowledge, innovations and practices of indigenous and local communities have been respected, preserved and maintained, and whether the customary use of

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<sup>214</sup> UNDRIP Article 31(1).

<sup>215</sup> CBD Article 8(j).

<sup>216</sup> Aichi Biodiversity Target 18. This provision is contained in The Strategic Plan for Biodiversity 2011-2020 and the Aichi Biodiversity Targets. The Strategic Plan includes 20 headline targets for 2015 or 2020 (the “Aichi Biodiversity Targets”), organized under five strategic goals. The goals and targets comprise both: (i) aspirations for achievement at the global level; and (ii) a flexible framework for the establishment of national or regional targets.

<sup>217</sup> Akwé: Kon Voluntary guidelines for the conduct of cultural, environmental and social impact assessments regarding developments proposed to take place on, or which are likely to impact on, sacred sites and on lands and waters traditionally occupied or used by indigenous and local communities (Akwé: Kon Guidelines) No. 59.

biological resources in accordance with traditional practices has been protected and encouraged; ...<sup>218</sup>

Appropriate indigenous capacity and local knowledge regarding the conservation and sustainable development of forests should, through institutional and financial support and in collaboration with the people in the local communities concerned, be recognized, respected, recorded, developed and, as appropriate, introduced in the implementation of programmes. Benefits arising from the utilization of indigenous knowledge should therefore be equitably shared with such people.<sup>219</sup>

To achieve the purpose of the *UNFF Instrument on Forests*, and taking into account national policies, priorities, conditions and available resources, Member States should: ... (f) Support the protection and use of traditional forest-related knowledge and practices in sustainable forest management with the approval and involvement of the holders of such knowledge, and promote fair and equitable sharing of benefits from their utilization, according to national legislation and relevant international agreements; ... (h) Create enabling environments to encourage private sector investment, as well as investment by and involvement of local and indigenous communities, other forest users and forest owners and other relevant stakeholders, in sustainable forest management, through a framework of policies, incentives and regulations; ... (y) Enhance access by households, small-scale forest owners, forest-dependent local and indigenous communities, living in and outside forest areas, to forest resources and relevant markets in order to support livelihoods and income diversification from forest management, consistent with sustainable forest management ...<sup>220</sup>

## EDUCATION AND LANGUAGES

1. Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning. 2. Indigenous individuals, particularly children, have the right to all levels and forms of education of the State without discrimination. 3. States shall, in conjunction with indigenous peoples, take effective measures, in order for indigenous individuals, particularly children, including those living outside their communities, to have access, when

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<sup>218</sup> Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of the Benefits Arising out of their Utilization (Bonn Guidelines) Provisions 41, 44(g).

<sup>219</sup> United Nations Conference on Environment and Development Non-Legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of All Types of Forests (UNCED Forest Principles) Paragraph 12(d).

<sup>220</sup> United Nations Forum on Forests Non-legally Binding Instrument on All Types of Forests (UNFF Instrument on Forests) Provision 6(f). The term "Member States" in the UNFF Instrument on Forests refers to Member States of the United Nations.

possible, to an education in their own culture and provided in their own language.<sup>221\*</sup>

Members of the peoples concerned shall enjoy opportunities at least equal to those of other citizens in respect of vocational training measures.<sup>222\*</sup>

1. Measures shall be taken to promote the voluntary participation of members of the peoples concerned in vocational training programmes of general application. 2. Whenever existing programmes of vocational training of general application do not meet the special needs of the peoples concerned, governments shall, with the participation of these peoples, ensure the provision of special training programmes and facilities. 3. Any special training programmes shall be based on the economic environment, social and cultural conditions and practical needs of the peoples concerned. Any studies made in this connection shall be carried out in co-operation with these peoples, who shall be consulted on the organisation and operation of such programmes. Where feasible, these peoples shall progressively assume responsibility for the organisation and operation of such special training programmes, if they so decide.<sup>223\*</sup>

Measures shall be taken to ensure that members of the peoples concerned have the opportunity to acquire education at all levels on at least an equal footing with the rest of the national community.<sup>224\*</sup>

1. Education programmes and services for the peoples concerned shall be developed and implemented in co-operation with them to address their special needs, and shall incorporate their histories, their knowledge and technologies, their value systems and their further social, economic and cultural aspirations. 2. The competent authority shall ensure the training of members of these peoples and their involvement in the formulation and implementation of education programmes, with a view to the progressive transfer of responsibility for the conduct of these programmes to these peoples as appropriate. 3. In addition, governments shall recognise the right of these peoples to establish their own educational institutions and facilities, provided that such institutions meet minimum standards established by the competent authority in consultation with these peoples. Appropriate resources shall be provided for this purpose.<sup>225\*</sup>

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<sup>221</sup> UNDRIP Article 14.

<sup>222</sup> ILO Convention No. 169 Article 21.

<sup>223</sup> ILO Convention No. 169 Article 22.

<sup>224</sup> ILO Convention No. 169 Article 26.

<sup>225</sup> ILO Convention No. 169 Article 27.

1. Children belonging to the peoples concerned shall, wherever practicable, be taught to read and write in their own indigenous language or in the language most commonly used by the group to which they belong. When this is not practicable, the competent authorities shall undertake consultations with these peoples with a view to the adoption of measures to achieve this objective. 2. Adequate measures shall be taken to ensure that these peoples have the opportunity to attain fluency in the national language or in one of the official languages of the country. 3. Measures shall be taken to preserve and promote the development and practice of the indigenous languages of the peoples concerned.<sup>226\*</sup>

The imparting of general knowledge and skills that will help children belonging to the peoples concerned to participate fully and on an equal footing in their own community and in the national community shall be an aim of education for these peoples.<sup>227\*</sup>

1. Governments shall adopt measures appropriate to the traditions and cultures of the peoples concerned, to make known to them their rights and duties, especially in regard to labour, economic opportunities, education and health matters, social welfare and their rights deriving from this *ILO Convention No. 169*. 2. If necessary, this shall be done by means of written translations and through the use of mass communications in the languages of these peoples.<sup>228\*</sup>

Educational measures shall be taken among all sections of the national community, and particularly among those that are in most direct contact with the peoples concerned, with the object of eliminating prejudices that they may harbour in respect of these peoples. To this end, efforts shall be made to ensure that history textbooks and other educational materials provide a fair, accurate and informative portrayal of the societies and cultures of these peoples.<sup>229\*</sup>

3. States should take appropriate measures so that, wherever possible, persons belonging to minorities may have adequate opportunities to learn their mother tongue or to have instruction in their mother tongue. 4. States should, where appropriate, take measures in the field of education, in order to encourage knowledge of the history, traditions, language and culture of the minorities existing within their territory. Persons belonging to minorities should have adequate opportunities to gain knowledge of the society as a whole.<sup>230</sup>

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<sup>226</sup> ILO Convention No. 169 Article 28.

<sup>227</sup> ILO Convention No. 169 Article 29.

<sup>228</sup> ILO Convention No. 169 Article 30.

<sup>229</sup> ILO Convention No. 169 Article 31.

<sup>230</sup> Declaration on the Rights of Minorities Article 4(3)-(4).

The States Parties to the present *Covenant on Economic, Social and Cultural Rights* recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.<sup>231</sup>

To achieve the purpose of the instrument, and taking into account national policies, priorities, conditions and available resources, Member States should: ... (v) Support education, training and extension programmes involving local and indigenous communities, forest workers and forest owners, in order to develop resource management approaches that will reduce the pressure on forests, particularly fragile ecosystems ...<sup>232</sup>

... States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: ... (e) Economic, social and cultural rights, in particular: ... (v) The right to education and training ...<sup>233</sup>

## **DEVELOPMENT**

1. The peoples concerned shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development. In addition, they shall participate in the formulation, implementation and evaluation of plans and programmes for national and regional development, which may affect them directly. 2. The improvement of the conditions of life and work and levels of health and education of the peoples concerned, with their participation and co-operation, shall be a matter of priority in plans for the overall economic development of areas they inhabit. Special projects for development of the areas in question shall also be so designed as to promote such improvement. 3. Governments shall ensure that, whenever appropriate, studies are carried out, in co-operation with the peoples concerned, to assess the social, spiritual, cultural and environmental impact on them of planned development activities. The results of

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<sup>231</sup> ICESCR Article 13(1).

<sup>232</sup> UNFF Instrument on Forests Provision 6(v).

<sup>233</sup> CERD Article 5.

these studies shall be considered as fundamental criteria for the implementation of these activities. 4. Governments shall take measures, in co-operation with the peoples concerned, to protect and preserve the environment of the territories they inhabit.<sup>234\*</sup>

States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities.<sup>235\*</sup>

Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.<sup>236\*</sup>

1. The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized. 2. The human right to development also implies the full realization of the right of peoples to self-determination, which includes, subject to the relevant provisions of both International Covenants on Human Rights, the exercise of their inalienable right to full sovereignty over all their natural wealth and resources.<sup>237</sup>

1. The human person is the central subject of development and should be the active participant and beneficiary of the right to development. 2. All human beings have a responsibility for development, individually and collectively, taking into account the need for full respect for their human rights and fundamental freedoms as well as their duties to the community, which alone can ensure the free and complete fulfilment of the human being, and they should therefore promote and protect an appropriate political, social and economic order for development. 3. States have the right and the duty to formulate appropriate national development policies that aim at the constant improvement of the well-being of the entire population and of all individuals, on the basis of their active, free and meaningful participation in development and in the fair distribution of the benefits resulting therefrom.<sup>238</sup>

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<sup>234</sup> ILO Convention No. 169 Article 7.

<sup>235</sup> UNDRIP Article 21(2).

<sup>236</sup> UNDRIP Article 23.

<sup>237</sup> Declaration on the Right to Development Article 1.

<sup>238</sup> Declaration on the Right to Development Article 2.

1. States should undertake, at the national level, all necessary measures for the realization of the right to development and shall ensure, inter alia, equality of opportunity for all in their access to basic resources, education, health services, food, housing, employment and the fair distribution of income. Effective measures should be undertaken to ensure that women have an active role in the development process. Appropriate economic and social reforms should be carried out with a view to eradicating all social injustices. 2. States should encourage popular participation in all spheres as an important factor in development and in the full realization of all human rights.<sup>239</sup>

Parties shall endeavour to support cooperation for sustainable development and poverty reduction, especially in relation to the specific needs of developing countries, in order to foster the emergence of a dynamic cultural sector ...<sup>240</sup>

States should consider appropriate measures so that persons belonging to minorities may participate fully in the economic progress and development in their country.<sup>241</sup>

## **CULTURAL AND NATURAL HERITAGE**

Each State Party to this *World Heritage Convention* recognizes that the duty of ensuring the identification, protection, conservation, presentation and transmission to future generations of the cultural and natural heritage referred to in Articles 1<sup>242</sup> and 2<sup>243</sup> and situated on its territory, belongs primarily to that State. It will do all it can to this end, to the utmost of its own resources and, where appropriate, with any international assistance and co-operation, in particular, financial, artistic, scientific and technical, which it may be able to obtain.<sup>244</sup>

The States Parties to this *World Heritage Convention* shall endeavor by all appropriate means, and in particular by educational and information programmes, to strengthen appreciation and respect by their peoples of the cultural and natural heritage defined in Articles 1 and 2 of the *World Heritage Convention*.<sup>245</sup>

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<sup>239</sup> Declaration on the Right to Development Article 8.

<sup>240</sup> Convention on Cultural Expressions Article 14.

<sup>241</sup> Declaration on the Rights of Minorities Article 4(5).

<sup>242</sup> Article 1 of the World Heritage Convention defines “cultural heritage” as certain monuments, groups of buildings, and sites.

<sup>243</sup> Article 2 of the World Heritage Convention defines “natural heritage” as certain natural features, geological and physiographical formations and precisely delineated areas, and natural sites or precisely delineated natural areas.

<sup>244</sup> World Heritage Convention Article 4.

<sup>245</sup> World Heritage Convention Article 27(1). The definitions in Articles 1 and 2 of the World Heritage Convention are given above.

Each State Party shall: (a) take the necessary measures to ensure the safeguarding of the intangible cultural heritage present in its territory; (b) among the safeguarding measures referred to in Article 2, paragraph 3,<sup>246</sup> identify and define the various elements of the intangible cultural heritage present in its territory, with the participation of communities, groups and relevant non-governmental organizations.<sup>247</sup>

To ensure identification with a view to safeguarding, each State Party shall draw up, in a manner geared to its own situation, one or more inventories of the intangible cultural heritage present in its territory. These inventories shall be regularly updated.<sup>248</sup>

Each State Party shall endeavour, by all appropriate means, to: (a) ensure recognition of, respect for, and enhancement of the intangible cultural heritage in society ... (b) keep the public informed of the dangers threatening such heritage, and of the activities carried out in pursuance of this *Convention on Intangible Cultural Heritage*; (c) promote education for the protection of natural spaces and places of memory whose existence is necessary for expressing the intangible cultural heritage.<sup>249</sup>

Within the framework of its safeguarding activities of the intangible cultural heritage, each State Party shall endeavour to ensure the widest possible participation of communities, groups and, where appropriate, individuals that create, maintain and transmit such heritage, and to involve them actively in its management.<sup>250</sup>

Without prejudice to the provisions of their national legislation and customary law and practices, the States Parties recognize that the safeguarding of intangible cultural heritage is of general interest to humanity, and to that end undertake to cooperate at the bilateral, subregional, regional and international levels.<sup>251</sup>

Creation draws on the roots of cultural tradition, but flourishes in contact with other cultures. For this reason, heritage in all its forms must be preserved, enhanced and handed on to future generations as a record of human experience and aspirations,

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<sup>246</sup> Article 2, Paragraph 3 of the Convention on Intangible Cultural Heritage provides as follows: "Safeguarding' means measures aimed at ensuring the viability of the intangible cultural heritage, including the identification, documentation, research, preservation, protection, promotion, enhancement, transmission, particularly through formal and non- formal education, as well as the revitalization of the various aspects of such heritage."

<sup>247</sup> Convention on Intangible Cultural Heritage Article 11.

<sup>248</sup> Convention on Intangible Cultural Heritage Article 12.

<sup>249</sup> Convention on Intangible Cultural Heritage Article 14.

<sup>250</sup> Convention on Intangible Cultural Heritage Article 15.

<sup>251</sup> Convention on Intangible Cultural Heritage Article 19(2).

so as to foster creativity in all its diversity and to inspire genuine dialogue among cultures.<sup>252</sup>

## **LAND TENURE**

States should: 1. Recognize and respect all legitimate tenure right holders and their rights. They should take reasonable measures to identify, record and respect legitimate tenure right holders and their rights, whether formally recorded or not; to refrain from infringement of tenure rights of others; and to meet the duties associated with tenure rights. 2. Safeguard legitimate tenure rights against threats and infringements. They should protect tenure right holders against the arbitrary loss of their tenure rights, including forced evictions that are inconsistent with their existing obligations under national and international law. 3. Promote and facilitate the enjoyment of legitimate tenure rights. They should take active measures to promote and facilitate the full realization of tenure rights or the making of transactions with the rights, such as ensuring that services are accessible to all. 4. Provide access to justice to deal with infringements of legitimate tenure rights. They should provide effective and accessible means to everyone, through judicial authorities or other approaches, to resolve disputes over tenure rights; and to provide affordable and prompt enforcement of outcomes. States should provide prompt, just compensation where tenure rights are taken for public purposes. 5. Prevent tenure disputes, violent conflicts and corruption. They should take active measures to prevent tenure disputes from arising and from escalating into violent conflicts. They should endeavour to prevent corruption in all forms, at all levels, and in all settings.<sup>253</sup>

States should strive to ensure responsible governance of tenure because land, fisheries and forests are central for the realization of human rights, food security, poverty eradication, sustainable livelihoods, social stability, housing security, rural development, and social and economic growth.<sup>254</sup>

States should provide appropriate recognition and protection of the legitimate tenure rights of indigenous peoples and other communities with customary tenure systems, consistent with existing obligations under national and international law, and with due regard to voluntary commitments under applicable regional and international instruments. Such recognition should take into account the land, fisheries and forests that are used exclusively by a community and those that are shared, and respect the general principles of responsible governance. Information on

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<sup>252</sup> UNESCO Universal Declaration on Cultural Diversity Article 7.

<sup>253</sup> FAO Tenure Guidelines No. 3(1).

<sup>254</sup> FAO Tenure Guidelines No. 4(1).

any such recognition should be publicized in an accessible location, in an appropriate form which is understandable and in applicable languages.<sup>255</sup>

Where indigenous peoples and other communities with customary tenure systems have legitimate tenure rights to the ancestral lands on which they live, States should recognize and protect these rights.<sup>256</sup>

States should consider adapting their policy, legal and organizational frameworks to recognize tenure systems of indigenous peoples and other communities with customary tenure systems. Where constitutional or legal reforms strengthen the rights of women and place them in conflict with custom, all parties should cooperate to accommodate such changes in the customary tenure systems.<sup>257</sup>

States should, in drafting tenure policies and laws, take into account the social, cultural, spiritual, economic and environmental values of land, fisheries and forests held under tenure systems of indigenous peoples and other communities with customary tenure systems. There should be full and effective participation of all members or representatives of affected communities, including vulnerable and marginalized members, when developing policies and laws related to tenure systems of indigenous peoples and other communities with customary tenure systems.<sup>258</sup>

States should respect and promote customary approaches used by indigenous peoples and other communities with customary tenure systems to resolving tenure conflicts within communities consistent with their existing obligations under national and international law, and with due regard to voluntary commitments under applicable regional and international instruments. For land, fisheries and forests that are used by more than one community, means of resolving conflict between communities should be strengthened or developed.<sup>259</sup>

States should take measures to promote and protect the security of land tenure, especially with respect to women, and poor and disadvantaged segments of society, through legislation that protects the full and equal right to own land and other property, including the right to inherit. As appropriate, States should consider establishing legal and other policy mechanisms, consistent with their international human rights obligations and in accordance with the rule of law, that advance land reform to enhance access for the poor and women. Such mechanisms should also

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<sup>255</sup> FAO Tenure Guidelines No. 9(4).

<sup>256</sup> FAO Tenure Guidelines No. 9(5).

<sup>257</sup> FAO Tenure Guidelines No. 9(6).

<sup>258</sup> FAO Tenure Guidelines No. 9(7).

<sup>259</sup> FAO Tenure Guidelines No. 9(11)

promote conservation and sustainable use of land. Special consideration should be given to the situation of indigenous communities.<sup>260</sup>

Non-state actors including business enterprises have a responsibility to respect human rights and legitimate tenure rights.<sup>261</sup>

## **NON-REMOVAL FROM LANDS OR TERRITORIES**

States shall provide effective mechanisms for prevention of, and redress for: ... (b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources; (c) Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights ...<sup>262\*</sup>

Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.<sup>263\*</sup>

1. Subject to the following paragraphs of this Article, the peoples concerned shall not be removed from the lands which they occupy. 2. Where the relocation of these peoples is considered necessary as an exceptional measure, such relocation shall take place only with their free and informed consent. Where their consent cannot be obtained, such relocation shall take place only following appropriate procedures established by national laws and regulations, including public inquiries where appropriate, which provide the opportunity for effective representation of the peoples concerned. 3. Whenever possible, these peoples shall have the right to return to their traditional lands, as soon as the grounds for relocation cease to exist. 4. When such return is not possible, as determined by agreement or, in the absence of such agreement, through appropriate procedures, these peoples shall be provided in all possible cases with lands of quality and legal status at least equal to that of the lands previously occupied by them, suitable to provide for their present needs and future development. Where the peoples concerned express a preference for compensation in money or in kind, they shall be so compensated under appropriate guarantees. 5. Persons thus relocated shall be fully compensated for any resulting loss or injury.<sup>264\*</sup>

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<sup>260</sup> FAO Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security (FAO Food Security Guidelines) No. 8.10.

<sup>261</sup> FAO Tenure Guidelines No. 3(2).

<sup>262</sup> UNDRIP Article 8(2).

<sup>263</sup> UNDRIP Article 10.

<sup>264</sup> ILO Convention No. 169 Article 16.

Where indigenous peoples and other communities with customary tenure systems have legitimate tenure rights to the ancestral lands on which they live, States should recognize and protect these rights. Indigenous peoples and other communities with customary tenure systems should not be forcibly evicted from such ancestral lands.<sup>265</sup>

Activities/interactions related to biological diversity, and the objectives of the *Convention on Biological Diversity*, such as conservation, ought not to cause indigenous and local communities to be removed from their lands and/or lands and waters traditionally occupied or used by them, as applicable, by force or coercion and without their consent. Where they consent to removal they should be compensated. Whenever possible, these indigenous and local communities should have the right to return to their traditional lands. Such activities/interactions should not cause indigenous and local community members, especially the elderly, the disabled and children to be removed from their families by force or coercion.<sup>266</sup>

States should protect legitimate tenure rights, and ensure that people are not arbitrarily evicted and that their legitimate tenure rights are not otherwise extinguished or infringed.<sup>267</sup>

## **STEWARDSHIP, GOVERNANCE, MANAGEMENT, AND USE OF TERRITORIES, LANDS AND NATURAL RESOURCES**

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired. 2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired. 3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.<sup>268\*</sup>

States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands,

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<sup>265</sup> FAO Tenure Guidelines No. 9(5).

<sup>266</sup> Tkarihwaié:ri Code of Ethical Conduct Section 2(19).

<sup>267</sup> FAO Tenure Guidelines No. 4(5).

<sup>268</sup> UNDRIP Article 26.

territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.<sup>269\*</sup>

Military activities shall not take place in the lands or territories of indigenous peoples, unless justified by a relevant public interest or otherwise freely agreed with or requested by the indigenous peoples concerned.<sup>270\*</sup>

1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources. 2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources. 3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.<sup>271\*</sup>

1. The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognised. In addition, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities. Particular attention shall be paid to the situation of nomadic peoples and shifting cultivators in this respect. 2. Governments shall take steps as necessary to identify the lands which the peoples concerned traditionally occupy, and to guarantee effective protection of their rights of ownership and possession. 3. Adequate procedures shall be established within the national legal system to resolve land claims by the peoples concerned.<sup>272\*</sup>

The rights of the peoples concerned to the natural resources pertaining to their lands shall be specially safeguarded. These rights include the right of these peoples to participate in the use, management and conservation of these resources.<sup>273\*</sup>

1. Procedures established by the peoples concerned for the transmission of land rights among members of these peoples shall be respected. 2. The peoples

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<sup>269</sup> UNDRIP Article 27.

<sup>270</sup> UNDRIP Article 30(1).

<sup>271</sup> UNDRIP Article 32.

<sup>272</sup> ILO Convention No. 169 Article 14.

<sup>273</sup> ILO Convention No. 169 Article 15(1). In this Article “[t]he use of the term lands ... shall include the concept of territories, which covers the total environment of the areas which the peoples concerned occupy or otherwise use.” ILO Convention No. 169 Article 13(2).

concerned shall be consulted whenever consideration is being given to their capacity to alienate their lands or otherwise transmit their rights outside their own community. 3. Persons not belonging to these peoples shall be prevented from taking advantage of their customs or of lack of understanding of the laws on the part of their members to secure the ownership, possession or use of land belonging to them.<sup>274\*</sup>

Adequate penalties shall be established by law for unauthorised intrusion upon, or use of, the lands of the peoples concerned, and governments shall take measures to prevent such offences.<sup>275\*</sup>

Traditional guardianship/custodianship recognizes the holistic interconnectedness of humanity with ecosystems and obligations and responsibilities of indigenous and local communities, to preserve and maintain their traditional role as traditional guardians and custodians of these ecosystems through the maintenance of their cultures, spiritual beliefs and customary practices. Because of this, cultural diversity, including linguistic diversity, ought to be recognized as keys to the conservation and sustainable use of biological diversity. Therefore, indigenous and local communities should, where relevant, be actively involved in the management of lands and waters traditionally occupied or used by them, including sacred sites and protected areas. Indigenous and local communities may also view certain species of plants and animals as sacred and, as custodians of biological diversity, have responsibilities for their well-being and sustainability, and this should be respected and taken into account in all activities/interactions.<sup>276</sup>

States should facilitate sustainable, non-discriminatory and secure access and utilization of resources consistent with their national law and with international law and protect the assets that are important for people's livelihoods. States should respect and protect the rights of individuals with respect to resources such as land, water, forests, fisheries and livestock without any discrimination. Where necessary and appropriate, States should carry out land reforms and other policy reforms consistent with their human rights obligations and in accordance with the rule of law in order to secure efficient and equitable access to land and to strengthen pro-poor growth. Special attention may be given to groups such as pastoralists and indigenous people and their relation to natural resources.<sup>277</sup>

Given that all human rights are universal, indivisible, interdependent and interrelated, the governance of tenure of land, fisheries and forests should not only

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<sup>274</sup> ILO Convention No. 169 Article 17.

<sup>275</sup> ILO Convention No. 169 Article 18.

<sup>276</sup> Tkarihwaié:ri Code of Ethical Conduct Section 2(20).

<sup>277</sup> FAO Food Security Guidelines No. 8.1.

take into account rights that are directly linked to access and use of land, fisheries and forests, but also all civil, political, economic, social and cultural rights. In doing so, States should respect and protect the civil and political rights of defenders of human rights, including the human rights of peasants, indigenous peoples, fishers, pastoralists and rural workers, and should observe their human rights obligations when dealing with individuals and associations acting in defence of land, fisheries and forests.<sup>278</sup>

States should protect indigenous peoples and other communities with customary tenure systems against the unauthorized use of their land, fisheries and forests by others. Where a community does not object, States should assist to formally document and publicize information on the nature and location of land, fisheries and forests used and controlled by the community. Where tenure rights of indigenous peoples and other communities with customary tenure systems are formally documented, they should be recorded with other public, private and communal tenure rights to prevent competing claims.<sup>279</sup>

The representatives of the Contracting Parties at such Conferences should include persons who are experts on wetlands or waterfowl by reason of knowledge and experience gained in scientific, administrative or other appropriate capacities.<sup>280</sup>

## **CUSTOMARY USE**

Each Contracting Party shall, as far as possible and as appropriate: ... protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements.<sup>281</sup>

State and non-state actors should acknowledge that land, fisheries and forests have social, cultural, spiritual, economic, environmental and political value to indigenous peoples and other communities with customary tenure systems.<sup>282</sup>

Parties, in their implementation of this *Nagoya Protocol*, shall, as far as possible, not restrict the customary use and exchange of genetic resources and associated

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<sup>278</sup> FAO Tenure Guidelines No. 4(8).

<sup>279</sup> FAO Tenure Guidelines No. 9(8).

<sup>280</sup> Convention on Wetlands of International Importance (Ramsar Convention) Article 7(1). The “Conferences” referred to in this Article are ordinary meetings of the Conference of the Contracting Parties (COP) to the Ramsar Convention convened at intervals of not more than three years. Although the Ramsar Convention itself does not mention Indigenous peoples or local communities, the COP has increasingly recognized their role in its Resolutions.

<sup>281</sup> CBD Article 10(c).

<sup>282</sup> FAO Tenure Guidelines No. 9(1).

traditional knowledge within and amongst indigenous and local communities in accordance with the objectives of the *Convention on Biological Diversity*.<sup>283</sup>

Traditional resource rights are collective in nature but may include other interests and obligations and apply to traditional resources occurring on lands and waters traditionally occupied or used by indigenous and local communities. Access of indigenous and local communities to traditional resources is crucial for the sustainable use of biological diversity and cultural survival. Activities/interactions should not interfere with access to traditional resources except with the approval of the community concerned. Activities/interactions should respect customary rules governing access to resources where this is required by the community concerned.<sup>284</sup>

## **SUSTAINABLE USE**<sup>285</sup>

Sustainability of use of biodiversity components will be enhanced if the following practical principles and related operational guidelines are applied:

*Practical Principle 1:* Supportive policies, laws, and institutions are in place at all levels of governance and there are effective linkages between these levels.

### *Operational guidelines*

- Consider local customs and traditions (and customary law where recognized) when drafting new legislation and regulations.

*Practical Principle 2:* Recognizing the need for a governing framework consistent with international<sup>286</sup>/national laws, local users of biodiversity components should be sufficiently empowered and supported by rights to be responsible and accountable for use of the resources concerned.

### *Operational guidelines*

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<sup>283</sup> Nagoya Protocol Article 12(4).

<sup>284</sup> Tkarihwaié:ri Code of Ethical Conduct Section 2(18).

<sup>285</sup> The provisions in the following section are excerpted from the Addis Ababa Principles and Guidelines for the Sustainable Use of Biodiversity (Addis Ababa Principles and Guidelines). Specifically, they are taken from Section B., entitled “practical principles, rationale and operational guidelines for the sustainable use of biodiversity”. The purpose of the Addis Ababa Principles and Guidelines is to assist Parties in achieving sustainable use of biological diversity, one of the three objectives of the Convention on Biological Diversity. Specifically, Article 10 of the Convention on Biological Diversity sets the agenda for sustainable use of the components of biological diversity.

<sup>286</sup> The Addis Ababa Principles and Guidelines note in Practical Principle 2 that “[w]here consistency with international law is referred to this recognizes: (i) that there are cases where a country will not be a party to a specific international convention and accordingly that law will not apply directly to them; and (ii) that from time to time countries are not able to achieve full compliance with the conventions to which they are a party and may need assistance.”

- Where possible adopt means that aim toward delegating rights, responsibility, and accountability to those who use and/or manage biological resources; ...
- Review existing regulations to see if they can be used for delegating rights; amend regulations where needed and possible; and/or draft new regulations where needed. Throughout local custom and traditions (including customary law where recognized) should be considered ...

*Practical principle 4:* Adaptive management should be practiced, based on: (a) Science and traditional and local knowledge; (b) Iterative, timely and transparent feedback derived from monitoring the use, environmental, socio-economic impacts, and the status of the resource being used; and (c) Adjusting management based on timely feedback from the monitoring procedures.

*Operational guidelines*

- Require adaptive management plans to incorporate systems to generate sustainable revenue, where the benefits go to indigenous and local communities and local stakeholders to support successful implementation ...

*Practical principle 6:* Interdisciplinary research into all aspects of the use and conservation of biological diversity should be promoted and supported.

*Operational guidelines*

- Encourage active collaboration between scientific researchers and people with local and traditional knowledge; ...
- Develop cooperation between researchers and biodiversity users (private or local communities), in particular, involve indigenous and local communities as research partners and use their expertise to assess management methods and technologies; ...
- Investigate and develop means of ensuring rights of access and methods for helping to ensure that the benefits derived from using components of biodiversity are equitably shared; ...

*Practical principle 9:* An interdisciplinary, participatory approach should be applied at the appropriate levels of management and governance related to the use.

*Rationale:* Sustainability of use depends on biological parameters of the resources being utilized. However, it is recognized that social, cultural, political and economic factors are equally important. It is therefore necessary to take such factors into consideration and involve indigenous and local communities and stakeholders, including and the private sector, and the people experienced in these different fields, at all levels of the decision making process.

*Practical principle 12:* The needs of indigenous and local communities who live with and are affected by the use and conservation of biological diversity, along with their contributions to its conservation and sustainable use, should be reflected in the equitable distribution of the benefits from the use of those resources.

*Rationale:* Indigenous and local communities and local stakeholders often shoulder significant costs or forgo benefits of potential use of biological diversity, in order to ensure or enhance benefits accruing to others. Many resources (e.g., timber, fisheries) are over-exploited because regulations are ignored and not enforced. When local people are involved as stakeholders such violations are generally reduced. Management regimes are enhanced when constructive programmes that benefit local communities are implemented, such as capacity training that can provide income alternatives, or assistance in diversifying their management capacities.

#### *Operational guidelines*

- Promote economic incentives that will guarantee additional benefits to indigenous and local communities and stakeholders who are involved in the management of any biodiversity components, e.g., job opportunities for local peoples, equal distribution of returns amongst locals and outside investors/co-management;
- Adopt policies and regulations that ensure that indigenous and local communities and local stakeholders who are engaged in the management of a resource for sustainable use receive an equitable share of any benefits derived from that use; ...
- Ensure that an equitable share of the benefits remain with the local people in those cases where foreign investment is involved;
- Involve local stakeholders, including indigenous and local communities, in the management of any natural resource and provide those involved with equitable compensation for their efforts, taking into account monetary and non-monetary benefits;
- In the event that management dictates a reduction in harvest levels, to the extent practicable assistance should be provided for local stakeholders, including indigenous and local communities, who are directly dependent on the resource to have access to alternatives.

## **EQUITABLE CONSERVATION OF BIODIVERSITY**

By 2020, at least 17 per cent of terrestrial and inland water areas, and 10 per cent of coastal and marine areas, especially areas of particular importance for biodiversity and ecosystem services, are conserved through effectively and equitably managed, ecologically representative and well connected systems of protected areas and other

effective area-based conservation measures, and integrated into the wider landscapes and seascapes.<sup>287</sup>

By 2020, ecosystems that provide essential services, including services related to water, and contribute to health, livelihoods and well-being, are restored and safeguarded, taking into account the needs of women, indigenous and local communities, and the poor and vulnerable.<sup>288</sup>

Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.<sup>289\*</sup>

The Parties shall encourage users and providers to direct benefits arising from the utilization of genetic resources towards the conservation of biological diversity and the sustainable use of its components.<sup>290</sup>

## **PROTECTED AREAS<sup>291</sup>**

*Goal 1.1 of the Convention on Biological Diversity's Programme of Work on Protected Areas:* To establish and strengthen national and regional systems of protected areas integrated into a global network as a contribution to globally agreed goals.

*Under Goal 1.1, Parties to the Convention on Biological Diversity are called on to:*<sup>292</sup>

By 2006, conduct, with the full and effective participation of indigenous and local communities and relevant stakeholders, national-level reviews of existing and potential forms of conservation, and their suitability for achieving biodiversity conservation goals, including innovative types of governance for protected areas that need to be recognized and promoted through legal, policy, financial institutional and community mechanisms, such as protected areas run by Government agencies

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<sup>287</sup> Aichi Biodiversity Target 11.

<sup>288</sup> Aichi Biodiversity Target 14.

<sup>289</sup> UNDRIP Article 29(1).

<sup>290</sup> Nagoya Protocol Article 9.

<sup>291</sup> This section is taken from Elements 1 and 2 of the CBD Program of Work on Protected Areas (PoWPA). Element 1 is entitled "Direct actions for planning, selecting, establishing, strengthening, and managing, protected area systems and sites." Element 2 is entitled "Governance, Participation, Equity and Benefit Sharing."

<sup>292</sup> This text does not appear in the CBD PoWPA. It is inserted to introduce the following paragraphs that contain suggested activities for Parties to the CBD and contained within the Goals of the CBD PoWPA listed here. This text is duplicated in this section for PoWPA Goals 1.4, 1.5, 2.1, and 2.2.

at various levels, co-managed protected areas, private protected areas, indigenous and local community conserved areas.<sup>293</sup>

1.1.7 Encourage the establishment of protected areas that benefit indigenous and local communities, including by respecting, preserving, and maintaining their traditional knowledge in accordance with article 8(j) and related provisions.<sup>294</sup>

*Goal 1.4 of the Convention on Biological Diversity's Programme of Work on Protected Areas:* To substantially improve site-based protected area planning and management.

*Under Goal 1.4, Parties to the Convention on Biological Diversity are called on to:*<sup>295</sup>

Create a highly participatory process, involving indigenous and local communities and relevant stakeholders, as part of site-based planning in accordance with the ecosystem approach, and use relevant ecological and socio-economic data required to develop effective planning processes.<sup>296</sup>

*Goal 1.5 of the Convention on Biological Diversity's Programme of Work on Protected Areas:* To prevent and mitigate the negative impacts of key threats to protected areas.

*Under Goal 1.5, Parties to the Convention on Biological Diversity are called on to:*

Apply, as appropriate, timely environmental impact assessments to any plan or project with the potential to have effects on protected areas, and ensure timely information flow among all concerned parties to that end, taking into account decision VI/7 A of the Conference of the Parties on guidelines for incorporating biodiversity related issues into environmental impact assessment legislation and/or processes and in strategic environmental assessments.<sup>297</sup>

Develop policies, improve governance, and ensure enforcement of urgent measures that can halt the illegal exploitation of resources from protected areas, and strengthen international and regional cooperation to eliminate illegal trade in such resources taking into account sustainable customary resource use of indigenous and local communities in accordance with article 10(c) of the Convention.<sup>298</sup>

*Goal 2.1 of the Convention on Biological Diversity's Programme of Work on Protected Areas:* To promote equity and benefit sharing [e]stablish by 2008 mechanisms for

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<sup>293</sup> CBD PoWPA 1.1.4.

<sup>294</sup> CBD PoWPA 1.1.7.

<sup>295</sup> As noted above, this text does not appear in the CBD PoWPA.

<sup>296</sup> CBD PoWPA 1.4.1.

<sup>297</sup> CBD PoWPA 1.5.1.

<sup>298</sup> CBD PoWPA 1.5.6.

the equitable sharing of both costs and benefits arising from the establishment and management of protected areas.<sup>299</sup>

*Under Goal 2.1, Parties to the Convention on Biological Diversity are called on to:*<sup>300</sup>

Assess the economic and socio-cultural costs, benefits and impacts arising from the establishment and maintenance of protected areas, particularly for indigenous and local communities, and adjust policies to avoid and mitigate negative impacts, and where appropriate compensate costs and equitably share benefits in accordance with the national legislation.<sup>301</sup>

Recognize and promote a broad set of protected area governance types related to their potential for achieving biodiversity conservation goals in accordance with the Convention, which may include areas conserved by indigenous and local communities and private nature reserves. The promotion of these areas should be by legal and/or policy, financial and community mechanisms.<sup>302</sup>

Establish policies and institutional mechanisms with full participation of indigenous and local communities, to facilitate the legal recognition and effective management of indigenous and local community conserved areas in a manner consistent with the goals of conserving both biodiversity and the knowledge, innovations and practices of indigenous and local communities.<sup>303</sup>

Use social and economic benefits generated by protected areas for poverty reduction, consistent with protected-area management objectives.<sup>304</sup>

Engage indigenous and local communities and relevant stakeholders in participatory planning and governance, recalling the principles of the ecosystem approach.<sup>305</sup>

*Goal 2.2 of the Convention on Biological Diversity's Programme of Work on Protected Areas:* To enhance and secure involvement of indigenous and local communities and relevant stakeholders. Target: Full and effective participation by 2008, of indigenous and local communities, in full respect of their rights and recognition of their responsibilities, consistent with national law and applicable international obligations, and the participation of relevant stakeholders, in the management of existing, and the establishment and management of new, protected areas.

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<sup>299</sup> CBD PoWPA Element 2.

<sup>300</sup> As noted above, this text does not appear in the CBD PoWPA.

<sup>301</sup> CBD PoWPA 2.1.1.

<sup>302</sup> CBD PoWPA 2.1.2.

<sup>303</sup> CBD PoWPA 2.1.3.

<sup>304</sup> CBD PoWPA 2.1.4.

<sup>305</sup> CBD PoWPA 2.1.5.

*Under Goal 2.2, Parties to the Convention on Biological Diversity are called on to:*<sup>306</sup>

Carry out participatory national reviews of the status, needs and context-specific mechanisms for involving stakeholders, ensuring gender and social equity, in protected areas policy and management, at the level of national policy, protected area systems and individual sites.<sup>307</sup>

Implement specific plans and initiatives to effectively involve indigenous and local communities, with respect for their rights consistent with national legislation and applicable international obligations, and stakeholders at all levels of protected areas planning, establishment, governance and management, with particular emphasis on identifying and removing barriers preventing adequate participation.<sup>308</sup>

Support participatory assessment exercises among stakeholders to identify and harness the wealth of knowledge, skills, resources and institutions of importance for conservation that are available in society.<sup>309</sup>

Promote an enabling environment (legislation, policies, capacities, and resources) for the involvement of indigenous and local communities and relevant stakeholders in decision making, and the development of their capacities and opportunities to establish and manage protected areas, including community-conserved and private protected areas.<sup>310</sup>

Ensure that any resettlement of indigenous communities as a consequence of the establishment or management of protected areas will only take place with their prior informed consent that may be given according to national legislation and applicable international obligations.<sup>311</sup>

## **SACRED NATURAL SITES**

Recognition of sacred sites, culturally significant sites and lands and waters traditionally occupied or used by indigenous and local communities: ... This principle recognizes the integral connection of indigenous and local communities to their sacred sites, culturally significant sites and lands and waters traditionally occupied or used by them and associated traditional knowledge, and that their cultures, lands and waters are interrelated. In accordance with national domestic law and

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<sup>306</sup> As noted above, this text does not appear in the CBD PoWPA.

<sup>307</sup> CBD PoWPA 2.2.1.

<sup>308</sup> CBD PoWPA 2.2.2.

<sup>309</sup> CBD PoWPA 2.2.3.

<sup>310</sup> CBD PoWPA 2.2.4. It should be noted that a footnote link in the PoWPA website following the word “stakeholders” in this activity does not work.

<sup>311</sup> CBD PoWPA 2.2.5.

international obligations, in this context, traditional land tenure of indigenous and local communities should be recognized, as access to traditional lands and waters and sacred sites is fundamental to the retention of traditional knowledge and associated biological diversity. Sparsely populated lands and waters ought not to be presumed to be empty or unoccupied but may be occupied or used by indigenous or local communities.<sup>312</sup>

When developments are proposed to take place on, or which are likely to impact on, sacred sites and on lands and waters traditionally occupied or used by indigenous and local communities, personnel associated with such developments should recognize that many sacred sites, and areas or places of other cultural significance may have important functions with respect to the conservation and sustainable use of biological diversity and, by extension, the maintenance of the natural resources upon which such communities rely for their well-being.<sup>313</sup>

## **FOOD AND AGRICULTURE**

The States Parties to the present *Covenant on Economic, Social and Cultural Rights*, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed: (a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources ...<sup>314</sup>

Food security exists when all people, at all times, have physical and economic access to sufficient, safe and nutritious food to meet their dietary needs and food preferences for an active and healthy life. The four pillars of food security are availability, stability of supply, access and utilization.<sup>315</sup>

States should promote and safeguard a free, democratic and just society in order to provide a peaceful, stable and enabling economic, social, political and cultural environment in which individuals can feed themselves and their families in freedom and dignity.

Recognizing the primary responsibility of States for the progressive realization of the right to adequate food, States are encouraged to apply a multistakeholder approach

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<sup>312</sup> Tkarihwaié:ri Code of Ethical Conduct Section 2(17).

<sup>313</sup> Akwé: Kon Guidelines No. 31.

<sup>314</sup> ICESCR Article 11(2).

<sup>315</sup> FAO Food Security Guidelines Introduction, Paragraph 15.

to national food security to identify the roles of and involve all relevant stakeholders, encompassing civil society and the private sector, drawing together their know-how with a view to facilitating the efficient use of resources.<sup>316</sup>

### ***Local Agricultural Systems***

National agrarian programmes shall secure to the peoples concerned treatment equivalent to that accorded to other sectors of the population with regard to: (a) the provision of more land for these peoples when they have not the area necessary for providing the essentials of a normal existence, or for any possible increase in their numbers; (b) the provision of the means required to promote the development of the lands which these peoples already possess.<sup>317\*</sup>

States, taking into account the importance of biodiversity, and consistent with their obligations under relevant international agreements, should consider specific national policies, legal instruments and supporting mechanisms to prevent the erosion of and ensure the conservation and sustainable use of genetic resources for food and agriculture, including, as appropriate, for the protection of relevant traditional knowledge and equitable participation in sharing benefits arising from the use of these resources, and by encouraging, as appropriate, the participation of local and indigenous communities and farmers in making national decisions on matters related to the conservation and sustainable use of genetic resources for food and agriculture.<sup>318</sup>

### ***Farmers and Crop Diversity***

Each Contracting Party shall, subject to national legislation, and in cooperation with other Contracting Parties where appropriate, promote an integrated approach to the exploration, conservation and sustainable use of plant genetic resources for food and agriculture and shall in particular, as appropriate: ... c) Promote or support, as appropriate, farmers and local communities' efforts to manage and conserve on-farm their plant genetic resources for food and agriculture; d) Promote in situ conservation of wild crop relatives and wild plants for food production, including in protected areas, by supporting, inter alia, the efforts of indigenous and local communities ...<sup>319</sup>

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<sup>316</sup> FAO Food Security Guidelines No. 6.1.

<sup>317</sup> ILO Convention No. 169 Article 19.

<sup>318</sup> FAO Food Security Guidelines No. 8.12.

<sup>319</sup> ITPGRFA Article 5(1).

The Contracting Parties shall, as appropriate, take steps to minimize or, if possible, eliminate threats to plant genetic resources for food and agriculture.<sup>320</sup>

The Contracting Parties shall develop and maintain appropriate policy and legal measures that promote the sustainable use of plant genetic resources for food and agriculture.<sup>321</sup>

The sustainable use of plant genetic resources for food and agriculture may include such measures as: a) pursuing fair agricultural policies that promote, as appropriate, the development and maintenance of diverse farming systems that enhance the sustainable use of agricultural biological diversity and other natural resources; b) strengthening research which enhances and conserves biological diversity by maximizing intra- and inter-specific variation for the benefit of farmers, especially those who generate and use their own varieties and apply ecological principles in maintaining soil fertility and in combating diseases, weeds and pests; c) promoting, as appropriate, plant breeding efforts which, with the participation of farmers, particularly in developing countries, strengthen the capacity to develop varieties particularly adapted to social, economic and ecological conditions, including in marginal areas; d) broadening the genetic base of crops and increasing the range of genetic diversity available to farmers; e) promoting, as appropriate, the expanded use of local and locally adapted crops, varieties and underutilized species; f) supporting, as appropriate, the wider use of diversity of varieties and species in on-farm management, conservation and sustainable use of crops and creating strong links to plant breeding and agricultural development in order to reduce crop vulnerability and genetic erosion, and promote increased world food production compatible with sustainable development ...<sup>322</sup>

States should promote agricultural research and development, in particular to promote basic food production with its positive effects on basic incomes and its benefits to small and women farmers, as well as poor consumers.<sup>323</sup>

### ***Sui Generis Plant Variety Protection***

[P]atents shall be available for any inventions, whether products or processes, in all fields of technology, provided that they are new, involve an inventive step and are capable of industrial application.<sup>324</sup> ... Members may also exclude from patentability: ... (b) plants and animals other than micro-organisms, and essentially biological

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<sup>320</sup> ITPGRFA Article 5(2).

<sup>321</sup> ITPGRFA Article 6(1).

<sup>322</sup> ITPGRFA Article 6(2).

<sup>323</sup> FAO Food Security Guidelines No. 8.4.

<sup>324</sup> Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) Article 27(1).

processes for the production of plants or animals other than non-biological and microbiological processes. However, Members shall provide for the protection of plant varieties either by patents or by an effective sui generis system or by any combination thereof. The provisions of this subparagraph shall be reviewed four years after the date of entry into force of the WTO Agreement.<sup>325</sup>

### ***Livestock Keepers***

The main aims of the Global Plan of Action for Animal Genetic Resources are: ... to promote the sustainable use and development of animal genetic resources, for food security, sustainable agriculture, and human well-being in all countries; to ensure the conservation of the important animal genetic resource diversity, for present and future generations, and to halt the random loss of these crucial resources; to promote a fair and equitable sharing of the benefits arising from the use of animal genetic resources for food and agriculture, and recognize the role of traditional knowledge, innovations and practices relevant to the conservation of animal genetic resources and their sustainable use, and, where appropriate, put in place effective policies and legislative measures; to meet the needs of pastoralists and farmers, individually and collectively, within the framework of national law, to have non-discriminatory access to genetic material, information, technologies, financial resources, research results, marketing systems, and natural resources, so that they may continue to manage and improve animal genetic resources, and benefit from economic development ...<sup>326</sup>

A diversity of animal genetic resources will ensure the ability of the livestock sector to meet changing market demands and environmental circumstances, including climate change and emerging diseases. Farmers and pastoralists require animal breeds that meet local needs and provide employment within rural communities, and that are resilient to a variety of biotic and abiotic factors, including extreme climatic conditions, feed availability, parasites and other disease factors. Furthermore, livestock provide a direct food source in times of crop failure.<sup>327</sup>

Pastoralists, farmers and breeders, individually and collectively, and indigenous and local communities, play a crucial role in in situ conservation and development of animal genetic resources. It is important to better understand and support their roles in a context of rapid economic and social change, so that they can play an effective function in in situ management, and share fairly and equitably in the benefits arising from the utilization of these resources. A number of actors and

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<sup>325</sup> TRIPS Article 27(3).

<sup>326</sup> Global Plan of Action for Animal Genetic Resources (GPA) No. 15.

<sup>327</sup> GPA No. 16.

stakeholders can assist livestock keepers and their communities in playing this role: researchers, extension agencies, the private sector, non-governmental organizations and local cooperatives.<sup>328</sup>

Establish national species and breed development strategies and programmes ... Provide information to farmers and livestock keepers to assist in facilitating access to animal genetic resources from various sources.<sup>329</sup>

Support indigenous and local production systems and associated knowledge systems of importance to the maintenance and sustainable use of animal genetic resources ... The historic contribution of indigenous and local communities to animal genetic diversity, and the knowledge systems that manage these resources, needs to be recognized, and their continuity supported. Today, the adaptive animal genetic resources management strategies of these communities continue to have economic, social and cultural significance, and to be highly relevant to food security in many rural subsistence societies, particularly, though not exclusively, in dry lands and mountainous regions. Measures to support such systems should take their specific ecological and socio-economic and cultural features into consideration.<sup>330</sup>

Support indigenous and local livestock systems of importance to animal genetic resources, including through the removal of factors contributing to genetic erosion. Support may include the provision of veterinary and extension services, delivery of microcredit for women in rural areas, appropriate access to natural resources and to the market, resolving land tenure issues, the recognition of cultural practices and values, and adding value to their specialist products.<sup>331</sup>

Promote and enable relevant exchange, interaction and dialogue among indigenous and rural communities and scientists and government officials and other

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<sup>328</sup> GPA No. 16.

<sup>329</sup> Strategic Priority 2. GPA at 19. The GPA contains twenty-three Strategic Priorities grouped within four Strategic Priority Areas. The four Strategic Priority Areas are: (1) Characterization, Inventory and Monitoring of Trends and Associated Risks; (2) Sustainable Use and Development; (3) Conservation; and (4) Policies, Institutions and Capacity-building. Each Strategic Priority contains a Rationale and Actions for its implementation. The GPA does not specify who is responsible for implementing each action, although presumably primary responsibility would fall to the governments who adopted the GPA. As stated in the Foreword: "Governments must now demonstrate sustained political will and mobilize the considerable resources needed to implement the Global Plan of Action successfully. This will require wide regional and international cooperation. FAO, other relevant international organizations, the countries, the scientific community, donors, civil society organizations and the private sector all have important roles to play."

<sup>330</sup> Strategic Priority 6. GPA at 20.

<sup>331</sup> GPA at 20.

stakeholders, in order to integrate traditional knowledge with scientific approaches.<sup>332</sup>

Loss of local breeds will cause cultural erosion and diminish the ability of communities to maintain their cultures and livelihoods. Structural changes in the livestock sector may result in a situation where the previous keepers of a breed are no longer in a position to maintain it: in such circumstances, other ways need to be identified to preserve the breed, as part of the global heritage of animal genetic resources.<sup>333</sup>

Loss of animal genetic resources reduces opportunities to develop rural economies in some countries. It may also have negative social and cultural impacts, given the long history of domestication and the resulting incorporation of domestic animals into community culture. Replacement of indigenous breeds could result in the loss of products and services preferred by local people, and the conservation of local breeds must therefore be considered within the broader context of sustaining rural communities and their existing economic foundations. Moreover, such losses now may limit future development options, based on animal products and services from specific breeds, that otherwise could have added considerable economic value as consumer demands become more varied.<sup>334</sup>

The loss of local breeds may have negative environmental impacts in some production environments, especially in dry lands and mountainous areas. Many Country Reports indicated the importance of local breeds in contributing to landscape management, vegetation control, and rangeland ecosystem sustainability, preventing the erosion of associated biodiversity.<sup>335</sup>

Appropriate conservation measures should ensure that farmers and researchers have access to a diverse gene pool for further breeding and research ...<sup>336</sup>

Establish or strengthen national educational and research facilities ... Review the national educational needs of livestock keepers, while respecting traditional knowledge and indigenous practices.<sup>337</sup>

We [the representatives of one hundred and nine States, and the European Community and forty-two Organizations] recognize that the genetic resources of animal species most critical to food security, sustainable livelihoods and human well-

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<sup>332</sup> GPA at 20.

<sup>333</sup> GPA No. 33.

<sup>334</sup> GPA No. 34.

<sup>335</sup> GPA No. 35.

<sup>336</sup> GPA No. 37.

<sup>337</sup> Strategic Priority 13. GPA at 28.

being are the result of both natural selection, and directed selection by smallholders, farmers, pastoralists and breeders, throughout the world, over generations. ...<sup>338</sup>

We acknowledge that maintaining the diversity of animal genetic resources for food and agriculture is essential to enable farmers, pastoralists and animal breeders to meet current and future production challenges resulting from changes in the environment, including climate change; to enhance resistance to disease and parasites; and to respond to changes in consumer demand for animal products. We also recognize the intrinsic value of biological diversity and the environmental, genetic, social, economic, medicinal, scientific, educational, cultural and spiritual importance of breeds of livestock, and our ethical responsibility to ensure genetic resources are available to future human generations.<sup>339</sup>

We recognize the enormous contribution that the local and indigenous communities and farmers, pastoralists and animal breeders of all regions of the world have made, and will continue to make for the sustainable use, development and conservation of animal genetic resources for food and agriculture ... We affirm the desirability, as appropriate, subject to national legislation, of respecting, preserving and maintaining traditional knowledge relevant to animal breeding and production as a contribution to sustainable livelihoods, and the need for the participation of all stakeholders in making decisions, at the national level, on matters related to the sustainable use, development and conservation of animal genetic resources.<sup>340</sup>

### ***Living Modified Organisms***

The Parties to the *Cartagena Protocol on Biosafety* shall ensure that the development, handling, transport, use, transfer and release of any living modified organisms are undertaken in a manner that prevents or reduces the risks to biological diversity, taking also into account risks to human health.<sup>341</sup>

The Parties shall, taking into account Article 8(g) of the *Convention on Biological Diversity*, establish and maintain appropriate mechanisms, measures and strategies to regulate, manage and control risks identified in the risk assessment provisions of this *Cartagena Protocol on Biosafety* associated with the use, handling and transboundary movement of living modified organisms.<sup>342</sup>

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<sup>338</sup> Interlaken Declaration on Animal Genetic Resources (Interlaken Declaration) Article 9. The Interlaken Declaration was adopted along with the GPA.

<sup>339</sup> Interlaken Declaration Article 10.

<sup>340</sup> Interlaken Declaration Article 12.

<sup>341</sup> Cartagena Protocol on Biosafety to the Convention on Biological Diversity (Cartagena Protocol on Biosafety) Article 2(2).

<sup>342</sup> Cartagena Protocol on Biosafety Article 16(1).

In order to avoid adverse effects on the conservation and sustainable use of biological diversity, taking also into account risks to human health, each Party shall take necessary measures to require that living modified organisms that are subject to intentional transboundary movement within the scope of this Protocol are handled, packaged and transported under conditions of safety, taking into consideration relevant international rules and standards.<sup>343</sup>

The Parties shall, in accordance with their respective laws and regulations, consult the public in the decision-making process regarding living modified organisms and shall make the results of such decisions available to the public, while respecting confidential information in accordance with Article 21.<sup>344</sup>

The Parties, in reaching a decision on import under this *Cartagena Protocol on Biosafety* or under its domestic measures implementing the Protocol, may take into account, consistent with their international obligations, socio-economic considerations arising from the impact of living modified organisms on the conservation and sustainable use of biological diversity, especially with regard to the value of biological diversity to indigenous and local communities.<sup>345</sup>

The Parties are encouraged to cooperate on research and information exchange on any socio-economic impacts of living modified organisms, especially on indigenous and local communities.<sup>346</sup>

Parties shall require the appropriate operator or operators, in the event of damage, subject to any requirements of the competent authority, to: (a) Immediately inform the competent authority; (b) Evaluate the damage; and (c) Take appropriate response measures.<sup>347</sup>

## **WATER**

The States Parties to the present *Covenant on Economic, Social and Cultural Rights* recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to

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<sup>343</sup> Cartagena Protocol on Biosafety Article 18(1).

<sup>344</sup> Cartagena Protocol on Biosafety Article 23(2).

<sup>345</sup> Cartagena Protocol on Biosafety Article 26(1).

<sup>346</sup> Cartagena Protocol on Biosafety Article 26(2).

<sup>347</sup> Nagoya-Kuala Lumpur Supplementary Protocol On Liability and Redress to the Cartagena Protocol on Biosafety (N-KL Supplementary Protocol) Article 5(1). Pursuant to Article 3, the N-KL Supplementary Protocol applies to “damage resulting from living modified organisms which find their origin in a transboundary movement.”

ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent.<sup>348</sup>

The States Parties to the present *Covenant on Economic, Social and Cultural Rights* recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.<sup>349</sup>

Bearing in mind that access to water in sufficient quantity and quality for all is fundamental for life and health, States should strive to improve access to, and promote sustainable use of, water resources and their allocation among users giving due regard to efficiency and the satisfaction of basic human needs in an equitable manner and that balances the requirement of preserving or restoring the functioning of ecosystems with domestic, industrial and agricultural needs, including safeguarding drinking-water quality.<sup>350</sup>

States Parties ... shall ensure to such women the right: ... To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.<sup>351</sup>

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services. 2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures: ... (c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution; ...<sup>352</sup>

Watercourse States shall in their respective territories utilize an international watercourse in an equitable and reasonable manner. In particular, an international watercourse shall be used and developed by watercourse States with a view to attaining optimal and sustainable utilization thereof and benefits therefrom, taking

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<sup>348</sup> ICESCR Article 11(1). The United Nations Committee on Economic, Social and Cultural Rights has concluded that the right to water emanates from and is inextricably linked to ICESCR Article 11(1) and Article 12(1), referenced below. Committee on Economic, Social and Cultural Rights General Comment No. 15 (2002).

<sup>349</sup> ICESCR Article 12(1).

<sup>350</sup> FAO Food Security Guidelines No. 8.11.

<sup>351</sup> CEDAW Article 14(2)(h).

<sup>352</sup> Convention on the Rights of the Child Article 24(2)(c).

into account the interests of the watercourse States concerned, consistent with adequate protection of the watercourse.<sup>353</sup>

Utilization of an international watercourse in an equitable and reasonable manner within the meaning of article 5 requires taking into account all relevant factors and circumstances, including: ... (c) The population dependent on the watercourse in each watercourse State; ... (f) Conservation, protection, development and economy of use of the water resources of the watercourse and the costs of measures taken to that effect ...<sup>354</sup>

## **CLIMATE CHANGE**

The Parties should protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities. Accordingly, the developed country Parties should take the lead in combating climate change and the adverse effects thereof.<sup>355</sup>

All Parties, taking into account their common but differentiated responsibilities and their specific national and regional development priorities, objectives and circumstances, shall: ... promote sustainable management, and promote and cooperate in the conservation and enhancement, as appropriate, of sinks and reservoirs of all greenhouse gases not controlled by the Montreal Protocol, including biomass, forests and oceans as well as other terrestrial, coastal and marine ecosystems.<sup>356</sup>

All Parties, taking into account their common but differentiated responsibilities and their specific national and regional development priorities, objectives and circumstances, shall: ... Cooperate in preparing for adaptation to the impacts of climate change; develop and elaborate appropriate and integrated plans for coastal zone management, water resources and agriculture, and for the protection and rehabilitation of areas, particularly in Africa, affected by drought and desertification, as well as floods.<sup>357</sup>

All Parties, taking into account their common but differentiated responsibilities and their specific national and regional development priorities, objectives and circumstances, shall: ... Promote and cooperate in education, training and public

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<sup>353</sup> Convention on the Law of the Non-navigational Uses of International Watercourses (Convention on Non-navigational Water Courses) Article 5(1).

<sup>354</sup> Convention on Non-navigational Water Courses Article 6(1).

<sup>355</sup> UNFCCC Article 3(1).

<sup>356</sup> UNFCCC Article 4(1)(d).

<sup>357</sup> UNFCCC Article 4(1)(e).

awareness related to climate change and encourage the widest participation in this process, including that of non-governmental organizations.<sup>358</sup>

States should ensure that the legitimate tenure rights to land, fisheries and forests of all individuals, communities or peoples likely to be affected, with an emphasis on farmers, small-scale food producers, and vulnerable and marginalized people, are respected and protected by laws, policies, strategies and actions with the aim to prevent and respond to the effects of climate change consistent with their respective obligations, as applicable, in terms of relevant climate change framework agreements.<sup>359</sup>

Where appropriate, States should strive to prepare and implement strategies and actions in consultation and with the participation of all people, women and men, who may be displaced due to climate change. Any provision of alternative land, fisheries, forests and livelihoods for displaced persons should not jeopardize the livelihoods of others. States may also consider offering special assistance to small island and other developing states.<sup>360</sup>

States should facilitate the participation, consistent with the principles of consultation and participation of these Guidelines, of all individuals, communities or peoples, with an emphasis on farmers, small-scale food producers, and vulnerable and marginalized people, who hold legitimate tenure rights, in the negotiations and implementation of mitigation and adaptation programmes.<sup>361</sup>

## **FORESTS**

The vital role of all types of forests in maintaining the ecological processes and balance at the local, national, regional and global levels through, inter alia, their role in protecting fragile ecosystems, watersheds and freshwater resources and as rich storehouses of biodiversity and biological resources and sources of genetic material for biotechnology products, as well as photosynthesis, should be recognized.<sup>362</sup>

Member States should respect the following principles ... : (c) Major groups as identified in Agenda 21, local communities, forest owners and other relevant stakeholders contribute to achieving sustainable forest management and should be involved in a transparent and participatory way in forest decision-making processes

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<sup>358</sup> UNFCCC Article 4(1)(i).

<sup>359</sup> FAO Tenure Guidelines No. 23(1).

<sup>360</sup> FAO Tenure Guidelines No. 23(2).

<sup>361</sup> FAO Tenure Guidelines No. 23(3).

<sup>362</sup> UNCED Forest Principles Paragraph 4.

that affect them, as well as in implementing sustainable forest management, in accordance with national legislation ...<sup>363</sup>

Governments should promote and provide opportunities for the participation of interested parties, including local communities and indigenous people, industries, labour, non-governmental organizations and individuals, forest dwellers and women, in the development, implementation and planning of national forest policies.<sup>364</sup>

(a) National forest policies should recognize and duly support the identity, culture and the rights of indigenous people, their communities and other communities and forest dwellers. Appropriate conditions should be promoted for these groups to enable them to have an economic stake in forest use, perform economic activities, and achieve and maintain cultural identity and social organization, as well as adequate levels of livelihood and well-being, through, inter alia, those land tenure arrangements which serve as incentives for the sustainable management of forests. (b) The full participation of women in all aspects of the management, conservation and sustainable development of forests should be actively promoted.<sup>365</sup>

The problems that hinder efforts to attain the conservation and sustainable use of forest resources and that stem from the lack of alternative options available to local communities, in particular the urban poor and poor rural populations who are economically and socially dependent on forests and forest resources, should be addressed by Governments and the international community.<sup>366</sup>

[The Conference of the Parties to the UN Framework Convention on Climate Change] encourages developing country Parties to contribute to mitigation actions in the forest sector by undertaking the following activities, as deemed appropriate by each Party and in accordance with their respective capabilities and national circumstances: (a) Reducing emissions from deforestation; (b) Reducing emissions from forest degradation; (c) Conservation of forest carbon stocks; (d) Sustainable management of forests; (e) Enhancement of forest carbon stocks ...<sup>367</sup>

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<sup>363</sup> UNFF Instrument on Forests Provision 2(c). "The major groups identified in Agenda 21 are women, children and youth, indigenous people and their communities, non-governmental organizations, local authorities, workers and trade unions, business and industry, scientific and technological communities, and farmers." UNFF Instrument on Forests Provision 2 note 7.

<sup>364</sup> UNCED Forest Principles) Paragraph 2(d).

<sup>365</sup> UNCED Forest Principles Paragraph 5.

<sup>366</sup> UNCED Forest Principles Paragraph 9(b).

<sup>367</sup> UNFCCC COP, "Decision 1/CP.16, The Cancun Agreements: Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention" (Cancun, 29 November – 10 December 2010) FCCC/CP/2010/7/Add.1 (UNFCCC Cancun Agreements) Paragraph 70.

When undertaking the activities referred to in paragraph 70 of this decision,<sup>368</sup> the following safeguards should be promoted and supported: ...

(c) Respect for the knowledge and rights of indigenous peoples and members of local communities, by taking into account relevant international obligations, national circumstances and laws, and noting that the United Nations General Assembly has adopted the United Nations Declaration on the Rights of Indigenous Peoples;

(d) The full and effective participation of relevant stakeholders, in particular indigenous peoples and local communities, in the actions referred to in paragraphs 70 and 72 of this decision;<sup>369</sup>

(e) That actions are consistent with the conservation of natural forests and biological diversity, ensuring that the actions referred to in paragraph 70 of this decision are not used for the conversion of natural forests, but are instead used to incentivize the protection and conservation of natural forests and their ecosystem services, and to enhance other social and environmental benefits; ...<sup>370</sup>

## DESERTIFICATION

In order to achieve the objective of this *Convention on Desertification* and to implement its provisions, the Parties shall be guided, inter alia, by the following: (a) the Parties should ensure that decisions on the design and implementation of programmes to combat desertification and/or mitigate the effects of drought are taken with the participation of populations and local communities and that an enabling environment is created at higher levels to facilitate action at national and local levels.<sup>371</sup>

National action programmes shall specify the respective roles of government, local communities and land users and the resources available and needed. They shall, inter alia: ... provide for effective participation at the local, national and regional

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<sup>368</sup> In this case, the paragraph directly above this one.

<sup>369</sup> Paragraph 72 of the UNFCCC Cancun Agreements reads as follows: "Also requests developing country Parties, when developing and implementing their national strategies or action plans, to address, inter alia, the drivers of deforestation and forest degradation, land tenure issues, forest governance issues, gender considerations and the safeguards identified in paragraph 2 of appendix I to this decision, ensuring the full and effective participation of relevant stakeholders, inter alia indigenous peoples and local communities; ..."

<sup>370</sup> *Paragraph 2 of Appendix I of the UNFCCC Cancun Agreements.* A footnote following the semicolon in Subparagraph (e) reads as follows: "Taking into account the need for sustainable livelihoods of indigenous peoples and local communities and their interdependence on forests in most countries, reflected in the United Nations Declaration on the Rights of Indigenous Peoples, as well as the International Mother Earth Day."

<sup>371</sup> Convention on Desertification Article 3.

levels of non-governmental organizations and local populations, both women and men, particularly resource users, including farmers and pastoralists and their representative organizations, in policy planning, decision-making, and implementation and review of national action programmes.<sup>372</sup>

The Parties agree, according to their respective capabilities, to integrate and coordinate the collection, analysis and exchange of relevant short term and long term data and information to ensure systematic observation of land degradation in affected areas and to understand better and assess the processes and effects of drought and desertification. This would help accomplish, inter alia, early warning and advance planning for periods of adverse climatic variation in a form suited for practical application by users at all levels, including especially local populations. To this end, they shall, as appropriate: ... (b) ensure that the collection, analysis and exchange of information address the needs of local communities and those of decision makers, with a view to resolving specific problems, and that local communities are involved in these activities.<sup>373</sup>

The Parties undertake, according to their respective capabilities, to promote technical and scientific cooperation in the fields of combating desertification and mitigating the effects of drought through appropriate national, subregional, regional and international institutions. To this end, they shall support research activities that: ... (c) protect, integrate, enhance and validate traditional and local knowledge, know-how and practices, ensuring, subject to their respective national legislation and/or policies, that the owners of that knowledge will directly benefit on an equitable basis and on mutually agreed terms from any commercial utilization of it or from any technological development derived from that knowledge.<sup>374</sup>

The Parties shall, according to their respective capabilities, and subject to their respective national legislation and/or policies, protect, promote and use in particular relevant traditional and local technology, knowledge, know-how and practices and, to that end, they undertake to ... (a) make inventories of such technology, knowledge, know-how and practices and their potential uses with the participation of local populations, and disseminate such information, where appropriate, in cooperation with relevant intergovernmental and non-governmental organizations; (b) ensure that such technology, knowledge, know-how and practices are adequately protected and that local populations benefit directly, on an equitable basis and as

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<sup>372</sup> Convention on Desertification Article 10(2)(f).

<sup>373</sup> Convention on Desertification Article 16(b).

<sup>374</sup> Convention on Desertification Article 17(1)(c).

mutually agreed, from any commercial utilization of them or from any technological development derived therefrom.<sup>375</sup>

The Conference of the Parties *to the Convention on Desertification* shall establish and/or strengthen networks of regional education and training centres to combat desertification and mitigate the effects of drought ...<sup>376</sup>

## **BENEFIT SHARING**

Indigenous and local communities ought to receive fair and equitable benefits for their contribution to activities/interactions related to biodiversity and associated traditional knowledge proposed to take place on, or which are likely to impact on, sacred sites and lands and waters traditionally occupied or used by indigenous and local communities. Benefit-sharing should be regarded as a way of strengthening indigenous and local communities and promoting the objectives of the Convention on Biological Diversity and ought to be equitable within and among relevant groups, taking into account relevant community-level procedures.<sup>377</sup>

Each Party shall take legislative, administrative or policy measures, as appropriate, with the aim of ensuring that benefits arising from the utilization of genetic resources that are held by indigenous and local communities, in accordance with domestic legislation regarding the established rights of these indigenous and local communities over these genetic resources, are shared in a fair and equitable way with the communities concerned, based on mutually agreed terms.<sup>378</sup>

Each Party shall take legislative, administrative or policy measures, as appropriate, in order that the benefits arising from the utilization of traditional knowledge associated with genetic resources are shared in a fair and equitable way with indigenous and local communities holding such knowledge. Such sharing shall be upon mutually agreed terms.<sup>379</sup>

... In the implementation of mutually agreed terms, users [of genetic resources] should: ... Ensure the fair and equitable sharing of benefits, including technology transfer to providing countries, pursuant to Article 16 of the *Convention on Biological Diversity* arising from the commercialization or other use of genetic

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<sup>375</sup> Convention on Desertification Article 18(2)(a), (b).

<sup>376</sup> Convention on Desertification Article 19(4).

<sup>377</sup> Tkarihwaié:ri Code of Ethical Conduct Section 2(14).

<sup>378</sup> Nagoya Protocol Article 5(2).

<sup>379</sup> Nagoya Protocol Article 5(5).

resources, in conformity with the mutually agreed terms they established with the indigenous and local communities or stakeholders involved; ...<sup>380</sup>

Pursuant to mutually agreed terms established following prior informed consent, benefits should be shared fairly and equitably with all those who have been identified as having contributed to the resource management, scientific and/or commercial process. The latter may include governmental, non-governmental or academic institutions and indigenous and local communities. Benefits should be directed in such a way as to promote conservation and sustainable use of biological diversity.<sup>381</sup>

The involvement of relevant stakeholders, in particular, indigenous and local communities, in the various stages of development and implementation of access and benefit-sharing arrangements can play an important role in facilitating the monitoring of compliance.<sup>382</sup>

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<sup>380</sup> Bonn Guidelines Provision 16(b)(ix).

<sup>381</sup> Bonn Guidelines Provision 48.

<sup>382</sup> Bonn Guidelines Provision 56.

## II. PROCEDURAL RIGHTS

### PRECAUTIONARY APPROACH

This principle reaffirms the precautionary approach contained in principle 15 of the Rio Declaration on Environment and Development<sup>383</sup> and in the preamble to the Convention on Biological Diversity. The prediction and assessment of potential harms to biological diversity should include local criteria and indicators, and should fully involve the relevant indigenous and local communities.<sup>384</sup>

### FREE, PRIOR AND INFORMED CONSENT

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.<sup>385\*</sup>

#### *Lands, Waters and Natural Resources*

In cases in which the State retains the ownership of mineral or sub-surface resources or rights to other resources pertaining to lands, governments shall establish or maintain procedures through which they shall consult these peoples, with a view to ascertaining whether and to what degree their interests would be prejudiced, before undertaking or permitting any programmes for the exploration or exploitation of such resources pertaining to their lands. The peoples concerned shall wherever possible participate in the benefits of such activities, and shall receive fair compensation for any damages which they may sustain as a result of such activities.<sup>386\*</sup>

2. States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent. 3. States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and

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<sup>383</sup> Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992, vol. I, Resolutions Adopted by the Conference (United Nations publication, Sales No. E.93.I.8 and corrigendum), resolution 1, annex I.

<sup>384</sup> Tkarihwaié:ri Code of Ethical Conduct Section 2(16).

<sup>385</sup> UNDRIP Article 19.

<sup>386</sup> ILO Convention No. 169, Article 15(2). In this Article, “[t]he use of the term lands ... shall include the concept of territories, which covers the total environment of the areas which the peoples concerned occupy or otherwise use.” ILO Convention No. 169 Article 13(2).

restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented.<sup>387\*</sup>

States shall undertake effective consultations with the indigenous peoples concerned, through appropriate procedures and in particular through their representative institutions, prior to using their lands or territories for military activities.<sup>388\*</sup>

States and other parties should hold good faith consultation with indigenous peoples before initiating any project or before adopting and implementing legislative or administrative measures affecting the resources for which the communities hold rights. Such projects should be based on an effective and meaningful consultation with indigenous peoples, through their own representative institutions in order to obtain their free, prior and informed consent under the United Nations Declaration of Rights of Indigenous Peoples and with due regard for particular positions and understandings of individual States. Consultation and decision-making processes should be organized without intimidation and be conducted in a climate of trust.<sup>389</sup>

### ***Genetic Resources***

In accordance with domestic law, each Party shall take measures, as appropriate, with the aim of ensuring that the prior informed consent or approval and involvement of indigenous and local communities is obtained for access to genetic resources where they have the established right to grant access to such resources.<sup>390</sup>

Each Party shall take appropriate, effective and proportionate legislative, administrative or policy measures to provide that genetic resources utilized within its jurisdiction have been accessed in accordance with prior informed consent and that mutually agreed terms have been established, as required by the domestic access and benefit-sharing legislation or regulatory requirements of the other Party.<sup>391</sup>

Contracting Parties with users of genetic resources under their jurisdiction should take appropriate legal, administrative, or policy measures, as appropriate, to support compliance with prior informed consent of the Contracting Party providing such resources and mutually agreed terms on which access was granted. These countries could consider, inter alia, the following measures: ... (ii) Measures to encourage the disclosure of the country of origin of the genetic resources and of the origin of

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<sup>387</sup> UNDRIP Article 29(2)-(3).

<sup>388</sup> UNDRIP Article 30(2).

<sup>389</sup> FAO Tenure Guidelines No. 9(9).

<sup>390</sup> Nagoya Protocol Article 6(2).

<sup>391</sup> Nagoya Protocol Article 15(1).

traditional knowledge, innovations and practices of indigenous and local communities in applications for intellectual property rights; ...<sup>392</sup>

25. ... *The Bonn Guidelines* are intended to assist Parties in the establishment of a system of prior informed consent, in accordance with Article 15, paragraph 5, of the *Convention on Biological Diversity*. ... 26. The basic principles of a prior informed consent system should include: ... (d) Consent of the relevant competent national authority(ies) in the provider country. The consent of relevant stakeholders, such as indigenous and local communities, as appropriate to the circumstances and subject to domestic law, should also be obtained.<sup>393</sup>

Respecting established legal rights of indigenous and local communities associated with the genetic resources being accessed or where traditional knowledge associated with these genetic resources is being accessed, the prior informed consent of indigenous and local communities and the approval and involvement of the holders of traditional knowledge, innovations and practices should be obtained, in accordance with their traditional practices, national access policies and subject to domestic laws.<sup>394</sup>

Prior informed consent is to be sought adequately in advance to be meaningful both for those seeking and for those granting access. Decisions on applications for access to genetic resources should also be taken within a reasonable period of time.<sup>395</sup>

### ***Traditional Knowledge, Innovations and Practices***

In accordance with domestic law, each Party shall take measures, as appropriate, with the aim of ensuring that traditional knowledge associated with genetic resources that is held by indigenous and local communities is accessed with the prior and informed consent or approval and involvement of these indigenous and local communities, and that mutually agreed terms have been established.<sup>396</sup>

In implementing their obligations under this *Nagoya Protocol*, Parties shall in accordance with domestic law take into consideration indigenous and local communities' customary laws, community protocols and procedures, as applicable, with respect to traditional knowledge associated with genetic resources.<sup>397</sup>

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<sup>392</sup> Bonn Guidelines Provision 16(d)(ii).

<sup>393</sup> Bonn Guidelines Provisions 25, 26. Article 15(5) of the CBD States: "Access to genetic resources shall be subject to prior informed consent of the Contracting Party providing such resources, unless otherwise determined by that Party."

<sup>394</sup> Bonn Guidelines Provision 31.

<sup>395</sup> Bonn Guidelines Provision 33.

<sup>396</sup> Nagoya Protocol Article 7.

<sup>397</sup> Nagoya Protocol Article 12(1).

Each Party shall take appropriate, effective and proportionate legislative, administrative or policy measures, as appropriate, to provide that traditional knowledge associated with genetic resources utilized within their jurisdiction has been accessed in accordance with prior informed consent or approval and involvement of indigenous and local communities and that mutually agreed terms have been established, as required by domestic access and benefit-sharing legislation or regulatory requirements of the other Party where such indigenous and local communities are located.<sup>398</sup>

Community and individual concerns over, and claims to, cultural and intellectual property relevant to traditional knowledge, innovations and practices related to the conservation and sustainable use of biodiversity should be acknowledged and addressed in the negotiation with indigenous and local communities, prior to starting activities/interactions.<sup>399</sup>

Indigenous and local communities should be adequately informed in advance, about the nature, scope and purpose of any proposed activities/interactions carried out by others that may involve the use of their traditional knowledge, innovations and practices related to the conservation and sustainable use of biodiversity, occurring on or likely to impact on, sacred sites and on lands and waters traditionally occupied or used by indigenous and local communities. This information should be provided in a manner that takes into consideration and actively engages with the body of knowledge and cultural practices of indigenous and local communities.<sup>400</sup>

Any activities/interactions related to traditional knowledge associated with the conservation and sustainable use of biological diversity, occurring on or likely to impact on sacred sites and on lands and waters traditionally occupied or used by indigenous and local communities and impacting upon specific groups, should be carried out with the prior informed consent and/or approval and involvement of indigenous and local communities. Such consent or approval should not be coerced, forced or manipulated.<sup>401</sup>

... [T]raditional knowledge, innovations and practices should be considered an important and integral component of baseline studies,<sup>402</sup> particularly the traditional knowledge, innovations and practices of those who have a long association with the

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<sup>398</sup> Nagoya Protocol Article 16(1).

<sup>399</sup> Tkarihwaïé:ri Code of Ethical Conduct Section 2(8).

<sup>400</sup> Tkarihwaïé:ri Code of Ethical Conduct Section 2(10).

<sup>401</sup> Tkarihwaïé:ri Code of Ethical Conduct Section 2(11).

<sup>402</sup> The purpose of a baseline study is “to ascertain those components of biological diversity of particular significance to the affected indigenous or local community” “in order to effectively undertake an environmental impact assessment for a proposed development”. Akwé: Kon Guidelines No. 37.

particular area for which the development is proposed. Traditional knowledge, innovations and practices can be cross-referenced by old photographs, newspaper articles, known historical events, archaeological records, anthropological reports, and other records contained in archival collections.<sup>403</sup>

Where consent or authority of indigenous and local communities is required with respect to traditional knowledge associated with the conservation and sustainable use of biodiversity, it is the right of indigenous and local communities, according to their customary law and procedures, to identify the relevant holders of their knowledge.<sup>404</sup>

## **CULTURAL, ENVIRONMENTAL AND SOCIAL IMPACT ASSESSMENTS**

National policies should ensure that environmental impact assessments should be carried out where actions are likely to have significant adverse impacts on important forest resources, and where such actions are subject to a decision of a competent national authority.<sup>405</sup>

The purpose of these *Akwé: Kon Guidelines* is to provide a collaborative framework within which Governments, indigenous and local communities, decision makers and managers of developments can: (a) Support the full and effective participation and involvement of indigenous and local communities in screening, scoping and development planning exercises; (b) Properly take into account the cultural, environmental and social concerns and interests of indigenous and local communities, especially of women who often bear a disproportionately large share of negative development impacts; Take into account the traditional knowledge, innovations and practices of indigenous and local communities as part of environmental, social and cultural impact-assessment processes, with due regard to the ownership of and the need for the protection and safeguarding of traditional knowledge, innovations and practices; (d) Promote the use of appropriate technologies; (e) Identify and implement appropriate measures to prevent or mitigate any negative impacts of proposed developments; (f) Take into consideration the interrelationships among cultural, environmental and social elements.<sup>406</sup>

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<sup>403</sup> Akwé: Kon Guidelines No. 38.

<sup>404</sup> Tkarihwaié:ri Code of Ethical Conduct Section 1(4).

<sup>405</sup> UNCED Forest Principles Paragraph 8(h).

<sup>406</sup> Akwé: Kon Guidelines No. 3.

The proponent of a development proposal or the responsible government authority should engage in a process of notification and public consultation of intention to carry out a development.<sup>407</sup>

The development proposal and impact assessment should be made available to organizations representing affected indigenous and local communities and relevant stakeholders for the purposes of public scrutiny and consultation. It should include all details relevant to the proposal. Notification and public consultation of the proposed development should allow for sufficient time to allow the affected indigenous or local community to prepare its response. An opportunity to present its response should be allowed for full and fair consideration by the proponent.<sup>408</sup>

In any development proposed to take place on, or likely to have an impact on, sacred sites and lands and waters traditionally occupied or used by them, indigenous and local communities should be invited to participate in and are to be accorded full respect at all stages of the assessment and development process, including planning and implementation.<sup>409</sup>

Affected indigenous and local communities should be invited to participate on any body appointed to advise on the screening and scoping phases or should be consulted on an impact assessment process for a development proposal, and should be involved in the establishment of the terms of reference for the conduct of the impact assessments, subject to national legislation. The screening and scoping phases should also take into account any community development plans and any mechanisms for strategic environmental assessment that have been formulated by an affected community.<sup>410</sup>

In addition to representation on any body established to advise on the other impact assessment process phases, the full and effective participation and involvement of affected indigenous and local communities should contemplate using participatory models of community engagement during the conduct of the impact assessments, including in decision-making. The proponent should also provide regular feedback to the affected community throughout all stages of the impact assessment and development processes.<sup>411</sup>

In order to maintain the health, well being and security of affected indigenous and local communities and the ecosystems that sustain them, and, to the extent that it is

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<sup>407</sup> Akwé: Kon Guidelines No. 10.

<sup>408</sup> Akwé: Kon Guidelines No. 11.

<sup>409</sup> Akwé: Kon Guidelines No. 12.

<sup>410</sup> Akwé: Kon Guidelines No. 14.

<sup>411</sup> Akwé: Kon Guidelines No. 15.

possible, in order to prevent adverse cultural, environmental and social impacts of any proposed developments, actors that should bear the responsibility for liability, redress, insurance and compensation should be clearly identified.<sup>412</sup>

Bearing in mind the unique relationship between indigenous and local communities and the environment, the *Akwé: Kon Guidelines* allow for the consideration of the integration of cultural, environmental, social impact assessments as a single process.<sup>413</sup>

Through the cultural impact assessment process, and particularly during the screening and scoping phases, the issues that are of particular cultural concern should be identified, such as cultural heritage, religions, beliefs and sacred teachings, customary practices, forms of social organization, systems of natural resource use, including patterns of land use, places of cultural significance, economic valuation of cultural resources, sacred sites, ceremonies, languages, customary law systems, and political structures, roles and customs. The possible impacts on all aspects of culture, including sacred sites, should therefore be taken into consideration while developing cultural impact assessments.<sup>414</sup>

In the conduct of the environmental component of an impact assessment regarding a development proposed to take place on, or which is likely to impact on, sacred sites and on lands and waters traditionally occupied or used by indigenous and local communities, the guidelines for incorporating biodiversity-related issues into environmental impact assessment legislation and/or process and in strategic environmental assessment, should be taken into account.<sup>415</sup>

In order to effectively undertake a social impact assessment with respect to an indigenous or local community that is or is likely to be affected by a proposed development, the screening and scoping phases should take into account gender and demographic factors, housing and accommodation, employment, infrastructure and services, income and asset distribution, traditional systems and means of production, as well as educational needs, technical skills and financial implications.<sup>416</sup>

Where the national legal regime requires prior informed consent of indigenous and local communities, the assessment process should consider whether such prior informed consent has been obtained. Prior informed consent corresponding to

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<sup>412</sup> Akwé: Kon Guidelines No. 20.

<sup>413</sup> Akwé: Kon Guidelines No. 23.

<sup>414</sup> Akwé: Kon Guidelines No. 24.

<sup>415</sup> Akwé: Kon Guidelines No. 35.

<sup>416</sup> Akwé: Kon Guidelines No. 39.

various phases of the impact assessment process should consider the rights, knowledge, innovations and practices of indigenous and local communities; the use of appropriate language and process; the allocation of sufficient time and the provision of accurate, factual and legally correct information. Modifications to the initial development proposal will require the additional prior informed consent of the affected indigenous and local communities.<sup>417</sup>

Indigenous and local communities should be encouraged, and provided with the necessary support and capacity to formulate their own community development plans. Such plans should include and should develop mechanisms for strategic environmental assessment that are commensurate with the goals and objectives of the development plans and appropriate poverty eradication programmes as defined by the indigenous and local communities.<sup>418</sup>

Any developments proposed to take place on, or which are likely to impact on, sacred sites and on lands and waters traditionally occupied or used by indigenous and local communities should maintain a balance between economic, social, cultural and environmental concerns, on the one hand, while, on the other hand, maximizing opportunities for the conservation and sustainable use of biological diversity, the access and equitable sharing of benefits and the recognition of traditional knowledge, innovations and practices in accordance with Article 8(j) of the Convention, and should seek to minimize risks to biological diversity. The cultural, environmental and social impact assessment processes should reflect this.<sup>419</sup>

In any assessment procedure, subject to national legislation consistent with international obligations, Governments, their agencies and development proponents should take into account the rights of indigenous and local communities over lands and waters traditionally occupied or used by them and the associated biological diversity.<sup>420</sup>

In all circumstances related to the proposed development, the customary laws and intellectual property rights of the indigenous and local communities with respect to their traditional knowledge, innovations and practices, should be respected. Such knowledge should only be used with the prior informed consent of the owners of that traditional knowledge. In order to safeguard their rights, indigenous and local communities should establish, or be assisted to establish, protocols consistent with relevant national legislation for access to and use of traditional knowledge, innovations and practices in the cultural, environmental and social impact

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<sup>417</sup> Akwé: Kon Guidelines No. 53.

<sup>418</sup> Akwé: Kon Guidelines No. 55.

<sup>419</sup> Akwé: Kon Guidelines No. 56.

<sup>420</sup> Akwé: Kon Guidelines No. 57.

assessment processes. Assistance in establishing such protocols should be provided if so requested.<sup>421</sup>

## **INFORMATION, DECISION MAKING AND ACCESS TO JUSTICE**

In order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being, each Party shall guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters in accordance with the provisions of this *Aarhus Convention*.<sup>422</sup>

Within the scope of the relevant provisions of this *Aarhus Convention*, the public shall have access to information, have the possibility to participate in decision-making and have access to justice in environmental matters without discrimination as to citizenship, nationality or domicile and, in the case of a legal person, without discrimination as to where it has its registered seat or an effective centre of its activities.<sup>423</sup>

### ***Access to Information***

1. The Contracting Parties to the *Convention on Biological Diversity* shall facilitate the exchange of information, from all publicly available sources, relevant to the conservation and sustainable use of biological diversity, taking into account the special needs of developing countries. 2. Such exchange of information shall include exchange of results of technical, scientific and socio-economic research, as well as information on training and surveying programmes, specialized knowledge, indigenous and traditional knowledge as such and in combination with the technologies referred to in Article 16, paragraph 1.<sup>424</sup> It shall also, where feasible, include repatriation of information.<sup>425</sup>

Each Party shall ensure that, subject to the following paragraphs of this article, public authorities, in response to a request for environmental information, make such information available to the public, within the framework of national legislation,

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<sup>421</sup> Akwé: Kon Guidelines No. 60.

<sup>422</sup> Aarhus Convention Article 1.

<sup>423</sup> Aarhus Convention Article 3(9).

<sup>424</sup> Article 16, paragraph 1 of the CBD provides as follows: "Each Contracting Party, recognizing that technology includes biotechnology, and that both access to and transfer of technology among Contracting Parties are essential elements for the attainment of the objectives of this Convention, undertakes subject to the provisions of this Article to provide and/or facilitate access for and transfer to other Contracting Parties of technologies that are relevant to the conservation and sustainable use of biological diversity or make use of genetic resources and do not cause significant damage to the environment."

<sup>425</sup> CBD Article 17.

including, where requested and subject to subparagraph (b) below, copies of the actual documentation containing or comprising such information: (a) Without an interest having to be stated; (b) In the form requested unless: (i) It is reasonable for the public authority to make it available in another form, in which case reasons shall be given for making it available in that form; or (ii) The information is already publicly available in another form.<sup>426</sup>

Each Party shall ensure that, within the framework of national legislation, the way in which public authorities make environmental information available to the public is transparent and that environmental information is effectively accessible ...<sup>427</sup>

The public concerned shall be informed, either by public notice or individually as appropriate, early in an environmental decision-making procedure, and in an adequate, timely and effective manner, inter alia, of: (a) The proposed activity and the application on which a decision will be taken; (b) The nature of possible decisions or the draft decision; (c) The public authority responsible for making the decision; (d) The envisaged procedure, including, as and when this information can be provided: ... (e) The fact that the activity is subject to a national or transboundary environmental impact assessment procedure.<sup>428</sup>

Each Party shall, within the framework of its national legislation, ensure that any person who considers that his or her request for information under article 4 has been ignored, wrongfully refused, whether in part or in full, inadequately answered, or otherwise not dealt with in accordance with the provisions of that article, has access to a review procedure before a court of law or another independent and impartial body established by law ...<sup>429</sup>

... Contracting Parties which are countries of origin of genetic resources, or other Parties which have acquired the genetic resources in accordance with the Convention, should: ... Establish mechanisms to ensure that their decisions are made available to relevant indigenous and local communities and relevant stakeholders, particularly indigenous and local communities; ...<sup>430</sup>

States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of

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<sup>426</sup> Aarhus Convention Article 4(1).

<sup>427</sup> Aarhus Convention Article 5(2).

<sup>428</sup> Aarhus Convention Article 6(2).

<sup>429</sup> Aarhus Convention Article 9(1). Article 4 contains 8 subparagraphs. Article 4(1) is referenced above. The other subparagraphs address issues involving timing of disclosure of environmental information, grounds for refusal of such disclosure, and costs charged for such disclosure.

<sup>430</sup> Bonn Guidelines Provision 16(a)(vi).

national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health.<sup>431</sup>

### ***Participation and Decision Making***

Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.<sup>432\*</sup>

1. In applying the provisions of this *ILO Convention 169*, governments shall: (a) consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly; (b) establish means by which these peoples can freely participate, to at least the same extent as other sectors of the population, at all levels of decision-making in elective institutions and administrative and other bodies responsible for policies and programmes which concern them; (c) establish means for the full development of these peoples' own institutions and initiatives, and in appropriate cases provide the resources necessary for this purpose. 2. The consultations carried out in application of this Convention shall be undertaken, in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent to the proposed measures.<sup>433\*</sup>

1. In applying the provisions of *ILO Convention No. 169*, governments shall: (a) consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly; (b) establish means by which these peoples can freely participate, to at least the same extent as other sectors of the population, at all levels of decision-making in elective institutions and administrative and other bodies responsible for policies and programmes which concern them; (c) establish means for the full development of these peoples' own institutions and initiatives, and in appropriate cases provide the resources necessary for this purpose. 2. The consultations carried out in application of this Convention shall be undertaken, in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent to the proposed measures.<sup>434\*</sup>

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<sup>431</sup> Convention on the Rights of the Child Article 17.

<sup>432</sup> UNDRIP Article 18.

<sup>433</sup> ILO Convention No. 169 Article 6.

<sup>434</sup> ILO Convention No. 169 Article 6.

Parties, if they have not already done so, should seek to ensure the full participation of affected indigenous and local communities, in accordance with national legislation, in the decision-making process for of any development proposal, including the review and appeal process, taking into account methods of mediation and dispute resolution, which may include customary methods.<sup>435</sup>

All decisions regarding activities/interactions with indigenous and local communities related to the objectives of the *Convention on Biological Diversity* should be developed and elaborated at the appropriate level to ensure indigenous and local community empowerment and effective participation, bearing in mind that such activities/interactions should respect indigenous and local community decision-making structures.<sup>436</sup>

Full and effective participation/participatory approach: This principle recognizes the crucial importance of indigenous and local communities fully and effectively participating in activities/interactions related to biological diversity and conservation that may impact on them, and of respecting their decision-making processes and time frames for such decision-making. Ethical conduct should acknowledge that there are some legitimate circumstances for indigenous and local communities to restrict access to their traditional knowledge.<sup>437</sup>

Competent national authorities, where they are established, may, in accordance with applicable national legislative, administrative or policy measures, be responsible for granting access and be responsible for advising on: ... (g) Mechanisms for the effective participation of different stakeholders, as appropriate for the different steps in the process of access and benefit- sharing, in particular, indigenous and local communities; (h) Mechanisms for the effective participation of indigenous and local communities while promoting the objective of having decisions and processes available in a language understandable to relevant indigenous and local communities.<sup>438</sup>

... Contracting Parties which are countries of origin of genetic resources, or other Parties which have acquired the genetic resources in accordance with the Convention, should: ... Support measures, as appropriate, to enhance indigenous and local communities' capacity to represent their interests fully at negotiations; ...<sup>439</sup>

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<sup>435</sup> Akwé: Kon Guidelines No. 22.

<sup>436</sup> Tkarihwaié:ri Code of Ethical Conduct Section 3(27).

<sup>437</sup> Tkarihwaié:ri Code of Ethical Conduct Section 3(30).

<sup>438</sup> Bonn Guidelines Provision 14.

<sup>439</sup> Bonn Guidelines Provision 16(a)(vii).

17. Involvement of relevant stakeholders is essential to ensure the adequate development and implementation of access and benefit-sharing arrangements. ... 19. To facilitate the involvement of relevant stakeholders, including indigenous and local communities, appropriate consultative arrangements, such as national consultative committees, comprising relevant stakeholder representatives, should be made.<sup>440</sup>

Persons belonging to minorities have the right to participate effectively in cultural, religious, social, economic and public life.<sup>441</sup>

Persons belonging to minorities have the right to participate effectively in decisions on the national and, where appropriate, regional level concerning the minority to which they belong or the regions in which they live, in a manner not incompatible with national legislation.<sup>442</sup>

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (a) To take part in the conduct of public affairs, directly or through freely chosen representatives; ...<sup>443</sup>

... States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: ... (c) Political rights, in particular the right to participate in elections-to vote and to stand for election-on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service; ...<sup>444</sup>

Procedures for public participation shall allow the public to submit, in writing or, as appropriate, at a public hearing or inquiry with the applicant, any comments, information, analyses or opinions that it considers relevant to the proposed activity.<sup>445</sup>

Each Party shall make appropriate practical and/or other provisions for the public to participate during the preparation of plans and programmes relating to the environment, within a transparent and fair framework, having provided the necessary information to the public. Within this framework, article 6, paragraphs 3, 4 and 8, shall be applied. The public which may participate shall be identified by the

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<sup>440</sup> Bonn Guidelines Provisions 17, 19.

<sup>441</sup> Declaration on the Rights of Minorities Article 2(2).

<sup>442</sup> Declaration on the Rights of Minorities Article 2(3).

<sup>443</sup> ICCPR Article 25. The distinctions mentioned in Article 2 of the ICCPR are: "race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

<sup>444</sup> CERD Article 5.

<sup>445</sup> Aarhus Convention Article 6(7).

relevant public authority, taking into account the objectives of this *Aarhus Convention*. To the extent appropriate, each Party shall endeavour to provide opportunities for public participation in the preparation of policies relating to the environment.<sup>446</sup>

Each Party shall strive to promote effective public participation at an appropriate stage, and while options are still open, during the preparation by public authorities of executive regulations and other generally applicable legally binding rules that may have a significant effect on the environment ...<sup>447</sup>

Within the framework of its safeguarding activities of the intangible cultural heritage, each State Party shall endeavour to ensure the widest possible participation of communities, groups and, where appropriate, individuals that create, maintain and transmit such heritage, and to involve them actively in its management.<sup>448</sup>

Parties, with the effective participation of the indigenous and local communities concerned, shall establish mechanisms to inform potential users of traditional knowledge associated with genetic resources about their obligations, including measures as made available through the Access and Benefit-sharing Clearing-House for access to and fair and equitable sharing of benefits arising from the utilization of such knowledge.<sup>449</sup>

### ***Equality Before the Law and Access To Justice***

States shall provide effective mechanisms for prevention of, and redress for: (a) Any action which has the aim or effect of depriving [Indigenous peoples and individuals] of their integrity as distinct peoples, or of their cultural values or ethnic identities; ...<sup>450\*</sup>

States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their

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<sup>446</sup> Aarhus Convention Article 7. Article 6, Paragraphs 3, 4 and 8 provide as follows: “3. The public participation procedures shall include reasonable time-frames for the different phases, allowing sufficient time for informing the public in accordance with paragraph 2 above and for the public to prepare and participate effectively during the environmental decision-making. 4. Each Party shall provide for early public participation, when all options are open and effective public participation can take place. ... 8. Each Party shall ensure that in the decision due account is taken of the outcome of the public participation.”

<sup>447</sup> Aarhus Convention Article 8.

<sup>448</sup> Convention on Intangible Cultural Heritage Article 15.

<sup>449</sup> Nagoya Protocol Article 12(2).

<sup>450</sup> UNDRIP Article 8(2).

cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.<sup>451\*</sup>

Indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress.<sup>452\*</sup>

1. Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent. 2. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.<sup>453\*</sup>

Indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.<sup>454\*</sup>

1. In imposing penalties laid down by general law on members of these peoples account shall be taken of their economic, social and cultural characteristics. 2. Preference shall be given to methods of punishment other than confinement in prison.<sup>455\*</sup>

The peoples concerned shall be safeguarded against the abuse of their rights and shall be able to take legal proceedings, either individually or through their representative bodies, for the effective protection of these rights. Measures shall be taken to ensure that members of these peoples can understand and be understood in legal proceedings, where necessary through the provision of interpretation or by other effective means.<sup>456\*</sup>

All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law,

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<sup>451</sup> UNDRIP Article 11(2).

<sup>452</sup> UNDRIP Article 20(2).

<sup>453</sup> UNDRIP Article 28(1).

<sup>454</sup> UNDRIP Article 40.

<sup>455</sup> ILO Convention No. 169 Article 10(1).

<sup>456</sup> ILO Convention No. 169 Article 12.

everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law ...<sup>457</sup>

Every effort should be made to avoid any adverse consequences to indigenous and local communities and lands and waters traditionally occupied or used by them, their sacred sites and sacred species, and their traditional resources from all activities/interactions affecting or impacting on them related to biological diversity, conservation and sustainable use. Should any such adverse consequences occur, appropriate restitution or compensation should be provided, in accordance with domestic legislation, and relevant international obligations, as applicable, and through mutually agreed terms between indigenous and local communities and those undertaking such activities/interactions.<sup>458</sup>

Each State Party to the present *Covenant on Civil and Political Rights* undertakes: (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity; (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; (c) To ensure that the competent authorities shall enforce such remedies when granted.<sup>459</sup>

... States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: (a) The right to equal treatment before the tribunals and all other organs administering justice ...<sup>460</sup>

States Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this *Convention on the Elimination of All Forms of Racial Discrimination*, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.<sup>461</sup>

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<sup>457</sup> ICCPR Article 14(1).

<sup>458</sup> Tkarihwaié:ri Code of Ethical Conduct Section 2(22).

<sup>459</sup> ICCPR Article 2(3).

<sup>460</sup> CERD Article 5.

<sup>461</sup> CERD Article 6.

Each Party shall, within the framework of its national legislation, ensure that members of the public concerned (a) Having a sufficient interest or, alternatively, (b) Maintaining impairment of a right, where the administrative procedural law of a Party requires this as a precondition, have access to a review procedure before a court of law and/or another independent and impartial body established by law, to challenge the substantive and procedural legality of any decision, act or omission subject to the provisions of article 6 and, where so provided for under national law and without prejudice to paragraph 3 below, of other relevant provisions of this *Aarhus Convention*.<sup>462</sup>

In addition and without prejudice to the review procedures referred to in [Articles 9(1) and 9(2) of the *Aarhus Convention*], each Party shall ensure that, where they meet the criteria, if any, laid down in its national law, members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment.<sup>463</sup>

States should ensure, in accordance with their international human rights obligations, that all individuals, including human rights defenders of the progressive realization of the right to adequate food, are accorded equal protection under the law and that due process is guaranteed in all legal proceedings.<sup>464</sup>

States should pursue inclusive, non-discriminatory and sound economic, agriculture, fisheries, forestry, land-use, and, as appropriate, land-reform policies, all of which will permit farmers, fishers, foresters and other food producers, particularly women, to earn a fair return from their labour, capital and management, and encourage conservation and sustainable management of natural resources, including in marginal areas.<sup>465</sup>

## **CAPACITY BUILDING AND AWARENESS**

Indigenous and local communities should have the opportunity to actively participate in research that affects them or which makes use of their traditional knowledge related to the objectives of the *Convention on Biological Diversity*, and decide on their own research initiatives and priorities, conduct their own research,

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<sup>462</sup> Aarhus Convention Article 9(2). Article 6 deals with public participation in decisions on specific activities. The phrase “paragraph 3 below” refers to Article 9(3), which requires Parties, when certain criteria are met, to provide members of the public access to procedures to challenge violations of national law related to the environment.

<sup>463</sup> Aarhus Convention Article 9(3).

<sup>464</sup> FAO Food Security Guidelines No. 1.4.

<sup>465</sup> FAO Food Security Guidelines No. 2.5.

including building their own research institutions and promoting the building of cooperation, capacity and competence.<sup>466</sup>

Parties shall: (a) encourage and promote understanding of the importance of the protection and promotion of the diversity of cultural expressions, inter alia, through educational and greater public awareness programmes; (b) cooperate with other Parties and international and regional organizations in achieving the purpose of this article; (c) endeavour to encourage creativity and strengthen production capacities by setting up educational, training and exchange programmes in the field of cultural industries. These measures should be implemented in a manner which does not have a negative impact on traditional forms of production.<sup>467</sup>

Each Party shall take measures to raise awareness of the importance of genetic resources and traditional knowledge associated with genetic resources, and related access and benefit-sharing issues. Such measures may include, inter alia: ... (b) Organization of meetings of indigenous and local communities and relevant stakeholders; ... (e) Promotion of voluntary codes of conduct, guidelines and best practices and/or standards in consultation with indigenous and local communities and relevant stakeholders; ... (g) Education and training of users and providers of genetic resources and traditional knowledge associated with genetic resources about their access and benefit-sharing obligations; (h) Involvement of indigenous and local communities and relevant stakeholders in the implementation of this Protocol; and (i) Awareness-raising of community protocols and procedures of indigenous and local communities.<sup>468</sup>

The Parties shall cooperate in the capacity-building, capacity development and strengthening of human resources and institutional capacities to effectively implement this *Nagoya Protocol* in developing country Parties, in particular the least developed countries and small island developing States among them, and Parties with economies in transition, including through existing global, regional, subregional and national institutions and organizations. In this context, Parties should facilitate the involvement of indigenous and local communities and relevant stakeholders, including non-governmental organizations and the private sector.<sup>469</sup>

In addition to their obligations pursuant to article 4, affected country Parties undertake to: ... (d) promote awareness and facilitate the participation of local populations, particularly women and youth, with the support of non- governmental

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<sup>466</sup> Tkarihwaié:ri Code of Ethical Conduct Section 2(25).

<sup>467</sup> Convention on Cultural Expressions Article 10.

<sup>468</sup> Nagoya Protocol Article 21.

<sup>469</sup> Nagoya Protocol Article 22.

organizations, in efforts to combat desertification and mitigate the effects of drought.<sup>470</sup>

The Parties recognize the significance of capacity building – that is to say, institution building, training and development of relevant local and national capacities – in efforts to combat desertification and mitigate the effects of drought. They shall promote, as appropriate, capacity-building: (a) through the full participation at all levels of local people, particularly at the local level, especially women and youth, with the cooperation of non-governmental and local organizations.<sup>471</sup>

The Parties shall cooperate with each other and through competent intergovernmental organizations, as well as with non-governmental organizations, in undertaking and supporting public awareness and educational programmes in both affected and, where relevant, unaffected country Parties to promote understanding of the causes and effects of desertification and drought and of the importance of meeting the objective of this *Convention on Desertification*.<sup>472</sup>

1. The States Parties to the present *Covenant on Economic, Social and Cultural Rights* recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right. 2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.<sup>473</sup>

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<sup>470</sup> Convention on Desertification Article 5(d).

<sup>471</sup> Convention on Desertification Article 19(1)(a).

<sup>472</sup> Convention on Desertification Article 19(3).

<sup>473</sup> ICESCR Article 6.

## **PART III**

### **FUTURE PATHWAYS AND THE RIGHT TO RESPONSIBILITY**

## FUTURE PATHWAYS

In his book *Indigenous Peoples in International Law*, James Anaya, the United Nations Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples, suggests that an analysis of international law must move beyond an examination of treaties and customary international law to an analysis of processes and trajectories.<sup>474</sup> Based on such an analysis, Anaya concludes that international law is developing – albeit “imperfectly and grudgingly”<sup>475</sup> – in ways that support Indigenous peoples’ demands.

Perhaps for the first time, this Compendium orders the broad sources of an emerging body of international law relating to the relationship between humans and nature, offering a means to systematically explore its current status and trajectory, identify gaps and make suggestions for legal reform. In doing so, it raises a number of important questions, including:

- Considering the plethora of provisions at the international level relating to the relationship between humans and nature, why is biological and cultural diversity still being lost at an alarming rate?
- What is the legal weight of international law and thus what are States’ legal obligations to implement it? Is there an existing process or is a new initiative required to clarify this critical question?
- How can Indigenous peoples, communities and civil society better assist governments to uphold their international commitments, including monitoring, evaluating and reporting on their performance?
- How are Indigenous peoples, local communities, networks, and broader social movements using international provisions at the national and local levels?
- Considering its current limitations, how can international law be reformed to better reflect local realities and priorities? How can it be more inclusive of Indigenous peoples, local communities and civil society?
- How can a diversity of legal systems (i.e. legal pluralism) and corresponding worldviews be fostered and nurtured in mutually supportive ways?
- How can integrated rights approaches be used to augment more conventional sectoral approaches to legal frameworks relating to human rights, the environment and cultural heritage?

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<sup>474</sup> Anaya, S., 2004. *Indigenous Peoples in International Law*. Oxford: Oxford University Press, 2nd ed.

<sup>475</sup> Anaya, 2004. Page 4.

- Is there a need for an international mechanism to monitor compliance with non-human rights-based international instruments such as the Convention on Biological Diversity?
- Is there a need for an international body or consortium to synthesise best practice and provide independent assessments of state and non-state actors' adherence to a range of procedural rights, including FPIC processes?
- What are effective strategies for ensuring enactment and implementation of international commitments at the national level?
- What kinds of legal and other forms of empowerment can assist individuals, peoples and communities to better affirm their responsibilities and assert their rights?

The above questions highlight the range and scope of critical engagement that will be required if international law is to become an effective means to support Indigenous peoples and local communities as custodians of the world's natural and cultural heritage. As previously noted, Darrell Posey suggested that proper development of TRRs would require "a process of dialogue" between Indigenous peoples, local communities and governmental and non-governmental institutions on a wide array of issues.<sup>476</sup> Similarly, it may be useful to bring together people from such groups, as well as lawyers and applied academics, into a dedicated working group. They could begin by engaging with a focused set of activities, examples of which are suggested below.

## **A. REVISING AND REFORMING INTERNATIONAL LAW**

Questions about the legal weight of specific international instruments of importance to Indigenous peoples and local communities should be a high priority. Moreover, Posey *et al.* suggest that once existing rights have been mapped and bundled to form a new picture of the law (as undertaken in the Compendium), further processes should be undertaken to "harmonize" existing international instruments and "equitize" the law to ensure Indigenous peoples and local communities are involved in its development and implementation. This could involve exploring the mutually supporting nature and conflicts between various instruments relevant to the biosphere, providing technical guidance and recommendations for reform, and actively engaging in the relevant fora.

Subsequent editions of the Compendium will consider adding provisions from the following relevant instruments and bodies, among others:

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<sup>476</sup> Posey, 1995. Page 19.

- United Nations General Assembly Resolutions and Proposals;
- Decisions issued by Conferences of the Parties to multilateral environmental agreements;
- Guidelines and best practices issued by organizations such as the FAO;
- Operating procedures and other guidance documents issued by financial institutions such as the World Bank; and
- Resolutions, recommendations and plans of action adopted by the IUCN World Conservation Congress and World Parks Congresses.

## **B. ENABLING NATIONAL IMPLEMENTATION OF INTERNATIONAL COMMITMENTS**

In an interview with the CBD Alliance in 2012,<sup>477</sup> the new Executive Secretary of the CBD, Braulio Ferreira de Souza Dias, said that his three immediate and overriding priorities are “implementation, implementation, and implementation.”<sup>478</sup> His comments coincided with the publication of a report that explores perceived weaknesses in the implementation of the CBD and suggests ways to increase Indigenous peoples’ and civil society’s involvement in the implementation and monitoring of the CBD.<sup>479</sup> When considering the wide array of unfulfilled international commitments, it becomes clear that lack of implementation is nearly a universal issue in international law. Concerted multi-stakeholder action, including developing genuine processes of participation and legal and institutional reform, could be undertaken in select countries with conditions favourable to positive change.

## **C. INCREASING THE ACCESSIBILITY OF INTERNATIONAL LAW AT THE LOCAL LEVEL**

One of the main objectives of this Compendium is to improve the accessibility of international law to Indigenous peoples, local communities and supporting organisations. To help achieve that objective, an online version of the Compendium is being developed that will make accessing the information in the Compendium as

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<sup>477</sup> Founded after the 6<sup>th</sup> COP in Den Haag, the Netherlands (April 2002), The Convention on Biological Diversity Alliance (CBD Alliance) is a loose network of activists and representatives from non-governmental organizations (NGOs), community-based organizations (CBOs), social movements and Indigenous Peoples’ Organizations (IPOs) advocating for improved and informed participation in CBD processes. For more information, see: [www.cbdalliance.org](http://www.cbdalliance.org).

<sup>478</sup> “Fewer decisions, more implementation”, Square Brackets, May 2012, Issue 6.

<sup>479</sup> Jonas, H., S. Booker, J. E. Makagon, and H. Shrumm, 2012. Implementing the Convention on Biological Diversity: A Rapid Assessment for the CBD Alliance. Natural Justice: Malaysia. As follow-up to this report, the CBD Alliance hosted a side event at the 11<sup>th</sup> Meeting of the Conference of the Parties to the CBD in Hyderabad to explore these very issues.

simple as possible, and allow the information to be displayed in a variety of ways, both visually and in text. The project will require input from members of Indigenous peoples and local communities, legal scholars and activists, and support from governments, international organizations and funders. This would dovetail with the need to make the Compendium more inclusive of the decisions, resolutions, and judgements that have been omitted from this second edition.

In the context of an upsurge in rights-based approaches to conservation,<sup>480</sup> this would be usefully augmented by a community-led process of documentation, analysis and dissemination of inspiring experiences of Indigenous peoples and local communities using the law and legal tools to secure their territories and areas.

Support for the above initiatives will further invigorate the current discussion about rights-based approaches, introduce innovative dynamics into the way Indigenous peoples and local communities assert their rights and affirm responsibilities, and lead to much-needed reforms in the way laws and policies are developed and implemented.

## TOWARDS THE RIGHT TO RESPONSIBILITY

The horizon leans forward,  
Offering you space to place new steps of change.  
Here, on the pulse of this fine day  
You may have the courage  
To look up and out and upon me, the  
Rock, the River, the Tree, your country.

**Maya Angelou**  
*On the Pulse of Morning*<sup>481</sup>

Accessing useful legal knowledge often takes significant amounts of time and money. It is hoped that this publication further illustrates the importance of *democratizing the law* by providing information about important rights and responsibilities in a form that is readily accessible to the people to whom it is of most use.

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<sup>480</sup> Campese, J., T. Sunderland, T. Greiber, and G. Oviedo (eds.), 2009. *Rights-based Approaches: Exploring Issues and Opportunities for Conservation*. CIFOR and IUCN: Bogor, Indonesia. For a critique of the current rights-based approach paradigm, see: Jonas, H., H. Shrumm and K. Bavikatte, 2010. "Biocultural Community Protocols and Conservation Pluralism", pages 102-112 in Shrumm, H. (ed.), *Exploring the Right to Diversity in Conservation Law, Policy and Practice*. IUCN-CEESP Policy Matters 17: Malaysia.

<sup>481</sup> Maya Angelou, *On the Pulse of Morning*. Available at: <http://www.america.gov/st/texttrans-english/2009/January/20090112155227berehellek0.2457697.html&distid=ucs>.

In light of this publication's focus on rights (due to the nature of international law), the irony is the fact that many Indigenous peoples and local communities downplay the assertion of individual rights<sup>482</sup> in favour of affirming their responsibilities to care for their communities and territories.<sup>483</sup> While rights rely on a claim of entitlement by virtue of being human,<sup>484</sup> responsibilities are the result of mutually supportive relationships. In this context, the above Compendium can be seen as a body of law that has been agreed internationally to support Indigenous peoples' and local communities' *right to responsibility*.<sup>485</sup> Only by being recognized and supported in their roles as responsible stewards of their territories and areas will they be able to properly fulfil their self-imposed duties.<sup>486</sup>

Looking ahead, this publication represents one element of a much larger process and is itself a work in progress. It is the authors' sincere hope that it contributes to the on-going work in this area and, by promoting an unorthodox reading of an existing legal landscape, helps Indigenous peoples, local communities and their supporters to identify 'space to place new steps of change'.

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<sup>482</sup> This is the case, at least in the first instance. Whereas Western systems privilege rights over responsibilities, many Indigenous and traditional communities espouse the opposite.

<sup>483</sup> A range of Indigenous peoples and local communities have expressed this, among other ways, through community protocols. See: [www.community-protocols.org](http://www.community-protocols.org).

<sup>484</sup> Schmitz, H.P. and Sikkink, K., *International Human Rights*, in Handbook of International Relations (2nd edition 2012), at 1.

<sup>485</sup> There appears to be little work done in this area. It would be interesting to explore the right to responsibility within the group that hopefully forms to advance this work.

<sup>486</sup> For a recent report on the importance of legal recognition and institutional support for the local roles of Indigenous peoples and local communities see: Jonas, H., A. Kothari and H. Shrumm, 2012.

## ANNEX I

**TABLE SETTING OUT THE INSTRUMENTS, GUIDELINES AND DECISIONS (ETC.) THAT WERE REVIEWED, IDENTIFYING WHICH ARE INCLUDED IN THE COMPENDIUM**

INCLUDED OR NOT	NAME OF INSTRUMENT, GUIDELINES etc.	YEAR
<b>HUMAN RIGHTS</b>		
✓	Universal Declaration of Human Rights	1948
✓	ILO Convention No. 169	1989, 1991 <sup>487</sup>
✓	United Nations Declaration of the Rights of Indigenous Peoples	2007
✓	International Covenant on Civil and Political Rights	1966, 1976
✓	International Covenant on Economic, Social and Cultural Rights	1966, 1976
✓	International Convention of the Elimination of All Forms of Racial Discrimination	1965, 1969
✓	Convention on the Elimination of All Forms of Discrimination against Women	1979, 1981
X	Convention against Torture and Other Cruel,	1984, 1987

<sup>487</sup> Unless otherwise indicated, when two years are provided, the first indicates the year adopted and the second indicates the year of entry into force. Where there is only one year provided that is the year of adoption.

	Inhuman or Degrading Treatment or Punishment	
✓	Convention on the Rights of the Child	1989, 1990
✓	Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities	1992
	<b>Regional Charters and Conventions on Human Rights</b>	
x	African Charter on Human and Peoples' Rights	1981, 1986
x	Arab Charter on Human Rights	1994, new version adopted 2004
x	Asian Human Rights Charter	Declared 1998
x	European Convention on Human Rights	1950, 1953
x	American Convention on Human Rights	1969, 1978
	<b>United Nations General Assembly and Subsidiary Bodies</b>	
x	Selection of United Nations General Assembly Resolutions <sup>488</sup> and General Comments that are not listed above, including: <ul style="list-style-type: none"> <li>- A/RES/67/153 on Indigenous Peoples Rights</li> </ul>	(Only those between 2010/2013)

<sup>488</sup> It is important to note that “[w]hile the decisions of the General Assembly have no legally binding force for Governments, they carry the weight of world opinion on major international issues, as well as the moral authority of the world community.” Available via: <http://www.un.org/ga/57/about.htm>.

	<ul style="list-style-type: none"> <li>- A/RES/208 on Culture and Development</li> <li>- A/RES/66/142 on Rights of Indigenous Peoples</li> <li>- A/RES/66/154 on Human Rights and Cultural Diversity</li> <li>- A/RES/66/204 on Harmony with Nature</li> <li>- A/RES/66/296 on Organization of the High-level Plenary Meeting of the General Assembly, to be known as the World Conference on Indigenous Peoples</li> <li>- A/RES/65/198 on Indigenous Issues</li> <li>- A/RES/65/166 on Culture and Development</li> <li>- A/RES/65/164 on Harmony with Nature</li> <li>- A/RES/65/161 on Convention on Biological Diversity</li> <li>- A/RES/65/120 on The role of the United Nations in promoting a new global human order<sup>489</sup></li> </ul>	
X	United Nations Human Rights Council Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework	2011
X	Reports of the United Nations Permanent Forum on Indigenous Issues	Established 2000
X	Reports of the Expert Mechanism on the Rights of Indigenous Peoples	Established 2007

<sup>489</sup> For a full list please consult <http://www.un.org/documents/resga.htm>.

	<b>United Nations Special Rapporteurs and Independent Experts</b>	
X	Reports of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the right to Non-discrimination in this Context	Established 2000
X	Reports of the Special Rapporteur on the Right to Food	Established 2000
X	Reports of the Special Rapporteur on the Situation of Human Rights Defenders	Established 2000
X	Reports of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples	Established 2001
X	Reports of the Independent Expert on Minority Issues	Established 2005
X	Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation	Established 2008
X	Reports of the Special Rapporteur in the Field of Cultural Rights	Established 2009
X	Reports of the Special Rapporteur of Internally Displaced Persons	Established 2010 (Representative operating since 1994)
<b>BIODIVERSITY</b>		

Convention on Biological Diversity		
✓	Convention on Biological Diversity	1992, 1993
✓	Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization	2010
✓	Cartagena Protocol on Biosafety	2000, 2003
✓	Nagoya-Kuala Lumpur Supplementary Protocol on Liability and Redress to the Cartagena Protocol	2010
✓	Tkarihwaí:ri Code of Ethical Conduct to Ensure Respect for the Cultural and Intellectual Heritage of Indigenous and Local Communities	2010
✓	Addis Ababa Principles and Guidelines for the Sustainable Use of Biodiversity	2004
✓	Akwé: Kon Guidelines	2004
✓	Aichi Biodiversity Targets (Decision X/2)	2010
x	Consolidated Update of the Global Strategy for Plant Conservation 2011-2020 (Decision X/17)	2010
x	Protected areas (Decision X/31)	2010
x	Sustainable use of biodiversity (Decision X/32)	2010
x	Biodiversity and climate change (Decision X/33)	2010
x	Multi-year programme of work on the implementation of Article 8(j) and related	2010

	provisions of the Convention on Biological Diversity (Decision X/43)	
✓	Programme of Work on Protected Areas	2004
x	<p>Select CBD COP Decisions that are not listed above, including:</p> <ul style="list-style-type: none"> <li>• Article 8(j) and Related Provisions (Decision V/16)</li> <li>• Article 8(j) and Related Provisions (Decision VI/10)</li> <li>• Protected Areas (Articles 8(a) to (e)) (Decision VII/28)</li> <li>• Protected Areas (Decision VIII/24)</li> <li>• Article 8(j) and Related Provisions (Decision IX/13)</li> <li>• Protected Areas (Decision IX/18)</li> <li>• Access and Benefit Sharing (Decision X/1)</li> <li>• Strategic Plan 2011-2012 (Decision X/2)</li> <li>• Protected Areas (Decision X/31)</li> <li>• Article 8(j) and Related Provisions (Decisions X/40-43)</li> <li>• Article 8(j) and Related Provisions (Decision XI/14)</li> <li>• Protected Areas (Decision XI/24)</li> <li>• Sustainable Use of Biodiversity (Decision XI/25)</li> </ul>	
<b>Forests</b>		
✓	United Nations Conference on Environment and Development Non-Legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of All Types of Forests	1992
x	FAO Responsible Management of Planted Forests:	2006

	Voluntary Guidelines	
X	FAO Fire Management: Voluntary Guidelines. Principles and Strategic Actions	2006
✓	United Nations Forum on Forests Non-legally Binding Instrument on All Types of Forests	2007
	<b>Other Agreements</b>	
X	International Plant Protection Convention	1951
✓	Convention on Wetlands of International Importance	1971, 1975
X	Convention on the International Trade in Endangered Species of Wild Fauna and Flora	1973, 1975 (Amended 1979)
X	Convention on the Conservation of Migratory Species of Wild Animals	1979, 1983
<b>IUCN Resolutions and Recommendations from World Conservation Congresses and the Fifth World Parks Congress</b>		
X	First World Conservation Congress	1996
X	Second World Conservation Congress	2000
X	Third World Conservation Congress	2004
X	Fourth World Conservation Congress	2008
X	Fifth World Conservation Congress	2012

X	Fifth World Parks Congress	2003
<b>POLLUTION</b>		
X	The Montreal Protocol on Substances that Deplete the Ozone Layer	1987, 1989
X	Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal	1989, 1992
X	Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade	1998, 2004
<b>CLIMATE CHANGE</b>		
✓	United Nations Framework Convention on Climate Change	1992, 1994
X	Kyoto Protocol to the United Nations Framework Convention on Climate Change	1997, 2005
✓	UNFCCC Cancun Agreements	2010
<b>DESERTIFICATION</b>		
✓	United Nations Convention to Combat Desertification	1994, 1996
<b>FOOD AND AGRICULTURE</b>		
X	United Nations Fish Stocks Agreement	1995

X	FAO Code of Conduct on Responsible Fisheries	1995
✓	The International Treaty on Plant Genetic Resources for Food and Agriculture	2001, 2004
X	ILO's Work in Fishing Convention	2007
✓	Global Plan of Action for Animal Genetic Resources and the Interlaken Declaration on Animal Genetic Resources	2007
	<b>Food and Agriculture Organization</b>	
X	FAO Code of Conduct on Responsible Fisheries	1995
✓	FAO Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security	2004
✓	FAO Voluntary Guidelines on the Tenure of Land Fisheries and Forests in the Context of National Food Security	2012
X	FAO International Guidelines for Securing Sustainable Small-scale Fisheries	2012 (Zero Draft)
	<b>WATER</b>	
✓	Convention on the Law of the Non-navigational Uses of International Watercourses	1997
<b>INTELLECTUAL PROPERTY</b>		
✓	The Agreement on Trade-Related Aspects of	

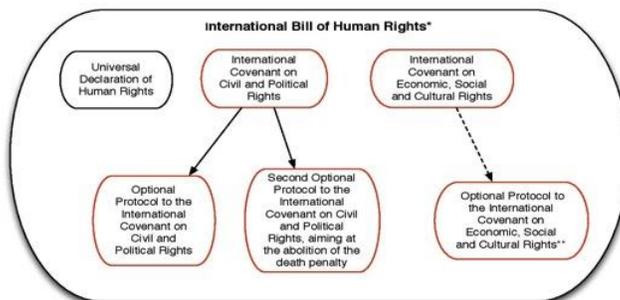
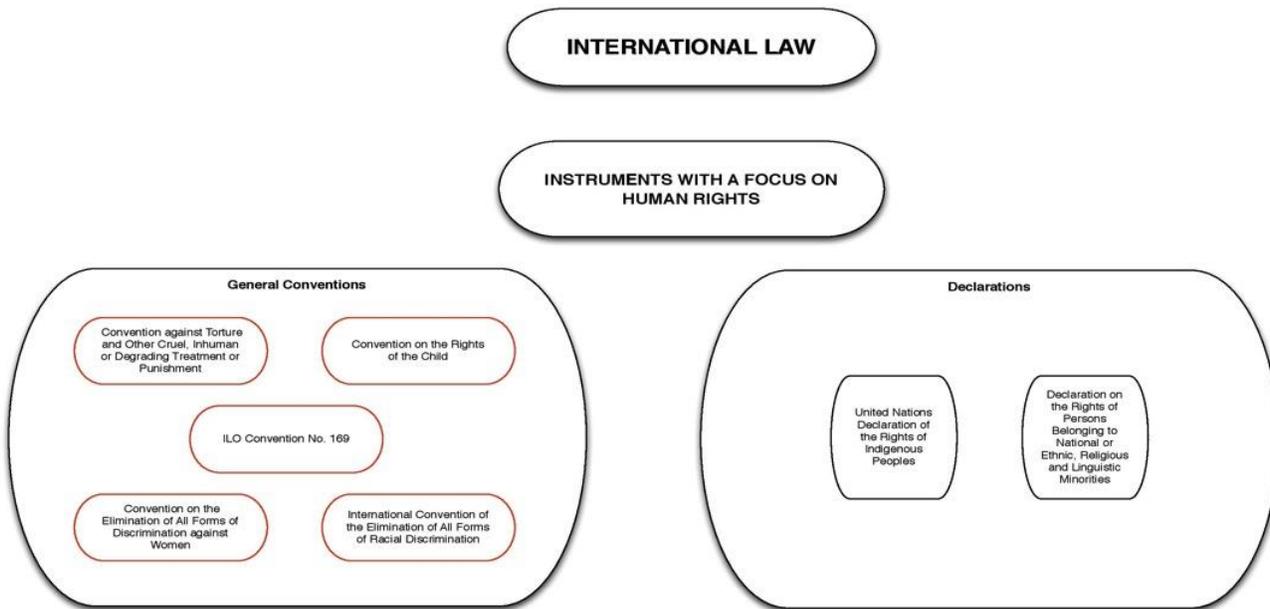
	Intellectual Property Rights <sup>490</sup>	
X	On-going WIPO negotiations on Effective Protection of Traditional Knowledge, Traditional Cultural Expressions/Folklore and Genetic Resources	
<b>CULTURAL HERITAGE</b>		
✓	UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage	1972
✓	UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions	2005, 2007
✓	UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage	2003, 2006
<b>BIOCULTURAL DIVERSITY</b>		
X	Declaration on Biocultural Diversity	2010
X	UNESCO-CBD Joint Programme of work on the Links between Biological and Cultural Diversity (referenced in Decision X/20)	2010
<b>SUSTAINABLE DEVELOPMENT</b>		
X	Declaration of the United Nations Conference on the Human Environment	1972
X	United Nations Declaration on the Right to	1986

<sup>490</sup> Many developing countries have been required to go beyond the requirements of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) when signing trade agreements with the United States and European Union. These have been called “TRIPS-Plus Provisions.”

	Development	
X	Rio Declaration on Environment and Development	1992
X	Agenda 21	1992
X	Programme for the Further Implementation of Agenda 21	1997
X	Plan of Implementation of the World Summit on Sustainable Development (Johannesburg Declaration on Sustainable Development and the Plan of Implementation) of the World Summit on Sustainable Development	2002
X	United Nations Programme of Action on the Sustainable Development of Small Island Developing States	1994
X	Mauritius Strategy for the Further Implementation of the Programme of Action for the Sustainable Development of SIDS (2005)	2005
X	The Future We Want	2012
<b>INFORMATION, PUBLIC PARTICIPATION AND ACCESS TO JUSTICE</b>		
✓	Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters	1998

# ANNEX II

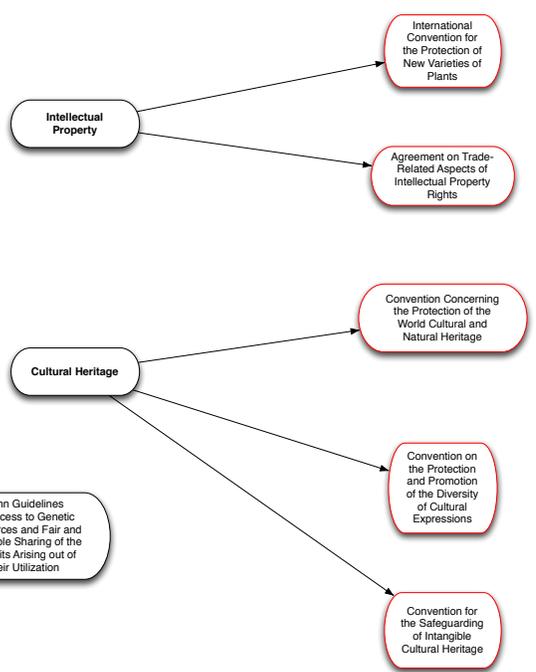
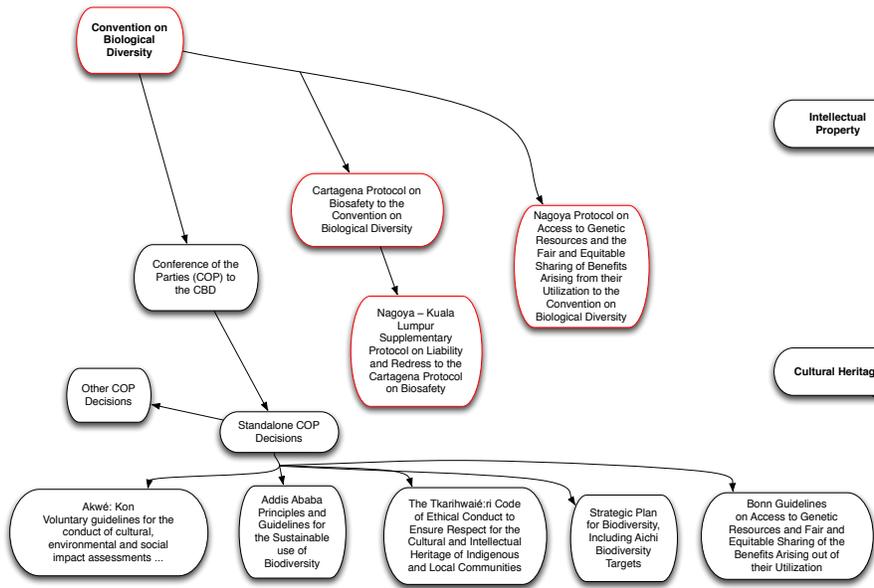
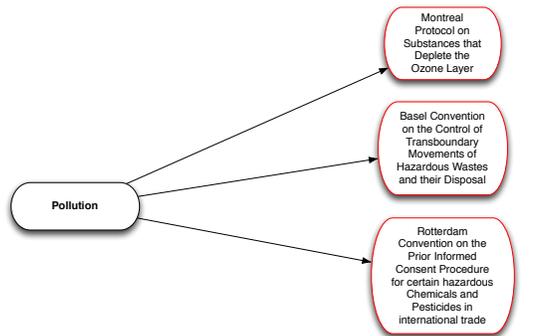
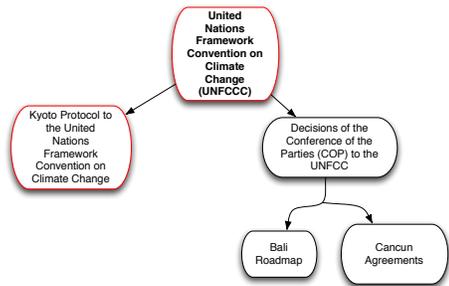
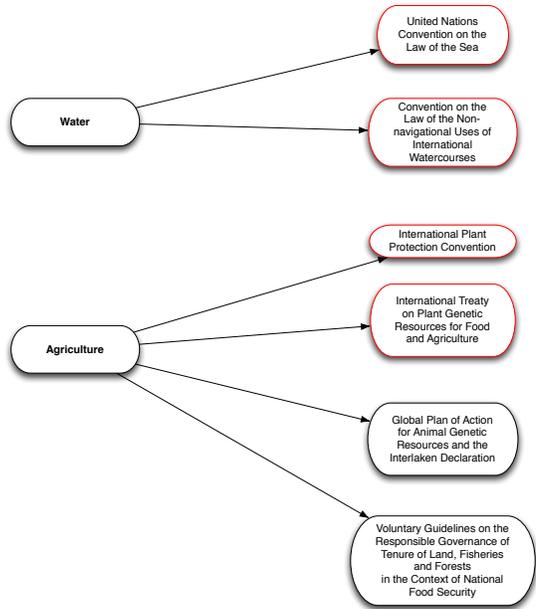
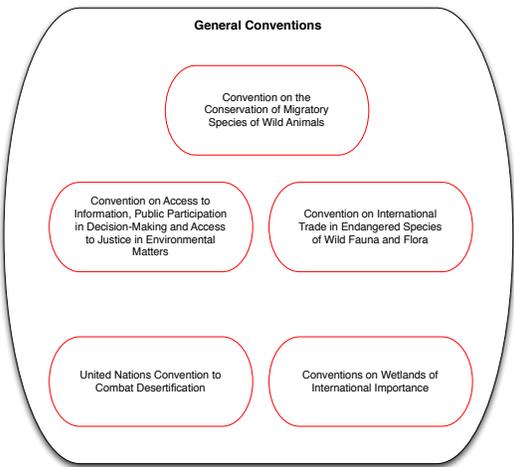
## DIAGRAMS OF INTERNATIONAL LAW



\*It is widely accepted that Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights are part of the International Bill of Human Rights. Sources differ on which sub-instruments to include.

\*\*The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights will enter into force on 5 May 2013.

**INSTRUMENTS WITH A FOCUS ON THE ENVIRONMENT,  
CULTURE, AND INTELLECTUAL PROPERTY**



  Indicates legally binding instrument

# ANNEX III

## RATIFICATIONS TABLE

COUNTRY	The International Treaty on Plant Genetic Resources for Food and Agriculture	The Agreement on Trade-Related Aspects of Intellectual Property Rights	Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters	UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage	UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions	UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage	Convention on the Law of the Non-navigational Uses of International Watercourses	United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa
Afghanistan	September 11, 2006			March 30, 2009	March 30, 2009	March 20, 1979		November 1, 1995
Albania	December 5, 2010	September 8, 2000	June 27, 2001	April 4, 2006	November 17, 2006	July 10, 1989		April 27, 2000
Algeria	December 13, 2002			March 15, 2004		June 24, 1974		May 22, 1996
Andorra					February 6, 2007	January 3, 1997		July 15, 2002
Angola	March 14, 2006	November 23, 1996			February 7, 2012	November 7, 1991		June 30, 1997
Antigua and Barbuda		January 1, 1995				November 1, 1983		June 6, 1997
Argentina		January 1, 1995		August 9, 2006	May 7, 2008	August 23, 1978		January 6, 1997
Armenia	March 20, 2007	February 5, 2003	August 1, 2001	May 18, 2006	February 27, 2007	September 5, 1993		July 2, 1997
Australia	December 12, 2005	January 1, 1995			September 18, 2009	August 22, 1974		May 15, 2000
Austria	November 4, 2005	January 1, 1995	January 17, 2005	April 9, 2009	December 18, 2006	December 18, 1992		June 2, 1997
Azerbaijan			March 23, 2000	January 18, 2007	February 15, 2010	December 16, 1993		August 10, 1998
Bahamas								November 10, 2000
Bahrain		January 1, 1995				May 28, 1991		July 14, 1997
Bangladesh	November 14, 2003	January 1, 1995		June 11, 2009	May 31, 2007	August 3, 1983		January 26, 1996
Barbados		January 1, 1995		October 2, 2008	October 2, 2008	April 9, 2002		May 14, 1997
Belarus			March 9, 2000	February 3, 2005	September 6, 2006	October 12, 1988		August 29, 2001
Belgium	October 2, 2007	January 1, 1995	January 21, 2003	March 24, 2006		July 24, 1996		June 30, 1997
Belize		January 1, 1995		December 4, 2007		November 6, 1990		July 23, 1998
Benin	February 24, 2006	February 22, 1996		April 17, 2012	December 20, 2007	June 14, 1982	July 5, 2012	August 29, 1996
Bhutan	September 2, 2003			October 12, 2005		October 17, 2001		August 20, 2003
Bolivia (Plurinational State of)		September 12, 1995		February 28, 2006	August 4, 2006	October 4, 1976		August 1, 1996
Bosnia and Herzegovina			October 1, 2008	February 23, 2009	January 27, 2009	July 12, 1993		August 26, 2002
Botswana		May 31, 1995		April 1, 2010		November 23, 1998		September 11, 1996
Brazil	May 22, 2006	January 1, 1995		March 1, 2006	January 16, 2007	September 1, 1977		June 25, 1997
Brunei Darussalam		January 1, 1995		August 12, 2011		August 12, 2011		December 4, 2002
Bulgaria	December 29, 2004	December 1, 1996	December 17, 2003	March 10, 2006	December 18, 2006	March 7, 1974		February 21, 2001
Burkina Faso	December 5, 2006	June 3, 1995		July 21, 2006	September 15, 2006	April 2, 1987	March 22, 2011	January 26, 1996
Burundi	April 28, 2006	July 23, 1995		August 25, 2006	October 14, 2008	May 19, 1982		January 6, 1997
Cambodia	June 11, 2002	October 13, 2004		June 13, 2006	September 19, 2007	November 28, 1991		August 18, 1997
Cameroon	December 12, 2005	December 13, 1995		October 9, 2012	November 22, 2006	December 7, 1982		May 29, 1997
Canada	June 10, 2002	January 1, 1995			November 28, 2005	July 23, 1976		December 1, 1995
Cape Verde		July 23, 2008				April 28, 1988		May 8, 1995
Central African Republic	August 4, 2003	May 31, 1995		December 7, 2004	May 11, 2012	December 22, 1980		September 5, 1996
Chad	March 14, 2006	October 19, 1996		June 17, 2008	June 17, 2008	June 23, 1999	September 26, 2012	September 27, 1996
Chile		January 1, 1995		December 10, 2008	March 13, 2007	February 20, 1980		November 11, 1997
China		December 11, 2001		December 2, 2004	January 30, 2007	December 12, 1985		February 18, 1997
Colombia		April 30, 1995		March 19, 2008	March 19, 2013	May 24, 1983		June 8, 1999
Comoros						September 27, 2000		March 3, 1998
Congo	September 14, 2004	March 27, 1997		July 16, 2012	October 22, 2008	December 10, 1987		July 12, 1999
Congo (Democratic Republic of)	June 5, 2003	January 1, 1997		September 28, 2010	September 28, 2010	September 23, 1974		September 12, 1997
Cook Islands	December 2, 2004					January 16, 2009		August 21, 1998
Costa Rica	November 14, 2006	January 1, 1995		February 23, 2007	March 15, 2011	August 23, 1977		January 5, 1998
Cote d'Ivoire	June 25, 2003	January 1, 1995		July 13, 2006	April 16, 2007	January 9, 1981		March 4, 1997
Croatia	May 8, 2009	November 30, 2000	March 27, 2007	July 28, 2005	August 31, 2006	July 6, 1992		October 6, 2000
Cuba	September 16, 2004	April 20, 1995		May 29, 2007	May 29, 2007	March 24, 1981		March 13, 1997
Cyprus	September 15, 2003	July 30, 1995	September 19, 2003	February 24, 2006	December 19, 2006	August 14, 1975		March 29, 2000
Czech Republic	March 31, 2004	January 1, 1995	July 6, 2004	February 18, 2009	August 12, 2010	March 26, 1993		January 25, 2000
Denmark	March 31, 2004	January 1, 1995	September 29, 2000	October 30, 2009	December 18, 2006	July 25, 1979	April 30, 2012	December 22, 1995
Djibouti	May 8, 2006	May 31, 1995		August 30, 2007	August 9, 2006	August 30, 2007		June 12, 1997
Dominica		January 1, 1995		September 5, 2005		April 4, 1995		December 8, 1997
Dominican Republic		March 9, 1995		October 2, 2006	September 24, 2009	February 12, 1985		June 26, 1997
Ecuador	May 7, 2004	January 21, 1996		February 13, 2008	November 8, 2006	June 16, 1975		September 6, 1995
Egypt	March 31, 2004	June 30, 1995		August 3, 2005	August 23, 2007	February 7, 1974		July 7, 1995
El Salvador	July 9, 2003	May 7, 1995		September 13, 2012		October 8, 1991		June 27, 1997
Equatorial Guinea				June 17, 2010	June 17, 2010	March 10, 2010		June 27, 1997
Eritrea	June 10, 2002			October 7, 2010		October 24, 2001		August 14, 1996
Estonia	March 31, 2004	November 13, 1999	August 2, 2001	January 27, 2006	December 18, 2006	October 27, 1995		February 8, 2012

Ethiopia	June 18, 2003			February 24, 2006	September 2, 2008	July 6, 1977		June 27, 1997
Fiji	July 9, 2008	January 14, 1996		January 19, 2010		November 21, 1990		August 26, 1998
Finland	March 31, 2004	January 1, 1995	September 1, 2004	February 21, 2013	December 18, 2006	March 4, 1987	January 23, 1998	September 20, 1995
France	July 7, 2005	January 1, 1995	July 8, 2002	July 11, 2006	December 18, 2006	June 27, 1975	February 24, 2011	June 12, 1997
Gabon	November 13, 2006	January 1, 1995		June 18, 2004	May 15, 2007	December 30, 1986		September 6, 1996
Gambia		October 23, 1996		May 26, 2011	May 26, 2011	July 1, 1987		June 11, 1996
Georgia		June 14, 2000	April 11, 2000	March 18, 2008	July 1, 2008	November 4, 1992		July 23, 1999
Germany	March 31, 2004	January 1, 1995	January 15, 2007	April 10, 2013	March 12, 2007	August 23, 1976	January 15, 2007	July 10, 1996
Ghana	October 28, 2002	January 1, 1995				July 4, 1975		December 27, 1996
Greece	March 31, 2004	January 1, 1995	January 27, 2006	January 3, 2007	January 3, 2007	July 17, 1981	December 2, 2010	May 5, 1997
Grenada		February 22, 1996		January 15, 2009	January 15, 2009	August 13, 1998		May 28, 1997
Guatemala	February 2, 2006	July 21, 1995		October 25, 2006	October 25, 2006	January 16, 1979		September 10, 1998
Guinea	June 6, 2002	October 25, 1995		February 20, 2008	February 20, 2008	March 18, 1979		June 23, 1997
Guinea-Bissau	February 1, 2006	May 31, 1995				January 28, 2006	May 19, 2010	October 27, 1995
Guyana		January 1, 1995			December 14, 2009	June 20, 1977		June 26, 1997
Haiti		January 30, 1996		September 17, 2009	February 8, 2010	January 18, 1980		September 25, 1996
Honduras	January 1, 2004	January 1, 1995		July 24, 2006	August 31, 2010	June 8, 1979		June 25, 1997
Hungary	March 4, 2004	January 1, 1995	July 3, 2001	March 17, 2006	May 9, 2008	July 15, 1985	January 26, 2000	July 13, 1999
Iceland	August 7, 2007	January 1, 1995	October 20, 2011	November 23, 2005	February 1, 2007	December 19, 1995		June 3, 1997
India	June 10, 2002	January 1, 1995		September 9, 2005	December 15, 2006	November 14, 1977		December 17, 1996
Indonesia	March 10, 2006	January 1, 1995		October 15, 2007	January 12, 2012	July 6, 1989		August 31, 1998
Iran (Islamic Republic of)	April 28, 2006			March 23, 2006		February 26, 1975		April 29, 1997
Iraq				January 6, 2010		March 5, 1974	July 9, 2001	May 28, 2010
Ireland	March 31, 2004	January 1, 1995	June 20, 2012		December 22, 2006	September 16, 1991		July 31, 1997
Israel		April 21, 1995				October 6, 1999		March 26, 1996
Italy	May 18, 2004	January 1, 1995	June 13, 2001	October 30, 2007	February 19, 2007	June 23, 1978	November 30, 2012	June 23, 1997
Jamaica	March 14, 2006	March 9, 1995		September 27, 2010	May 4, 2007	June 14, 1983		November 12, 1997
Japan		January 1, 1995		June 15, 2004		June 30, 1992		September 11, 1998
Jordan	May 30, 2002	April 11, 2000		March 24, 2006	February 16, 2007	May 5, 1975	June 22, 1999	October 21, 1996
Kazakhstan			January 11, 2001	December 28, 2011		April 29, 1994		July 9, 1997
Kenya	May 27, 2003	January 1, 1995		October 24, 2007	October 24, 2007	June 5, 1991		June 24, 1997
Kiribati	December 13, 2005					May 12, 2000		September 8, 1998
Korea (Democratic People's Republic of)	July 16, 2003			November 21, 2008		July 21, 1998		December 29, 2003
Kuwait	September 2, 2003	January 1, 1995			August 3, 2007	June 6, 2002		June 27, 1997
Kyrgyzstan	June 1, 2009	December 20, 1998	May 1, 2001	November 6, 2006		July 3, 1995		September 19, 1997
Lao People's Democratic Republic	March 14, 2006	February 2, 2013		November 26, 2009	November 5, 2007	March 20, 1987		September 20, 1996
Latvia	May 27, 2004	February 10, 1999	June 14, 2002	January 14, 2005	July 6, 2007	January 10, 1995		October 21, 2002
Lebanon	May 6, 2004			January 8, 2007		February 3, 1983	May 25, 1999	May 16, 1996
Lesotho	November 21, 2005	May 31, 1995		July 29, 2008	February 18, 2010	November 25, 2003		September 12, 1995
Liberia	November 25, 2005					March 28, 2002		March 2, 1998
Libya	April 12, 2005					October 13, 1978	June 14, 2005	July 22, 1996
Liechtenstein		September 1, 1995						December 29, 1999
Lithuania	June 21, 2005	May 31, 2001	January 28, 2002	January 21, 2005	December 18, 2006	March 31, 1992		July 25, 2003
Luxembourg	March 31, 2004	January 1, 1995	October 25, 2005	January 31, 2006	December 18, 2006	September 28, 1983	June 8, 2012	February 4, 1997
Madagascar	March 13, 2006	November 17, 1995		March 31, 2006	September 11, 2006	July 19, 1983		June 25, 1997
Malawi	July 4, 2002	May 31, 1995		March 16, 2010	March 16, 2010	January 5, 1982		June 13, 1996
Malaysia	May 5, 2003	January 1, 1995				December 7, 1988		June 25, 1997
Maldives	March 2, 2006	May 31, 1995				May 22, 1986		September 3, 2002
Mali	May 5, 2005	May 31, 1995		June 3, 2005	November 9, 2006	April 5, 1977		October 31, 1995
Malta		January 1, 1995	April 23, 2002		December 18, 2006	November 14, 1978		January 30, 1998
Marshall Islands						April 24, 2002		June 2, 1998
Mauritania	February 11, 2003	May 31, 1995		November 15, 2006		March 2, 1981		August 7, 1996
Mauritius	March 27, 2003	January 1, 1995		June 4, 2004	March 29, 2006	September 19, 1995		January 23, 1996
Mexico		January 1, 1995		December 14, 2005	July 5, 2006	February 23, 1984		April 3, 1995
Micronesia				February 13, 2013		July 22, 2002		March 25, 1996
Monaco				June 4, 2007	July 31, 2006	November 7, 1978		March 5, 1999
Mongolia		January 29, 1997		June 29, 2005	October 15, 2007	February 2, 1990		September 3, 1996
Montenegro	July 21, 2010	April 29, 2012	November 2, 2009	September 14, 2009	June 24, 2008	April 26, 2007		June 4, 2007
Morocco	July 14, 2006	January 1, 1995		July 6, 2006		October 28, 1975	April 13, 2011	November 7, 1996
Mozambique		August 26, 1995		October 18, 2007	October 18, 2007	November 27, 1982		March 13, 1997
Myanmar	December 4, 2002	January 1, 1995				April 29, 1994		January 2, 1997
Namibia	October 7, 2004	January 1, 1995		September 19, 2007	November 29, 2006	April 6, 2000	August 29, 2001	May 16, 1997
Nauru								September 22, 1998
Nepal	October 19, 2009	April 23, 2004		June 15, 2010		June 20, 1978		October 15, 1996
Netherlands	November 18, 2005	January 1, 1995	December 29, 2004	May 15, 2012	October 9, 2009	August 26, 1992	January 9, 2001	June 27, 1995
New Zealand		January 1, 1995			October 5, 2007	November 22, 1984		September 7, 2000
Nicaragua	November 22, 2002	September 3, 1995		February 14, 2006	March 5, 2009	December 17, 1979		February 17, 1998
Niger	October 27, 2004	December 13, 1996		April 27, 2007	March 14, 2007	December 23, 1974	February 20, 2013	January 19, 1996
Nigeria		January 1, 1995		October 21, 2005	January 21, 2008	October 23, 1974	September 27, 2010	July 8, 1997
Niue						January 23, 2001		August 14, 1998
Norway	August 3, 2004	January 1, 1995	May 2, 2003	January 17, 2007	January 17, 2007	May 12, 1977	September 30, 1998	August 30, 1996
Occupied Palestinian Territory						December 8, 2011	December 8, 2011	
Oman	July 14, 2004	November 9, 2000		August 4, 2005	March 16, 2007	October 6, 1981		July 23, 1996
Pakistan	September 2, 2003	January 1, 1995		October 7, 2005		July 23, 1976		February 24, 1996
Palau	August 5, 2008			November 2, 2011		June 11, 2002		June 15, 1999
Panama	March 13, 2006	September 6, 1997		August 20, 2004	January 22, 2007	March 3, 1978		April 4, 1996
Papua New Guinea		June 9, 1996		September 12, 2008		July 28, 1997		December 6, 2000

Paraguay	January 3, 2003	January 1, 1995		September 14, 2006	October 30, 2007	April 27, 1988		January 15, 1997
Peru	June 5, 2003	January 1, 1995		September 23, 2005	October 16, 2006	February 24, 1982		November 9, 1995
Philippines	September 28, 2006	January 1, 1995		August 18, 2006		September 19, 1985		February 10, 2000
Poland	February 7, 2005	July 1, 1995	February 15, 2002	May 16, 2011	August 17, 2007	June 29, 1976		November 14, 2001
Portugal	November 7, 2005	January 1, 1995	June 9, 2003	May 21, 2008	March 16, 2007	September 30, 1980	June 22, 2005	April 1, 1996
Qatar	July 1, 2008	January 13, 1996		September 1, 2008	April 21, 2009	September 12, 1984	February 28, 2002	March 15, 1999
Republic of Korea	January 20, 2009	January 1, 1995		February 9, 2005	April 1, 2010	September 14, 1988		August 17, 1999
Republic of Moldova		July 26, 2001	August 9, 1999	March 24, 2006	October 5, 2006	September 23, 2002		March 10, 1999
Romania	May 31, 2005	January 1, 1995	July 11, 2000	January 20, 2006	July 20, 2006	May 16, 1990		August 19, 1998
Russian Federation		August 22, 2012				October 12, 1988		May 29, 2003
Rwanda	October 14, 2010	May 22, 1996		January 21, 2013	July 16, 2012	December 28, 2000		October 22, 1998
Saint Kitts and Nevis		February 21, 1996				July 10, 1986		June 30, 1997
Saint Lucia	July 16, 2003	January 1, 1995		February 1, 2007	February 1, 2007	October 14, 1991		July 2, 1997
Saint Vincent and the Grenadines		January 1, 1995		September 25, 2009	September 25, 2009	February 3, 2003		March 16, 1998
Samoa	March 9, 2006	May 10, 2012				August 28, 2001		August 21, 1998
San Marino						October 18, 1991		July 23, 1999
Sao Tome and Principe	April 7, 2006			July 25, 2006		July 25, 2006		July 8, 1998
Saudi Arabia	October 17, 2005	December 11, 2005		January 10, 2008		August 7, 1978		June 25, 1997
Senegal	October 25, 2006	January 1, 1995		January 5, 2006	November 7, 2006	February 13, 1976		July 26, 1995
Serbia			July 31, 2009	June 30, 2010	July 2, 2009	September 11, 2001		December 18, 2007
Seychelles	May 30, 2006			February 15, 2005	June 20, 2008	April 9, 1980		June 26, 1997
Sierra Leone	November 20, 2002	July 23, 1995				January 7, 2005		September 25, 1997
Singapore		January 1, 1995				June 19, 2012		April 26, 1999
Slovakia	June 8, 2010	January 1, 1995	December 5, 2005	March 24, 2006	December 18, 2006	March 31, 1993		January 7, 2002
Slovenia	January 11, 2006	July 30, 1995	July 29, 2004	September 18, 2008	December 18, 2006	November 5, 1992		June 28, 2001
Solomon Islands		July 26, 1995				June 10, 1992		April 16, 1999
Somalia								July 24, 2002
South Africa		January 1, 1995			December 21, 2006	July 10, 1997	October 26, 1998	September 30, 1997
South Sudan								
Spain	March 31, 2004	January 1, 1995	December 29, 2004	October 25, 2006	December 18, 2006	May 4, 1982	September 24, 2009	January 30, 1996
Sri Lanka		January 1, 1995		April 21, 2008		June 6, 1980		December 9, 1998
Sudan	June 10, 2002			June 19, 2008	June 19, 2008	June 6, 1974		November 24, 1995
Suriname		January 1, 1995				October 23, 1997		June 1, 2000
Swaziland	January 21, 2013	July 1, 1995		October 30, 2012	October 30, 2012	November 30, 2005		October 7, 1996
Sweden	March 31, 2004	January 1, 1995	May 20, 2005	January 26, 2011	December 18, 2006	January 22, 1985	June 15, 2000	December 12, 1995
Switzerland	November 22, 2004	January 1, 1995		July 16, 2008	July 16, 2008	September 17, 1975		January 19, 1996
Syrian Arab Republic	August 26, 2003			March 11, 2005	February 5, 2008	August 13, 1975	April 2, 1998	June 10, 1997
Tajikistan		March 2, 2013	July 17, 2001	August 17, 2010	October 24, 2007	August 28, 1992		July 16, 1997
Thailand		January 1, 1995				September 17, 1987		March 7, 2001
The former Yugoslav Republic of Macedonia		April 4, 2003	July 22, 1999	June 13, 2006	May 22, 2007	April 30, 1997		March 6, 2002
Timor-Leste								August 20, 2003
Togo	October 23, 2007	May 31, 1995		February 5, 2009	September 5, 2006	April 15, 1998		October 4, 1995
Tonga	July 27, 2007	January 1, 1995		January 26, 2010		June 3, 2004		September 25, 1998
Trinidad and Tobago	October 27, 2004	March 1, 1995		July 22, 2010	July 26, 2010	February 16, 2005		June 8, 2000
Tunisia	June 8, 2004	March 29, 1995		July 24, 2006	February 15, 2007	March 10, 1975	April 22, 2009	October 11, 1995
Turkey	June 7, 2007	March 26, 1995		March 27, 2006		March 16, 1983		March 31, 1998
Turkmenistan			June 25, 1999	November 25, 2011		September 30, 1994		September 18, 1996
Tuvalu								September 14, 1998
Uganda	March 25, 2003	January 1, 1995		May 13, 2009		November 20, 1987		June 25, 1997
Ukraine		May 16, 2008	November 18, 1999	May 27, 2008	March 10, 2010	October 12, 1988		August 27, 2002
United Arab Emirates	February 16, 2004	April 10, 1996		May 2, 2005	June 6, 2012	May 11, 2001		October 21, 1998
United Kingdom of Great Britain and Northern Ireland	March 31, 2004	January 1, 1995	February 23, 2005		December 7, 2007	May 29, 1984		October 18, 1996
United Republic of Tanzania	April 30, 2004	January 1, 1995		October 18, 2011	October 18, 2011	August 2, 1977		June 19, 1997
United States of America		January 1, 1995				December 7, 1973		November 17, 2000
Uruguay	March 1, 2006	January 1, 1995		January 18, 2007	January 18, 2007	March 9, 1989		February 17, 1999
Uzbekistan				January 29, 2008		January 13, 1993	September 4, 2007	October 31, 1995
Vanuatu		August 24, 2012		September 22, 2010		June 13, 2002		August 10, 1999
Vatican City						October 7, 1982		
Venezuela (Bolivarian Republic of)	May 17, 2005	January 1, 1995		April 12, 2007		October 30, 1990		June 29, 1998
Viet Nam		January 11, 2007		September 20, 2005	August 7, 2007	October 19, 1987		August 25, 1998
Yemen	March 1, 2006			October 8, 2007		October 7, 1980		January 14, 1997
Zambia	March 13, 2006	January 1, 1995		May 10, 2006		June 4, 1984		September 19, 1996
Zimbabwe	July 5, 2005	March 5, 1995		May 30, 2006	May 15, 2008	August 16, 1982		September 23, 1997

COUNTRY	United Nations Framework Convention on Climate Change (Entry into Force)	Convention on Wetlands of International Importance	Nagoya-Kuala Lumpur Supplementary Protocol on Liability and Redress to the Cartagena Protocol	Convention on Biological Diversity	Cartagena Protocol on Biosafety (Entry into Force)	Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization	Convention on the Rights of the Child	International Convention on the Elimination of All Forms of Racial Discrimination
Afghanistan	December 18, 2002			September 19, 2002	May 21, 2013		March 28, 1994	July 6, 1983
Albania	January 1, 1995	February 29, 1996	January 29, 2013	January 5, 1994	May 9, 2005	January 29, 2013	February 27, 1992	May 11, 1994
Algeria	March 21, 1994	March 4, 1984		August 14, 1995	November 3, 2004		April 16, 1993	February 14, 1972
Andorra	May 31, 2011	November 23, 2012					January 2, 1996	September 22, 2006
Angola	August 15, 2000			April 1, 1998	May 28, 2009		December 5, 1990	
Antigua and Barbuda	March 21, 1994	October 2, 2005		March 9, 1993	December 9, 2003		October 5, 1993	October 25, 1988
Argentina	June 9, 1994	September 4, 1992		November 22, 1994			December 4, 1990	October 2, 1968
Armenia	March 21, 1994	November 6, 1993		May 14, 1993	July 29, 2004		June 23, 1993	June 23, 1993
Australia	March 21, 1994	December 21, 1975		June 18, 1993			December 17, 1990	September 30, 1975
Austria	May 29, 1994	April 16, 1983		August 18, 1994	September 11, 2003		August 6, 1992	May 9, 1972
Azerbaijan	August 14, 1995	May 21, 2001		August 3, 2000	June 30, 2005		August 13, 1992	August 16, 1996
Bahamas	June 27, 1994	June 7, 1997		September 2, 1993	April 14, 2004		February 20, 1991	August 5, 1975
Bahrain	March 28, 1995	February 27, 1998		August 30, 1996	May 7, 2012		February 13, 1992	March 27, 1990
Bangladesh	July 14, 1994	September 21, 1992		May 3, 1994	May 5, 2004		August 3, 1990	June 11, 1979
Barbados	June 21, 1994	April 12, 2006		December 10, 1993	September 11, 2003		October 9, 1990	November 8, 1972
Belarus	August 9, 2000	August 25, 1991		September 8, 1993	September 11, 2003		October 1, 1990	April 8, 1969
Belgium	April 15, 1996	July 4, 1986		November 22, 1996	July 14, 2004		December 16, 1991	August 7, 1975
Belize	January 29, 1995	August 22, 1998		December 30, 1993	May 12, 2004		May 2, 1990	November 14, 2001
Benin	September 28, 1994	May 24, 2000		June 30, 1994	May 31, 2005		August 3, 1990	November 30, 2001
Bhutan	November 23, 1995	September 7, 2012		August 25, 1995	September 11, 2003		August 1, 1990	
Bolivia (Plurinational State of)	January 1, 1995	October 27, 1990		October 3, 1994	September 11, 2003		June 26, 1990	September 22, 1970
Bosnia and Herzegovina	December 6, 2000	March 1, 1992		August 26, 2002	December 30, 2009		September 1, 1993	July 16, 1993
Botswana	April 27, 1994	April 9, 1997		October 12, 1995	September 11, 2003	February 21, 2013	March 14, 1995	February 20, 1974
Brazil	May 29, 1994	September 24, 1993		February 28, 1994	February 22, 2004		September 24, 1990	March 27, 1968
Brunei Darussalam	December 5, 2007			July 27, 2008			December 27, 1995	
Bulgaria	August 10, 1995	January 24, 1976	December 6, 2012	April 17, 1996	September 11, 2003		June 3, 1991	August 8, 1966
Burkina Faso	March 21, 1994	October 27, 1990		September 2, 1993	November 2, 2003		August 31, 1990	July 18, 1974
Burundi	April 7, 1997	October 5, 2002		April 15, 1997	December 31, 2008		October 19, 1990	October 27, 1977
Cambodia	March 17, 1996	October 23, 1999		February 9, 1995	December 16, 2003		October 15, 1992	November 28, 1983
Cameroon	January 17, 1995	July 20, 2006		October 19, 1994	September 11, 2003		January 11, 1993	June 24, 1971
Canada	March 21, 1994	May 15, 1981		December 4, 1992			December 13, 1991	October 14, 1970
Cape Verde	June 27, 1995	November 18, 2005		March 29, 1995	January 30, 2006		June 4, 1992	October 3, 1979
Central African Republic	June 8, 1996	April 5, 2006		March 15, 1995	February 16, 2009		April 23, 1992	March 16, 1971
Chad	September 5, 1994	October 13, 1990		June 7, 1994	January 30, 2007		October 2, 1990	August 7, 1977
Chile	March 22, 1995	November 27, 1981		September 9, 1994			August 13, 1990	October 20, 1971
China	March 21, 1994	July 31, 1992		January 5, 1993	September 6, 2005		March 2, 1992	December 29, 1981
Colombia	June 20, 1995	October 18, 1998		November 28, 1994	September 11, 2003		January 28, 1991	September 2, 1981
Comoros	January 29, 1995	June 9, 1995		September 29, 1994	June 23, 2009		June 22, 1993	September 27, 2004
Congo	January 12, 1997	October 18, 1998		August 1, 1996	October 11, 2006		October 14, 1993	July 11, 1988
Congo (Democratic Republic of)	April 9, 1995	May 18, 1996		December 3, 1994	June 21, 2005		September 27, 1990	April 21, 1976
Cook Islands	March 21, 1994			April 20, 1993			June 6, 1997	
Costa Rica	November 24, 1994	April 27, 1992		August 26, 1994	May 7, 2007		August 21, 1990	January 16, 1967
Cote d'Ivoire	February 27, 1995	June 27, 1996		November 29, 1994			February 4, 1991	January 4, 1973
Croatia	July 7, 1996	June 25, 1991		October 7, 1996	September 11, 2003		October 12, 1992	October 12, 1992
Cuba	April 5, 1994	August 12, 2001		March 8, 1994	September 11, 2003		August 21, 1991	February 15, 1972
Cyprus	January 13, 1998	November 11, 2001		July 10, 1996	March 4, 2004		February 7, 1991	April 21, 1967
Czech Republic	March 21, 1994	January 1, 1993	February 13, 2012	December 3, 1993	September 11, 2003		February 22, 1993	February 22, 1993
Denmark	March 21, 1994	January 2, 1978		December 21, 1993	September 11, 2003		July 19, 1991	December 9, 1971
Djibouti	November 25, 1995	March 22, 2003		September 1, 1994	September 11, 2003		December 6, 1990	September 30, 2011
Dominica	March 21, 1994			April 6, 1994	October 11, 2004		March 13, 1991	
Dominican Republic	January 5, 1999	September 15, 2002		November 25, 1996	September 18, 2006		June 11, 1991	May 25, 1983
Ecuador	March 21, 1994	January 7, 1991		February 23, 1993	September 11, 2003		March 23, 1990	September 22, 1966
Egypt	March 5, 1995	September 9, 1988		June 2, 1994	March 21, 2004		July 6, 1990	May 1, 1967
El Salvador	March 3, 1996	May 22, 1999		September 8, 1994	December 25, 2003		July 10, 1990	November 30, 1979
Equatorial Guinea	November 14, 2000	October 2, 2003		December 6, 1994			June 15, 1992	October 8, 2002
Eritrea	July 23, 1995			March 21, 1996	June 8, 2005		August 3, 1994	July 31, 2001
Estonia	October 25, 1994	July 29, 1994		July 27, 1994	June 22, 2004		October 21, 1991	October 21, 1991
Ethiopia	July 4, 1994			April 5, 1994	January 7, 2004	November 16, 2012	May 14, 1991	June 23, 1976
Fiji	March 21, 1994	August 11, 2006		February 25, 1993	September 11, 2003	October 24, 2012	August 13, 1993	January 11, 1973
Finland	August 1, 1994	December 21, 1975		July 27, 1994	October 7, 2004		June 20, 1991	July 14, 1970
France	June 23, 1994	December 1, 1986		July 1, 1994	September 11, 2003		August 7, 1990	July 28, 1971
Gabon	April 21, 1998	April 30, 1987		March 14, 1997	July 31, 2007	November 11, 2011	February 9, 1994	February 29, 1980
Gambia	September 8, 1994	January 16, 1997		June 10, 1994	September 7, 2004		August 8, 1990	December 29, 1978
Georgia	October 27, 1994	June 7, 1997		June 2, 1994	February 2, 2009		June 2, 1994	June 2, 1999
Germany	March 21, 1994	June 26, 1976		December 21, 1993	February 18, 2004		March 6, 1992	May 16, 1969

Ghana	December 5, 1995	June 22, 1988		August 29, 1994	September 11, 2003		February 5, 1990	September 8, 1966
Greece	November 2, 1994	December 21, 1975		August 4, 1994	August 19, 2004		May 11, 1993	June 18, 1970
Grenada	November 9, 1994	September 22, 2012		August 11, 1994	May 5, 2004		November 5, 1990	
Guatemala	March 14, 1996	October 26, 1990		July 10, 1995	January 26, 2005		June 6, 1990	January 18, 1983
Guinea	March 21, 1994	March 18, 1993		May 7, 1993	March 10, 2008		July 13, 1990	March 14, 1977
Guinea-Bissau	January 25, 1996	May 14, 1990		October 27, 1995	August 17, 2010		August 20, 1990	November 1, 2010
Guyana	November 27, 1994			August 29, 1994	June 16, 2008		January 14, 1991	February 15, 1977
Haiti	December 24, 1996			September 25, 1996			June 8, 1995	December 19, 1972
Honduras	January 17, 1996	October 23, 1993		July 31, 1995	February 16, 2009		August 10, 1990	October 10, 2002
Hungary	May 25, 1994	August 11, 1979		February 24, 1994	April 12, 2004		October 7, 1991	May 4, 1967
Iceland	March 21, 1994	April 2, 1978		September 12, 1994			October 28, 1992	March 13, 1967
India	March 21, 1994	February 1, 1982		February 18, 1994	Sep 11, 2003	October 9, 2012	December 11, 1992	December 3, 1968
Indonesia	November 21, 1994	August 8, 1992		August 23, 1994	March 3, 2005		September 5, 1990	June 25, 1999
Iran (Islamic Republic of)	October 16, 1996	December 21, 1975		August 6, 1996	February 18, 2004		July 13, 1994	August 29, 1968
Iraq	October 26, 2009	February 17, 2008		October 26, 2009			June 15, 1994	January 14, 1970
Ireland	July 19, 1994	March 15, 1985	January 14, 2013	March 22, 1996	February 12, 2004		September 28, 1992	December 29, 2000
Israel	September 2, 1996	March 12, 1997		August 7, 1995			October 3, 1991	January 3, 1979
Italy	July 14, 1994	April 14, 1977		April 15, 1994	June 22, 2004		September 5, 1991	January 5, 1976
Jamaica	April 6, 1995	February 7, 1998		January 6, 1995	December 24, 2012		May 14, 1991	June 4, 1971
Japan	March 21, 1994	October 17, 1980		May 28, 1993	February 19, 2004		April 22, 1994	December 15, 1995
Jordan	March 21, 1994	May 10, 1977		November 12, 1993	February 9, 2004	January 10, 2012	May 24, 1991	May 30, 1974
Kazakhstan	August 15, 1995	May 2, 2007		September 6, 1994	December 7, 2008		August 12, 1994	August 26, 1998
Kenya	November 28, 1994	October 5, 1990		July 26, 1994	September 11, 2003		July 30, 1990	September 13, 2001
Kiribati	May 8, 1995			August 16, 1994	July 19, 2004		December 11, 1995	
Korea (Democratic People's Republic of)	March 5, 1995			October 26, 1994	October 27, 2003		September 21, 1990	
Kuwait	March 28, 1995			August 2, 2002			October 21, 1991	October 15, 1968
Kyrgyzstan	August 23, 2000	March 12, 2003		August 6, 1996	January 3, 2006		October 7, 1994	September 5, 1997
Lao People's Democratic Republic	April 4, 1995	September 28, 2010		September 20, 1996	November 1, 2004	September 26, 2012	May 8, 1991	February 22, 1974
Latvia	June 21, 1995	November 25, 1995	November 30, 2011	December 14, 1995	May 13, 2004		April 14, 1992	April 14, 1992
Lebanon	March 15, 1995	August 16, 1999		December 15, 1994	May 7, 2013		May 14, 1991	November 12, 1971
Lesotho	May 8, 1995	November 1, 2004		January 10, 1995	September 11, 2003		March 10, 1992	November 4, 1971
Liberia	February 4, 2002	November 2, 2003		November 8, 2000	September 11, 2003		June 4, 1993	November 5, 1976
Libya	September 12, 1999	August 5, 2000		July 12, 2001	September 12, 2005		April 15, 1993	July 3, 1968
Liechtenstein	September 20, 1994	December 6, 1991		November 19, 1997			December 22, 1995	March 1, 2000
Lithuania	June 22, 1995	December 20, 1993	December 6, 2012	February 1, 1996	February 5, 2004		January 31, 1992	December 10, 1998
Luxembourg	August 7, 1994	August 15, 1998		May 9, 1994	September 11, 2003		March 7, 1994	May 1, 1978
Madagascar	August 31, 1999	January 25, 1999		March 4, 1996	February 22, 2004		March 19, 1991	February 7, 1969
Malawi	July 20, 1994	March 14, 1997		February 2, 1994	May 28, 2009		January 2, 1991	June 11, 1996
Malaysia	October 11, 1994	March 10, 1995		June 24, 1994	December 2, 2003		February 17, 1995	
Maldives	March 21, 1994			November 9, 1992	September 11, 2003		February 11, 1991	April 24, 1984
Mali	March 28, 1995	September 25, 1987		March 29, 1995	September 11, 2003		September 20, 1990	July 16, 1974
Malta	June 15, 1994	January 30, 1989		December 29, 2000	April 5, 2007		September 30, 1990	May 27, 1971
Marshall Islands	March 21, 1994	November 13, 2004		October 8, 1992	September 11, 2003		October 4, 1993	
Mauritania	April 20, 1994	February 22, 1983		August 16, 1996	October 20, 2005		May 16, 1991	December 13, 1988
Mauritius	March 21, 1994	September 30, 2001		September 4, 1992	September 11, 2003	December 17, 2012	July 26, 1990	May 30, 1972
Mexico	March 21, 1994	November 4, 1986	September 26, 2012	March 11, 1993	September 11, 2003	May 16, 2012	September 21, 1990	February 20, 1975
Micronesia	March 21, 1994			June 20, 1994		January 30, 2013	May 5, 1993	
Monaco	March 21, 1994	December 20, 1997		November 20, 1992			June 21, 1993	September 27, 1995
Mongolia	March 21, 1994	April 8, 1998		September 30, 1993	October 20, 2003		July 5, 1990	August 6, 1969
Montenegro	January 21, 2007	June 3, 2006		June 3, 2006	June 3, 2006		October 23, 2006	October 23, 2006
Morocco	March 27, 1996	October 20, 1980		August 21, 1995	July 24, 2011		June 21, 1993	December 18, 1970
Mozambique	November 23, 1995	December 3, 2004		August 25, 1995	September 11, 2003		April 26, 1994	April 18, 1983
Myanmar	February 23, 1995	March 17, 2005		November 25, 1994	May 13, 2008		July 15, 1991	
Namibia	August 14, 1995	December 23, 1995		May 16, 1997	May 11, 2005		September 30, 1990	November 11, 1982
Nauru	March 21, 1994			November 11, 1993	September 11, 2003		July 27, 1994	
Nepal	July 31, 1994	April 17, 1988		November 23, 1993			September 14, 1990	January 30, 1971
Netherlands	March 21, 1994	September 23, 1980		July 12, 1994	September 11, 2003		February 6, 1995	December 10, 1971
New Zealand	March 21, 1994	December 13, 1976		September 16, 1993	May 25, 2005		April 6, 1993	November 22, 1972
Nicaragua	January 29, 1996	November 30, 1997		November 20, 1995	September 11, 2003		October 5, 1990	February 15, 1978
Niger	October 23, 1995	August 30, 1987		July 25, 1995	December 29, 2004		September 30, 1990	April 27, 1967
Nigeria	November 27, 1994	February 2, 2001		August 29, 1994	October 13, 2003		April 19, 1991	October 16, 1967
Niue	May 28, 1996			February 28, 1996	September 11, 2003		December 20, 1995	
Norway	March 21, 1994	December 21, 1975	November 1, 2012	July 9, 1993	September 11, 2003		January 8, 1991	August 6, 1970
Occupied Palestinian Territory								
Oman	May 9, 1995			February 8, 1995	September 11, 2003		December 9, 1996	January 2, 2003
Pakistan	August 30, 1994	November 23, 1976		July 26, 1994	May 31, 2009		November 12, 1990	September 21, 1966
Palau	March 9, 2000	February 18, 2003		January 6, 1999	September 11, 2003		August 4, 1995	
Panama	August 21, 1995	November 26, 1990		January 17, 1995	September 11, 2003	December 12, 2012	December 12, 1990	August 16, 1967
Papua New Guinea	March 21, 1994	July 16, 1993		March 16, 1993	January 12, 2006		March 2, 1993	January 27, 1982
Paraguay	May 25, 1994	October 7, 1995		February 24, 1994	June 8, 2004		September 25, 1990	August 18, 2003
Peru	March 21, 1994	March 30, 1992		June 7, 1993	July 13, 2004		September 4, 1990	September 29, 1971
Philippines	October 31, 1994	November 8, 1994		October 8, 1993	January 3, 2007		August 21, 1990	September 15, 1967
Poland	October 26, 1994	March 22, 1978		January 18, 1996	March 9, 2004		June 7, 1991	December 5, 1968
Portugal	March 21, 1994	March 24, 1981		December 21, 1993	December 29, 2004		September 21, 1990	August 24, 1982
Qatar	July 17, 1996			August 21, 1996	June 12, 2007		April 3, 1995	July 22, 1976
Republic of Korea	March 21, 1994	July 28, 1997		October 3, 1994	January 1, 2008		November 20, 1991	December 5, 1978
Republic of	September 7, 1995	October 20, 2000		October 20, 1995	September 11, 2003		January 26, 1993	January 26, 1993

Moldova								
Romania	September 6, 1994	September 21, 1991		August 17, 1994	September 28, 2003	September 28, 1990	September 15, 1970	
Russian Federation	March 28, 1995	February 11, 1977		April 5, 1995		August 16, 1990	February 4, 1969	
Rwanda	November 16, 1998	April 1, 2006		May 29, 1996	October 20, 2004	March 20, 2012	January 24, 1991	April 16, 1975
Saint Kitts and Nevis	March 21, 1994			January 7, 1993	September 11, 2003		July 24, 1990	October 13, 2006
Saint Lucia	March 21, 1994	June 19, 2002		July 28, 1993	September 14, 2005		June 16, 1993	February 14, 1990
Saint Vincent and the Grenadines	March 2, 1997			June 3, 1996	November 25, 2003		October 26, 1993	November 9, 1981
Samoa	February 27, 1995	February 6, 2005		February 9, 1994	September 11, 2003		November 29, 1994	
San Marino	January 26, 1995			October 28, 1994			November 25, 1991	March 12, 2002
Sao Tome and Principe	December 28, 1999	December 21, 2006		September 29, 1999			May 14, 1991	
Saudi Arabia	March 28, 1995			October 3, 2001	November 7, 2007		January 26, 1996	September 23, 1997
Senegal	January 15, 1995	November 11, 1977		October 17, 1994	January 6, 2004		July 31, 1990	April 19, 1972
Serbia	June 10, 2001	April 27, 1992		March 1, 2002	May 9, 2006		March 12, 2001	March 12, 2001
Seychelles	March 21, 1994	March 22, 2005		September 22, 1992	August 11, 2004	April 20, 2012	September 7, 1990	March 7, 1978
Sierra Leone	September 20, 1995	April 13, 2000		December 12, 1994			June 18, 1990	August 2, 1967
Singapore	August 27, 1997			December 21, 1995			October 5, 1995	
Slovakia	November 23, 1994	January 1, 1993		August 25, 1994	February 22, 2004		May 28, 1993	May 28, 1993
Slovenia	February 29, 1996	June 25, 1991		July 9, 1996	September 11, 2003		July 6, 1992	July 6, 1992
Solomon Islands	March 28, 1995			October 3, 1995	October 26, 2004		April 10, 1995	March 17, 1982
Somalia	December 10, 2009			December 10, 2009	October 24, 2010			August 26, 1975
South Africa	November 27, 1997	December 21, 1975		November 2, 1995	November 12, 2003	January 10, 2013	June 16, 1995	December 10, 1998
South Sudan								
Spain	March 21, 1994	September 4, 1982	December 4, 2012	December 21, 1993	September 11, 2003		December 6, 1990	September 13, 1968
Sri Lanka	March 21, 1994	October 15, 1990		March 23, 1994	July 26, 2004		July 12, 1991	February 18, 1982
Sudan	March 21, 1994	May 7, 2005		October 30, 1995	September 11, 2005		August 3, 1990	March 21, 1977
Suriname	January 12, 1998	November 22, 1985		January 12, 1996	June 25, 2008		March 1, 1993	March 15, 1984
Swaziland	January 5, 1997	June 15, 2013		November 9, 1994	April 13, 2006		September 7, 1995	April 7, 1969
Sweden	March 21, 1994	December 21, 1975	October 12, 2012	December 16, 1993	September 11, 2003		June 29, 1990	December 6, 1971
Switzerland	March 21, 1994	May 16, 1976		November 21, 1994	September 11, 2003		February 24, 1997	November 29, 1994
Syrian Arab Republic	April 3, 1996	July 5, 1998	November 5, 2012	January 4, 1996	June 30, 2004	April 5, 2013	July 15, 1993	April 21, 1969
Tajikistan	April 7, 1998	November 18, 2001		September 29, 1997	May 12, 2004		October 26, 1993	January 11, 1995
Thailand	March 28, 1995	September 13, 1998		January 29, 2004	February 8, 2006		March 27, 1992	January 28, 2003
The former Yugoslav Republic of Macedonia	April 28, 1998	September 8, 1991		December 2, 1997	September 12, 2005		December 2, 1993	January 18, 1994
Timor-Leste	January 8, 2007			January 8, 2007			April 16, 2003	April 16, 2003
Togo	June 6, 1985	November 4, 1995		October 4, 1995	September 30, 2004		August 1, 1990	September 1, 1972
Tonga	October 18, 1998			May 19, 1998	December 17, 2003		November 6, 1995	February 16, 1972
Trinidad and Tobago	September 22, 1994	April 21, 1993		August 1, 1996	September 11, 2003		December 5, 1991	October 4, 1973
Tunisia	March 21, 1994	March 24, 1981		July 15, 1993	September 11, 2003		January 30, 1992	January 13, 1967
Turkey	May 24, 2004	November 13, 1994		February 14, 1997	January 24, 2004		April 4, 1995	September 16, 2002
Turkmenistan	September 3, 1995	July 3, 2009		September 18, 1996	November 19, 2008		September 20, 1993	September 29, 1994
Tuvalu	March 21, 1994			December 20, 2002			September 22, 1995	
Uganda	March 21, 1994	July 4, 1988		September 8, 1993	September 11, 2003		August 17, 1990	November 21, 1980
Ukraine	August 11, 1997	December 1, 1991		February 7, 1995	September 11, 2003		August 28, 1991	March 7, 1969
United Arab Emirates	March 28, 1996	December 29, 2007		February 10, 2000			January 3, 1997	June 20, 1974
United Kingdom of Great Britain and Northern Ireland	March 21, 1996	May 5, 1976		June 3, 1994	February 17, 2004		December 16, 1991	March 7, 1969
United Republic of Tanzania	July 16, 1997	August 13, 2000		March 8, 1996	September 11, 2003		June 10, 1991	October 27, 1972
United States of America	March 21, 1994	April 18, 1987						October 21, 1994
Uruguay	November 16, 1994	September 22, 1984		November 5, 1993	January 31, 2012		November 20, 1990	August 30, 1968
Uzbekistan	March 21, 1994	February 8, 2002		July 19, 1995			June 29, 1994	September 28, 1995
Vanuatu	March 21, 1994			March 25, 1993			July 7, 1993	
Vatican City							April 20, 1990	May 1, 1969
Venezuela (Bolivarian Republic of)	March 28, 1995	November 23, 1988		September 13, 1994	September 11, 2003		September 13, 1990	October 10, 1967
Viet Nam	February 14, 1995	January 20, 1989		November 16, 1994	April 20, 2004		February 28, 1990	June 9, 1982
Yemen	May 21, 1996	February 8, 2008		February 21, 1996	March 1, 2006		May 1, 1991	October 18, 1972
Zambia	March 21, 1994	December 28, 1991		May 28, 1993	July 25, 2004		December 6, 1991	February 4, 1972
Zimbabwe	March 21, 1994	May 3, 2013		November 11, 1994	May 26, 2005		September 11, 1990	May 13, 1991

COUNTRY	Convention on the Elimination of All Forms of Discrimination against Women	UNDRIP (Signatories)	Universal Declaration of Human Rights (Signatories)	Indigenous and Tribal Peoples Convention (International Labour Organization Convention #169)	International Covenant on Civil and Political Rights (Parties)	International Covenant on Economic, Social and Cultural Rights (Parties)
Afghanistan	March 5, 2003	September 13, 2007	December 10, 1948		January 24, 1983	January 24, 1983
Albania	May 11, 1994	September 13, 2007			October 4, 1991	October 4, 1991
Algeria	May 22, 1996	September 13, 2007			September 12, 1989	September 12, 1989
Andorra	January 15, 1997	September 13, 2007			September 22, 2006	
Angola	September 17, 1986	September 13, 2007			January 10, 1992	January 10, 1992
Antigua and Barbuda	August 1, 1989	September 13, 2007				
Argentina	July 15, 1985	September 13, 2007	December 10, 1948	July 3, 2000	August 8, 1986	August 8, 1986
Armenia	September 13, 1993	September 13, 2007			June 23, 1993	September 13, 1993
Australia	July 28, 1983	April 3, 2009	December 10, 1948		August 13, 1980	December 10, 1975
Austria	March 31, 1982	September 13, 2007			September 10, 1978	September 10, 1978
Azerbaijan	July 10, 1995				August 13, 1992	August 13, 1992
Bahamas	October 6, 1993	September 13, 2007			December 23, 2008	December 23, 2008
Bahrain	June 18, 2002	September 13, 2007			September 20, 2006	September 27, 2007
Bangladesh	November 6, 1984				September 6, 2000	October 5, 1998
Barbados	October 16, 1980	September 13, 2007			January 5, 1973	January 5, 1973
Belarus	February 4, 1981	September 13, 2007			November 12, 1973	November 12, 1973
Belgium	July 10, 1985	September 13, 2007	December 10, 1948		April 21, 1983	April 21, 1983
Belize	May 16, 1990	September 13, 2007			June 10, 1996	
Benin	March 12, 1992	September 13, 2007			March 12, 1992	March 12, 1992
Bhutan	August 31, 1981					
Bolivia (Plurinational State of)	June 8, 1990	September 13, 2007	December 10, 1948	December 11, 1991	August 12, 1982	August 12, 1982
Bosnia and Herzegovina	September 1, 1993	September 13, 2007			September 1, 1993	September 1, 1993
Botswana	August 13, 1996	September 13, 2007			September 8, 2000	
Brazil	February 1, 1984	September 13, 2007	December 10, 1948	July 25, 2002	January 24, 1992	January 24, 1992
Brunei Darussalam	May 24, 2006	September 13, 2007				
Bulgaria	February 8, 1982	September 13, 2007			September 21, 1970	September 21, 1970
Burkina Faso	October 14, 1987	September 13, 2007			January 4, 1999	January 4, 1999
Burundi	January 8, 1992				May 9, 1990	May 9, 1990
Cambodia	October 15, 1992	September 13, 2007			May 26, 1992	May 26, 1992
Cameroon	August 23, 1994	September 13, 2007			June 27, 1984	June 27, 1984
Canada	December 10, 1981	November 12, 2010	December 10, 1948		May 19, 1976	May 19, 1976
Cape Verde	December 5, 1980	September 13, 2007			August 6, 1993	August 6, 1993
Central African Republic	June 21, 1991	September 13, 2007		August 30, 2010	May 8, 1981	May 8, 1981
Chad	June 9, 1995				June 9, 1995	June 9, 1995
Chile	December 7, 1989	September 13, 2007	December 10, 1948	September 15, 2008	February 10, 1972	February 10, 1972
China	November 4, 1980	September 13, 2007	December 10, 1948			March 27, 2001
Colombia	January 19, 1982		December 10, 1948	August 7, 1991	October 29, 1969	October 29, 1969
Comoros	October 13, 1994	September 13, 2007				
Congo	July 26, 1982	September 13, 2007			October 5, 1983	October 5, 1983
Congo (Democratic Republic of)	October 17, 1986	September 13, 2007			November 1, 1976	November 1, 1976
Cook Islands	August 11, 2006					
Costa Rica	April 4, 1986	September 13, 2007	December 10, 1948	April 2, 1993	November 29, 1968	November 29, 1968
Cote d'Ivoire	December 18, 1995				March 26, 1992	March 26, 1992
Croatia	September 9, 1992	September 13, 2007			October 12, 1992	October 12, 1992
Cuba	July 17, 1980	September 13, 2007	December 10, 1948			
Cyprus	July 23, 1985	September 13, 2007			April 2, 1969	April 2, 1969
Czech Republic	February 22, 1993	September 13, 2007			February 22, 1993	February 22, 1993
Denmark	April 21, 1983	September 13, 2007	December 10, 1948	February 22, 1996	January 6, 1972	January 6, 1972
Djibouti	December 2, 1998	September 13, 2007			November 5, 2002	November 5, 2002
Dominica	September 15, 1980	September 13, 2007		June 25, 2002	June 17, 1993	June 17, 1993
Dominican Republic	September 2, 1982	September 13, 2007	December 10, 1948		January 4, 1978	January 4, 1978
Ecuador	November 9, 1981	September 13, 2007	December 10, 1948	May 15, 1998	March 6, 1969	March 6, 1969
Egypt	September 18, 1981	September 13, 2007	December 10, 1948		January 14, 1982	January 14, 1982
El Salvador	August 19, 1981	September 13, 2007	December 10, 1948		November 30, 1979	November 30, 1979
Equatorial Guinea	October 23, 1984				September 25, 1987	September 25, 1987
Eritrea	September 5, 1995				January 22, 2002	April 17, 2001
Estonia	October 21, 1991	September 13, 2007			October 21, 1991	October 21, 1991
Ethiopia	September 10, 1981		December 10, 1948		June 11, 1993	June 11, 1993
Fiji	August 28, 1995			March 3, 1998		
Finland	September 4, 1986	September 13, 2007			August 19, 1975	August 19, 1975
France	December 14, 1983	September 13, 2007	December 10, 1948		November 4, 1980	November 4, 1980
Gabon	January 21, 1983	September 13, 2007			January 21, 1983	January 21, 1983
Gambia	April 16, 1993				March 22, 1979	December 29, 1978
Georgia	October 26, 1994				May 3, 1994	May 3, 1994
Germany	July 10, 1985	September 13, 2007			December 17, 1973	December 17, 1973
Ghana	January 2, 1986	September 13, 2007			September 7, 2000	September 7, 2000
Greece	June 7, 1983	September 13, 2007	December 10, 1948		May 5, 1997	May 16, 1985
Grenada	August 30, 1990				September 6, 1991	September 6, 1991

Guatemala	August 12, 1982	September 13, 2007	December 10, 1948	June 5, 1996	May 5, 1992	May 19, 1988
Guinea	August 9, 1982	September 13, 2007			January 24, 1978	January 24, 1978
Guinea-Bissau	August 23, 1985				November 1, 2010	July 2, 1992
Guyana	July 17, 1980	September 13, 2007			February 15, 1977	February 15, 1977
Haiti	July 20, 1981	September 13, 2007	December 10, 1948		February 6, 1991	
Honduras	March 3, 1983	September 13, 2007		March 28, 1995	August 25, 1997	February 17, 1981
Hungary	December 22, 1983	September 13, 2007			January 17, 1974	January 17, 1974
Iceland	June 18, 1985	September 13, 2007	December 10, 1948		August 22, 1979	August 22, 1979
India	July 9, 1993	September 13, 2007	December 10, 1948		April 10, 1979	April 10, 1979
Indonesia	September 13, 1984	September 13, 2007			February 23, 2006	February 23, 2006
Iran (Islamic Republic of)		September 13, 2007	December 10, 1948		June 24, 1975	June 24, 1975
Iraq	August 13, 1986	September 13, 2007	December 10, 1948		January 25, 1971	January 25, 1971
Ireland	December 23, 1985	September 13, 2007			December 8, 1989	December 8, 1989
Israel	October 3, 1991				October 3, 1991	October 3, 1991
Italy	June 10, 1985	September 13, 2007			September 15, 1978	September 15, 1978
Jamaica	October 19, 1984	September 13, 2007			October 3, 1975	October 3, 1975
Japan	June 25, 1985	September 13, 2007			June 21, 1979	June 21, 1979
Jordan	July 1, 1992	September 13, 2007			May 28, 1975	May 28, 1975
Kazakhstan	August 26, 1998	September 13, 2007			January 24, 2006	January 24, 2006
Kenya	March 9, 1984				May 1, 1972	May 1, 1972
Kiribati	March 17, 2004					
Korea (Democratic People's Republic of)	February 27, 2001	September 13, 2007			September 14, 1981	September 14, 1981
Kuwait	September 2, 1994	September 13, 2007			May 21, 1996	May 21, 1996
Kyrgyzstan	February 10, 1997				October 7, 1994	October 7, 1994
Lao People's Democratic Republic	August 14, 1981	September 13, 2007			September 25, 2009	February 13, 2007
Latvia	April 14, 1992	September 13, 2007			April 14, 1992	April 14, 1992
Lebanon	April 16, 1997	September 13, 2007	December 10, 1948		November 3, 1972	November 3, 1972
Lesotho	August 22, 1995	September 13, 2007			September 9, 1992	September 9, 1992
Liberia	July 17, 1984	September 13, 2007	December 10, 1948		September 22, 2004	September 22, 2004
Libya	May 16, 1989	September 13, 2007			May 15, 1970	May 15, 1970
Liechtenstein	December 22, 1995	September 13, 2007			December 10, 1998	December 10, 1998
Lithuania	January 18, 1994	September 13, 2007			November 20, 1991	November 20, 1991
Luxembourg	February 2, 1989	September 13, 2007	December 10, 1948		August 18, 1983	August 18, 1983
Madagascar	March 17, 1989	September 13, 2007			June 21, 1971	September 22, 1971
Malawi	March 12, 1987	September 13, 2007			December 22, 1993	December 22, 1993
Malaysia	July 5, 1995	September 13, 2007				
Maldives	July 1, 1993	September 13, 2007			September 19, 2006	September 19, 2006
Mali	September 10, 1985	September 13, 2007			July 16, 1974	July 16, 1974
Malta	March 8, 1991	September 13, 2007			September 13, 1990	September 13, 1990
Marshall Islands	March 2, 2006					
Mauritania	May 10, 2001				November 17, 2004	November 17, 2004
Mauritius	July 9, 1984	September 13, 2007			December 12, 1973	December 12, 1973
Mexico	March 23, 1981	September 13, 2007	December 10, 1948	September 5, 1990	March 23, 1981	March 23, 1981
Micronesia	September 1, 2004	September 13, 2007				
Monaco	March 18, 2005	September 13, 2007			August 28, 1997	August 28, 1997
Mongolia	July 20, 1981	September 13, 2007			November 18, 1974	November 18, 1974
Montenegro	October 23, 2006				October 23, 2006	October 23, 2006
Morocco	June 21, 1993				May 3, 1979	May 3, 1979
Mozambique	April 21, 1997	September 13, 2007			July 21, 1993	
Myanmar	July 22, 1997	September 13, 2007	December 10, 1948			
Namibia	November 23, 1992	September 13, 2007			November 28, 1994	November 28, 1994
Nauru	June 23, 2011					
Nepal	April 22, 1991	September 13, 2007		September 14, 2007	May 14, 1991	May 14, 1991
Netherlands	July 23, 1991	September 13, 2007	December 10, 1948	February 2, 1998	December 11, 1978	December 11, 1978
New Zealand	January 10, 1985	April 19, 2010	December 10, 1948		December 28, 1978	December 28, 1978
Nicaragua	October 27, 1981	September 13, 2007	December 10, 1948	August 25, 2010	May 12, 1980	May 12, 1980
Niger	October 8, 1999	September 13, 2007			March 7, 1986	March 7, 1986
Nigeria	June 13, 1985				July 29, 1993	July 29, 1993
Niue						
Norway	May 21, 1981	September 13, 2007	December 10, 1948	June 19, 1990	September 13, 1972	September 13, 1972
Occupied Palestinian Territory						
Oman	February 7, 2006	September 13, 2007				
Pakistan	March 12, 1996	September 13, 2007	December 10, 1948		June 23, 2010	April 17, 2008
Palau						
Panama	October 29, 1981	September 13, 2007	December 10, 1948		March 8, 1977	March 8, 1977
Papua New Guinea	January 12, 1995				July 21, 2008	July 21, 2008
Paraguay	April 6, 1987	September 13, 2007	December 10, 1948	August 10, 1993	June 10, 1992	June 10, 1992
Peru	September 13, 1982	September 13, 2007	December 10, 1948	February 2, 1994	April 28, 1978	April 28, 1978
Philippines	August 5, 1981	September 13, 2007	December 10, 1948		October 23, 1986	June 7, 1974
Poland	July 30, 1980	September 13, 2007			March 18, 1977	March 18, 1977
Portugal	July 30, 1980	September 13, 2007			June 15, 1978	July 31, 1978
Qatar	April 29, 2009	September 13, 2007				
Republic of Korea	December 27, 1984	September 13, 2007			April 10, 1990	April 10, 1990
Republic of Moldova	July 1, 1994	September 13, 2007			January 26, 1993	January 26, 1993
Romania	January 7, 1982				December 9, 1974	December 9, 1974
Russian Federation	January 23, 1981				October 16, 1973	October 16, 1973
Rwanda	March 2, 1981				April 16, 1975	April 16, 1975
Saint Kitts and Nevis	April 25, 1985					
Saint Lucia	October 8, 1982	September 13, 2007				

Saint Vincent and the Grenadines	August 4, 1981	September 13, 2007		November 9, 1981	November 9, 1981
Samoa	September 25, 1992			February 15, 2008	
San Marino	December 10, 2003	September 13, 2007		October 18, 1985	October 18, 1985
Sao Tome and Principe	June 3, 2003				
Saudi Arabia	September 7, 2000	September 13, 2007			
Senegal	February 5, 1985	September 13, 2007		February 13, 1978	February 13, 1978
Serbia	March 12, 2001	September 13, 2007		March 12, 2001	March 12, 2001
Seychelles	May 5, 1992			May 5, 1992	May 5, 1992
Sierra Leone	November 11, 1988	September 13, 2007		August 23, 1996	August 23, 1996
Singapore	October 5, 1995	September 13, 2007			
Slovakia	May 28, 1993	September 13, 2007		May 28, 1993	May 28, 1993
Slovenia	July 6, 1992	September 13, 2007		July 6, 1992	July 6, 1992
Solomon Islands	May 6, 2002				March 17, 1982
Somalia				January 24, 1990	January 24, 1990
South Africa	December 15, 1995	September 13, 2007		December 10, 1998	
South Sudan					
Spain	January 5, 1984	September 13, 2007	February 15, 2007	April 27, 1977	April 27, 1977
Sri Lanka	October 5, 1981	September 13, 2007		June 11, 1980	June 11, 1980
Sudan		September 13, 2007		March 18, 1986	March 18, 1986
Suriname	March 1, 1993	September 13, 2007		December 28, 1976	December 28, 1976
Swaziland	March 26, 2004	September 13, 2007		March 26, 2004	March 26, 2004
Sweden	July 2, 1980	September 13, 2007	December 10, 1948	December 6, 1971	December 6, 1971
Switzerland	March 27, 1997	September 13, 2007	December 10, 1948	June 18, 1992	June 18, 1992
Syrian Arab Republic	March 28, 2003	September 13, 2007		April 21, 1969	April 21, 1969
Tajikistan	October 26, 1993			January 4, 1999	January 4, 1999
Thailand	August 9, 1985	September 13, 2007	December 10, 1948	October 29, 1996	September 5, 1999
The former Yugoslav Republic of Macedonia	January 18, 1994	September 13, 2007		January 18, 1994	January 18, 1994
Timor-Leste	April 16, 2003	September 13, 2007		September 18, 2003	April 16, 2003
Togo	September 26, 1983			May 24, 1984	May 24, 1984
Tonga					
Trinidad and Tobago	January 12, 1990	September 13, 2007		December 21, 1978	December 8, 1978
Tunisia	September 20, 1985	September 13, 2007		May 18, 1969	May 18, 1969
Turkey	December 20, 1985	September 13, 2007	December 10, 1948	September 23, 2003	September 23, 2003
Turkmenistan	May 1, 1997			May 1, 1997	May 1, 1997
Tuvalu	October 6, 1999				
Uganda	July 22, 1985			June 21, 1995	January 21, 1987
Ukraine	March 12, 1981			November 12, 1973	November 12, 1973
United Arab Emirates	October 6, 2004	September 13, 2007			
United Kingdom of Great Britain and Northern Ireland	April 7, 1986	September 13, 2007	December 10, 1948	May 20, 1976	May 20, 1976
United Republic of Tanzania	August 20, 1985	September 13, 2007		June 11, 1976	June 11, 1976
United States of America		December 16, 2010	December 10, 1948	June 8, 1992	
Uruguay	October 9, 1981	September 13, 2007	December 10, 1948	April 1, 1970	April 1, 1970
Uzbekistan	July 19, 1995			September 28, 1995	September 28, 1995
Vanuatu	September 8, 1995			November 21, 2008	
Vatican City					
Venezuela (Bolivarian Republic of)	May 2, 1983	September 13, 2007	December 10, 1948	May 22, 2002	May 10, 1978
Viet Nam	February 17, 1982	September 13, 2007		September 24, 1982	September 24, 1982
Yemen	May 30, 1984	September 13, 2007		February 9, 1987	February 9, 1987
Zambia	June 21, 1985	September 13, 2007		April 10, 1984	April 10, 1984
Zimbabwe	May 13, 1991	September 13, 2007		May 13, 1991	May 13, 1991

## ANNEX IV RATIFICATION BY REGION

REGION:	AFRICA				
Total Number of States = 193 + 4 Sovereign Territories	54				
	Northern (7)	Southern (5)	Western (16)	Eastern (17)	Middle (9)
International Treaty on Plant Genetic resources for plant food and agriculture	6	3	13	14	8
Agreement on Trade-Related Aspects of Intellectual Property Rights	3	5	15	12	7
Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters	0	0	0	0	0
UNESCO Convention for the Safeguarding of Intangible Cultural Heritage	5	4	11	15	8
UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expression	3	4	10	12	8
UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage	6	5	16	16	9
Convention on the Law of Non-navigational Uses of International Watercourses	3	2	5	0	1
United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa	6	5	16	17	9
United Nations Framework Convention on Climate Change	6	5	16	17	9
Convention on Wetlands of International Importance	6	5	16	14	8
Nagoya-Kuala Lumpur Supplementary Protocol on Liability and Redress to the Cartagena Protocol	0	0	0	0	0
Convention on Biological Diversity	6	5	16	17	9
Cartagena Protocol on Biosafety	6	5	14	17	7
Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization	0	2	0	4	1
Convention on the Rights of the Child	6	5	16	16	9
International Convention on the Elimination of All Forms of Racial Discrimination	6	5	16	17	7
Convention on the Elimination of All Forms of Discrimination against Women	5	5	16	16	9
UNDRIP (sig)	5	5	10	9	6
UDHR (sig)	1	0	1	1	0
Indigenous and Tribal Peoples Convention (ILO 169)	0	0	0	0	1
ICCPR	6	5	16	16	8
ICESCR	6	3	16	15	8
	91	78	239	245	132
<b>22 Instruments x # States</b>	154	110	352	374	198
<b>% of Sub-Regions who are Party to the International Instruments</b>	59.09	70.91	67.90	65.51	66.67
<b>Total % for Africa:</b>			66.08		

REGION:	AMERICA			
Total Number of States = 193 + 4 Sovereign Territories	35			
	Northern (2)	Central (8)	Southern (12)	Caribbean (13)
International Treaty on Plant Genetic resources for plant food and agriculture	1	6	6	4
Agreement on Trade-Related Aspects of Intellectual Property Rights	2	8	12	12
Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters	0	0	0	0
UNESCO Convention for the Safeguarding of Intangible Cultural Heritage	0	8	10	10
UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expression	1	6	10	9
UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage	2	8	12	12
Convention on the Law of Non-navigational Uses of International Watercourses	0	0	0	0
United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa	2	8	12	13
United Nations Framework Convention on Climate Change	2	8	12	13
Convention on Wetlands of International Importance	2	8	11	9
Nagoya-Kuala Lumpur Supplementary Protocol on Liability and Redress to the Cartagena Protocol	0	1	0	0
Convention on Biological Diversity	1	8	12	13
Cartagena Protocol on Biosafety	0	8	10	12
Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization	0	2	0	0
Convention on the Rights of the Child	1	8	12	13
International Convention on the Elimination of All Forms of Racial Discrimination	2	8	12	11
Convention on the Elimination of All Forms of Discrimination against Women	1	8	12	13
UNDRIP (sig)	2	8	11	11
UDHR (sig)	2	6	10	3
Indigenous and Tribal Peoples Convention (ILO 169)	0	5	9	1
ICCPR	2	8	12	9
ICESCR	1	7	12	8
	24	137	197	176
<b>22 Instruments x # States</b>	<b>44</b>	<b>176</b>	<b>264</b>	<b>286</b>
<b>% of Sub-Regions who are Party to the International Instruments</b>	54.55	77.84	74.62	61.54
<b>Total % for America:</b>		69.35		

REGION:	ASIA				
Total Number of States = 193 + 4 Sovereign Territories	48				
	Southern (9)	Eastern (5)	Central (5)	South-Eastern (11)	Western (18)
International Treaty on Plant Genetic resources for plant food and agriculture	8	2	1	6	12
Agreement on Trade-Related Aspects of Intellectual Property Rights	6	4	2	10	12
Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters	0	0	4	0	4
UNESCO Convention for the Safeguarding of Intangible Cultural Heritage	8	5	5	6	14
UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expression	3	3	1	4	11
UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage	9	5	5	10	18
Convention on the Law of Non-navigational Uses of International Watercourses	0	0	1	0	5
United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa	9	5	5	11	17
United Nations Framework Convention on Climate Change	9	5	5	11	17
Convention on Wetlands of International Importance	7	4	5	8	13
Nagoya-Kuala Lumpur Supplementary Protocol on Liability and Redress to the Cartagena Protocol	0	0	0	0	1
Convention on Biological Diversity	9	5	5	11	17
Cartagena Protocol on Biosafety	8	5	4	8	13
Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization	1	0	0	1	2
Convention on the Rights of the Child	9	5	5	11	17
International Convention on the Elimination of All Forms of Racial Discrimination	8	4	5	7	17
Convention on the Elimination of All Forms of Discrimination against Women	8	5	5	11	17
UNDRIP (sig)	7	5	1	11	14
UDHR (sig)	4	1	0	3	3
Indigenous and Tribal Peoples Convention (ILO 169)	1	0	0	0	0
ICCPR	8	4	5	7	13
ICESCR	8	5	5	7	13
	130	72	69	143	250
<b>22 Instruments x # States</b>	198	110	110	242	396
<b>% of Sub-Regions who are Party to the International Instruments</b>	65.66	65.45	62.73	59.09	63.13
<b>Total % for Asia:</b>			62.88		

REGION:	EUROPE			
Total Number of States = 193 + 4 Sovereign Territories	44			
	Northern (10)	Southern (15)	Western (9)	Eastern (10)
International Treaty on Plant Genetic resources for plant food and agriculture	10	8	7	6
Agreement on Trade-Related Aspects of Intellectual Property Rights	10	10	8	9
Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters	10	12	6	9
UNESCO Convention for the Safeguarding of Intangible Cultural Heritage	8	11	8	9
UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expression	10	13	7	9
UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage	10	15	8	10
Convention on the Law of Non-navigational Uses of International Watercourses	4	4	4	1
United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa	10	14	9	10
United Nations Framework Convention on Climate Change	10	14	9	10
Convention on Wetlands of International Importance	10	13	9	10
Nagoya-Kuala Lumpur Supplementary Protocol on Liability and Redress to the Cartagena Protocol	5	2	0	2
Convention on Biological Diversity	10	13	9	10
Cartagena Protocol on Biosafety	9	12	7	9
Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization	0	1	0	0
Convention on the Rights of the Child	10	15	9	10
International Convention on the Elimination of All Forms of Racial Discrimination	10	15	9	10
Convention on the Elimination of All Forms of Discrimination against Women	10	14	9	10
UNDRIP (sig)	10	13	9	7
UDHR (sig)	5	1	5	0
Indigenous and Tribal Peoples Convention (ILO 169)	2	1	1	0
ICCPR	10	14	9	10
ICESCR	10	13	9	10
	183	228	151	161
<b>22 Instruments x # States</b>	220	330	198	220
<b>% of Sub-Regions who are Party to the International Instruments</b>	83.18	69.09	76.26	73.18
<b>Total % for Europe:</b>	74.69			

REGION:	OCEANIA			
Total Number of States = 193 + 4 Sovereign Territories	16			
	Au & N.Z (2)	Micronesia (5)	Melanesia (4)	Polynesia (5)
International Treaty on Plant Genetic resources for plant food and agriculture	1	2	1	2
Agreement on Trade-Related Aspects of Intellectual Property Rights	2	0	4	2
Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters	0	0	0	0
UNESCO Convention for the Safeguarding of Intangible Cultural Heritage	0	2	3	1
UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expression	2	0	0	0
UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage	2	4	4	4
Convention on the Law of Non-navigational Uses of International Watercourses	0	0	0	0
United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa	2	5	4	5
United Nations Framework Convention on Climate Change	2	5	4	5
Convention on Wetlands of International Importance	2	2	2	1
Nagoya-Kuala Lumpur Supplementary Protocol on Liability and Redress to the Cartagena Protocol	0	0	0	0
Convention on Biological Diversity	2	5	4	5
Cartagena Protocol on Biosafety	1	4	3	3
Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization	0	1	1	0
Convention on the Rights of the Child	2	5	4	5
International Convention on the Elimination of All Forms of Racial Discrimination	2	0	3	1
Convention on the Elimination of All Forms of Discrimination against Women	2	4	4	3
UNDRIP (sig)	2	1	0	0
UDHR (sig)	2	0	0	0
Indigenous and Tribal Peoples Convention (ILO 169)	0	0	1	0
ICCPR	2	0	2	1
ICESCR	2	0	2	0
	30	40	46	38
<b>22 Instruments x # States</b>	<b>44</b>	<b>110</b>	<b>88</b>	<b>110</b>
<b>% of Sub-Regions who are Party to the International Instruments</b>	<b>68.18</b>	<b>36.36</b>	<b>52.27</b>	<b>34.55</b>

<b>Total % for Oceania:</b>	<b>43.75</b>
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## ANNEX V

### A NON-EXHAUSTIVE LIST OF JUDGEMENTS FROM INTERNATIONAL AND REGIONAL COURTS

<b>International Judgments</b>
Western Sahara, Advisory Opinion, International Court of Justice 12 (1975).
Poma Poma v. Peru, Human Rights Committee, Comm. No. 1457/2006, UN Doc. CCPR/C/95/D/1457/2006 (2009).
<b>Regional Judgments</b>
<i>Africa</i>
The Social and Economic Rights Action Centre and the Centre for Economic and Social Rights v. Nigeria, Communication No. 155/96, African Commission on Human and Peoples' Rights (2001)
Endorois Welfare Council v Kenya, Communication No. 276/2003, Decision of the African Commission on Human and Peoples' Rights (2009)
<i>Americas</i>
Mayagna (Sumo) Awas Tingni Community v. Nicaragua, Inter-American Court of Human Rights (Ser. C), No. 79 (2001).
Yakye Axa Indigenous Community v. Paraguay, Inter-American Court of Human Rights, (Ser. C), No. 125 (2005).
Sawhoyamaxa Indigenous Community v. Paraguay, Inter-American Court of Human Rights, (Ser. C) No. 146 (2006).

Moiwana Village v. Suriname, Inter-American Court of Human Rights (Ser. C), No. 124 (2005).

Saramaka v. Suriname, Inter-American Court of Human Rights (Ser. C), No. 172 (2007).

Sarayaku v. Ecuador, Inter-American Court of Human Rights (Ser. C), No. 245 (2012)

## ANNEX VI

### A NON-EXHAUSTIVE LIST OF INDIGENOUS PEOPLES' AND LOCAL COMMUNITIES' DECLARATIONS

NAME	YEAR	INFORMATION
<b>General Environment and Development</b>		
The Iquitos Declaration	1990	Coordinating Body for Indigenous Peoples' Organizations of the Amazon Basin (COICA) and environmental and conservationist organizations to analyse the serious deterioration of the Amazon biosphere and look for joint alternatives.
Kari-Oca Declaration and Indigenous Peoples Earth Charter	1992	<a href="http://www.dialoguebetweenations.com/ir/english/kariocakimberley/KOCharter.html">http://www.dialoguebetweenations.com/ir/english/kariocakimberley/KOCharter.html</a>
International Alliance Charter	1992, Revised 2002	Regarding "indigenous and tribal peoples of the tropical-forests" <a href="http://www.international-alliance.org/charter_eng.htm">http://www.international-alliance.org/charter_eng.htm</a>
The Heart of the Peoples Declaration	1997	Prepared by participants in the North American Indigenous Peoples Summit on Biological Diversity and Biological Ethics <a href="http://www.ipcb.org/resolutions/htmls/dec_heartopeoples.html">http://www.ipcb.org/resolutions/htmls/dec_heartopeoples.html</a>
Redstone Statement	2010	Prepared at the 2010 International

		Summit on Indigenous Environmental Philosophy
Draft Universal Declaration on the Rights of Mother Earth	2010	Outcome of 2010 Cochabamba World Conference on Climate Change and the Rights of Mother Earth  <a href="http://www.celdf.org/rights-of-nature-universal-declaration-on-the-rights-of-mother-earth">http://www.celdf.org/rights-of-nature-universal-declaration-on-the-rights-of-mother-earth</a>
Rio+20: Indigenous Peoples International Declaration on Self-Determination and Sustainable Development	2012	<a href="http://www.iwgia.org/news/search-news?news_id=542">http://www.iwgia.org/news/search-news?news_id=542</a>
Declaration of Indigenous Peoples of Africa on Sustainable Development and Rio+20	2012	<a href="http://www.uncsd2012.org/index.php?page=view&amp;nr=1151&amp;type=230&amp;menu=38">http://www.uncsd2012.org/index.php?page=view&amp;nr=1151&amp;type=230&amp;menu=38</a>
Collective Statement of Khoi Tribal Groupings and Partners from South Africa on the International Day of the World's Indigenous Peoples	2012	
<b>Genetic Resources, Access and Benefit Sharing and Intellectual Property Rights</b>		
Mataatua Declaration on the Cultural and Intellectual Property Rights of Indigenous Peoples	1993	<a href="http://www.ankn.uaf.edu/IKS/mataatua.html">http://www.ankn.uaf.edu/IKS/mataatua.html</a>
Declaration of Indigenous Peoples of the Western Hemisphere Regarding the Human Genome Diversity	1995	<a href="http://www.ipcb.org/resolutions/htmls/dec_phx.html">http://www.ipcb.org/resolutions/htmls/dec_phx.html</a>

Project.		
Coordinating Body for Indigenous Peoples' Organizations of the Amazon Basin Regional Meeting on Intellectual Property Rights and Biodiversity	1994	Outcome of 1994 regional meeting hosted by COICA and the United Nations Development Programme  <a href="http://himaldoc.icimod.org/record/9889">http://himaldoc.icimod.org/record/9889</a>
Declaration on Indigenous Peoples' Rights to Genetic Resources and Indigenous Knowledge	2007	Prepared at UNFPII 2007  <a href="http://www.grain.org/article/entries/2222-unpfii-6-indigenous-peoples-rights-to-genetic-resources">http://www.grain.org/article/entries/2222-unpfii-6-indigenous-peoples-rights-to-genetic-resources</a>
Iskenisk Declaration on the Access, Use, and Fair and Equitable Sharing of Benefits Arising Out of the Utilization of Genetic Resources and Associated Traditional Knowledge in Canada	2011	Outcome of 2011 session convened by Maritime Aboriginal Peoples Council, a regional institution based in Canada
Nagoya Protocol - Joint Submission on Substantive and Procedural Injustices	2011	<a href="http://www.ubcic.bc.ca/News_Releases/UBCICNews05191102.html#axzz27bjZ9UWd">http://www.ubcic.bc.ca/News_Releases/UBCICNews05191102.html#axzz27bjZ9UWd</a>
<b>Climate Change and Reducing Emissions from Deforestation and Forest Degradation in Developing Countries (REDD)</b>		
Indigenous Peoples Global Strategy on REDD	2008	Adopted at the Global Indigenous Peoples Consultation on Reducing Emissions from Deforestation and Forest Degradation (REDD)  <a href="http://www.unutki.org/default.php?doc_id=133">http://www.unutki.org/default.php?doc_id=133</a>

The Anchorage Declaration	2009	Regarding climate change, prepared by Indigenous representatives from the Arctic, North America, Asia, Pacific, Latin America, Africa, Caribbean and Russia  <a href="http://worldpulse.com/node/10409">http://worldpulse.com/node/10409</a>
Position Paper of Nepal Federation of Indigenous Nationalities (NEFIN) on Climate Change and Reducing Emission from Forest Deforestation and Degradation (REDD)	2010	<a href="http://ccmin.aippnet.org/index.php?option=com_content&amp;view=article&amp;id=96:position-paper-of-nepal-federation-of-indigenous-nationalities-nefin-on-climate-change-and-reducing-emission-from-forest-deforestation-and-degradation-redd&amp;catid=17:national-statements&amp;Itemid=29">http://ccmin.aippnet.org/index.php?option=com_content&amp;view=article&amp;id=96:position-paper-of-nepal-federation-of-indigenous-nationalities-nefin-on-climate-change-and-reducing-emission-from-forest-deforestation-and-degradation-redd&amp;catid=17:national-statements&amp;Itemid=29</a>
Declaration of Solidarity – International Conference on Indigenous Peoples’ Rights, Alternatives and Solutions to the Climate Crisis	2010	Prepared by 76 Indigenous peoples representatives and advocates from 15 countries in Asia, Pacific, Australia, Africa, North and South America, and Europe  <a href="http://www.redd-monitor.org/2010/11/18/international-indigenous-peoples-groups-reject-market-based-mechanisms/">http://www.redd-monitor.org/2010/11/18/international-indigenous-peoples-groups-reject-market-based-mechanisms/</a>
Declaration of Iquitos: There is No REDD+ without Territories, Rights and Autonomy for Indigenous People	2011	<a href="http://www.rightsandresources.org/blog.php?id=700">http://www.rightsandresources.org/blog.php?id=700</a>
Kari-Oca 2 Declaration, “Indigenous Peoples Global Conference on Rio+20 and Mother Earth	2012	<a href="http://indigenous4motherearthrioplus20.org/kari-oca-2-declaration/">http://indigenous4motherearthrioplus20.org/kari-oca-2-declaration/</a>

<b>Extractive Industries</b>		
The Manila Declaration of the International Conference on Extractive Industries and Indigenous Peoples	2009	Prepared by Indigenous Peoples and support organisations from 35 countries  <a href="http://www.escr-net.org/docs/i/871960">http://www.escr-net.org/docs/i/871960</a>
The Ka Nui Conference Declaration	2012	Regarding extractive industries, prepared by Indigenous peoples (tangata whenua) and community activists from Aotearoa  <a href="http://kanuiconference.wordpress.com/2012/08/26/conference-declaration/">http://kanuiconference.wordpress.com/2012/08/26/conference-declaration/</a>
<b>Indigenous Peoples' and Community Conserved Areas and Territories</b>		
The Manila Declaration on Indigenous Peoples' and Community Conserved Areas and Territories	2012	Approved and delivered at the 'First National Conference on ICCAs in the Philippines'
<b>Pastoralists and Livestock Keepers</b>		
Segovia Declaration of Nomadic and Transhumant Pastoralists	2007	<a href="http://data.iucn.org/wisp/WISP_events_gathering_2.htm">http://data.iucn.org/wisp/WISP_events_gathering_2.htm</a>
Declaration on Livestock Keepers' Rights	2009	<a href="http://www.new-ag.info/en/news/newsitem.php?a=1570">http://www.new-ag.info/en/news/newsitem.php?a=1570</a>
Mera Declaration of the Global Gathering of Women	2010	<a href="http://www.landcoalition.org/news/mera-declaration-global-gathering-">http://www.landcoalition.org/news/mera-declaration-global-gathering-</a>

Pastoralists		<a href="#">women-pastoralists</a>
<b>Sacred Natural Sites and Territories</b>		
Statement of Custodians of Sacred Natural Sites and Territories	2008	<a href="http://sacrednaturalsites.org/items/custodians-statement/">http://sacrednaturalsites.org/items/custodians-statement/</a>
The Aanaar/Inari Statement on Diversity of Sacred Natural Sites in Europe	2010	

## ANNEX VII

### MULTILATERAL DEVELOPMENT BANKS AND FINANCIAL INSTITUTIONS

Multilateral Development Banks <sup>491</sup>	Relevant Policies <sup>492</sup>
World Bank <sup>493</sup>	Operational Policy and Bank Procedure on Indigenous Peoples (OP/BP 4.10) (2005)
African Development Bank	Involuntary Resettlement Policy (2003)
Asian Development Bank	Safeguard Policy Statement (2009)
European Bank for Reconstruction and Development	Indigenous Peoples Guidance Note (2010)
Inter-American Development Bank	Operational Policy on Indigenous Peoples and Strategy for Indigenous Development (2006)

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<sup>491</sup> "Multilateral Development Banks are institutions that provide financial support and professional advice for economic and social development activities in developing countries." The World Bank, "About Us". Last accessed 19 September 2012 at [www.worldbank.org](http://www.worldbank.org).

<sup>492</sup> For purposes of brevity, only the major policies of Multilateral Development Banks have been listed. These and other banks listed below may have other policies that affect Indigenous peoples and local communities.

<sup>493</sup> The World Bank Group comprises three sub-institutions that make loans and grants to developing countries: the International Bank for Reconstruction and Development (IBRD), the International Development Association (IDA), and the International Finance Corporation (IFC).

<b>Multilateral Financial Institutions</b> <sup>494</sup>
The European Commission and The European Investment Bank
International Fund for Agricultural Development
The Islamic Development Bank
The Nordic Development Fund and The Nordic Investment Bank
The OPEC Fund for International Development
<b>Sub-regional Banks</b> <sup>495</sup>
Corporacion Andina de Fomento
Caribbean Development Bank
Central American Bank for Economic Integration
East African Development Bank
North American Development Bank
West African Development Bank

<sup>494</sup> "Several other banks and funds that lend to developing countries are also identified as multilateral development institutions, and are often grouped together as other Multilateral Financial Institutions (MFIs). They differ from the MDBs in that they have a narrower ownership/membership structure and they focus on special sectors or activities." The World Bank, "About Us". Last accessed 19 September 2012 at [www.worldbank.org](http://www.worldbank.org).

<sup>495</sup> "A number of Sub-Regional Banks, established for development purposes, are also classified as multilateral banks, as they are owned by a group of countries (typically borrowing members and not donors)." The World Bank, "About Us". Last accessed 19 September 2012 at [www.worldbank.org](http://www.worldbank.org).

## ANNEX VIII

### A NOTE ON LEGAL WEIGHT<sup>496</sup>

#### 1. Introduction

It is in the nature of Western cultures in particular to organize the world into a hierarchical structure, be it with regard to leadership, sports teams, or, more prosaically, the classification of international laws. As far as international law is concerned, two broad categories have emerged to classify it hierarchically. One category consists of “hard law,”<sup>497</sup> generally created by treaties or “from a general and consistent practice of states followed by them from a sense of legal obligation,” (often called “customary international law”) which theoretically imposes binding legal obligations on member states.<sup>498</sup> In the other category is “soft law,” non-binding legal norms<sup>499</sup> often created by instruments that contain aspirational or moral goals that are explicitly qualified as being voluntary. Despite the apparent simplicity of these two categories, it can be difficult to determine whether a specific instrument operates as hard or soft law.<sup>500</sup>

One instrument that raises particular difficulties of classification is the Convention on Biological Diversity (CBD), “a far-reaching and ambitious instrument of international law[.]”<sup>501</sup> It is important to address the CBD in this context because it “has emerged as the ‘primary instrument’ and the preferred international forum for indigenous

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<sup>496</sup> This Annex is drawn from J. Eli Makagon, *Analyzing The Binding Nature of COP Decisions Through the Convention on Biological Diversity* (Natural Justice, New York 2012). <http://naturaljustice.org/library/our-publications/articles>.

<sup>497</sup> Abbot, K.W. and Snidal, D., *Hard and Soft Law In International Governance* (2000) International Organization 54(3), 421 (defining hard law as “legally binding obligations that are precise (or can be made precise through adjudication or the issuance of detailed regulations) and that delegate authority for interpreting and implementing the law”). “The realm of ‘soft law’ begins once legal arrangements are weakened along one or more of the dimensions of obligation, precision, and delegation.” *Id.* at 422.

<sup>498</sup> Bradley, C.A. and Goldsmith, J.L., *Customary International Law as Federal Common Law: A Critique of the Modern Position* (1997) 110 Harvard Law Review 4, 817.

<sup>499</sup> See Gruchalla-Wesierski, T., *A Framework for Understanding “Soft Law,”* (1984) 30 McGill Law Journal 38, 44 (stating that “the term soft law is used as a convenient shorthand to include vague legal norms”).

<sup>500</sup> Some suggest that these labels operate more as points on a continuum rather than as two distinct categories. Abbot and Snidal, at 424. Commentators have argued that a clear distinction between hard and soft law may actually be a misnomer, given the process of compromise that leads to multilateral environmental agreements. Harrop, S. and Pritchard, D., *A Hard Instrument Goes Soft: The Implications of the Convention on Biological Diversity’s Current Trajectory* (2011) Global Environmental Change 21, 474-480, at 476 (citing DiMento, J., *The Global Environment and International Law* (2003) University of Texas Press, Austin).

<sup>501</sup> Tinker, C., *A New Breed of Treaty: The United Nations Convention on Biological Diversity* (1995) 12 Pace Env’t L. Rev. 191, 194.

and local communities to express their interests and demands for the protection of their traditional knowledge[.]”<sup>502</sup> In theory, the CBD is hard law, a binding international treaty negotiated by states that obligates them to abide by the CBD’s provisions. In practice, however, this may not be the case, and it has been argued that the “CBD conforms to the characteristics of other international hard laws that possess a soft nature.”<sup>503</sup>

This section provides a preliminary analysis of the issues involved in classifying the CBD and its subsidiary instruments as hard or soft law. It first addresses the international legal context within which multilateral environmental agreements (MEAs) such as the CBD are developed. It then provides background on the procedural aspects of the CBD, including adoption of protocols and amendments to the text. Finally it addresses the substantive implementation of the CBD through COP decisions, and engages in a preliminary analysis of the legal weight<sup>504</sup> of the CBD.

## 2. Traditional International Law

Traditionally, binding<sup>505</sup> international law is created pursuant to the Vienna Convention on the Law of Treaties (Vienna Convention).<sup>506</sup> Under the Vienna Convention, states consent to be bound by a treaty at an international conference and the treaty enters into force once it has been ratified by a minimum number of states.<sup>507</sup> This is the “traditional process of lawmaking, [where] states protect their individual interests by exercising their sovereign right to withhold their consent to be bound and their prerogative to demand reciprocal concessions of their bargaining partners.”<sup>508</sup> This is the method under which conventions such as the CBD<sup>509</sup> and the

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<sup>502</sup> Morgera, E. and Tsioumani, E., *Yesterday, Today, and Tomorrow: Looking Afresh at the Convention on Biological Diversity* (2011) University of Edinburgh School of Law Working Paper 2011/21, 17.

<sup>503</sup> Harrop and Pritchard, at 476.

<sup>504</sup> In this section the phrase “legal weight” is used to describe where a particular instrument fits in the hard/soft law spectrum.

<sup>505</sup> It should be noted that the usefulness of terms such as “binding” and “non-binding” have been questioned due to practical issues of enforcement—or lack thereof—regarding allegedly “binding” provisions of an international instrument. Brunee, J., *COPing with Consent: Law Making Under Multilateral Environmental Agreements* (2002) 15 *Leiden Journal of International Law* 1, 32. For purposes of this discussion however, they will be employed in order to provide an overview of the legal status of MEAs.

<sup>506</sup> Vienna Convention on the Law of Treaties, Vienna 23 May 1969, entry into force 27 January 1980.

<sup>507</sup> Vienna Convention Articles 9-18. Article 11 provides that “[t]he consent of a State to be bound by a treaty may be expressed by signature, exchange of instruments constituting a treaty, ratification, acceptance, approval or accession, or by any other means if so agreed.” (Emphasis added).

<sup>508</sup> Werksman, J., *The Conference of Parties to Environmental Treaties* (1996) *Greening International Institutions* 55, 55-56. See also Churchill, R. and Ulfstein, G., *Autonomous Institutional Arrangements in Multilateral Environmental Agreements: A Little-Noticed Phenomenon in International Law* (2000) 94 *AJIL* 623.

United Nations Framework Convention on Climate Change (UNFCCC)<sup>510</sup> entered into force.

While the traditional treaty-making process protects states' sovereign rights to withhold or grant consent to be bound by a treaty, it has been criticized in the context of MEAs as being inadequate to respond to the realities of environmental degradation and loss of biodiversity in a timely and effective manner.<sup>511</sup> This has prompted calls for "new approaches to international environmental law-making,"<sup>512</sup> including approaches aimed at overcoming the constraints of the consent requirement. The Conference of the Parties to MEAs is one avenue through which restraints imposed by the consent requirement is being addressed.

### 3. The Conference Of The Parties (COP)

MEAs generally involve two stages: the treaty-making stage, where the text of the instrument is negotiated and adopted, and the implementation stage.<sup>513</sup> During the implementation stage, "the MEA is carried forward by the institutional structure established by the agreement's own terms, the Conference of the Parties."<sup>514</sup> The COP is typically the plenary, "supreme" organ of the MEA.<sup>515</sup> Although generally tasked with implementing the MEA, the COP's role varies depending upon the MEA's underlying text. The role of COPs "ranges from the adoption of texts that are subsequently ratified by MEA parties to what appear to be more autonomous forms of law-making."<sup>516</sup>

Where Parties ratify texts adopted by COPs, the role of the COP approximates the traditional, consent-based method of treaty law. On the other hand, a COP's exercise of "more autonomous forms of law-making" raises questions about the legitimacy and binding nature of COP decisions, at least as traditional treaty law theory is understood.<sup>517</sup> One method then for determining the legal weight of a particular COP action involves examining the circumstances in which the action took place.

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<sup>509</sup> Morgera and Tsioumani, at 3 (noting that the CBD is "[w]idely seen as a framework convention"); Harrop and Pritchard, at 476; McGraw, D., *The CBD – Key Characteristics and Implications for Implementation* (2002) 11 R.E.C.I.E.L. 17, 18 note 10.

<sup>510</sup> United Nations Framework Convention on Climate Change, 9 May 1992, entry into force 21 March 1994.

<sup>511</sup> See Werksman, at 56; Brunee, at 2.

<sup>512</sup> Brunee, at 2.

<sup>513</sup> Werksman, at 57.

<sup>514</sup> Werksman, at 57.

<sup>515</sup> Brunee, at 4 note 12.

<sup>516</sup> Brunee, at 4. As an example of the latter role, under Article 2.9 of the Montreal Protocol on Substances that Deplete the Ozone Layer, adjustments to the ozone depleting potential of substances can be adopted by a two-thirds majority decision, which becomes binding on all parties. *Id.* at 21.

<sup>517</sup> Brunee, at 5.

Because COPs are taking on a “growing role”<sup>518</sup> in international environmental law-making, determining the binding nature of their actions becomes increasingly important.

#### **4. The Convention on Biological Diversity**

In 1992, the CBD opened for signature at the United Nations Conference on Environment and Development in Rio, Brazil, and it entered into force in 1993.<sup>519</sup> It was “hailed as the epitome of a new generation of multilateral environmental agreements.”<sup>520</sup> At least initially, it was seen as “balanc[ing] the needs and concerns of developing countries against the goals of industrialized countries.”<sup>521</sup> Like other MEAs, the CBD established a COP tasked with the responsibility of implementing its provisions.<sup>522</sup>

##### **4.1 Procedural Aspects: Adoption and Amendment of Rules, Protocols, and Annexes**

Along with adopting rules of procedure and financing,<sup>523</sup> the CBD sets forth three major functions of the COP: adoption of protocols<sup>524</sup>; amendment of the CBD or protocols<sup>525</sup>; and adoption and amendment of annexes.<sup>526</sup> Additionally, the CBD instructs the COP to “[c]onsider and undertake any additional action that may be required for the achievement of the purposes of this Convention in the light of experience gained in its operation.”<sup>527</sup>

CBD Articles 28, 34, and 36, among others, govern adoption of protocols. Pursuant to Article 34(1), “any protocol shall be subject to ratification, acceptance or approval by States[.]” Under Article 36(2), a protocol enters into force after a prescribed date once “the number of instruments of ratification, acceptance, approval or accession, specified in that protocol . . . has been deposited.” Where a protocol has entered into force without the consent of a particular Party, the protocol will not be binding

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<sup>518</sup> Brunee, at 6.

<sup>519</sup> Tinker, at 191.

<sup>520</sup> Morgera and Tsioumani, at 1.

<sup>521</sup> Tinker, at 192-93. However, despite its perceived progressive nature, the CBD has “attracted intense criticism for its vague and heavily qualified text, which is fraught with loopholes.” Morgera and Tsioumani, at 1.

<sup>522</sup> CBD Article 23.

<sup>523</sup> CBD Article 23(3).

<sup>524</sup> CBD Article 28.

<sup>525</sup> CBD Article 29.

<sup>526</sup> CBD Article 30.

<sup>527</sup> CBD Article 23(4)(i).

on that Party until it “ratifies, accepts or approves that protocol or accedes thereto[.]”<sup>528</sup>

Amendment of the CBD or its protocols is governed by CBD Article 29. CBD Article 29(3) instructs the Parties to “make every effort” to reach agreement on proposed amendments to the CBD or any protocol by consensus. If consensus is not possible, as a last resort the amendment shall “be adopted by a two-third majority vote of the Parties to the instrument in question present and voting at the meeting, and shall be submitted by the Depository<sup>[529]</sup> to all Parties for ratification, acceptance or approval.”<sup>530</sup> Parties then notify the Depository of their acceptance of the amendment. Amendments only enter into force with regard to a particular Party if that Party has consented to the amendment.<sup>531</sup>

CBD Article 30 governs adoption and amendment of annexes to the CBD or any protocol.<sup>532</sup> Annexes are to be proposed and adopted pursuant to the procedure set forth in Article 29. However, any Party that is unable to approve an annex must notify the Depository within one year from the date that it is notified of the annex’s adoption.<sup>533</sup> If such notification is not provided within the prescribed time frame, “the annex shall enter into force for all Parties to this Convention or to any protocol concerned[.]”<sup>534</sup> Amendments to annexes follow the same procedure as proposal, adoption and entry into force of annexes.<sup>535</sup>

As these provisions demonstrate, different rules apply to different COP actions under the COP. For example, the minimum number of Parties required for a protocol to enter into force is set forth in the protocol itself, and conceivably could consist of only two Parties. However, the protocol only enters into force for those Parties that have agreed to be bound by it.

With regard to amendments to the CBD or protocols, Parties must first seek to reach agreement by consensus. If consensus is not possible, amendments can be adopted by a “two-third majority vote of the parties to the instrument in question.”<sup>536</sup>

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<sup>528</sup> CBD Article 36(4).

<sup>529</sup> The Depository is the Secretary General of the United Nations. CBD Article 41.

<sup>530</sup> CBD Article 29(3).

<sup>531</sup> CBD Article 29(4).

<sup>532</sup> “[A]nnexes shall be restricted to procedural, scientific, technical and administrative matters.” CBD Article 30(1).

<sup>533</sup> CBD Article 30(2)(b).

<sup>534</sup> CBD Article 30(2)(c).

<sup>535</sup> CBD Article 30(3).

<sup>536</sup> CBD Article 29(3).

Nevertheless, amendments only enter into force for those Parties that have agreed to be bound by them.<sup>537</sup>

Annexes and amendments to annexes are adopted pursuant to the same process as amendments to the CBD or protocols with one important distinction. Unlike amendments to the CBD or protocols, where Parties opt-in in order to be bound by them, Parties must opt-out of adoptions of or amendments to annexes by notifying the Depositary that they do not want to be so bound. Failure to do so will mean that the annex will enter into force with regard to that Party.

The distinction between opting in and opting out is important because it puts the onus on the Parties to the CBD to take action if they do not want to be bound by an annex or amendment thereto. Whereas inaction in the context of adopting a protocol or an amendment to the CBD or a protocol will mean that the Party will not be bound by the protocol or amendment, inaction in the context of an annex or amendment thereto will mean that the Party will be bound.

This distinction is also important because although the CBD states that “annexes shall be restricted to procedural, scientific, technical and administrative matters[,]”<sup>538</sup> “the lines between the ‘technical’ and the ‘substantive’ are often fluid.”<sup>539</sup> Thus, where annexes and amendments thereto contain substantive matters, Parties may end up being bound by an obligation not in the text of the treaty itself, despite the fact that they did not expressly consent to such an obligation.<sup>540</sup>

#### **4.2 Substantive Aspects: Implementing the CBD Through COP Decisions**

Following each meeting of a COP to an MEA, it is standard practice for the COP to issue a series of written decisions related to implementing the particular MEA for which it is responsible. Some MEAs, such as the UNFCCC, clearly address COP decisions in their text. For example, UNFCCC Article 7(2) provides that “[t]he Conference of the Parties, as the supreme body of this Convention, shall keep under regular review the implementation of the Convention and any related legal instruments that the Conference of the Parties may adopt, and shall make, within its mandate, the decisions necessary to promote the effective implementation of the Convention.” Unlike the UNFCCC, the CBD—which was opened for signature at the

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<sup>537</sup> Only two protocols to the CBD have been adopted since the CBD entered into force. These are the Cartagena Protocol on Biosafety to the Convention on Biological Diversity and the Protocol On Access To Genetic Resources And The Fair And Equitable Sharing Of Benefits Arising From Their Utilization To The Convention On Biological Diversity. Harrop and Pritchard, at 476.

<sup>538</sup> CBD Article 30(1).

<sup>539</sup> Brunee, at 20.

<sup>540</sup> See Brunee, at 20 (noting that under the Montreal Protocol, “additions to an annex can significantly increase the scope of the obligations contained in the protocol text itself”).

same environmental conference<sup>541</sup>—is essentially silent in regard to the role of decisions issued by the COP.<sup>542</sup>

Nevertheless, the CBD COP likely falls into a common scenario where its “decisions are made on the assumption of implied authority.”<sup>543</sup> In the CBD, such implied authority exists under the catchall provision in Article 23, which allows the CBD to “[c]onsider and undertake any additional action that may be required for the achievement of the purposes of this Convention[.]” Regardless of the source of its authority, like other COPs to MEAs, the CBD COP issues numerous decisions aimed at implementing the CBD’s provisions after each of its periodic ordinary meetings.<sup>544</sup>

Also relevant are the Rules of Procedure for Meetings of the Conference of the Parties to the Convention on Biological Diversity (“CBD Rules of Procedure”), although unfortunately they do little to clarify matters. Notably, they do not specifically state that the COP will issue decisions as a method of implementing the CBD. Instead, Rule 40 addresses decision-making on matters of substance and procedure and provides as follows<sup>545</sup>:

[1. The Parties shall make every effort to reach agreement on all matters of substance by consensus. If all efforts to reach consensus have been exhausted and no agreement reached, the decision [, except a decision under paragraph 1 or 2 of article 21 of the Convention] shall, as a last resort, be taken by a two-thirds majority vote of the Parties present and voting, unless otherwise provided by the Convention, the financial rules referred to in paragraph 3 of article 23 of the Convention, or the present rules of procedure.

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<sup>541</sup> United Nations Conference on Environment and Development (UNCED), Rio de Janeiro, 3-14 June 1992.

<sup>542</sup> CBD Article 12 refers to “decisions of the Conference of the Parties taken in consequence of recommendations of the Subsidiary Body on Scientific, Technical and Technological Advice[.]” Article 32(2) provides that “Decisions under any protocol shall be taken only by the Parties to the protocol concerned.”

<sup>543</sup> Camenzuli, L., *The Development of International Environmental Law at the Multilateral Environmental Agreements’ Conference of the Parties and its Validity* (2007) IUCN Environmental Law Programme Newsletter, 15.

<sup>544</sup> “Conference of the Parties (COP): Background and Status,” last accessed 12 November 2012 at <http://www.cbd.int/cop/>. The number of COP decisions issued at each meeting has grown over the years, from twelve at COP 1 to forty-seven at COP 10. Morgera and Tsioumani, at 4 note 29. Based on the *Advanced Unedited Copy of COP 11 Decisions*, it appears that COP 11, held in 2012, will result in thirty-three decisions.

<sup>545</sup> The brackets in the quoted text appear in the original. In a rather ironic twist, the entirety of Rule 40 is bracketed “due to the lack of consensus among the Parties concerning the majority required for decision-making on matters of substance.” CBD, Report of the Tenth Meeting of the COP to the CBD, 20 January 2011, at Paragraph 65. As of COP 10, “[t]he Conference of the Parties did not currently appear to be in a position to adopt those outstanding rules so the President suggested postponing discussion of the issue to the eleventh meeting of the Conference of the Parties.” *Id.* It is hoped that at COP 11, the COP was able to finally reach a consensus on its rules for reaching a consensus.

[Decisions of the Parties under paragraphs 1 and 2 of article 21 of the Convention shall be taken by consensus.]]

2. Decisions of the Conference of the Parties on matters of procedure shall be taken by a majority vote of the Parties present and voting.

As Rule 40 demonstrates, unlike provisions governing adoption of protocols and amendments to the CBD, reaching a decision under Rule 40 does not require ratification by Parties. It is also unclear under Rule 40 whether Parties who were not present and voting at the time the decision was taken, or who voted against the decision, are bound by it.

Setting aside the issue of the COP's technical authority for issuing decisions, there is no question that a number of significant substantive decisions now exist. For example, at COP 7 in 2004, the COP issued Decision VII/16 which contains the Akwe:Kon Guidelines.<sup>546</sup> The Akwe:Kon Guidelines are an explicitly voluntary set of guidelines addressing governments' development and implementation of impact-assessment regimes related to developments likely to impact sacred sites and lands and waters traditionally occupied or used by indigenous and local communities. Another decision issued at COP 7, Decision VII/12, contains the Addis Ababa Principles and Guidelines for Sustainable Use of Biodiversity (Addis Ababa Principles and Guidelines). They set forth principles, guidelines and instruments for their implementation that govern the uses of components of biodiversity to ensure such uses are sustainable.

These two decisions are a small example of the kinds of decisions issued by the COP designed to substantively affect the behavior of the CBD's member states. While some, like the Akwe:Kon Guidelines, are clearly labeled as voluntary—and thus presumably are soft law—others, like the Addis Ababa Principles and Guidelines are not. This raises the question of where such decisions sit on the spectrum of hard and soft law.

#### **4.3 Legal Weight of CBD COP Actions**

Under traditional treaty law analysis, the actions of the COP which most closely approximate traditional treaty formation—adoption and ratification—will constitute hard law. Thus, amendments to the CBD, adoption of protocols, and amendments to protocols, which require express consent from Parties before they are bound, should

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<sup>546</sup> The full title is "The Akwé: Kon Voluntary Guidelines for the Conduct of Cultural, Environmental and Social Impact Assessment Regarding Developments Proposed to Take Place on, or Which are Likely to Impact on, Sacred Sites and on Lands and Waters Traditionally Occupied or Used by Indigenous and Local Communities."

constitute hard law.<sup>547</sup> Annexes and amendments thereto deviate from the traditional treaty-law formation in that they require opting out in order to avoid being bound. As set forth in Article 11 of the Vienna Convention, however, “[t]he consent of a State to be bound by a treaty may be expressed . . . by any other means if so agreed.” It could be argued that the opt-out process in the CBD is another means by which Parties can express consent. Even if a literal interpretation of the term “express consent” is taken, Parties still have the opportunity to determine whether or not to be bound by an annex or amendment thereto.

On the other hand, the legal weight of actions which take place outside of this context (such as COP decisions taken by a “two-thirds majority vote” as provided in CBD Rules of Procedure Rule 40) “is at best uncertain.”<sup>548</sup> In fact, while certain COP decisions do contain mandatory terms, they “do not appear to be binding in a formal sense.”<sup>549</sup> Thus, under a traditional treaty analysis, CBD COP decisions do not qualify as hard law.

It is important to note, however, that some commentators argue that traditional treaty analysis is inadequate to address the scope of COP decision-making.<sup>550</sup> According to Brunee, “[t]o the extent that parties understand some of the rules contained in the relevant decisions as ‘mandatory’ and agree to subject themselves to their terms, the distinction between COP decisions that are, technically speaking, legally binding and those that are not may well be more apparent than real.”<sup>551</sup> The point here is that rather than focusing on whether or not a decision was made within the formal confines of traditional treaty law, decisions are analyzed according to general concepts of transparency, mutual understanding, and customary practice.

#### **4.4 Other Issues**

Some commentators have noted that by its nature, the CBD is more in the realm of a soft law instrument. Because of the contentious issues addressed by the CBD, the instrument was drafted with a “broad remit,” with many of the details to be implemented by individual Parties.<sup>552</sup> Rather than implementing additional hard law

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<sup>547</sup> See Churchill and Ulfstein, at 636 (noting that COP treaty amendment procedures “essentially reflect the general procedures for treaty amendment laid down in the Vienna Convention on the Law of Treaties, though in institutionalized and more streamlined form”).

<sup>548</sup> Camenzuli, at 17.

<sup>549</sup> Brunee, at 32. See also Camenzuli, at 17-18.

<sup>550</sup> Brunee, at 6.

<sup>551</sup> Brunee, at 32-33.

<sup>552</sup> Harrop and Pritchard, at 476.

instruments, however, the CBD COP “develop[ed] soft instruments which are not backed by obligations.”<sup>553</sup>

Additionally, CBD COP Decisions themselves, which are often long and poorly organized, may hamper the hard nature of the instrument.<sup>554</sup> One commentator has suggested that because “it is quite difficult to determine the legal strength of CBD COP decisions on the basis of their wording, it seems that the pragmatic way to determine whether these decisions actually contribute to addressing climate change and biodiversity in a mutually reinforcing manner is to assess state practice, both in relevant international negotiations outside the CBD framework and in implementing CBD COP decisions at the national and local level.”<sup>555</sup>

## 5. Conclusion

Actions of COPs inhabit an ambiguous area in the hard/soft law dichotomy of traditional international law. While some actions such as amending the governing instrument take place in a manner akin to formal treaty-making, other actions, such as reaching agreement on decisions, occur under less formal circumstances. The status of this latter category of actions is unclear. Applying formal treaty law, such actions appear to be more akin to soft law.

Legal scholarship in regard to COP actions is still in its nascent stage, and in regard to actions of the CBD COP in particular, is essentially nonexistent.<sup>556</sup> As more actions are taken by COPs in the future, new approaches to analyzing their legal status may gain wider use. These approaches may help to clarify the legal status of COP actions. More importantly, the effects of COP actions on Parties’ behavior will help to determine whether or not they are binding. For the time being, however, there are no definitive answers regarding the binding nature of COP actions.

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<sup>553</sup> Harrop and Pritchard, at 479. Harrop and Pritchard do acknowledge that “[t]he setting of global targets has addressed one of the foundational inadequacies of the CBD, by providing necessary timelines, rates and measures.” *Id.* However, they note that “the convention’s work on targets has not to-date provided instruments that facilitate their national implementation.” *Id.*

<sup>554</sup> See Morgera, E., *Faraway, So Close: A Legal Analysis of the Increasing Interactions between the Convention on Biological Diversity and Climate Change Law*, University of Edinburgh School of Law Working Paper Series 2011/05, at 2 (noting that “it is difficult to obtain a clear and comprehensive picture of the guidance given by the CBD’s Conference of the Parties” regarding climate change and biodiversity due to COP Decisions that are “generally long” and “not always well organized”).

<sup>555</sup> Morgera, at 36.

<sup>556</sup> Morgera, at 36 note 180 (noting that “of the authors that have discussed the legal significance of multilateral environmental agreements’ COP decisions, none has referred to the specific case of the CBD”).

## ANNEX IX

### ABBREVIATIONS

Abbreviation	Full Name
Aarhus Convention	Convention on Access to Information, Public Participation In Decision-Making, and Access to Justice In Environmental Matters
Addis Ababa Principles and Guidelines	Addis Ababa Principles and Guidelines for the Sustainable Use of Biodiversity
Aichi Biodiversity Targets	The Strategic Plan for Biodiversity 2011-2020 and the Aichi Biodiversity Targets
Akwé: Kon Guidelines	Akwé: Kon Voluntary guidelines for the conduct of cultural, environmental and social impact assessments regarding developments proposed to take place on, or which are likely to impact on, sacred sites and on lands and waters traditionally occupied or used by indigenous and local communities
Bonn Guidelines	Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of the Benefits Arising out of their Utilization
Cartagena Protocol on Biosafety	Cartagena Protocol on Biosafety and the Nagoya-Kuala Lumpur Supplementary Protocol on Biosafety
CBD	Convention on Biological Diversity
CBOs	Community-based organisations

CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CERD	International Convention on the Elimination of All Forms of Racial Discrimination
CIFOR	Centre for International Forestry Research
Tkarihwaié:ri Code of Ethical Conduct	Tkarihwaié:ri Code of Ethical Conduct to Ensure Respect for the Cultural and Intellectual Heritage of Indigenous and Local Communities
Convention on Cultural Expressions	UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions
Convention on Desertification	United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa
Convention on Intangible Cultural Heritage	UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage
Convention on Non-navigational Watercourses	Convention on the Law of the Non-navigational Uses of International Watercourses
Convention on the Rights of the Child	Convention on the Rights of the Child
COP	Conference of the Parties
Declaration on the Right to Development	United Nations Declaration on the Right to Development
Declaration on the Rights of	Declaration on the Rights of Persons Belonging to

Minorities	National or Ethnic, Religious and Linguistic Minorities
FAO	Food and Agriculture Organisation of the United Nations
FAO Food Security Guidelines	FAO Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security
FAO Tenure Guidelines	FAO Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security
FPIC	Right to free, prior and informed consent
GEF	Global Environment Facility
GPA	Global Plan of Action for Animal Genetic Resources
ICJ	International Court of Justice
IACHR	Inter-American Court of Human Rights
ICCAs	Indigenous Peoples and Community Conserved Territories and Areas
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IDA	International Development Association

IFC	International Finance Corporation
ILO	International Labour Organisation
ILO Convention No. 169	Indigenous and Tribal Peoples Convention No. 169
Interlaken Declaration	Interlaken Declaration on Animal Genetic Resources
ITPGRFA	The International Treaty on Plant Genetic Resources for Food and Agriculture
IUCN	International Union for Conservation of Nature
IUCN-CEESP	International Union for Conservation of Nature's Commission on Environmental, Economic and Social Policy
MDBs	Multilateral Development Banks
MEAs	Multilateral environmental agreements
MFIs	Multilateral Financial Institutions
N-KL Supplementary Protocol	Nagoya-Kuala Lumpur Supplementary Protocol On Liability and Redress to the Cartagena Protocol on Biosafety
Nagoya Protocol	Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization
NGO	Non Governmental Organisation
OPEC	Organisation of Petroleum Exporting Countries

PoWPA	Program of Work on Protected Areas
Ramsar Convention	Convention on Wetlands of International Importance Especially as Waterfowl Habitat
REDD	Reducing Emissions from Deforestation and Forest Degradation
The Compendium	A Compendium of Internationally Recognised Rights That Support The Integrity And Resilience Of Indigenous Peoples' And Local Communities' Territories And Other Social-Ecological Systems
TRIPS	Agreement on Trade Related Aspects of Intellectual Property Law
TRRs	Traditional resource rights
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNCED Forest Principles	United Nations Conference on Environment and Development Non-Legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of All Types of Forests
UNDRIP	United Nations Declaration of the Rights of Indigenous Peoples
UNESCO	United Nations Educational, Scientific and Cultural Organisation

UNFCCC	United Nations Framework Convention on Climate Change
UNFCCC Cancun Agreements	UNFCCC COP, “Decision 1/CP.16, The Cancun Agreements: Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention” (Cancun, 29 November – 10 December 2010) FCCC/CP/2010/7/Add.1
UNFCCC COP	United Nations Framework Convention on Climate Change Conferences of the Parties
UNFF Instrument on Forests	United Nations Forest Forum Non-legally Binding Instrument on All Types of Forests
Vienna Convention	Vienna Convention on the Law of Treaties 1969
WIPO	World Intellectual Property Organisation
World Heritage Convention	UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage

## ANNEX X

### QUICK REFERENCE LIST OF DEFINITIONS

List of Terms	Definition
Biocultural diversity	<p>As defined in the International Conference on Biological and Cultural Diversity: Diversity for Development – Development for Diversity Working Document (8-10 June 2010): “[...] the total sum of the world’s differences, no matter what their origin. This concept encompasses biological diversity at all its levels and cultural diversity in all its manifestations. Biocultural diversity is derived from the myriad ways in which humans have interacted with their natural surroundings. Their co-evolution has generated local ecological knowledge and practices: a vital reservoir of experience, methods and skills that help different societies to manage their resources. Diverse worldviews and ethical approaches to life have emerged in tandem with this co-evolution of nature and culture. The biocultural concept is critical to making progress on building mutual understanding and support between these two diversities.”</p>
Indigenous peoples	<p>There is no settled definition of the term “indigenous peoples.” One of the most widely cited definitions is that set forth in Jose Martinez-Cobo’s study on the Problem of Discrimination against Indigenous Populations, in which he noted that “Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing on those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal system.”<sup>557</sup></p> <p>As noted in the United Nations Declaration on the Rights of Indigenous Peoples, “the situation of indigenous peoples</p>

<sup>557</sup> UN Doc E/CN.4/Sub.2/1986/7.

	varies from region to region and from country to country and that the significance of national and regional particularities and various historical and cultural backgrounds should be taken into consideration.”
Local communities	<p>The term “local communities” also lacks an agreed definition. However, in 2011, an Expert Group Meeting of Local Community Representatives within the context of the Convention on Biological Diversity was convened with a view to identifying common characteristics of local communities.<sup>558</sup> The Expert Group identified several characteristics, including the following:</p> <p>(a) Self-identification as a local community;</p> <p>(b) Lifestyles linked to traditions associated with natural cycles (symbiotic relationships or dependence), the use of and dependence on biological resources and linked to the sustainable use of nature and biodiversity;</p> <p>(c) The community occupies a definable territory traditionally occupied and/or used, permanently or periodically.</p>
Stewardship	Referring to the connection between Indigenous peoples and local communities in relation to their lands and waters, including their positive relationship to the health of the territory or landscape. <sup>559</sup>
Substantive rights	Rights and obligations that govern relationships between people or between people and the government.
Procedural rights	The way in which substantive rights are made operational.
Hard law (binding)	Law that is binding on all parties, generally created when treaties are adopted by States pursuant to the Vienna Convention on the Law of Treaties or from a general and consistent practice of states followed by them from a sense

<sup>558</sup> See Report of the Expert Group Meeting of Local Community Representatives Within the Context of Article 8(j) and Related Provisions of the Convention on Biological Diversity (UNEP/CBD/WG8J/7/8/Add.1\*), at 12.

<sup>559</sup> Case of *Moiwana Village v. Suriname*, Inter-Am. Ct. H.R. (ser. C) No. 124 (15 June 2005), para. 131.

	of legal obligation (customary international law).
Soft law (non-binding)	Non-binding legal norms, often created by instruments containing aspirational or moral goals. While generally considered non-binding, soft law has important legal significance, including its use as persuasive evidence that the law is moving in a particular direction.
Customary international law	Binding principles of law that are created by a common understanding that these principles constitute law, and State practice that supports the idea that these are legally binding principles. The main human rights included in this category are the prohibition of torture, genocide and slavery, as well as the principle of non-discrimination. <sup>560</sup>
Ratify/Ratification	An act by which a State signifies an agreement to be legally bound by the terms of a particular treaty. To ratify a treaty, the State first signs it and then fulfils its own national legislative requirements. Once the appropriate national organ of the country – Parliament, Senate, the Crown, Head of State or Government, or a combination of these – follows domestic constitutional procedures and makes a formal decision to be a party to the treaty. The instrument of ratification, a formal sealed letter referring to the decision and signed by the State’s responsible authority, is then prepared and deposited with the United Nations Secretary-General in New York. <sup>561</sup>
Prima facie	On face value, or at first sight.

<sup>560</sup> Shaw, M., page 275.

<sup>561</sup> UNICEF, Introduction to the Rights of the Child: Definition of Key Terms, available at <http://www.unicef.org/crc/files/Definitions.pdf>.