

GUIDELINES ON INDIGENOUS PEOPLES IN LATIN AMERICA

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In July 1997, the United Nations Working Group on Indigenous Populations celebrated its 20th anniversary in Geneva. It is during these two decades that Indigenous Peoples have become central to international debates on human rights, environment, development, agriculture, forestry and trade. Debates have focused on rights—rights to land, territories and resources, with subsidiary questions of rights to participation, decision-making, education, work, and cultural and language integrity. Since the 1992 Earth Summit (and subsequent Social Summit and Human Rights Conference), these issues have expanded to include: equity, benefit-sharing, control over access to resources, full disclosure, prior informed consent, and intellectual property rights. All of these concerns are considered by Indigenous Peoples themselves to be subsumed under the single and central concept of **self-determination**.

Self-determination implies rights to *sovereignty*, i.e. recognition that Indigenous Peoples exist as independent and separate “nations” with their own languages, laws, cultures, and histories—and have done so prior to the formation of modern nation states. Self-determination (and sovereignty) is symbolised by the ‘s’ on *Peoples*. In contrast, People with no ‘s’ denies the distinctiveness and collective rights of Indigenous nations. *Populations* is considered to be even less acceptable. Indigenous Peoples also do not consider themselves minorities (in categories such as women, children, handicapped, homosexuals, etc.), nor even ethnic minorities (although some may also be ethnic minorities within nation states). It is not surprising, then, that much debate in the UN Working Group on Indigenous Populations has been over the name of the group itself and how to confront nation states that refuse to negotiate sovereignty issues. Any and all work with Indigenous Peoples must be sensitive to and address these principal issues—especially self-determination.

The first legally-binding international agreement on indigenous peoples was the International Labour Organisation’s *Convention Concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries* (ILO Convention 107, adopted in 1957)ⁱ. It was revised in 1989 as ILO Convention 169—the *Convention Concerning Indigenous People in Independent Countries*—and removes earlier “integrationist language”, while strengthening recognition of customary law, supporting traditional livelihoods, and recognising collective rights to land, territory and resources. It remains the only internationally legally-binding agreement specifically on Indigenous Peoples, although to date only Bolivia, Colombia, Costa Rica, Denmark, Guatemala, Honduras, Mexico, Norway, Paraguay, and Peru have ratified the Convention. ILO 169 is considered by most Indigenous Peoples as weak and inadequate, but is generally supported as “a set of minimum standards from which to negotiate more favourable conditions” (Barsh ?????? ____). A summary of ILO provisions can be found in Box 1.

BOX 1: MAJOR PRINCIPLES EMBODIED IN ILO 169

Governments shall:

- develop, with participation of the peoples concerned, coordinated and systematic action to protect the Rights of indigenous Peoples and guarantee respect for their integrity (Article 2.1);
- support the full “realisation” of indigenous social, economic & cultural rights (Article 2.2b);
- adopt special measures to safeguard persons, institutions, property, labour, cultures and environments of Indigenous Peoples (Article 4);
- consult peoples through appropriate procedures and representative institutions (Article 4);
- respect the integrity of indigenous social, cultural, religions, and spiritual values (Article 5);
- guarantee peoples the right to make their own decisions, establish their own priorities, and control all economic, social and cultural development that affects them (Article 7.1);
- ensure that assessments of cultural, spiritual, social and environmental impacts are made for planned development activities, and that these impacts become the “fundamental criteria” for implementation of these activities Article 7.3, 7.4);
- ensure peoples have the right to retain their customs, customary laws and institutions, and no one is subjected to arbitrary interference with privacy, family, home or correspondence (Article 12);
- respect the collective aspects of land, territory, and culture and the special relationships Indigenous Peoples hold with these (Article 13.1);
- guarantee that peoples have the right to participate in the use, management and conservation of natural resources pertaining to their lands (Article 15).

Other international agreements that affect the rights of Indigenous Peoples include the 1948 *Universal Declaration of Human Rights* (UDHR), the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), and the *International Covenant on Civil and Political Rights* (ICCPR). It is important to remember, however, that human rights law is oriented more towards *individual* rights than the *collective rights* also required by indigenous nations, tribes, or communities.

The *Convention on Biological Diversity* (CBD) has become an important instrument to extend indigenous rights into areas of natural resources, biodiversity, and intellectual property rights. The CBD has been ratified by over 160 Member States, and, as a result, has much more political influence than ILO 169 (or even the legally non-binding UDHR). Article 8(j) calls on States to:

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

Note that the issue of People/Peoples is avoided by the use of “indigenous and local communities embodying traditional lifestyles. The CBD, however, raises important issues of “equity” and “benefit-sharing” from the “wider application” of indigenous “knowledge, innovations, and practices”. Article 18.4 even refers to “indigenous and traditional technologies”, which implies that the knowledge of Indigenous Peoples should be protected by intellectual property rights mechanisms just as are other (industrial) technologies.

Access to traditional technologies—as well as the biological resources upon which these are based—is a central issue in the CBD. Thus, terms of access, including full disclosure (of intended use or application) and prior informed consent by the “holders”, become major new issues for governments, science and industry. Intersessional negotiations are now underway to determine what principles should guide these processes. Box 2 provides a list of recommendations for implementation of CBD Article 8(j).

BOX 2: RECOMMENDATIONS: IMPLEMENTATION OF ARTICLE 8(j)

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

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

The CBD debates have forced nation states to look broadly for existing international standards, both legally and non-legally binding, to guide implementation of the Convention through national laws. Appendix 1 provides a chart of some major conventions and agreements that support both individual and collective rights for Indigenous Peoples (as well as other traditional and local communities), and also presents relevant principles already established in international law and customary practice.

Although many important principles have already been established, it is generally believed by Indigenous Peoples and many nation states, that additional legal mechanisms (sometimes known as *sui generis*, or specially developed, systems of protection and equitable benefit-sharing) are necessary. Increasingly guidelines for new laws are being sought in “soft law” agreements—i.e., those that have no legal status, but articulate broadly agreed principles that may constitute *customary practice* and eventually “harden” into law. The primary international document to guide this process is the *Draft Declaration on the Rights of Indigenous Peoples*, which was developed as the central task of the U.N. Working Group on Indigenous Populations. It is the result of one of the longest running and broadest consulting processes in UN history.

The Draft Declaration is currently under review by the UN Economic and Social Council and will eventually be debated by the UN General Assembly for adoption. That process may take many years and nation states are already taking issue with what they consider the strong language of self-determination. But in the meantime—and independent of the official outcome in the UN—the Draft Declaration is the primary benchmark for development of policies on Indigenous Peoples. A summary of its principal points is in Box 3.

BOX 3: SOME PRINCIPAL RIGHTS AFFIRMED BY THE DRAFT DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

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

INDIGENOUS PEOPLES IN LATIN AMERICA

The concept of “Indigenous” was basically developed in the Americas, and, therefore, escapes some of the almost insurmountable problems of definition confronted in Africa and Asia (see Posey & Dutfield, 1996). The ILO defines the term as:

a) tribal peoples in countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations

b) peoples in countries who are regarded by themselves or others as Indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization or the establishment of present state boundaries and who, irrespective of their legal status, retain, or wish to retain, some or all of their own social, economic, spiritual, cultural and political characteristics and institutions.

In addition, the Convention establishes another important principle:

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

The World Council of Indigenous Peoples (whose members are predominantly indigenous groups from Latin America) provides the following definition:

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

There are now many non-governmental organisations in Latin America that are dedicated to indigenous issues, and by far the majority of these are operated by Indigenous Peoples themselves. Appendix 2 provides a list of some of the principal groups in Central and South America.

One of the most important of these organisations is COICA (Coordinating Body of Indigenous Peoples of the Amazon Basin). COICA has been influential in developing policy guidelines for Latin American governments and other institutions (see Appendix 3).

Most laws governing Indigenous Peoples in Latin America deal with land, territory, water, soil and sub-soil rights. Since the CBD, however, additional legislation efforts have broadened the concern to cover access, transfer, benefit-sharing and protection of traditional knowledge and genetic resources. The two principal legal efforts to date are:

1. *The Andean Pact*: Model laws are being considered by the Andean Pact countries (Bolivia, Colombia, Ecuador, Peru and Venezuela) for the conservation and sustainable use of biological material used as a source of genetic resources. Member States are permitted to set terms for access to their biological resources that may include the following: sharing of benefits between receivers of biological resources, members states and providers, which may be legal entities, private individuals, or Indigenous or local communities; restrictions on transfer to third parties; reporting on obligations on future uses; obligations related to intellectual property; exclusivity and confidentiality; recognition of the member states or provider in the publication of research results. When the provider is an Indigenous or local community, member states may take measures to enable them to enter into access agreements.

2. *The Brazilian Indigenous Societies Act (PL 2057/91)*: This proposed law was approved in 1994 by the House of Deputies of the National Legislature. It has never passed into the Senate and is still under consideration for its legality. The proposed law is intended to protect and assure respect for Indigenous Peoples' social organisation, customs, languages, beliefs and traditions, and rights over their territories and possessions. Articles 18-29 deal with the intellectual property of Indigenous Peoples. Among the important provisions of benefit to Indigenous Peoples are the following: the right to maintain the secrecy of traditional knowledge; the right to refuse access to traditional knowledge; the right to apply for IPR protection, which, in the case of collective knowledge will be granted in the name of the community or society; the right of prior informed consent (to be given in writing) for access to, use of and application of traditional knowledge; the right to co-ownership of research data, patents and products derived from the research; and, the right of communities to nullify patents illegally derived from their knowledge.

Amazon Pact countries are discussing ways to adapt the Andean Pact provisions. It is likely that in a few years, most—if not all—Latin American countries will have legislation regulating transfer and access of genetic resources and indigenous knowledge. The legal and legislative developments bear close observation and evaluation, since they will profoundly affect the way research, collecting, and industrial development occurs in Latin America.

IDENTIFYING PRINCIPLES AND GUIDELINES

In 1995, a Workshop on “equitable relationships” with Indigenous Peoples was held at the Green College Centre for Environmental Policy and Understandingⁱⁱ (University of Oxford). Representatives from industry, science, politics, educational and research institutions met with indigenous representatives to develop general guidelines for how British institutions should approach collaborative undertakings and equitable partnerships with indigenous, traditional, and local communities. The following findings and recommendations were made:

BOX 4: FINDINGS AND RECOMMENDATIONS FROM THE GREEN COLLEGE WORKSHOP: INDIGENOUS PEOPLES AND TRADITIONAL RESOURCE RIGHTS

Finding 1: Indigenous rights are based on concepts of self-determination as defined in relevant declarations. These should guide science, research and development policy as well as efforts to protect traditional resources and intellectual property rights (IPRs). They include: (i) territorial and resource rights; (ii) respect for cultural differences and Indigenous Peoples' own institutions and efforts; (iii) prior informed consent; and (iv) veto power over research and development projects.

Recommendations: That governmental and non-governmental institutions:

- follow principles already established in indigenous rights documents;
- support, disseminate and integrate these principles into policy guidelines and operations.

Finding 2: Traditional and Indigenous Peoples: (i) well express concerns around the world about loss of local autonomy and control, erosion of common resources, and destruction of biological and cultural diversity; (ii) have inadequate opportunities for dialogue with institutional representatives; and (iii) are under-represented at all levels of governmental and non-governmental decision-making.

Recommendations: That scientists, government and non-government representatives; UN agencies; government departments; scientific and professional institutions:

- recognize and value indigenous knowledge as a basis for new models of development and environmental conservation;
- establish means to facilitate dialogue and form alliances with indigenous leaders;
- strengthen and support local institutions;
- involve Indigenous Peoples in planning and executing projects and policies affecting them and the environments in which they live, and let their knowledge guide all levels of decision-making;
- ensure transparency in all negotiations of research, results, data management, and benefit-sharing;
- establish centres and programmes to guide and facilitate this process.

Finding 3: Modifications of existing practice are necessary to meet the concerns of Indigenous Peoples.

Recommendations:

- ensure *in situ* programmes strengthen local livelihoods;
- make community-controlled research standard practice;
- give local communities prior informed consent and right of veto regarding projects taking place on their lands or territories or that affect them;
- that determination of the *common good* should reflect indigenous and traditional values.

Finding 4: Research and scientific research organizations do not have adequate operational guidelines to reflect the principles of the Convention on Biological Diversity and indigenous rights.

Recommendations:

Form a consortium of institutions to:

- establish codes and standards for conduct and policies to reflect indigenous rights and the Convention on Biological Diversity;
- identify gaps between policies and practices, and correct these deficiencies;
- ensure that scientists, government officials, and non-government representatives are properly informed of indigenous rights and views.

Finding 5: Existing IPR instruments are inadequate and new mechanisms must be developed.

Recommendations:

- to pursue the "bundles of rights" approach, to develop Traditional Resource Rights and to look into other legal systems;
- to investigate other ways of protecting intellectual, cultural and scientific resources, including customary practice;
- to observe a moratorium on "biodiversity prospecting" unless and until adequate and effective mechanisms for protection and compensation have been established.

Finding 6: Institutions may not be able to ensure rights are respected in the countries where Indigenous Peoples reside, but guidelines for institutions can define partners and funding priorities that will affect recognition of indigenous rights.

Recommendations: that as criteria for collaboration:

- indigenous rights, including intellectual property rights are recognized;
 - indigenous rights are guaranteed in countries of activity;
 - mechanisms are provided to ensure community decision-making, traditional resource rights protection, and benefit-sharing.
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Since the Green College Workshop, The Museum of Natural History has developed a "Bioprospecting Policy" that reflects the recommendations of the Workshop (see Appendix 4). The Royal Botanical Gardens at Kew also began a long process of internal and external consultation to develop its policy on access, transfer and intellectual property rights *vis a vis* nation states, but considering the concerns of Indigenous Peoples (still un-published)ⁱⁱⁱ.

The standard for international institutions is the World Bank's Operational Directive on Indigenous Peoples (OD.420, September, 1991; see Appendix 5 for the complete Directive). Principal points in the Directive are:

1. *Fundamental policy objectives must (a) ensure that indigenous people benefit from development projects, and (b) avoid or mitigate potentially adverse effects from projects (Item 2);*
2. *Informed participation is essential to identify local preferences through direct consultation, incorporation of indigenous knowledge into project approaches, and use experienced specialists for core activities (Item 8);*
3. *Where adverse impacts are unavoidable, mitigation and alternative plans are required; these must be developed together with the indigenous people to ensure they benefit from development investments (Item 9);*
4. *National development policy frameworks and institutions for indigenous people may need to be strengthened to ensure indigenous participation in design and implementation of projects; Indigenous issues should be explicitly addressed in sector and sub-sector work (Item 11);*
5. *Technical assistance should normally be provided that strengthens and supports development initiatives taken by indigenous people themselves (Item 12);*
6. *All projects that affect indigenous people must include a **development plan** consistent with these pre-requisites (Item 14):*
 - *culturally appropriate project design that reflects indigenous preferences;*
 - *studies of anticipated adverse trends with plans to mitigate or avoid harm;*
 - *evidence of social, technical, and legal skills—or means to obtain them—required to successfully implement projects (including existing institutions, local organisations, and non-governmental organisations);*
 - *support local production systems, social organisation, religious beliefs, and resource use, rather than creating or aggravating dependency;*
 - *adequate (often long term) planning and follow-up to ensure that overall objectives are achieved;*
7. *Development plans should have the following components:*

- **Legal Framework**—including (i) legal status of indigenous groups, and (ii) access to and effective use of legal system to defend rights;
- **Baseline Data**—including (a) maps & photos of indigenous areas, (b) analysis of social structure and income sources, (iii) inventory or resource use and production, (iv) relationship of indigenous people to local and national groups;
- **Land Tenure**—including plans to strengthen or establish legal recognition of the customary or traditional land tenure system;
- **Strategy for Local Participation**—including mechanisms to ensure decision-making throughout planning, implementation, and evaluation;
- **Technical Identification of Development or Mitigation Activities**—including use of indigenous knowledge to prepare and appraise proposed services such as education, training, health, credit, and legal assistance;
- **Institutional Capacity**—including assessment of track record, capabilities and needs of local and national institutions;
- **Implementation Schedule**—including the evaluation of the long-term sustainability of project activities;
- **Monitoring and Evaluation**—including, (i) independent monitoring capacities, (ii) technical assistance for indigenous groups with weak management histories, (iii) use of indigenous organisations and perspectives;
- **Cost Estimates and Financing Plan**, including funds for use by indigenous groups themselves;
- **Identification**—including clear and full disclosure of (these) policies that affect project support and funding before calls/bids for projects are made;
- **Preparation**—including early involvement of anthropologists and local NGOs with expertise in securing land rights for Indigenous groups;]
- **Appraisal**—including guarantees that indigenous people have participated meaningfully in the development of the project;
- **Implementation and Supervision**—including appropriate anthropological, legal, and technical skills in supervision missions during implementation;
- **Documentation**—including development of clear “bench marks” that can be monitored during supervision and implementation.

These World Bank guidelines are generally seen as progressive, and are appropriate for DFID projects in Latin America. It is also important, however, to look at suggestions from other types of institutions and Indigenous Peoples themselves. For example, the Biodiversity and Ethics Working Group of Pew Conservation Fellows (**CITATION**) has developed guidelines for “Biodiversity Research Protocols” (see Appendix 6).

The most comprehensive and extensive study of guidelines and principles for collaborative relationships and partnerships with Indigenous Peoples has been completed by the International Society for Ethnobiology in conjunction with the Working Group on Traditional Resource Rights (Oxford Centre for the Environment, Ethics & Society at Mansfield College, University of Oxford). The survey included analysis of policy statements, operational directives, codes of ethics, and standards of practice of over 80 scientific and professional organisations, businesses, foundations and lending institutions (including the World Bank and Inter-American Development Bank). These were compared with demands made in nearly 120 declarations, manifestos, and statements of Indigenous organisations. The findings have been incorporated into a draft *Code of Conduct and Standards of Practice for the International Society for Ethnobiology* and can be found in Appendix 7. The results are summarised in BOX 5 below and provide a comprehensive list of principles and issues that are relevant to DFID policies.

BOX 5: PRINCIPLES ESTABLISHED BY THE INTERNATIONAL SOCIETY FOR ETHNOBIOLOGY IN CONJUNCTION WITH INDIGENOUS PEOPLES

1. **Principle of Self-Determination:** This principle recognizes that indigenous peoples have a right to self determination (or local determination for traditional and local communities) and that researchers shall as appropriate acknowledge and respect such rights. Culture and language are intrinsically connected to land and territory, and cultural and linguistic diversity are inextricably linked to biological diversity; therefore, the principle of self-determination includes: (i) The right to control land and territory; (ii) the right to sacred places; (iii) the right (to own / determine the use of / accreditation, protection and compensation for) knowledge; (iv) the right of access to traditional resources; (v) the right to preserve and protect local language, symbols and modes of expression (vi) and the right to self-definition.
2. **Principle of Inalienability:** This principle recognizes that the inalienable rights of indigenous peoples and local communities in relation to their traditional lands, territories, forests, fisheries and other natural resources. These rights are both individual and collective, with local peoples determining which ownership regimes are appropriate.
3. **Principle of Minimum Impact:** This principle recognizes the duty of scientists and researchers to ensure that their research and activities have minimum impact on local communities.
4. **Principle of Full Disclosure:** This principle recognizes that it is important for the indigenous & traditional peoples & local communities to have disclosed to them (in a manner that they can comprehend), the manner in which the research is to be undertaken, how information is to be gathered and the ultimate purpose for which such information is to be used and by whom it is to be used.
5. **Principle of Prior Informed Consent & Veto:** This principle recognizes that the prior informed consent of all peoples and their communities must be obtained before any research is undertaken. Indigenous peoples, traditional societies and local communities have the right to veto any program, project, or study that affects them.
6. **Principle of Confidentiality:** This principle recognizes that indigenous peoples, traditional societies, and local communities, at their sole discretion, have the right to exclude from publication and/or to be kept confidential any information concerning their culture, traditions, mythologies or spiritual beliefs and that such confidentiality will be observed by researchers and other potential users. Indigenous and traditional peoples also have the right to privacy and anonymity.
7. **Principle of Active Participation:** This principle recognizes the critical importance of communities to be active participants in all phases of the project from inception to completion.
8. **Principle of Respect:** This principle recognizes the necessity for western researchers to respect the integrity of the culture, traditions and relationship of indigenous and traditional peoples with their natural world and to avoid the application of ethnocentric conceptions and standards.
9. **Principle of Active Protection:** This principle recognizes the importance of researchers taking active measures to protect and enhance the relationship of communities with their environment and thereby promoting the maintenance of cultural and biological diversity.
10. **Principle of Good Faith:** This principle recognizes that researchers and others having access to knowledge of indigenous peoples, traditional societies and local communities will at all times conduct themselves with the utmost good faith.
11. **Principle of Compensation:** This principle recognizes that communities should be fairly, appropriately, and adequately remunerated or compensated for access and use of their knowledge and information.
12. **Principle of Restitution:** This principle recognizes that where as a result of research being undertaken, there are adverse consequences and disruptions to local communities, those responsible for all undertaking of research will make appropriate restitution and compensation.
13. **Principle of Reciprocity:** This principle recognizes the inherent value to western science and humankind in general from gaining access to knowledge of indigenous peoples, traditional societies, and local communities and the desirability of reciprocating that contribution.
14. **Principle of Equitable Sharing:** This principle recognizes the right of communities to share in the benefits from products or publications developed from access to and use of their knowledge and the duty of scientists and researchers to equitably share these benefits with indigenous peoples.

DEVELOPING A CHECK LIST

The major issues, principles and guidelines mentioned above can be neatly summarised in a checklist (Figure 6). This checklist should be applied to all development projects considered by DFID for support that affect Indigenous Peoples.

FIGURE 1: CHECKLIST FOR D.F.I.D. PROJECTS THAT AFFECT INDIGENOUS PEOPLES IN LATIN AMERICA

1. How does the project deal with issues of *self-determination*:
 - a. How will the legal status of the group(s) be evaluated? _____
 - b. How will their access to and effective use of legal structures be assessed? _____
 - c. What provisions are made to enhance recognition of rights and legal recognition? _____
 - d. What provisions are made to recognise customary or traditional land and resource tenure? _____
 - e. What are the assurances that the project will be sensitive to local cultural and social systems? _____
 - f. How will local language, culture, social structures and production systems be strengthened? _____

2. What are the potential *dangers and negative aspects* of the project?
 1. How have dangers been assessed? _____
 2. How will negative aspects or adverse impacts be avoided or mitigated? _____
 3. What forms of restitution are envisioned if negative impacts occur? _____
 4. How does the project attempt to minimise disruption or damage to local land, resources, and cultures? _____

3. How will *informed participation* (from conception to implementation, monitoring, and follow-up) be secured?
 - a. How were indigenous preferences and priorities assessed? _____
 - b. How have Indigenous Peoples been involved in the preliminary stages of the project proposal? _____
 - c. What procedures are used to ensure full-disclosure of intentions and prior informed consent from appropriate institutions? _____
 - d. How were the appropriate institutions and their representatives identified? _____
 - e. How will indigenous and local knowledge be incorporated into the project? _____
 - f. How will local criteria, indicators, and priorities be assessed and integrated into all phases of the project? _____
 - g. What mechanisms are used to ensure local decision-making throughout planning, implementation, and evaluation? _____
 - h. Have Indigenous Peoples been guaranteed the right to veto the project or any of its components, phases, or outputs? _____

4. How have *traditional resource rights* been secured?

- a. What “products” (data bases, photos, interviews, biological collections, etc.) will be generated that are subject to intellectual property rights concerns? _____
- b. What arrangements have been made to guarantee intellectual property rights of the Indigenous Peoples? _____
- c. What equitable benefit-sharing mechanisms have been established? _____
- d. What are the potentials for misuse of data and information accumulated as part of this project and how can these be avoided or minimised? _____
- e. What equitable benefit-sharing mechanisms have been established? _____
- f. What forms of compensation are envisioned? _____
- g. What are the potentials for misuse of data and information accumulated as part of this project and how can these be avoided or minimised? _____
- h. Has confidentiality of information been guaranteed? _____

5. Is the project sustainable?

- a. Are there clear “bench marks” that can be monitored during supervision, implementation, and follow-up? _____
- b. Will local and national institutions be prepared to maintain the project after funding ends? _____
- c. What are the guarantees that Indigenous Peoples have participated meaningfully in the project? _____
- d. What are the long-term benefits to indigenous communities and their organisations and national status? _____

APPENDIX 1: TRADITIONAL RESOURCE RIGHTS IN INTERNATIONAL LAW

Category	Supporting agreements	
	Legally binding	Not legally binding
Human rights	ICESCR, ICCPR, CDW, CERD, CG, CRC, NLS	UDHR, DDRIP, VDPA
Right to self-determination	ICESCR, ICCPR	DDRIP, VDPA
Collective rights	ILO169, ICESCR, ICCPR	DDRIP, VDPA
Land and territorial rights	ILO169, NLS	DDRIP, FP
Right to religious freedom	ICCPR, NLS	UDHR
Right to development	ICESCR, ICCPR, ILO169	DDHRE, DDRIP, DHRD, DICED, VDPA
Right to privacy	ICCPR, NLS	UDHR
Prior informed consent	CBD, NLS	Agenda21, DDRIP, DICED
Environmental integrity	CBD, CCD	Agenda21, DDHRE, DICED, FP, RD
Intellectual property rights	CBD, GATT, UPOV, WIPO, NLS	Agenda21
Neighbouring rights	RC, NLS	
Right to enter into legal agreements, such as contracts and covenants	NLS	
Cultural property rights	Unesco-CCP, Unesco-WHC, NLS	
Right to protection of folklore	NLS	Unesco-WIPO, Unesco-F
Right to protection of cultural heritage	Unesco-WHC, NLS	Unesco-PICC
Recognition of cultural landscapes	Unesco-WHC	
Recognition of customary law and practice	CBD, ILO169, NLS	DDRIP
Farmers' rights		FAO-IUPGR

Notes:

CBD, *Convention on Biological Diversity* (1992) — 147 states parties as of 1 May 1996.

CCD, *UN Convention to Combat Desertification in Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa* (1994) – not in force.

CDW, *UN Convention on the Elimination of all Forms of Discrimination Against Women* (1979) — 138 states parties as of 31 December 1994.

CERD, *UN Convention on the Elimination of all Forms of Racial Discrimination* (1966) — 142 states parties as of 31 December 1994.

CG, *UN Convention on the Prevention and Punishment of the Crime of Genocide* (1948) — 116 state parties as of 31 December 1994.

CRC, *UN Convention on the Rights of the Child* (1994) — 168 states parties as of 31 December 1994.

DDHRE, *UN Draft Declaration of Principles on Human Rights and the Environment* (1994).

DDRIP, *UN Draft Declaration on the Rights of Indigenous Peoples* (formally adopted by the UN's Working Group on Indigenous Populations in July 1994).

DHRD, *UN Declaration on the Human Right to Development* (1986).

DICED, *Draft International Covenant on Environment and Development* (1995)

FAO-IUPGR, *International Undertaking on Plant Genetic Resources* (1987 version).

FP, *Non-Legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of All Types of Forests* (1992)

GATT, *Final Document Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations* (1994)

ICCPR, UN *International Covenant on Civil and Political Rights* (1966) — 129 states parties as of 31 December 1994.

ICESCR, UN *International Covenant on Economic, Social and Cultural Rights* (1966) — 131 states parties as of 31 December 1994.

ILO169, International Labour Organization *Convention 169 Concerning Indigenous and Tribal Peoples in Independent Countries* (1989) — 7 states parties.

NLs, national laws.

RC, *Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations* (1961) — 47 states parties as of 31 December 1994.

RD, Rio Declaration (1992).

UDHR, *Universal Declaration of Human Rights* (1948).

Unesco-CCP, *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property* (1970) — 79 states parties as of 1 January 1994.

Unesco-F, Recommendations on the Safeguarding of Traditional Culture and Folklore (1989).

Unesco-PICC, Declaration on the Principles of International Cultural Cooperation.

Unesco-WHC, *Convention Concerning the Protection of the World Cultural and Natural Heritage* (1972) — 135 states parties as of 1 January 1994.

Unesco-WIPO, *Model Provisions for National Laws on Protection of Expressions of Folklore Against Illicit Exploitation and Other Prejudicial Actions* (1985) .

UPOV, *International Union for the Protection of New Varieties of Plants Convention* (1961, revised in 1972, 1978, and 1991) — 30 states parties as of January 1996 (2 of the 1961 Convention and 28 of the 1978 Convention).

VDPA, UN *Vienna Declaration and Programme of Action* (1993).

WIPO, World Intellectual Property Organization (administers international IPR agreements, such as: the *Paris Convention for the Protection of Industrial Property* (1883, revised most recently in 1967) — 129 states parties as of 31 December 1994; *Berne Convention for the Protection of Literary and Artistic Works* (1886, revised most recently in 1971) — 111 states parties as of 31 December 1994; *Madrid Agreement Concerning the International Registration of Trademarks* (1891, revised most recently in 1967) — 43 states parties as of 31 December 1994; *Lisbon Agreement for the Protection of Appellations of Origin and their International Registration* (1958, revised most recently in 1967) — 17 states parties as of 31 December 1994; *Patent Cooperation Treaty* (1970) — 77 states parties as of 31 December 1994.

**APPENDIX 2: DIRECTORY OF
INDIGENOUS PEOPLES ORGANISATIONS
IN CENTRAL AND SOUTH AMERICA**

CENTRAL AMERICA

BELIZE

National Garifuna Council
P.O. Box 229
Belize City
Belize
Email: uwibze@btl.net

COSTA RICA

Asociacion Cultural Sejekto - La Voz del Indio
Apdo. 1293-2150, Moravia,
San Jose
Costa Rica
Tel/Fax: +506 234 7115

PANAMA

Asociation Napguana
P.O. Box 536 Panama 1
Republica de Panama
Tel/Fax: +507 638879

SOUTH AMERICA

BRAZIL

Centro de Trabalho Indigenista (CTI)
Rua Fidalga 584,
Sao Paulo 054232 SP
Brazil

Associação Matarella - Povo Surui
Linha 11, zona rural - Riozinho,
Cacoal/RO, CEP 78960
Brazil

Associação Xavante de Pimentel Barbosa
Caixa Postal 77,
Nova Xavantina/Mato Grosso, CEP 78690-000
Brazil

Federacao das Organizacoes Indigenas do Rio Negro
(FOIRN)
Av. Alvaro Maia, 69 - Sao Gabriel da Cachoeira/AM,
Caixa Postal 31, CEP 69750
Brazil

Ailton Krenak

Nucleo de Cultura Indigena (NCI)
Caixa Postal 25945,
Sao Paulo, Cep.05599-970
Brazil
Tel: +55 11 813 1754
Fax: +55 11 211 9996

Marcos Terena
Comite Intertribal (ITC)
Sqn.215, Bloco F, Ap.506,
CEP 70.874.060, Brasilia DF
Brazil
Tel: +55-61-347-1337
Fax: +55-61-347-1337

CHILE

Consejo de Todas las Tierras
Miraflores 1326,
Cas. 448,
Temuco
Chile

ECUADOR

The Director
Organizacion de Pueblos Indigenas de Pastaza (OPIP)
Apdo.790, Puyo
Ecuador
Tel: +593-2-885 461
Fax: +593-2-885 461

COICA

Joaquin Pinto 240 y Reina Victoria
Casilla Postal 17-21-753
Quito
Ecuador
Tel: +593 2 566 399
Fax: +593 2 564 012
Email: coica@ecuanex.ec

APPENDIX 3: COICA/United Nations Development Programme Regional Meeting on Intellectual Property Rights and Biodiversity (Santa Cruz, Bolivia, September 1994)

Extracts from the Statement of Basic Points of Agreement

- For Indigenous Peoples, the intellectual property system means legitimisation of the misappropriation of our peoples' knowledge and resources for commercial purposes.
- For members of Indigenous Peoples, knowledge and determination of the use of resources are collective and inter-generational. No indigenous population, whether of individuals or communities, nor the government, can sell or transfer ownership of resources which are the property of the people and which each generation has an obligation to safeguard for the next.
- All aspects of the issue of intellectual property (determination of access to natural resources, control of the knowledge or cultural heritage of peoples, control of the use of their resources and regulation of the terms of exploitation) are aspects of self-determination. For Indigenous Peoples, accordingly, the ultimate decision on this issue is dependent on self-determination.
- For Indigenous Peoples, the intellectual property system means legitimization of the misappropriation of our peoples' knowledge and resources for commercial purposes.
- There must be appropriate mechanisms for maintaining and ensuring rights of Indigenous Peoples to deny indiscriminate access to the resources of our communities or peoples and making it possible to contest patents or other exclusive rights to what is essentially Indigenous.
- A system of protection and recognition of our resources and knowledge must be designed which is in conformity with our world view and contains formulas that...will prevent appropriation of our resources and knowledge.

ⁱ The International Labour Organisation (ILO) became the forum for negotiating indigenous rights because of its historical interest in indigenous labour. In 1926, a Committee of Experts on Native Labour was established to develop international standards for the protection of native workers. This Committee eventually became part of the ILO.

ⁱⁱ The Workshop was chaired by Sir Crispin Tickell and Dr. Darrell Posey. The complete report, entitled "Indigenous Peoples and Traditional Resource Rights: A Basis for Equitable Relationships?", is available from The Green College Centre for Environmental Policy and Understanding, The Green College, University of Oxford OX2 6HG.

ⁱⁱⁱ A DFID Project is now underway at Kew Gardens to develop guidelines for botanical gardens. For further information, contact Ms Kerry ten Kate, Office of the Director, Royal Botanical Gardens, Kew, Richmond, Surrey.