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HUMAN RIGHTS OF INDIGENOUS PEOPLES

Report of the seminar on the draft principles and guidelines
for the protection of the heritage of indigenous people

(Geneva, 28 February - 1 March 2000)

Chairperson-Rapporteur: Mrs. Erica-Irene Daes

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Introduction

1. By its resolution 1997/13, the Sub-Commission on the Promotion and Protection of Human Rights (formerly Sub-Commission on the Prevention of Discrimination and Protection of Minorities) requested the United Nations High Commissioner for Human Rights to convene, prior to the sixteenth session of the Working Group on Indigenous Populations and the fiftieth session of the Sub-Commission, a seminar on the draft principles and guidelines for the protection of the heritage of indigenous peoples elaborated by the Special Rapporteur, Mrs. Erica-Irene A. Daes, with her participation and the participation of representatives of Governments, United Nations bodies and organizations, specialized agencies, organizations of indigenous peoples and competent indigenous persons.
2. In its decision 1998/103 the Commission on Human Rights endorsed the recommendation of the Sub-Commission. This decision was subsequently endorsed by the Economic, Social and Cultural Council (decision 1998/277).
3. The seminar on the draft principles and guidelines for the protection of the heritage of indigenous people was held at the United Nations Office at Geneva, from 28 February to 1 March 2000. More than 45 persons attended the workshop. The list of participants is annexed to this report.

I. ORGANIZATION OF WORK

Opening of the workshop

4. A representative of the Office of the High Commissioner for Human Rights, Ms. Stefanie Grant, opening the seminar, referred to the draft principles and guidelines elaborated by Mrs. Daes (E/CN.4/Sub.2/1995/26, annex) as the distillation and outcome of the study undertaken by the Special Rapporteur in 1993 on this issue. She emphasized that in the era of economic globalization, the protection of the heritage of indigenous peoples is taking on an even greater significance. In this context, she said that the High Commissioner had a particular interest in the protection of the heritage of indigenous peoples and noted that the International Decade of the World's Indigenous People was one of the priorities of her Office.

Election of Chairperson-Rapporteur

5. By common consent, the Special Rapporteur, Mrs. Erica-Irene A. Daes, was elected Chairperson-Rapporteur of the seminar. In her opening remarks, Mrs. Daes explained the background to her study entitled "Protection of the heritage of indigenous people" and the draft principles and guidelines annexed to the final report and described what she considered to be the purpose of the seminar. She stressed the importance for the participants of sharing their knowledge and experience on this topic. The protection of indigenous peoples' control over their knowledge was essential for their survival as well as that of humankind as a whole. Effective protection must, however, be holistic in its approach. It must result from a comprehensive and constructive dialogue between indigenous peoples and other persons representing labour, trade, developmental, cultural and scientific interests. The draft principles and guidelines were therefore addressed, not only to Governments, intergovernmental

organizations and non-governmental organizations but also to business, the media, academics and others. The main and urgent task of the international community is to harmonize its activities with the protection of the heritage of indigenous people.

Adoption of the agenda

6. The seminar approved the following agenda:
 1. Election of officers.
 2. Adoption of the agenda.
 3. Organization of work.
 4. Comments relating to the draft principles and guidelines for the protection of the heritage of indigenous people on an article-by-article basis.
 5. Consideration of the draft principles and guidelines.
 6. Conclusions and recommendations.

Documentation

7. The seminar had before it the following documents:

Provisional agenda (HR/GVA/SEM.1/IP/2000/1);

Protection of the Heritage of Indigenous People, by Erica-Irene A. Daes, Human Rights Study Series, No. 10, 1977;

Draft principles and guidelines for the protection of the heritage of indigenous people by the Special Rapporteur Mrs. Erica-Irene A. Daes (E/CN.4/Sub.2/1995/26, annex);

Report of the technical meeting on the protection of the heritage of indigenous people, Geneva, 6-7 March 1997 (E/CN.4/Sub.2/1997/15);

Document submitted by Mr. Carlos Zolla of the National Institute for the Indigenous of Mexico (HR/GVA/SEM.1/IP/2000/CRP.1).

Organization of work

8. In order to speed up the work during the seminar, the Chairperson-Rapporteur suggested establishing two drafting groups: one for the consideration of the principles and one for the consideration of the guidelines. Two facilitators were appointed for the drafting groups: Mr. Siegfried Wiessner (St. Thomas University, United States of America) for the former and Ms. Marie Battiste (University of Saskatchewan, Canada) for the latter.

II. GENERAL COMMENTS

9. Ms. Roy expressed the view that there were many similarities between the draft principles and guidelines for the protection of the heritage of indigenous people and the provisions of ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries. In this respect, reference was made to the provisions of the Convention regarding the adoption of special measures to protect the heritage of indigenous peoples (art. 4); to the provisions dealing with education and means of communication (arts. 26-31); to articles 28 and 29 relating to children; and to the collective aspects of the Convention (art. 14). The representative also stressed that the two concepts of consultation and participation in the draft principles and guidelines were of great importance.

10. The representative of Canada noted that much work had been done internationally within the context of article 8 j of the Convention on Biological Diversity. Within Canada these issues were being discussed between the Government and indigenous communities within the framework of self-government negotiations.

11. Three governmental representatives said that they understood the seminar to be part of a consultative process. Their participation in no way indicated their Governments' consent to the guidelines and principles or to what would be generated as a result of the meeting. They would participate in the seminar on an informal basis, and were looking forward to receiving and reviewing the product of the seminar and to comments from indigenous peoples in their respective countries.

12. Mr. Zolla noted that there were two possible concepts of what constituted "heritage". On the one hand, heritage could be understood in terms of artistic heritage; on the other hand, heritage could be defined more broadly to include a reference to territory and the social organization of indigenous peoples. He emphasized that it was important to reach consensus on the rights and obligations of indigenous peoples and Governments towards indigenous peoples' heritage. At present indigenous peoples were vulnerable and in order to protect their heritage effectively it was essential for them to have control over their heritage through, for example, the transfer of new technologies.

13. Mr. Sambuc, a consultant on intellectual property rights, referred to the work of the World Intellectual Property Organization (WIPO) as it related to the protection of the heritage of indigenous peoples. He noted that the work of WIPO in this area went beyond the draft principles and guidelines as it focused on traditional knowledge generally. In this way it included knowledge of communities other than indigenous communities. On another level, many aspects of the draft principles and guidelines were outside the scope of WIPO's mandate. He also referred to a special programme set up by WIPO that was looking at areas related to the protection of indigenous peoples' heritage.

14. Mr. Planche said his organization had noted with great interest the final report on the protection of the heritage of indigenous peoples. He said that there were many issues of particular concern to UNESCO, and pointed to the constitutional mandate of the organization to contribute to the protection of the cultural heritage of humanity. The spirit of the draft principles

and guidelines were very much in line with UNESCO's interest in the preservation of cultural diversity. He drew the attention of the seminar to some points that needed reflection and some mechanisms which already existed and had not been mentioned in the document.

III. CONSIDERATION OF THE DRAFT PRINCIPLES

15. Mr. Wiessner, introduced the discussion on the draft principles and called attention to the critical need to develop effective principles and modes of legal protection of indigenous peoples' heritage.

16. Participants considered the above draft as an important working paper constituting a good basis for further protection of indigenous rights. Some specific comments were made on the draft principles.

17. With regard to principle 1, it was suggested that the statement on diversity be broadened by omitting the qualifier "cultural", thereby stressing the link between diversity and the sustainability of the human species as a whole.

18. Further discussion ensued on whether to retain in principle 2 a "duty" of indigenous peoples to maintain and develop their culture. Indigenous representatives maintained that they clearly knew they had a duty and that the draft principles did not need to remind them of it.

19. In response to a question from a governmental representative, the Chairperson-Rapporteur explained that principle 2 did not use the principle of self-determination in the same broad sense as in article 3 of the draft United Nations declaration on the rights of indigenous peoples.

20. Various statements were made regarding the terms "culture, arts and sciences" in principle 3. The representative of Canada suggested using the language of the Convention on Biological Diversity which speaks of "traditional knowledge, innovations and practices". Mr. Sambuc said that the Convention on Biological Diversity focused on different issues and was guided by possibly different policies than the working paper under discussion, which employed a broader definition of "heritage". Some participants suggested replacing the term "culture, arts and sciences" with the term "heritage". It was also pointed out that indigenous peoples were the "source" of the culture, not just the carriers.

21. Mr. Sambuc questioned the focus on "international" recognition in principle 4, since problems were often of a domestic nature. A further suggestion was made by a participant that indigenous peoples' customs, rules and practices, should not only be recognized and respected, but also valued. Mr. Chennells was, however, of the opinion that "respect" included also the "valuing" of them.

22. Some participants stressed the importance of retaining the language "collective, permanent and inalienable ownership" in principle 5. Although Western legal systems were not based on collective ownership, they recognized and applied the legal notion. It was suggested, however, to provide for the atypical case where the heritage of an indigenous people might not be held collectively. It was also proposed that indigenous peoples' ownership and custody

should be “collective, permanent and inalienable” or, alternatively “as prescribed by the customs, rules and practices of each people”. Mr. Sambuc expressed the view that a broader type of protection for indigenous peoples’ heritage was afforded by not specifying the nature of the heritage.

23. Some participants commented on the wording “must continue to be” since it appeared to impose obligations on indigenous peoples. Instead, the formulation “should be” was suggested.

24. The representative of Mexico drew attention to the potential conflict between elements of the heritage of indigenous peoples and elements of national heritage.

25. With regard to draft principle 7, it was suggested to replace “to protect” with “to preserve” at the beginning of the sentence. However, some participants objected, since the term “preserve” by itself might not imply protection. Others said that a combined version, “to protect and preserve”, should be used. Further, it was suggested that the words “wherever necessary” be deleted since they might imply that the restoration of indigenous languages was not always necessary. Other participants commented that the opposite might in fact be the case and suggested to replace “wherever necessary” with “where indigenous languages may be eroded or lost”. Some participants suggested to use “wherever applicable” instead of “wherever necessary”. Attention was also drawn to the fact that indigenous languages, besides being lost or eroded, were sometimes forbidden.

26. It was stated that the word “control” in several principles was a concept with a broad scope and could have different meanings. In this context, some governmental representatives expressed their hesitation with respect to the word “control” in principle 8, and suggested “consent” in its stead. Some indigenous participants, however, insisted on retaining the term, since it was seen as affording stronger protection. As with respect to draft principle 6, the word “control” was seen to be a relatively elastic legal concept, lending itself to more detailed elaboration and implementation.

27. With regard to draft principle 8, comments were made regarding the nature of the research undertaken within indigenous peoples’ territories. It was said that the purpose of the provision was to avoid any intrusion, not to prevent intellectual research. Some participants stated that indigenous peoples should be involved in, aware of, and participate in the research process. Some participants stated that indigenous peoples should have as much control over research on their heritage as they could attain. At a minimum, they should give their free consent to any research concerning them. It was also stated that indigenous peoples were perfectly capable of conducting their own research. Finally, it was suggested that the word “control” be retained and linked to “all research conducted on their people and any aspect of their heritage”.

28. It was suggested that in principle 9, the term “prior” should be added before the phrase “free and informed consent”. Controversy regarding this principle focused on the term “traditional owners”. There was disagreement over whether “traditional owners” should be replaced by “owners”. In any event, representatives of indigenous organizations insisted that the word “traditional” should be retained. They said that the word “owners” could mean anything and could refer to any Government, institution, organization or individual. Other participants

pointed out that one of the guidelines (13) would still define “owners” in accordance with indigenous peoples’ own customs, laws and practices, referring to “the whole people, a particular family or clan, an association or community, or individuals who have been specially taught or initiated to be its custodians”.

29. Some concern was expressed about the concept of “revocability” in principle 10. It was suggested that the provision be deleted. Discussion ensued on the issue of changing the reference to indigenous peoples as “primary beneficiaries of commercial application” to “equitable beneficiaries”. The discussion focused on the legal and commercial interpretations of the terms “primary” and “equitable”. As an alternative, “principal beneficiaries” was brought forward.

30. Throughout the discussion, it was felt necessary to add a provision that would allow for the recognition and support of national and international legal protections that parallel or exceed the protection assured indigenous peoples under the draft principles and guidelines. Reference was made to article 44 of the draft United Nations declaration on the rights of indigenous peoples. It was felt necessary to add a principle ensuring that the draft principles and guidelines do not diminish or extinguish existing or future rights. Similarly, concern was expressed that the principles did not necessarily reflect women’s rights and that this would implicitly raise the issue of the relationship of a people’s cultural rights vis-à-vis individual human rights. This could be addressed by adding the statement that nothing in the declaration “may ... be construed as violating universal standards of human rights”.

IV. CONSIDERATION OF THE GUIDELINES

31. Ms. Battiste introduced the discussion on the draft guidelines. She noted that the guidelines had been extensively reviewed with representatives of Governments, indigenous peoples and other concerned organizations. The guidelines should therefore reflect a common understanding that was inclusive of the opinions of all actors.

32. The possibility of including references to specific programmes of intergovernmental and governmental organizations relating to issues raised in the principles and guidelines was discussed. In that regard Mr. Planche drew the attention of the seminar to the Intergovernmental Committee for the Promotion of the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation. On the one hand, some participants believed that it might be useful to highlight these mandates and programmes in the document, especially as a means of informing indigenous peoples of relevant programmes. Some participants, on the other hand, thought that identification with any specific programme might effectively limit the scope of the draft principles and guidelines, especially in the case of programmes being cut or mandates being amended. Many participants believed that the language of the document should be broad and inclusive.

33. With regard to the recovery and restitution of heritage, the representative of Mexico stated that much of the heritage of the pre-Hispanic period was scattered throughout the world and that it would be difficult to recover this material. Therefore, it would be virtually impossible for her country to abide by the draft principles and guidelines. The representative of Canada said that the guidelines were unclear, as they did not deal with competing claims. Some indigenous

participants emphasized the importance of creating mechanisms within countries for indigenous peoples to be able to recover their heritage. Another indigenous participant raised the question of who could be a claimant for the recovery of material when a people had disappeared.

34. While some discussion ensued in an attempt to abbreviate or simplify the draft principles and guidelines, indigenous representatives held that the working paper under consideration, in its longer form, had the effect of raising the consciousness of various actors and players involved and thus was valuable to them in their countries.

35. The seminar agreed that the definition of “heritage” should be broad and inclusive. As elements of heritage were identified in guideline 12, the broadest language should be used. Mr. Wendland suggested that the broader term “creations” should replace the legally specific term “works”. Some participants noted the importance of including “language” and “sites” as elements of indigenous peoples’ heritage within the definition. It was also pointed out by some participants that much of indigenous heritage remained to be discovered, sometimes in other countries where it might have been taken. It was acknowledged that “creations” in the future and/or rediscovered in the future needed to be added.

36. The importance of ensuring that the language of the document was consistent with future discussion and consent and consensus among indigenous peoples and nation States was raised. For example, guideline 37 concerning the moratorium on the Human Genome Diversity Project raised the practical problem of what criteria should be used to support such a proposal. The guidelines should not make proposals that indigenous peoples could not implement or for which they might not have the appropriate information to consider.

37. With regard to the principle relating to research conducted on flora and fauna, Mr. Wendland explained that property rights on flora and fauna in their natural form did not exist. It was the knowledge associated with flora and fauna that could be subject to intellectual property rights. Therefore, flora and fauna in their natural state did not form part of heritage.

38. Some participants noted that some terms in English appeared to have a different effect when translated into other languages, in particular Spanish.

39. A participant suggested that there was a potential inconsistency between the guidelines relating to the sharing of elements of indigenous heritage and the principle that indigenous peoples’ ownership and custody of their heritage should be “collective, permanent and inalienable”. Other participants said that while indigenous peoples held their heritage as inalienable, heritage could be shared under certain circumstances as each indigenous people had its laws and its own core values of generosity and reciprocity which informed their own customs, traditions and expectations of benefit.

40. Mr. Sambuc thought the guidelines on international organizations could be more concise. He also suggested that they should reflect the following four principles, which were important: coherence of international action in the field of the protection of the heritage of indigenous people; the raising of awareness about the issue; funding; and the participation of indigenous peoples in negotiations and discussions on the protection of their heritage.

41. An indigenous representative read out a joint statement on behalf of the National Indigenous Working Group, the Foundation for Aboriginal and Islander Research Action, and the National Aboriginal and Torres Strait Islander Legal Services Secretariat. He noted that indigenous peoples were often told that they must compromise their rights or change their cultural practices in order to gain legal protection of their heritage. He believed that the principles and guidelines discussed went a long way towards the recognition that indigenous peoples must have the right to have education systems that pass their heritage on to future generations; the right to decide what heritage is available for academic or commercial use; and the right to link heritage to geographical areas of land, sea and territory. Finally, heritage laws must be based on simple certification that indigenous peoples as a community have recognized their heritage as continuing.

V. CONCLUSIONS AND RECOMMENDATIONS

42. The participants welcomed the opportunity to further elaborate the draft principles and guidelines on the protection of the heritage of indigenous peoples prepared by the Special Rapporteur, Erica-Irene A. Daes.

43. The participants expressed their gratitude to the High Commissioner for Human Rights, Mary Robinson, for her personal concern and assistance with the organization of the seminar and underlined the importance of holding consultations among indigenous and governmental experts, representatives of United Nations organizations and specialized agencies as well as scholars and academics on this issue.

44. The participants thanked and expressed their deep appreciation to the Special Rapporteur for her work and recommended that she consider the proposals, amendments and other comments made during the course of the seminar and revise the principles and guidelines accordingly and should annex them to the report of the seminar to be submitted to the Sub-Commission on the Promotion and Protection of Human Rights at its next session.

45. The participants expressed warm thanks and appreciation to the two chairpersons of the drafting groups on principles and guidelines, Mr. Wiessner and Ms. Battiste for the work they had done in their respective drafting groups.

46. Indigenous participants underlined their determination to work together for the speedy adoption of the principles and guidelines for the protection of the heritage of the indigenous peoples by the United Nations.

47. Indigenous participants affirmed their wish and commitment to promote the adoption of the principles and guidelines by their own nations, communities and peoples as an international compact among themselves and as a valuable basis for dealing with non-indigenous interests, and to work together for the establishment of a global registry for indigenous nations and peoples who have agreed to respect and implement the principles and guidelines within their territories. They expressed their support for all international standard-setting initiatives by indigenous peoples that advance these actions.

48. The experts endorsed the recommendation of the Special Rapporteur that the report of the seminar and the revised draft principles and guidelines annexed thereto should be considered by the Sub-Commission at its next session, with the aim of transmitting them to the Commission on Human Rights at its fifty-seventh session.

49. The Special Rapporteur expressed her sincere wish that it would be possible for the General Assembly to adopt and proclaim a declaration of principles and guidelines on the protection of the heritage of indigenous peoples in the near future. The proclamation of such an instrument would constitute, inter alia, a strong message that the United Nations was committed to the protection of the heritage of indigenous peoples.

Annex I

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

PRINCIPLES

1. The effective protection of the heritage of the indigenous peoples of the world benefits all humanity. Its diversity is essential to the adaptability, sustainability and creativity of the human species as a whole.
2. To be effective, the protection of indigenous peoples' heritage should be based broadly on the principle of self-determination, which includes the right of indigenous peoples to maintain and develop their own cultures and knowledge systems, and forms of social organization.
3. Indigenous peoples should be the source, the guardians and the interpreters of their heritage, whether created in the past, or developed by them in the future.
4. Recognizing, respecting and valuing their customs, rules and practices for the transmission of their heritage to future generations is essential to indigenous peoples, their identity and dignity.
5. Indigenous peoples' ownership and custody of their heritage should be collective, permanent and inalienable, or as prescribed by the customs, rules and practices of each people.
6. The discovery, use and teaching of indigenous peoples' heritage is inextricably connected with the traditional lands and territories of each people. Control over traditional territories and resources is essential to the continued transmission of indigenous peoples' heritage to future generations, and its full protection.
7. To protect and preserve their heritage, indigenous peoples must control their own forms of cultural transmission and education. This includes their right to the continued use and, wherever applicable, the restoration of their own languages and orthographies.
8. To protect and preserve their heritage, indigenous peoples must also exercise control over all research conducted on their people and any aspect of their heritage within their territories.
9. The prior, free and informed consent of the owners should be an essential precondition of any agreements which may be made for the recording, study, display, access, and use, in any form whatsoever, of indigenous peoples' heritage.
10. Any agreements which may be made for the recording, study, use or display of indigenous peoples' heritage must ensure that the peoples concerned continue to be the principal beneficiaries of any use or application.

11. Nothing in this declaration may be construed as diminishing or extinguishing existing or future rights indigenous peoples may have or acquire under national or international law; neither may it be construed as violating universal standards of human rights.

GUIDELINES

Definitions

12. The heritage of indigenous peoples has a collective character and is comprised of all objects, sites and knowledge including languages, the nature or use of which has been transmitted from generation to generation, and which is regarded as pertaining to a particular people or its territory of traditional natural use. The heritage of indigenous peoples also includes objects, sites, knowledge and literary or artistic creation of that people which may be created or rediscovered in the future based upon their heritage.

13. The heritage of indigenous peoples includes all moveable cultural property as defined by the relevant conventions of UNESCO; all kinds of literary and artistic creation such as music, dance, song, ceremonies, symbols and designs, narratives and poetry and all forms of documentation of and by indigenous peoples; all kinds of scientific, agricultural, technical, medicinal, biodiversity-related and ecological knowledge, including innovations based upon that knowledge, cultigens, remedies, medicines and the use of flora and fauna; human remains; immoveable cultural property such as sacred sites of cultural, natural and historical significance and burials.

14. Every element of an indigenous peoples' heritage has owners, which may be the whole people, a particular family or clan, an association or community, or individuals, who have been specially taught or initiated to be such custodians. The owners of heritage must be determined in accordance with indigenous peoples' own customs, laws and practices.

Transmission of heritage

15. Indigenous peoples' heritage should continue to be transmitted, preferably through indigenous languages, and learned in the forms traditionally used and rules and practices for the culturally appropriate transmission of this heritage and dissemination of its use should be formally recognized and incorporated in the national legal system.

16. Governments, international organizations and private institutions should:

(a) support the development of educational, research, and training centres which are controlled by indigenous communities, and strengthen these communities' capacity to document, protect, teach, and apply all aspects of their heritage;

(b) ensure that the use of traditional languages in education, arts and the mass media is respected and, to the extent possible, promoted and strengthened;

(c) support the development of regional and global networks for the exchange of information and experience among indigenous peoples in the fields of science, culture, education and the arts, including support for systems of electronic information and multi-media communication;

(d) provide the necessary financial resources and institutional support to ensure that every indigenous child has the opportunity to know, develop and exercise the manifestation of his/her heritage, especially to achieve full fluency and literacy in his/her own language, as well as an official language.

Recovery and restitution of heritage

17. Governments, international organizations and private institutions should assist indigenous peoples and communities in recovering control and possession of their moveable cultural property and other heritage, including from across international borders, through adequate agreements and/or appropriate domestic governmental action including if necessary the creation of adequate institutions and mechanisms.

18. In cooperation with indigenous peoples, UNESCO should facilitate the mediation of the recovery of moveable cultural property from across international borders, at the request of the traditional owners of the property concerned.

19. Human remains and associated funerary objects and documentation must be returned to their descendants in a culturally appropriate manner, as determined by the indigenous peoples concerned. Documentation may be retained, or otherwise used only in such form and manner as may be agreed upon with the peoples concerned.

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

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

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

National legislation and programmes

23. National laws for the protection of indigenous peoples' heritage should:

(a) be adopted following consultations with the peoples concerned, in particular the traditional owners and teachers of religious, sacred and spiritual knowledge, and, wherever possible, should have the informed consent of the peoples concerned;

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

(c) deny to any person or corporation the right to obtain patent, copyright or other legal protection for any element of indigenous peoples' heritage without adequate documentation of the free and informed consent of the traditional owners to an arrangement for the sharing of ownership, control, use and benefits;

(d) ensure the labelling, correct attribution and legal protection of indigenous peoples' artistic, literary and cultural works whenever they are offered for public display or sale.

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

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

Researchers and scholarly institutions

26. Any person, organization or group of organizations whatsoever legal or factual form, aim or activity (profit/non-profit; public/private; local/national/regional or international) must refrain from any act, whatsoever its nature, having as its purpose or effect the use or exploitation of any part of indigenous peoples' heritage whatsoever the means or forms given to this act.

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

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

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

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

31. Researchers must not publish information obtained from indigenous peoples or the results of research conducted on flora, fauna, microbes or materials discovered through the assistance of indigenous peoples, without identifying the traditional owners and obtaining their consent to citation or publication and provide compensation when a commercial benefit is generated from such information.

32. No research or research application concerning the human genome should prevail over respect for the human rights, fundamental freedoms and human dignity of indigenous individuals and peoples.

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

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

Business and industry

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

36. Business and industry should ensure they have a prior, free and informed consent of indigenous peoples when entering into agreements for the rights to discover, record and use previously undescribed species or cultivated varieties of plants, animals or micro-organisms, or naturally occurring pharmaceuticals. Any agreement should ensure that the indigenous peoples concerned continue to be primary beneficiaries of commercial application.

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

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

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

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

Artists, writers and performers

41. Artists, writers and performers should refrain from incorporating elements of indigenous heritage, particularly those of a sacred character, into their works without the prior, free and informed consent of the traditional owners.

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

43. Artists, writers and performers should contribute, through their individual works and professional organizations, to the greater public understanding and respect for the indigenous heritage associated with the country in which they live as well as with the international community as a whole.

Public information and education

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

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

46. The media should actively assist indigenous peoples in exposing any activities, public or private, which destroy or degrade indigenous peoples' heritage.

47. Governments must ensure that school curricula and textbooks teach understanding and respect for indigenous peoples' heritage and history and recognize the contribution of indigenous peoples to creativity and cultural diversity.

International organizations

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

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

50. The United Nations should publish and circulate to all parties concerned (Governments, international organizations, indigenous peoples and non-governmental organizations) a comprehensive annual report, based upon information from all available sources, including indigenous peoples themselves, on the problems experienced and solutions adopted in the protection of indigenous peoples' heritage in all countries.

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

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

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

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

55. The United Nations should consider as a matter of urgent priority the drafting of a convention for the protection of the heritage of indigenous peoples.

Annex II

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