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Discrimination and Protection of Minorities

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DISCRIMINATION AGAINST INDIGENOUS PEOPLES

Protection of the heritage of indigenous people

ANNEX

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

Elaborated by the Special Rapporteur of the Subcommission
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PRINCIPLES

1. The effective protection of the heritage of the indigenous peoples of the world benefits all humanity. Cultural diversity is essential to the adaptability and creativity of the human species as a whole.
2. To be effective, the protection of indigenous peoples, heritage should be based broadly on the principle of self-determination, which includes the right and the duty of indigenous peoples to develop their own cultures and knowledge systems, and forms of social organization.
3. Indigenous peoples should be recognized as the primary guardians and interpreters of their cultures, arts and sciences, whether created in the past, or developed by them in the future.

4. International recognition and respect for indigenous peoples, own customs, rules and practices for the transmission of their heritage to future generations is essential to these peoples, enjoyment of human rights and human dignity.
5. Indigenous peoples, ownership and custody of their heritage must continue to be collective, permanent and inalienable, as prescribed by the customs, rules and practices of each people.
6. The discovery, use and teaching of indigenous peoples, knowledge, arts and cultures 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 their heritage, indigenous peoples must control their own means of cultural transmission and education. This includes their right to the continued use and, wherever necessary, the restoration of their own languages and orthographies.
8. To protect their heritage, indigenous peoples must also exercise control over all research conducted within their territories, or which uses their people as subjects of study.
9. The free and informed consent of the traditional owners should be an essential precondition of any agreements which may be made for the recording, study, use or display of indigenous peoples, heritage.
10. Any agreements which may be made for the recording, study, use or display of indigenous peoples, heritage must be revocable, and ensure that the peoples concerned continue to be the primary beneficiaries of commercial application.

GUIDELINES

DEFINITIONS

11. The heritage of indigenous peoples is comprised of all objects, sites and knowledge 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. The heritage of an indigenous people also includes objects, knowledge and literary or artistic works which may be created in the future based upon its heritage.
12. The heritage of indigenous peoples includes all moveable cultural property as defined by the relevant conventions of UNESCO; all kinds of literary and artistic works such as

music, dance, song, ceremonies, symbols and designs, narratives and poetry; all kinds of scientific, agricultural, technical and ecological knowledge, including cultigens, medicines and the rational use of flora and fauna; human remains; immovable cultural property such as sacred sites, sites of historical significance, and burials; and documentation of indigenous peoples, heritage on film, photographs, videotape, or audiotape.

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

TRANSMISSION OF HERITAGE

14. Indigenous peoples' heritage should continue to be learned by the means customarily employed by its traditional owners for teaching, and each indigenous peoples' rules and practices for the transmission of heritage and sharing of its use should be incorporated in the national legal system.

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

16. Governments, international organizations and private institutions should support the development of educational, research, and training centres which are controlled by indigenous communities, and strengthen these communities, capacity to document, protect, teach, and apply all aspects of their heritage.

17. Governments, international organizations and private institutions should support the development of regional and global networks for the exchange of information and experience among indigenous peoples in the fields of science, culture, education and the arts, including support for systems of electronic information and mass communication.

18. Governments, with international cooperation, should provide the necessary financial resources and institutional support to ensure that every indigenous child has the opportunity to achieve full fluency and literacy in his/her own language, as well as an official language.

RECOVERY AND RESTITUTION OF HERITAGE

19. Governments, with the assistance of competent international organizations, should assist indigenous peoples and communities in recovering control and possession of their moveable cultural property and other heritage.

20. In cooperation with indigenous peoples, UNESCO should establish a programme to mediate the recovery of moveable cultural property from across international borders, at the request of the traditional owners of the property concerned.

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

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

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

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

NATIONAL PROGRAMMES AND LEGISLATION

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

26. National laws should deny to any person or corporation the right to obtain patent, copyright or other legal protection for any element of indigenous peoples, heritage without adequate documentation of the free and informed consent of the traditional owners to an arrangement for the sharing of

ownership, control, use and benefits.

27. National laws should ensure the labelling and correct attribution of indigenous peoples, artistic, literary and cultural works whenever they are offered for public display or sale. Attribution should be in the form of a trademark or an appellation of origin, authorized by the peoples or communities concerned.

28. National laws for the protection of indigenous peoples, heritage should be adopted following consultations with the peoples concerned, in particular the traditional owners and teachers of religious, sacred and spiritual knowledge, and, wherever possible, should have the informed consent of the peoples concerned.

29. National laws should ensure that the use of traditional languages in education, arts and the mass media is respected and, to the extent possible, promoted and strengthened.

30. Governments should provide indigenous communities with financial and institutional support for the control of local education, through community-managed programmes, and with use of traditional pedagogy and languages.

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

RESEARCHERS AND SCHOLARLY INSTITUTIONS

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

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

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

35. Researchers and scholarly institutions must refrain from engaging in any study of previously undescribed species or

cultivated varieties of plants, animals or microbes, or naturally occurring pharmaceuticals, without first obtaining satisfactory documentation that the specimens were acquired with the consent of the traditional owners.

36. Researchers must not publish information obtained from indigenous peoples or the 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 publication.

37. Researchers should agree to an immediate moratorium on the Human Genome Diversity Project. Further research on the specific genotypes of indigenous peoples should be suspended unless and until broadly and publicly supported by indigenous peoples to the satisfaction of United Nations human rights bodies.

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

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

BUSINESS AND INDUSTRY

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

41. Business and industry should agree to an immediate moratorium on making contracts with indigenous peoples for the rights to discover, record and use previously undescribed species or cultivated varieties plants, animals or microbes, or naturally occurring pharmaceuticals. No further contracts should be negotiated until indigenous peoples and communities themselves are capable of supervising and collaborating in the research process.

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

43. Business and industry should refrain from employing scientists or scholars to acquire and record traditional

knowledge or other heritage of indigenous peoples in violation of these guidelines.

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

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

ARTISTS, WRITERS AND PERFORMERS

46. Artists, writers and performers should refrain from incorporating elements derived from indigenous heritage into their works without the informed consent of the traditional owners.

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

48. 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.

PUBLIC INFORMATION AND EDUCATION

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

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

51. Journalists should actively assist indigenous peoples in exposing any activities, public or private, which destroy or degrade indigenous peoples, heritage.

52. Educators should ensure that school curricula and textbooks teach understanding and respect for indigenous peoples, heritage and history and recognize the contribution of indigenous peoples to creativity and cultural diversity.

INTERNATIONAL ORGANIZATIONS

53. The Secretary-General 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.

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

55. The United Nations should publish a comprehensive annual report, based upon information from all available sources, including indigenous peoples themselves, on the problems experienced and solutions adopted in the protection of indigenous peoples, heritage in all countries.

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

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

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

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

60. The United Nations should consider the possibility of drafting a convention to establish international jurisdiction for the recovery of indigenous peoples, heritage across national frontiers, before the end of the International Decade of the World's Indigenous People.

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