

Fourth World Journal



Center for World Indigenous Studies

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LUKANKA..... i - vi

Mirjam Hirsch, PhD

Self-Determination in Indigenous Health:

A Comprehensive Perspective PEER REVIEWED 1 - 30

T. Anantha Vijayah

**Digitizing Worldviews and Intangible
Cultural Heritages 31 - 55**

Ben Powless

**Photo Essay: Indigenous Peoples'
Durban Climate Change 57- 66**

Grand Council of the Crees (Eeyou Istchee)

**Participation in the WIPO
Intergovernmental Committee on Intellectual Property,
Genetic Resources, Traditional Knowledge and Folklore 67- 146**

Susan Lightening Hand Perna

We are not divided but ONE 147- 152

P. Karunakar, PhD

**Threat of Gloablization to Indigenous Peoples'
Cultures and Identities in India 153- 166**

Rudolph C. Ryser, PhD

**México's Food Security and Civil Society Organizations,
A Global Affair 167- 180**

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Fourth World Journal



LUKANKA

(Lukanka is a Miskito word for “thoughts”)



Rudolph C. Rýser
Editor in Chief
Fourth World Journal

Indigenous peoples' knowledge systems remain for most of the world quite opaque and mysterious. From the smallest community in a jungle, savannah, ice flow, desert, or mountaintop to transplanted indigenous peoples' communities and individuals located in the middle of a bustling city awareness of the value and importance of the immense variety of knowledge systems has begun to grip the imagination and consciousness of indigenous peoples. This may come as a surprise to our readers, but most indigenous peoples do not categorize, package, or project the knowledge system on which they have depended generation after generation. Like other aspects of culture, a knowledge system simply exists as a part of the everyday experience.

Knowledge systems of all types have become valuable and the object of documentary research in the progressive world of what is now labeled “intellectual property.” Knowledge of plant

medicines, animal behaviors, architectural methods, measurements of the cosmos, nutrition, healing practices, entheogens, and child rearing practices, mental illness, producing foods on lands enhancing their beneficial use, and the secrets of domestication are just some of the types of indigenous knowledge embedded in different knowledge systems. As in previous issues, Fourth World Journal continues to unfold the invisible to reveal valuable insights and profoundly important perspectives that continue the process of joining indigenous peoples' contributions to knowledge to the body of all human knowledge

Contributors in this issue spotlight critical concerns that bear on the principle of consent so widely touted in international agreements. It is clear by their commentary that the individual states' have much to do to formally incorporate the principle of consent for indigenous peoples, and of equal or greater import, indigenous peoples must take more deliberate action on their own to create and activate their own instruments for consent.

Dr. Mirjam Hirsch, CWIS Associate Scholar holding a doctorate in Medical Geography from the University of Cologne probes the nexus of traditional health policy engagement in her incisive essay *Self-Determination in Indigenous Health: A Comprehensive Perspective.* "Indigenous peoples' health practitioners and international health organizations all will benefit from Dr. Hirsch's insights and proposals.

In "Digitizing Worldviews and Intangible Cultural Heritage **Anantha Vijayah** examines a critical matter of importance to every Fourth World nation: documenting knowledge. His emphasis on the "story" and problems that must be addressed in the process of knowledge documentation are

revealing.

Mowhawk photographer, political activist and international diplomat **Ben Powless** of Ontario, Canada, lends a powerful feature to reporting on indigenous peoples' efforts to incorporate language protecting indigenous peoples' rights at the Durban, Kwazulu, South Africa session of Climate Change treaty talks with his "Photo Essay, Indigenous Peoples' Durban Climate Change." Blended with the proposed language and comments made at climate talks, one has immediate access to the experience of the climate change negotiation drama.

The **Grand Council of the Crees (Eeyou Istchee)** illustrate in considerable detail the complexity of Fourth World diplomacy in "Participation in the WIPO Intergovernmental Committee on Intellectual Property..." an important submission made in November 2011 on the rationale for Fourth World nations' participation in deliberations of the World Intellectual Property Organization.

Susan Lightening Hand Perna, shares a vision given her to share with the world. In "We are not divided but ONE!" Perna not only demonstrates a profoundly critical method of acquiring knowledge, but she reveals a fundamental truth deeply embedded in traditional knowledge of Fourth World peoples.

Dr. P. Karunakar rejoins the Fourth World Journal pages with an essay that contrasts the globalization mantra of developed countries and developing countries with the perspectives of indigenous peoples in India. His "Threat of Globalization to Indigenous Peoples' Cultures and Identities in India" challenges the conventional wisdom and alerts readers to the deleterious and corroding influences of modern global economic

pressures.

In my essay, “México’s Food Security and Civil Society Organizations,” I point to a mechanism that exists in metropolitan society that can mitigate the adverse affects of capital-intensive government planning and development policy that can ensure the continuing application of traditional knowledge to the production of food systems that respond to changing climate. The ancient food domestication and transformation systems contributed to the development of a Fourth World civilization that survives to the present after 3,500 years. The original food systems of México began to nourish the world long ago and remain the original food source for a increasingly interdependent world.

As always we remain grateful to our readers for continuing to stimulate us and encourage us as we publish yet another issue of the Fourth World Journal.

Editor in Chief

A handwritten signature in black ink, reading "Raphael C. Riser". The signature is stylized with large, sweeping loops and a prominent underline.

Fourth World Journal



Self-Determination in Indigenous Health: A Comprehensive Perspective

By Mirjam Hirsch, PhD
University of Cologne

ABSTRACT

Indigenous health disparities are devastating. Indigenous health research has focused mainly on biomedical approaches. Prevailing evidence indicates that models that integrate concepts of biomedical care and traditional healing are better suited to improve health outcomes among Indigenous groups. In this article the author focuses on holistic approaches to health as initiated by self-determined indigenous health movements. The paper suggests comprehensive frameworks to tackle Indigenous health issues in their full complexity. Frameworks that take into consideration a combination of social, cultural, economic, environmental and political factors to influence health status. The author also discusses traditional medicine and self-determination in the U.S. system, recommends international policy and points to future action and research that may remedy deficits in indigenous health.

Keywords: Indigenous sovereignty, traditional healing, indigenous health, integrative health approach, indigenous health care systems analysis

Since the early 1980s there has been an increasing awareness among indigenous peoples and researchers of the loss of traditional medicinal knowledge. At the same time the potential of traditional healing knowledge to improve significantly the availability, access and quality of (mental) health and care services has been acknowledged (WHO 2001: 4). In this regard traditional health care practitioners are seen to possess valuable and unique knowledge and skills that can be harnessed for the development of a holistic health system as a means of ensuring wider coverage of healthcare particularly to minority groups such as Indigenous people. Hence the current attempts internationally to rediscover and reinstate Indigenous traditional health systems in the most acceptable, affordable and accessible way to Indigenous peoples.

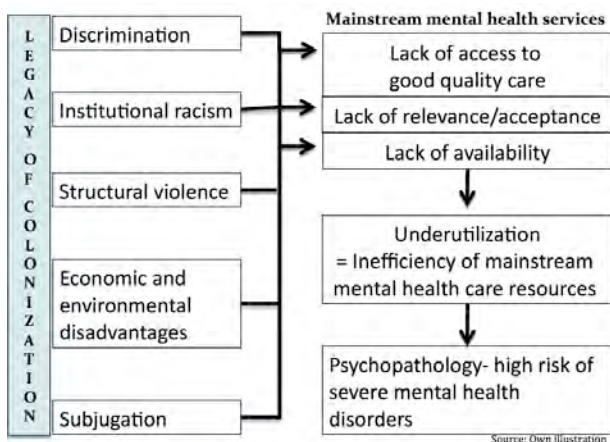
Governments and international organizations such as the World Health Organization (WHO) have been promoting regulations and health policies that comprise the contributions made by traditional healing practices for decades. A series of questions asked in this context are: What are examples of best practices in Indigenous healing that could serve as role models for bettering the health situation of Indigenous groups? What are options and efficiency of integrating or combining Indigenous healing practices and biomedical systems of care to achieve best health? So far, however, especially in the western hemisphere only few studies have been conducted that enquire into these questions and investigate into local traditional practices and how these might be

integrated into Indigenous health care provision (WHO 2002). Traditional healing therefore does not enjoy the status that would correspond to its significance.

Considering historical, social cultural and legal contexts in this essay I present an overview of the need and potential of Indigenous self-determination in (mental) health and care. Incorporating Indigenous peoples' perspectives of (mental) health the paper tries to map an Indigenous cultural approach to understanding the underlying factors behind Indigenous consistent poor health and methods to eliminate health disparities. For dramatic inequalities continue to dominate Indigenous health. Mental health problems, chronic stress, substance use as well as suicide are over proportionately high within Indigenous communities who have a significantly lower life expectancy the world over. Experts working in the field of traditional healing, as expressed throughout the WHO Traditional Medicine Strategy 2002-2005, emphasize the need to make visible and promote the resource potential of traditional medicine in offering solutions to the contemporary problems in mental and Indigenous health. Still Indigenous nations are exposed to lack of health care, culturally appropriate services and oftentimes discrimination and institutional racism within the mainstream systems of care which in turn leads to underutilization of services and thus higher risk of pathology.

Overall, many Indigenous people stated they did not feel heard but rather “trapped in a heath

Figure 1: Colonization Legacy not sufficiently considered in Mainstream System



care system” over which “they lack control” (personal communication).

In the backdrop of this urgent need for action Indigenous nations themselves have been taking proactive steps to find solutions to improve their health situation and care provision. There has been significant movement in Indigenous communities to coordinate and legitimize Indigenous concepts of health, illness and care with the mainstream health care system.

Through endeavors of self-determination since the 1960s Indigenous nations began to establish Indigenous health care systems to improve health care provision and lay the basis for an upward trend in their health status. Indigenous peoples’ redefining and re-thinking of components of their

health and care systems includes finding a place for their own traditional beliefs about health and healing within the institutionalized as well as non-institutionalized systems of care. Hence at the community level “cultural public health movements” have been initiated that are based on traditional knowledge and on revitalization of Indigenous cultural practices to improve health status. At the institutional level pioneering self-governed clinics offer integration of services based on Indigenous models of integrative care systems. These clinics provide a more culturally sensitive alternative to the mainstream health system. They offer a relationship-oriented model of care that is more appropriate and integrates preventative interventions and health promotion - a model, which considers *geogene*, *epigene* and *pathogene* within the Indigenous landscapes of care. One such Indigenous health care system, the relationship-based, customer-driven Nuka System of Care at South Central Foundation (SCF) in Alaska has recently been proposed as a model for national reform in the U.S. (TRAHANT 2010). In the summer of 2011 SCF’s Traditional Healing Clinic has been the recipient of an Indian Health Service Director’s Special Recognition Award for “outstanding public health leadership in incorporating traditional healing practices into the total medical care regimen for the benefit of Native peoples.” The fusion of Native values, beliefs and practices was stated by director of IHS, Dr. Yvette Roubideaux to be “a prime example of the positive power of federal self-determination policies that allow Indian tribes to manage their own health care” (SCF Public Relations 2011). Accordingly the emerging efforts of Indigenous self-determination in health and Indigenous

medicine claims on government sponsored systems to provide effective, culturally sensitive health care which addresses all aspects of healing through physical, mental, emotional and spiritual wellness, need to be discussed.

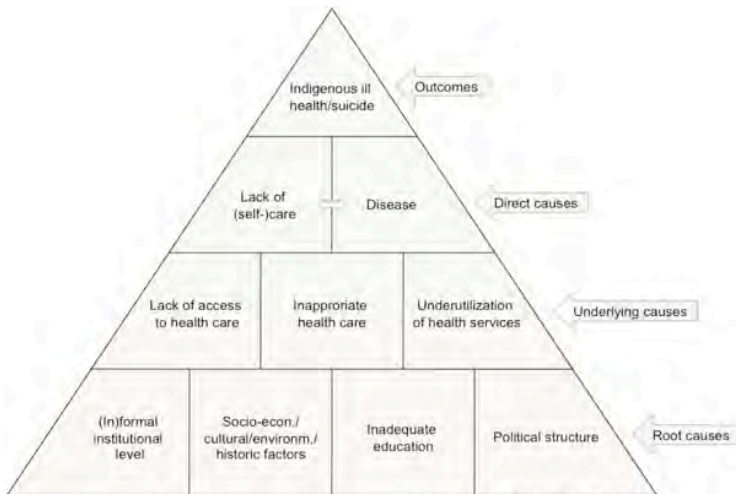
Within the contemporary health system two areas of work can be distinguished. One strand, the so-called 'contemporary' strand, considers illness to occur naturally and culture-free. The underlying concept is based on the belief in technical solutions to problems quantified by accurate measurements. Within this strand over the course of the last few decades, (mental) disease has increasingly been treated by drug-based therapies to influence the 'chemical imbalance.' Geographer Doug Richardson aware of the limitations of this strand in medical research describes a recent shift in scientific endeavors to address the complex but pressing health research and human needs more comprehensively:

"To date, most mental health research has focused largely on biomedical pathways. Increasingly, however, researchers are considering how people's environments—the physical and cultural contexts in which they live—influence the prevalence and consequence of mental health disorders" (2009: 42).

In contrast to the biomedical view therefore a stance is adopted which argues, in various ways, that the key determinants of health and variations in health are intimately linked to power relations in society. Underlying causes of disease are seen as being embedded in the social, political and economic systems (KRIEGER 2001: 668).

According to this view explanations are not to be sought at the individual level alone - for example, the kinds of “unhealthy” behaviors an Indigenous person adopts. Instead it is the broader social context that matters. Therefore adherents to this view maintain that the politics of health in the context of dominant ideological understructures of social and political forms have to be analyzed more closely. Because of the stress on these macro-scale social, political, and economic structures, this style of approach is often also referred to as *structuralist*, or alternatively as a political economy perspective (Ibid: 670). The current global resurgence of interest in traditional and alternative medicine practices on the international scene as a means of avoiding overuse of pure chemicals and achieving wider or total coverage of healthcare for all people especially the poor, vulnerable and marginalized groups of people is in line with the structuralist perspective. The structuralist/political economy perspective best corresponds to Indigenous concepts. Indigenous peoples often consider (mental) health issues as synonymous with social, political and economic issues of environmental degradation, loss of land and political disenfranchisement (COHEN 1999: 26). To improve Indigenous health status Indigenous peoples argue not only the immediate causes of disease ought to be treated. As emphasized by the WHO Commission on Social Determinants of Health the root causes, i.e. the ‘causes of the causes’ of ill health have to be attacked (WOODMAN, GRIG et al. 2007: 13). In the Indigenous context some of the root causes are the long-term effects of colonization on Indigenous communities and the fundamental structures of social interaction.

Figure 2: Conceptual Framework for causes of Indigenous ill-health/suicide



German pathologist, Rudolf Virchow proposed in 1848 a holistic approach to health and health system research in a report he published on the typhus epidemic in Upper Silesia, Germany. Virchow remarked the poor population of the region to be “starving before the epidemic occurred [...]. There can no longer be any doubt that such an epidemic dissemination of typhus could only have been possible under the wretched conditions of life that poverty and lack of culture had created in Upper Silesia” (2006: 2104).

Virchow regarded the improvement of the economic situation and eradication of poverty in the region fundamental to better the health of the inhabitants. The promotion of education, transportation, agriculture, and manufacturing he commented to be essential in order to avoid like disaster in the future. As Virchow observed, "medicine is a social science, and politics is nothing more than medicine in larger scale" (Ibid). Virchow's early historic example describes how a combination of social, cultural, economic, environmental and political factors, functioning at the community level, influence health status. In line with this school of thought social epidemiologists Kawachi and Kennedy in a contemporary article which probes the links between income inequality and social cohesion explain that "Reducing inequities between various communities and improving health depends on the actions and policies of multiple sectors such as education, food, housing economic opportunities all of which lead to greater social cohesion" (1997: 1037).

Sociological, philosophical, psychological and neuro-scientific models during the last century have largely contributed to a more holistic understanding of (mental) health and illness. These models take into account biological, psychological and social factors and thus distance themselves from the Cartesian dualism of mind and body (LENGEN 2010: 34). This approach focuses less on disease-causing factors but on those that support human health and well-being. Antonovsky's "salutogenic model" (1980) similarly focuses on 'the origins of health' (Latin: *salus* = health, Greek: *genesis* = origins). This model, primarily used in the fields of health

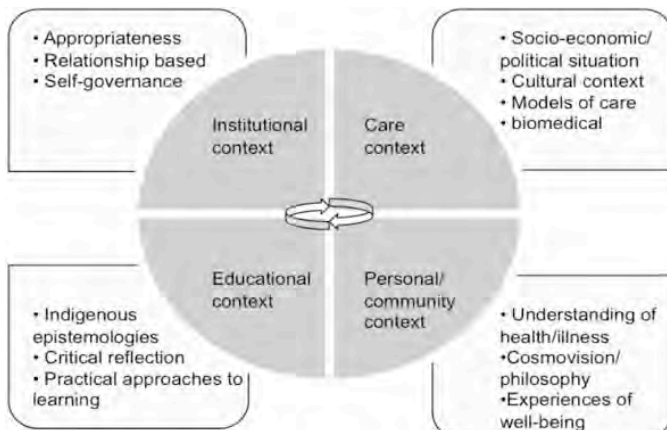
psychology, psychiatry, alternative and preventive medicine, considers health supporting factors, the relationship between health, stress and coping rather than the disease causing factors of the pathogenic paradigm. These understandings correspond to concepts expressed by the Indigenous health movement as will be described below.

The foundation for an international Indigenous health movement based on holistic health concepts, with a focus on the specific health needs of Indigenous groups was laid as early as 1990. The International Congress on Alcohol and Addictions at its Berlin Conference included a special forum on Indigenous health issues. Many Indigenous peoples attended the conference. This new movement entitled "Healing Our Spirit Worldwide" (HOSW) attracted more than three thousand participants from around the globe when held for the second time in Edmonton, Canada in 1992. This international Indigenous conference led by the International Indigenous Council, a group of Indigenous leaders, focuses on strengthening and healing Indigenous families and communities and discusses best practices, successes and common issues in health and healing within Indigenous nations. The latest, Sixth Gathering took place in 2010 in Honolulu, hosted by Papa Ola Lokahi under the stated mission of the conferences "to gather in a cultural celebration inviting the world to share holistic healing experiences of Indigenous peoples in the movement toward healthy lifestyles."¹

¹ For further information see: <http://www.hosw.com>.

Underlying this international Indigenous movement and emerging health models are Indigenous views on well-being. There is not one standard definition of conceptions of health and healing. Every culture's intrinsic perception and understanding of health and disease as well as healing is influenced by their particular belief systems and living contexts. Common to the Indigenous definitions of health is a comprehensive concept of health that moves beyond the mere physical and includes social, cultural and historical elements. The illustration below shows a framework, which depicts the multi-layered Indigenous health contexts.

Figure 3: Framework of Indigenous health contexts



Source: Own illustration

This framework corresponds to concepts of traditional healing which are based on a holistic approach towards the intervention and person to be treated (ONG, BODEKER et al. 2005: ix). Traditional healing considers the whole person and is to simultaneously act on the physical, mental, spiritual and emotional level. Prevention and health promotion are a main focus. Use of plants and herbs, food as medicine and counseling on lifestyle choices and habits are commonly observed with traditional healing practitioners (WHO 2001).

Traditional healing has a long history. Until the beginning of the 19th century all medical practice was what is now referred to as *traditional*. One can find traces of a traditional healing concepts in older Indoeuropean cultures within which healing (the act and the word) is connected to wholeness, holiness and integrity, as is suggested by the origin of the word “health.”² Very much like the Indigenous peoples of the present world the Indoeuropean healers of ancient times focused on the understanding of the full structure of the cosmos (KREMER 1995: 13). This worldview changed when the Cartesian scientific materialism was introduced into medicine and other disciplines during the time of the great philosophical upheaval of the renaissance. The focus developed then was on scientific experiment and statistical validation, research and organization. Emotions and intuition were

² health. (n.d.). Online Etymology Dictionary. Retrieved January 07, 2011, from Dictionary.com website:
<http://dictionary.reference.com/browse/health>

belittled (BANNERMAN 1983: 11). Despite outside pressures of colonialism and cultural imperialism (during efforts of forced assimilation of Indigenous nations in countries such as the U.S. in the past traditional healers were dismissed and outlawed) traditional healing survived in many Indigenous communities (OLSON-GAREWAL 2000). Most forms of traditional healing therapies in order to be efficient depend heavily upon the skills and experience, i.e. the proficiency of the practitioners. Their client-centered, personalized care is relationship oriented, which encourages communication about the illness and social issues related to the disease. In many communities they frequently play a key role as first point of consultation.

Traditional healers use Indigenous knowledge in their treatments and protocols. They are oftentimes regarded as experienced local leaders, folk psychologists and comprise psychic healers, herbalists, traditional birth attendants, faith healers, and spiritualists. Traditional healers' holistic view on health is one of harmony, a state of balance and equilibrium within a person's body, psyche and relationship with other people around them. Ill health is sign of an imbalance in any of these relationships and the healer is to restore that balance seeing the disease in a wider personal, social and cosmic context (HELMAN 2006: 201). Hence Indigenous people have characterized biomedicine as being reductionist since the focus is mainly on the physical body. Despite these contrastive concepts of health care provision an integrative approach has been promoted. Back in 1978 the World Health Organization formally recognized the importance of collaborations between mainstream and traditional health

practitioners. The WHO saw traditional medicine practitioners as possible allies of the medical system despite the remaining caution as to superstitious beliefs and practices with all their potential dangers (Ibid: 200). WHO issued guidelines on traditional medicines, traditional healers and collaboration between biomedicines and traditional medicines and organized expert consultations and conferences. Furthermore the WHO has designated basic and clinical research centers, e.g. at University of Illinois school of pharmacy. In subsequent years there has been an increasing use of complementary and alternative medicine (CAM)³ in many developed and developing countries (ONG, BODEKER et al. 2005: xiii). Use of traditional medicine and CAM in countries such as the US varies considerably between groups and regions. While CAM is used increasingly by the wealthy, data is lacking in tribal settings. Most tribes appear to focus more on biomedicine with traditional healers stating they “run up against a whole system opposed to traditional medicine” (personal communication). This is explicable by the fact that throughout history local healers and their medicine was discredited, especially when these healers were not able to take care of the introduced diseases. Long-term effects of this might lead to tribes not wanting to undertake specific actions to implement traditional healing in their health care.

³ CAM “complementary and alternative medicines” relates to health care practices that do not form part of a country’s own tradition, or not integrated into its dominant health care systems, such as acupuncture, homeopathy and chiropractic systems. See Traditional Medicine Strategy 2002-2005, World Health Organization, WHO/EDM/TRM/2002.1, Geneva, p.7.

Policy on traditional healing and the right of self-determination

Supported by national governments efforts to develop adequate policies and strategies to protect traditional healing knowledge have increased internationally in recent years. Despite its continued use for centuries the majority of countries does not have official policies - as of the year 2000, only 25 of WHO's 191 Member States reported having a national traditional medicine policy (WHO 2002: 20).

WHO has defined three types of health system structures to describe the degree to which traditional medicine is an officially recognized component of care. In a tolerant health system health care is entirely based on allopathic medicine. Traditional medicine practices are not officially recognized. In an inclusive health system, even though not incorporated in all areas of care, traditional medicine is recognized - be this in the delivery of health care or the educational and training context or regulations. The third category is an integrative health system which officially recognizes and incorporates traditional medicine in all the different areas of health care provision (WHO 2002: pp. 8-9).

In countries where traditional health practitioners are regulated by laws they can be classified as part of the formal health system. In countries like the United States where no legal frameworks exist which recognize Indigenous healing, as valid healers are part of the informal health workers. They either have to adjust to the existing administrative and labor standards like

any private entity (WHO 2003) or work under the regulations of tribal clinics which have started defining their own rules for qualification and certification, supervision and quality control of traditional healers. Safety, efficacy and quality standards of their healing methods are being designed.

In the United States of America there are no official policies regarding traditional healing, whether American Indian or imported systems, like Chinese medicine. In regard to U.S. medical policy, this lack of recognition of traditional healing practices has led to a situation where traditional healing resource remains underestimated and under researched.

Indigenous groups in the U.S. have developed numerous (prevention) programs, which focus on traditional approaches to physical and mental health and well-being. Although tribes know about and the Indian Health Service acknowledges the importance of traditional healing there is no formal policy to protect these methods within the IHS system. Nor is there any guidance to IHS staff to ensure that traditional healing practices are given the same respect that is given to conventional Western practices.

Some states in the U.S. are fairly progressive concerning regulations about the practice of alternative medicine. Massage therapy for example has to be covered by insurances in certain States. However little is moving on the policy level concerning integrative services. Indian health programs should be permitted to integrate traditional health care practices into their prevention/wellness programs with no adverse impact on the ability to receive federal support for

prevention and wellness programs. There are initiatives to allow integration of traditional health practices and to assure that prevention and wellness programs are covered services in all public programs (Medicare, Medicaid and CHIP). So far research is mainly funded at the National Institutes of Health (NIH). Through the Fogarty Center at NIH traditional medicine research has been conducted worldwide.

To identify and address the barriers that prevent the integration of traditional healing with the rest of the Indian health care system continued discussion with tribal leaders, health care providers, traditional healers, and community members has to be promoted.

As for the mainstream health system there are signs of a growing national movement in cross-cultural health care in the U.S. that takes into consideration the cultural beliefs for medical treatment decisions. In a recent survey of 60 hospitals the largest hospital accrediting group in the U.S., the Joint Commission found cultural values and beliefs to be increasingly embraced, catering to immigrant, refugee and ethnic-minority populations (LEIGH BROWN 2009). At White Memorial Medical Center in Los Angeles e.g. a “low-tech approach“ is implemented geared toward prevention in which the physician on a case-by-case basis refers patients to traditional healers. At Mercy Medical Center in Merced, California with a high Hmong patient population from northern Laos healing includes shaman practices. The hospital enacted a “Hmong shaman policy” which is the first regulation in a mainstream hospital in the U.S. that formally acknowledges that traditional healers cultural role and approves ceremonies such as chanting (Ibid).

Similar policies could be introduced to encourage traditional healing for American Indians in mainstream institutions. In order to succeed in this effort representatives of public institutions and agencies have to be engaged to pay more attention to the resource potential of traditional healing. American Regional Networks should be created that will explore the field of traditional healing and its possible applications in health policies.

Integrating needs into policy

To integrate Indigenous peoples' health needs and perspectives into national as well as international health development frameworks, such as national health sector plans and the Millennium Development Goals guidelines for health policy makers need to be issued. In policy, service development and practice, access to and uptake of evidence should be improved. This would influence the development and implementation of strategies and policies to address health and wellbeing in Indigenous communities at local/regional, state and national levels. Policy makers thus are provided with a framework that allows them to shift focus, to developing and strengthening social approaches instead of “caseness” problem and pathology.

Apart from the policy requirements listed above a new legal framework is furthermore required to prevent the exploitation of traditional knowledge and coveted resources on Indigenous lands internationally. Indigenous well-being is particularly closely connected to the healthy relationship to the environments in which indigenous groups live. (CHIVAN 2001: 66). Continuing de-

struction of habitat and disappearance of species deprives local cultures of their very means of existence, as these elements are unique and irreplaceable parts of Indigenous culture and lifestyle. This causes significant psychological distress. Accordingly Jacques Mabit commented at the Traditional Medicine, Interculturality and Mental Health Congress in Tarapoto, Peru in June 2009 on the relative importance of traditional health policies that: "There is no point in continuing to develop health policies or eradication campaigns if society does not deal with the lack of meaning in life" which he believes is what can lead especially to mental problems and drug-addiction. The broader picture therefore should be considered. Efficient policies should be developed that are not limited to traditional healing and knowledge but guarantee justice, fair compensation, education and human rights as well as cultural and biodiversity protection amongst others. A focus on improvements in health services alone accordingly is not sufficient. In order to improve health for Indigenous groups an interdisciplinary, holistic approach needs to include complex social and political, educational and economical as well as ecological factors. Due to the interdependencies between these various factors coordinated intervention of health care services, educational systems, and economic development programs are required. Collaborations and partnerships among Indigenous nations, health organizations, medical centers, foundations, NGOs, and governmental agencies and programs need to be established. All these different stakeholders must come together to map out where to go.

The recently developed Indigenous self-

determined health approaches communities that are rooted in traditional knowledge and practices and lie partly outside of the health sector demonstrate that local Indigenous groups have a central role in defining what is possible and practical to improve health. Since the 1970s, when Indigenous groups began to demand more self-governance Federal policy has encouraged less centralized Indigenous administration of government programs in areas such as health and education. Today self-determination is, to Indigenous peoples, the most fundamental of the rights they ask the world and, above all, the state they have been made a part of, to recognize. In its broadest formulation, the principle of self-determination encompasses the political, legal, economic, social and cultural subjects of the life of peoples. Article 3 of The Universal Declaration on the Rights of Indigenous Peoples, endorsed on Sept 13 2007 speaks of the right of self-determination: "Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."⁴

What has become evident throughout these last years and decades of self-governance and has only started to be discussed in depth fairly recently, is the fact that a lack of self-determination (the negation of the Indigenous way of life and world vision, the destruction of habitat, the decrease of biodiversity, the imposition of sub-standard living and working conditions, the dispossession of traditional lands and the relocation and transfer of populations) leads to

⁴ See: <http://www.un.org/esa/socdev/unpfii/en/drip.html>

decrease of health and well-being. Solutions to many of the problems faced by Indigenous peoples therefore can best come from the nations themselves. They are closely connected to nation building - which must develop from inside out. Self-government initiatives are needed as well as direct contact with and participation of Indigenous peoples when designing strategies to improve Indigenous health and defining comprehensive health services and policies. Meaningful and valuable consultation and substantial Indigenous operation and control can produce more accepted and appropriate health outcomes. Discussion should not be limited to health but additionally concern areas like education, welfare, culture and community affairs. A new framework for health care systems analysis needs to be developed that considers the complexities of factors influencing health outcome.

On the international scale only few international organizations are seeking to enable Indigenous nations to have greater visibility in national and international processes affecting them; and to engage with Indigenous communities in mutually beneficial relationships. First and foremost therefore Indigenous peoples must be directly involved in all processes affecting them and come up with strategies most suited to their needs so that they can relate to and trust those strategies. Cooperation between Indigenous peoples and policy makers (WHO, PAHO, EHMA) needs to be facilitated.

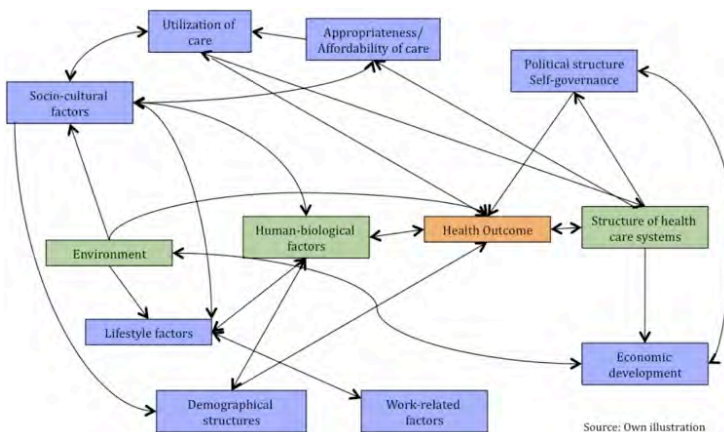


Figure 4: Framework for Indigenous healthcare systems analysis

Today more global instruments can be found that incorporate Indigenous peoples' rights to their traditional medicines. The Universal Declaration on the Rights of Indigenous Peoples guarantees Indigenous peoples right to health and traditional healing systems states in article 23: "The right to determine and develop priorities and strategies [...] for health programs affecting them"; article 31: "[...] the right to maintain, control, protect and develop their [...] medicines [...]."⁵ Traditional health systems and the right to

⁵ UNDRIP is not legally binding and thus remains 'aspirational'. Indigenous leaders demand that both the governments and private corporations incorporate the declaration into national economic, political, cultural and environmental policies. President Obama

one's own culturally defined health system should be placed on the international agenda as a key element of self-determination of Indigenous peoples. Healing arts in international policy need to be discussed, the subject matter opened up as an agenda item at the UN Indigenous Peoples Forum. An (inter)national traditional medicine policy needs to be worked out, a global strategy on Indigenous people's health and mental health developed. As the effectiveness of a global strategy requires strong support and close involvement by respective state governments the feasibility of implementing such a strategy has to be questioned. How the states involved worldwide frame the issue of Indigenous health differs considerably as do Indigenous practices and beliefs. Adapting the strategy to the respective country-specific context would take time due to widely disparate needs and interests and because it must be a general, multi-stakeholder instrument (including Indigenous representatives, governments, members of the United Nations family, local leaders).

Apart from international policy, support is required in the specific national contexts. In the United States under the self-determination policy developed during the Nixon administration, tribes were encouraged to take over governing their health care programs (FLACK, AMARO et al.

announced that his government endorsed the Declaration at the December 2010 White House Tribal Conference. Federal and state public policies addressing health and well-being are to be made compliant and consistent with international law and accepted covenants relating to human rights, and to Indigenous peoples' rights relating to health and well-being. Discussions are being pursued on the objectives of public health, the appropriate balancing of trade and more effectively controlling the private sector as well as enhancing the community-based sectors.

1995). In 1975, President Ford signed into law the Indian Self-Determination and Education Assistance Act (ISDEAA) - Public Law 93-638. This landmark legislation strengthened the federal policy of Tribal Self-Determination with Indian Tribes exercising decision-making authority over their own affairs.

American Indian and Alaska Native tribal governments have sovereign nation status with the Federal government. As "nations within a nation" they are recognized as distinct political entities operating within the American government system and thus have a unique government-to-government relationship with the federal government. The amount of American Indian sovereignty retained depends on the varying degrees of assimilation that each particular nation has undergone and the outcome of past and present disputes about tribal governance. Unlike most states Washington e.g. has better laws and better policies than most other states securing state tribal relationships on a government level. The Centennial Accord 1989 sets the tone of this relationship, fully recognizing the tribes as sovereign governments. Also 7.11 policy concerns the commitment of government and requires the state to build relationships with the tribes and maintain their government-to-government relationships with the tribes. Tribes living in Washington State have established through negotiations the most extensive arrangements for self-determination in the United States. This means that instead of federal officials deciding e.g. how funds are distributed, the tribes decide.

Today health care for members of American Indian tribes and Alaska Natives often comes from a separate health care delivery system, provided by the federal government, as an outgrowth of the

unique and complex history of interactions between the various tribes and the United States government (SHELTON 2004:1).

American Indian Tribes can choose the governmental source of health care for their enrolled members through (1) direct services from the Indian Health Service- IHS directly manages 52 health centers, 31 hospitals, and 31 health stations. Tribally managed services (2) "Self-Determination Contracts," i.e. contracts which the tribes establish with the IHS in the interest of administrative and funding control of the services and programs that would otherwise be provided by the IHS, or (3) "Self-Governance Compacts," i.e. compacts between the tribes and the IHS to gain control over programs and health care services otherwise provided by the IHS in order to design health care programs which meet the specific needs of tribal communities- services operated by the tribes are authorized by contracts and compacts under the Indian Self-Determination and Education Assistance Act. Tribally managed services manage nearly 50% of the IHS system. Health care is provided by tribal services in 256 health centers, 15 hospitals, 282 health stations (which include 166 Alaska Native village clinics) and 9 school health centers. As of December 2010, the IHS had negotiated a total of 78 Self-Governance Compacts and 100 funding agreements with 332, 59% of the 562 federally-recognized Indian Tribes in the United States. Self-Governance Tribes currently control nearly \$1.4 billion of the IHS budget of approximately \$4.03 billion, or about 35% of the total IHS FY 2010 budget appropriation. Tribal Self-Governance programs served 37% of users (550,646 out of a

total of 1,483,423) of Indian health care programs in 2008 (IHS 2011).

As the Indian health service is very limited in their services tribes are relying less and less on the IHS and doing more of their work, providing their own services. In the face of severe political and financial challenges it is now the modern tribal governments that have the responsibility for creating new social health and economic institutions that support and serve those suffering from disease. One outstanding model example for good work in the field of self-determined indigenous health is the afore-mentioned Native-owned and operated health care organization, South Central Foundation in Anchorage, Alaska. SCF's success story speaks powerfully to everyone working in Indigenous health, inspiring others, giving hope to reach for what might seem impossible given the historical and structural realities indigenous people face in many parts of the world to the present day. On Nov. 22, 2011 the U.S Secretary of Commerce announced the organization to receive Presidential honor for performance excellence. SCF is the first Native organization to earn the Malcolm Baldrige National Quality Award.

A conclusion to be drawn from this analysis is that in essence Indigenous peoples' health is as much a question of political will and leadership as it is of consciousness and underlying cosmology. In order to improve Indigenous health a paradigmatic shift towards a comprehensive approach is needed. New frameworks, such as the political economy of health approach seem well suited for Indigenous health disparities research.

Other multi-level theories that could be informed by Indigenous ways of knowing will need to be developed to be able to analyze the complex ways in which people understand and change the intermingled physical, biological as well as socio-cultural worlds they live in. Funding of such interdisciplinary research has to be increased.

To sum up it has been shown that Indigenous peoples' self-determination in health if appropriately supported and strengthened bears promising potential to improve overall health status. The assumptions raised by the kinds of phenomenon that are being pioneered in places where communities self-determinedly endeavor to work toward a healing of mind, body, and spirit might look much more like the Indigenous world to envision.

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Fourth World Journal



Digitizing Worldviews Intangible Cultural Heritages

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ABSTRACT:

The tangible and intangible cultural heritages are the visible part of a culture, which is just 10 percent of the culture that is exposed. The hidden 90 percent of the culture determines the visible ten percent of the culture. When one records the tangible and the intangible cultural heritages it would be more appropriate that the world view that forms the basis for expression are also recorded. Stories are the best ways for cultural transmission within communities. Stories recorded along with the worldviews can be used for intercultural understanding and appreciation of cultural heritages.

The United Nations Educational, Scientific and Cultural Organization's (UNESCO) Convention for the *Safeguarding of the Intangible Cultural Heritage* (2003), recognises that "...the processes of globalization and social trans-

formation, alongside the conditions they create for renewed dialogue among communities, also give rise, as does the phenomenon of intolerance, to grave threats of deterioration, disappearance and destruction of the intangible cultural heritage.” (Mastuura, 2004) Active steps are initiated to ensure safeguarding of cultural heritages in this multicultural world. One such effort is to digitise the intangible cultural heritages that will enable to share cultures.

The UNESCO’s statement above acknowledges the fact that ethnocentrism is predominant, and it is looking towards simultaneously preserving cultural diversity, progressing with globalisation, preserving the tangible and the intangible cultural heritages, ensuring cultural understanding and dialogue between cultures, and being aware of not fossilizing them in digital mode and being aware of intellectual property rights and plagiarism.

In a world that is witnessing movement of people across cultural divides at a greater pace, encountering different cultures becomes increasingly likely—be it for business, pleasure, travel, politics, and volunteering in direct service to communities. However fleeting the interaction, cultural encounters demand for respect and understanding for the tangible and intangible cultural heritages of the other and it cannot be taken lightly.

This has posed a dual challenge for UNESCO and conscientious people around the world working to preserve the worldviews and cultural identity of indigenous communities. The first challenge is to ensure sustenance of identity and the second is to digitise and propagate the same

for a better understanding and sensitising the 'other' to enable a genuine understanding.

With the advent of modern digital equipments, the cultures of the visible majority are becoming systematically digitized. But the cultures from the margins are not due to various social, political and economic reasons. It is the indigenous communities around the world that are fast receding into oblivion as they are in direct line of confrontation and subjugation by the mainstream on account of land, natural resources, habitat and the ripple effects of the mainstream culture on indigenous culture, society and community and above all on their identity.

It is very disturbing to note that there is both internal and external erosion of cultural identity of the indigenous cultures. The cultures from the margins are rendered fragile due to the impact of the bulldozing by the mainstream culture. The media of the mainstream has stereotyped the urban cosmopolitan behaviour as a universal standard. *Universalising* such pattern of behaviour has been on the rise and it has vastly disturbed many cultures in the margins and those that are not so powerful in the media.

There are instances of serious attempts by some of the marginalized themselves to integrate into the mainstream in order to reap economic and social benefits sacrificing their cultural identity. Loss of transmission of knowledge from one generation to the next is due to movement of children away from the community, and advancing age of the traditional keepers of knowledge. With every passing year, the stories and the worldviews of the indigenous communities go unrecorded for posterity.

By declaring the Second International Decade of the World's Indigenous Peoples (2005-2014) UNESCO promotes the international community's commitment toward preservation of the indigenous communities around the world. It urges enhanced understanding between peoples for peaceful coexistence. Thoughtful leaders in the international community see specific pathways toward achieving this important goal. Mastuura opines,

The process of globalization creates conditions for renewed dialogue among communities ... increased opportunities for interaction and dialogue, thereby contributing to the spread of knowledge about other cultures and heightening people's awareness of their own cultures. One result of this intensifying and deepening exchange is that we can now also document and disseminate information about our shared intangible cultural heritage to an extent previously unimaginable. The opportunity to share the world's intangible cultural heritage and to promote its preservation is contributing to a better understanding among peoples worldwide and is underlining the value and vibrancy of cultural diversity. (Mastuura, 2004)

This essay argues for recording the system of knowledge of communities; digitizing, recording and preserving the tangible and intangible cultural heritage of a community. Such an attempt will vastly benefit the appreciation and acceptance of indigenous peoples and will reveal the ethos to the practitioners to enable them to pass their worldview on to the next generation with conviction. Knowing the values, and the reason

for their artifacts' existence, one arrives at a better understanding of that community.

Hypothesis

The tangible and intangible cultural heritage of a community is best understood only when the worldview of the community is also recorded along with it.

Counter Hypothesis

For better understanding of a culture and its preservation and transmission of the same to the next generation and to people from other cultures, it is enough if tangible or intangible cultural heritage are recorded / digitized without any information and background worldviews or ethos it represents.

Heritages product of culture

There is a growing understanding of the exhaustive list of tangible and intangible cultural heritages along with natural heritage sites that encompasses the documentation of cultural heritages. Natural heritage becomes important as indigenous worldviews are typically tied down to their geographic locations.

The standard format for a heritage mapping activity is a matrix of heritage resources— natural, built, movable and intangible - against their intrinsic and associative attributes to capture their meaning. Natural heritage resources include landscapes, mountains, lakes, forests, rivers, valleys and other geological formations. These resources are documented

based on name, other names, geological history, outstanding features, contents, settings, approach and statutory protections. Movable heritage resources include artworks, costumes, jewelry, documents, weaponry, machinery and other material with spatial transference. These resources are documented based on name, other names, owner, maker, dimensions, material, function, and location. Intangible heritage resources include festivals, songs, prayers, myths, legends, language, dance, skills, and local technology. These resources are documented based on name, purpose, history, seasonality, process, documentation, materials used, music used, costumes used, language used and participants. (Zerrudo, 2010)

But when these are recorded and documented, they provide only the visible part of that culture. While the expressive and visible part of the culture is dynamic and subject to change, the culture that underlies the expression is that which determines the perception of the community behind the movable, immovable, tangible and intangible cultural resources.

‘Intangible’ represents the abstract and nonmeasurable. The notion of orality and oral tradition acts as the main vehicle of the intangible. The elements ‘bias’ and ‘prejudice against the preservation of nonmaterial heritage’ have pervaded much of our conceptualisation and appreciation of literate versus oral expressions. ... Tangible heritage is knitted into the intangible heritage domain. Anthropologist Ruth Finnegan argues that oral (intangible)

products are the result of interactions between a vast range of different participants and are not simply 'picked up like pebbles' along the way. 'Tangible heritage, without intangible heritage, is a mere husk or inert matter', argues Kirschenblatt-Gimblett. (Vuuren, 2008)

What goes beneath the tangible and intangible expressions and understanding of the natural world is the worldview of that culture. However, it is the culture that is instrumental in bringing out these expressions in a particular fashion. Every culture has a system and a structure. In order to understand the system and the structure of that culture, one has to understand the worldviews of that culture. Worldviews are the centres that determine the form and the play of its elements: According to Derrida,

... structure—or rather the structurality of structure ... has always been neutralized or reduced, and this by a process of giving it a center or of referring it to a point of presence, a fixed origin. The function of this center was not only to orient, balance and organize the structure ... but above all to make sure that the organizing principle of the structure would limit what we might call the play of the structure. By orienting and organizing the coherence of the system, the center of a structure permits the play of its elements inside the total form. (Derrida, 2002 p352)

The total form being the sum total of all the tangible and the intangible cultural expressions that are well within the culture of that society. The center being the worldview, the visible structure is the expression of that culture. Apart from constructing a structure, worldview also

determines the perception of reality. According to Marsden:

Cultures pattern perceptions of reality into conceptualisations of what they perceive reality to be; of what is to be regarded as actual, probable, possible or impossible. These conceptualisations form what is termed the 'world view' of a culture. The World view is the central systematisation of conceptions of reality to which members of its culture assent and from which stems their value system. The world view lies at the very heart of the culture, touching, interacting with and strongly influencing every aspect of the culture. (Royal, 2007)

These expressions of culture and understanding of the appreciation of natural heritage is based on what Bourdieu refers to as "the habitus":

Habitus can be understood as the set of values and dispositions gained from our cultural history that stay with us across contexts. These values and dispositions allow us to respond to cultural rules and contexts in a variety of ways, but those responses are always largely determined – regulated-by where we have been in culture. (Schirato, 2000 p42)

However, a basic question remains: whether one can really appreciate other cultures.

A work of art has meaning and interest only for someone who possesses the cultural competence that is the code, into which it is encoded. The conscious or unconscious implementation of explicit or implicit schemes of perception and appreciation, which constitutes pictorial or musical culture is hidden condition for recognizing styles characteristic of a period, a

school or an author, and, more generally, for the familiarity with the internal logic of works that aesthetic enjoyment presupposes. ... Thus the encounter with a work of art ... presupposes an act of cognition, a decoding operation, which implies the implementation of a cognitive acquirement, a cultural code. (Bourdieu, 1984 p 3)

This understanding of the habitus, and cultural code of Bourdieu, structure of Derrida that is being shared by the 'collective actant'- the community that shares the culture and acts accordingly - is due to their worldview. The worldview determines the play (Derrida), work of art (Bourdieu), literary text, stories and all expressions of a culture. Thus a text, story or expression "... cannot exist outside the culture." (Sonesson, 1998) Stories and literary texts of a culture have to be within the culture of its creator. Artifacts, literature, stories are the visible texts and products of that culture.

When recording heritage stories / oral traditions we tend to record the rendition by the practitioners. What we are digitally recording is the visible part of the culture. Even if one hears the stories of the 'other', one cannot but interpret the same with the perception of one's own knowledge and cultural bias and not what the other culture intends. Hence there will be or can be paucity in that communication.

Thus without understanding the worldview, it is not possible even to appreciate the intangible and tangible artifacts, texts, stories, and cultural products of societies. Hart is of the opinion that:

"... understanding worldviews is necessary ... our worldviews affect our belief systems, decision

making, assumptions, and modes of problem solving. ... understanding worldviews of both the targeted community and ourselves is imperative if we are going to do more good than harm” (Hart, 2010)

Worldviews

This draws us to the need for understanding the worldviews of the “other.” Worldviews according to Jenkins is,

the common concept of reality shared by a particular group of people, usually referred to as a culture, or an ethnic group. Worldview is an individual as well as a group phenomenon.” It is called Cognitive Culture. This is the mental organization in each individual's mind of how the world works. Expressions of commonality in individual worldviews make up the cultural worldview of the group. This leads to the social culture....

Worldview denotes the complex of beliefs, concepts, sense of order and social constructs, role-models and moral precepts which are unique and peculiar in comparison to other such complexes of other such socio-cultural groupings...each culture's worldview is adequate for that culture and thus valid in its own terms. (Jenkins, 2004)

According to Michael Lind, "a worldview is a more or less coherent understanding of the nature of reality, which permits its holders to interpret new information in light of their preconceptions." Talking on aboriginal worldview, Loisel opines,

The Aboriginal worldview is comprehensive and spiritual in nature ... spirituality as a vital

element since it is seen as pervading every aspect of life ... the Native significance and purpose of spirituality is “the process and relationship we have with our greater power... the part of you which helps you see the beauty along the way...[and] the goodness in [others]”. ...the Aboriginal perspective of life is “a systemic approach to being in the world” ... “Self-in-relation” that is: immanence (respect for all life forms), interconnectedness and balance. (Loiselle, 2006)

Ouellette quotes Kawagley:

A worldview consists of the principals (principles?) we acquire to make sense of the world around us. Young people learn these values, traditions and customs from myths, legends, stories, family, community and examples set by community leaders. The worldview (cognitive map) is a summation of coping devices that have worked in the past [but may not work in the now or future]... The worldview [allows a people who self-identity] to make sense of the world around them, make artifacts to fit their world, generate behaviour and interpret their experiences. (Ouellette, 2010) (Parenthesis not mine.)

Further bolstering this perspective Poonwassie, states that:

Worldviews emerge from the totality of peoples' social, political, economic, cultural and spiritual perceptions and beliefs. Ermine ... describes Aboriginal worldviews as founded on a search for meaning from a metaphysical, implicit, subjective journey for knowledge based on the premises of "skills that promote personal and social transformation; a vision of social change

that leads to harmony with rather than control over the environment; and the attribution of a spiritual dimension to the environment" (Poonwassie, 2001)

From a linguistic perspective, language has a potentially intricate relationship with worldview. According to Sapir-Whorf hypothesis,

the principle of linguistic relativity holds that the structure of a language affects the ways in which its speakers are able to conceptualize their world, i.e. their world view ... that language determines thought and that linguistic categories limit and determine cognitive categories and ... linguistic categories and usage influence thought and certain kinds of non-linguistic behavior. (Worf, 1940, 1956)

Rebecca Ash wrote an interesting essay about the Sapir-Whorf Hypothesis where she notes that the hypothesis is not only controversial, but has been the basis for research in a wide range of disciplines. Some of that research seems to reinforce the Hypothesis suggesting linguistic relativism is at least likely while a greater number of studies deny this view and favor linguistic universalism (Ash, 1999). Noting that the controversy continues, Ash argues that more research is necessary to settle the competing findings of existing research.

Communicating Culture

Language is driven by the worldview that constructs the culture. Culture of a community forms an integral part of any communication of that community. Stories are part of communication, hence, are very close to express the worldview in a subtler manner. While digitally

documenting intangible cultural heritages like stories, songs, adages, proverbs, etc, one records communication that has cultural content seeped into it.

Each epistemology is linked to the precepts of its culture in intricate ways; the interrelationships of precepts form its conception of reality.

Epistemology, or the specific Aboriginal way of knowing, is the foundation upon which each tribal society builds its web of knowledge.

(Bastien, 2004 p38)

The web of knowledge is transmitted in indigenous communities through stories. The stories encompass within them the knowledge and the worldviews in a more intricate way. However, from the indigenous perspective, which is being pushed to the margins more resolutely than ever before, preserving and transmission of culture and establishing itself in the multicultural world becomes essential for its survival.

An Indigenous worldview or philosophy is intrinsically holistic, interdisciplinary, intergenerational and spiritual. Because it has also had to exist, survive and now thrive within and beside a colonial worldview, it must also involve the processes of conscientization and decolonization. (Rock, 2007)

The best bet to survive is to rely on stories more than cultural artifacts and natural heritage sites.

Why Stories?

Stories were used by generations from time immemorial to record and retransmit ideas over generations and geographical locations. They are

the best way to communicate the ethos from one generation to the next. They are the best way to communicate to the cultural “other” as it plays a vital role in driving the ethos in a most objective manner, by incorporating within itself the worldviews. Stories can create a mental space for the reader to be transformed into another sphere hitherto unknown to the reader and experience a new culture. Though one might in all likelihood read it from one’s own perspective, stories create space for alternate thinking.

But it would be even more beneficial when the ethos of the community is also recorded while recording the stories and preserving the artifacts of the community for the benefit of the community and for the connoisseurs from other communities to appreciate it holistically.

Thoughts are structured and constructed through the stories as they create the mental frame. The mental frame thus created would form the basis of further expansion on that particular line of thought. Language helps constructs the structure of the thought. The worldviews decide the language. Hence, understanding worldviews will provide the reason for a community’s thinking in one particular way for the story readers.

At the level of children, in the multicultural context, understanding each other is easier as they have a limited set of conditioning through stereotyping. Stories can act as a medium of teaching the worldview of the other. Hence stories play a vital role in establishing the worldviews of a community among the community and to others who wants to understand the community. Stories after all are meant to create an experience. Thus when a story is recorded, its connotation lies

elsewhere in the society and in its cultural repertoire. The story thus is intricately related to the worldviews and forms an integral part of the semiotic structure of that culture. Let us work on stories and how they encompass the worldview in them.

A Blackfoot Story

Once there was a (man) Siksikaitstapi who was hunting in the foothills and mountain area. He had but one horse. In those days people usually had different horses and another with which to pack the kill. However, this man had but one horse. He was a poor man. He was very fortunate, though, for on this day he had a kill. He had cut up the meat and packed it on his horse. Also, he had left enough for a good meal for the coyotes or wolves. On the way back home, he ran into a pack of wolves. He knew the wolves were on their way to the remains of his kill. A little later, he ran into an Old Wolf, who was having a hard time keeping up with the pack. The hunter stopped and offered the choicest cut to the Old Man and told him, "By the time you get there, there may be nothing left for you to eat." As it was a cold winter and everyone was hungry, he replied, "I am in a hurry, those ahead are hungry. I need to get there because they will not start without me. You see I am the grandfather. You will receive a gift for your generosity." Later, the hunter was very fortunate in his hunting expeditions and as a result had many horses. (Bastien 36)

Recording the story – an intangible cultural heritage as narrated down generations when taken out of the cultural milieu of the native Canadian

traditions, reveals only partially the ethos. Let us attempt to read the story without any cultural input from the First Nations. The reading will go thus: A poor man hunting is understandable, but when he leaves behind the kill for the wolves and coyotes this is not understandable outside the cultural context. Why should one have to leave a kill, which he made (accomplished) to the wolves? Wolves are dangerous and need to be killed in order to escape from them.

“A little later, he ran into an Old Wolf ... the Old Man and told him....”

The shift from old wolf to old man is a transformation, which defies reason for people outside the culture. Why should someone revere an old wolf?

But the concluding sentences are more dramatic: “ I am in a hurry, those ahead are hungry. I need to get there because they will not start without me. You see i am the grandfather. You will receive a gift for your generosity.” Later, the hunter was very fortunate in his hunting expeditions and as a result had many horses. The fact that the animals are communicating to the man is not unreal for the First Nations; there is a continuum that permeates the existence of all life on earth. The relations cutting across species is because of the world view of the Blackfoot, who believe that there exists an interconnection among all things created on earth and that the man need not perceive the wolf or the coyote as a competitor to his hunt for his food.

The consideration of the Old Wolf for his pack, and the mutual respect the pack has for their elder reflects the mutual respect for each other. The fortune that befell the hunter for helping the

wolf pack and the concern he has shown for the Old Man is a direct benefit for his good deed and thought.

The worldview of the Blackfoot is that all creatures are interconnected. A good deed is always rewarded. Respect for other life and concern for the elders.

A Pulayar story

Once there was a young girl of the Pulayar community who has lost her parents. There was one young man from the settler community who also lost his parents. There was no one to support him. As the boy was from the settler community, the Pulayar community did not extend any support to the boy. He was also left uncared for by his own community.

Feeling sorry for the boy, this girl extended support to the boy by way of feeding him. Fearing reprisal from the elders, she chose to deliver food during the nights. One day the community elders found out this gracious act of the girl and decided to punish her as she was against the dictates of the community.

The elders threw her off a cliff. She clung to a root and pleaded for rescue. The community elders lowered her rope made of twines. When she held to the twines, they cut off their hold and allowed her to die in the abyss. Going down she shouted back that she will come back as strong wind and will destroy all those who do not respect her.

Now it is the practice of the settler community and that of the tribals to come together and pray to that girl before embarking on any

festival in their area. They have deified her.

A Tradition to follow ...

In yet another traditional activity, before embarking on any festival by the community they need to bury their differences among themselves for the better unity of the community and for the smooth functioning of the function. The community has devised a method to execute it.

The elders in the community collect water from all the families in a settlement in a huge drum in the middle of the village. The water thus collected from all the families in the village is redistributed to all the families and even the just born babies are also provided with a little drop.

This event could be recorded digitally in video, or recorded in a story. But will it be enough if it is done so? The questions now arise is what does this practice signify? Can it be replicated in another community? Why does this community do this? This takes us to the belief of that community that they all belong to one family. Differences are bound to arise. But for the common cause and for the unity of the community, they need to be united. That they are all related to one another all the minor or major differences have to be dissolved before they take up a common cause. This is not just a symbolic gesture of burying the differences, but a deep-seated belief that is brought to the conscious mind of the community in order to bury their differences.

Landscape beliefs

One more story about the nature around is the folklore of the community. There were warriors

from another community who came to occupy the hill tracts where the Pulayars were living. But they were driven away by their goddess Rakkatchiamman. The soldiers from the plains retracted, only to regroup and attack again. But when they came back reinforced with mightier force with camels and elephants, the Goddess got wild and transformed them into stones. The belief is that the present day stone formations are the cavalry of yesteryears who were turned into stone by their Goddess.

The rocks in the forest region are considered to occupy a sacred ground and we were asked to remove our shoes well before entering the area. Though this is the practice, the stories about the sacred grounds are handed over from one generation to the next. Without understanding the worldviews of the community, any event, belief, story and practice could well be branded as superstitious. But when the worldviews of the community are recorded along with the artifacts/stories, one understands the ethos with which they have created the stories, artifacts, beliefs and motifs for expression. Recording the same with the worldviews ensures better appreciation of the other culture as they are. Such a recording will also help the community to realise the potential of their own community, its genealogy and heritage. Such an understanding among the community members will ensure its transmission to the next generation, thus preserving the cultural diversity.

This draws us to the meaning part of the stories, which communicate the worldviews and ethos the community holds closer to itself. In order to understand the ethos of the target community, one needs to understand and

appreciate the values they hold.

Clyde Kluckhohn proposes the *Values Orientation Theory* in which it is stated that cross-cultural understanding and communication could be facilitated by analyzing a given culture's orientation to five key aspects of human life: Human Nature (people seen as intrinsically good, evil, or mixed); Man-Nature Relationship (the view that humans should be subordinate to nature, dominant over nature, or live in harmony with nature); Time (primary value placed on past and tradition, present and enjoyment, or future and posterity or delayed gratification); Activity (being, becoming, inner development, or doing, striving, industriousness); and Social Relations (hierarchical, collateral/collective-egalitarian, or individualistic). (Gallagher, 2001)

The basis of the Clyde Kluckhohn's Value Orientation Theory is that it may promote a better understanding of the worldview of "the other." Gallagher gives depth to this assertion we he writes:

If we understand each other better, across cultures, we can better avoid conflict and work through our differences ... that ignorance of, or misattribution of another's values and motives, cannot possibly aid conflict resolution. To better understand each other, however, we need useful insights -- the VOM provides this insight. It helps us to understand ourselves at a new, deeper level, and it helps us to understand others. (Gallagher, 2001)

If, for instance, an Indian says *Hari Om* to you, with folded arms, it means salutations. How will you interpret it? Greetings? ... or, an equivalent of Good day or good morning? It

means more. It means that I salute the part of the whole in you. You are an indivisible part of the whole and to that I salute. It is a salutation at the spiritual level and not at the physical level. From all the above, we understand that the world views of a community which is 90% beneath the surface and subtle determines the communication, content and language, which in turn determines the tangible and intangible cultural heritages that could be digitally recorded or preserved for posterity.

This essay closes with the view that the stories are best mode of understanding the other and positively works towards conflict resolution. Recording stories along with the worldviews will be more beneficial

For a better presentation of a culture, it is not enough if one records the tangible and the intangible heritages alone in the digital mode, but also record their world views along with their stories. Emma LaRoque in her book '*Defeating the Indian*' suggests that for effective intercultural education that students need to be consistently taught that different values, religions, systems exist and that each is viable within the context of its people, era and location. Worldviews are to be recognized as unique systems and hence they are to be incorporated while recording the visible expressions of cultures be they tangible or intangible cultural heritages.

A short note on Pulayar tribes

Pulayar of Palani Hills is one of the tribes that migrated to hill tracts in the subcontinent of India and has spread all over the hills. They have their own names for the hills. They are now

restricted to a few pockets of settlements on the fringes of the present day towns and villages. They face the same fate that is being faced by many indigenous communities around the world. Their stories and cultural identities are fast vanishing and efforts are being taken by the community elders to train their youth in the cultural traditions, stories and songs.

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Indigenous Nations

and

Modern States



Rudolph C. Ryser

Release: April 23, 2012 <http://www.taylorandfrancis.com/books/details/9780415808538/>

The Political Emergence of Nations Challenging State Power

Routledge

Fourth World Journal

A Photo Essay: Indigenous Peoples' Climate Change

**United Nations Climate Negotiations –
Durban, Kwazulu, South Africa. Nov 28 – Dec
9, 2011**

By Ben Powless



“The failure to act – because of the greed of a few countries – would result in an attack on our cultures around the world, and the ecosystems we depend upon. This would only perpetuate injustice to the peoples of the world.”

*IIPFCC, AWG-KP intervention
Durban, 6 December, 2011*

International Indigenous Peoples'
Forum on Climate Change
Opening Session of Climate

Change Talks – November 2011,
Durban, Kwazulu, SA



Climate Change Talks
Plenary Session



“Current climate change measures and actions are resulting in serious and massive human rights violations of indigenous peoples in addition to the worsening impacts of climate change.”

*IIPFCC, AWG-KP intervention
Durban, 6 December, 2011*



During previous sessions of the annual Climate Change talks, Indigenous Peoples have actively sought to engage states' party negotiators— frequently to deaf ears.

“We do take note of advances in the decisions relative to REDD+ and agriculture affirming respect for traditional knowledge and the rights of Indigenous Peoples. However, these references are omitted from all other COP outcome documents.”

*IIPFCC, High Level Statement,
Copenhagen, 18 December 2009*

“Mr. Chair, I remind this body that scientific study and practical experiences confirm that Indigenous Peoples are the most directly and severely affected by climate change throughout the world.” *IIPFCC, SBI Closing Durban, 2 December, 2011*



“You all know what our traditional peoples have been telling us for many years, and what scientists can confirm. We are killing the planet, and we need to stop. You know the numbers.” *IIPFCC, AWG-KP Durban, 2 December, 2011*

“Our peoples’ lives are on the line. Without Kyoto, we face the real prospect of climate ethnocide. This is no time for empty words. We want real commitments.” We need real action. *IIPFCC, AWG-KP Durban, 2 December, 2011*





Indigenous peoples and local communities should be involved in Monitoring, Reporting and Verification in all stages of all climate related initiatives. *IIPFCC High Level Statement – Copenhagen 18 December 2009*

Current climate change measures and actions are resulting in serious and massive human rights violations of indigenous peoples in addition to the worsening impacts of climate change. *IIPFCC, AWG-KP Durban, 6 December, 2011*





“... we, the indigenous peoples of the world, shall continue to strengthen our ranks from the local to the global levels to push for effective solutions to climate change.”
IIPFCC, Urgent Appeal, 6 December, 2011





The constructive engagement of indigenous peoples in UNFCCC sessions is crucial if comprehensive and effective responses to climate change are to be achieved. *IIPFCC, AWG-KP Durban, 2 December, 2011*





International Indigenous Peoples Forum on Climate Change joined in unity as the Climate Change talks in Durban, Kwazulu drew to an end – December 2011



Archbishop Desmond Tutu joined in support of the cause of Indigenous peoples.

“We do take note of advances in the decisions relative to REDD+ and agriculture affirming respect for traditional knowledge and the rights of Indigenous Peoples. However, these references are omitted from all other COP outcome documents. These human rights must be protected through clear and unequivocal language recognizing our rights to land, territories and resources, our full and effective participation including our right of free, prior and informed consent, and protection for our traditional knowledge. In order to protect our forests, biodiversity, the air, and the water that sustains us all, we need a binding commitment to the UN Declaration on the Rights of Indigenous Peoples.”

IIPFCC High Level Statement – Copenhagen 18 December 2009

Any decision or indication undertaken by the Parties will have to be founded on a strong rights-based approach and framework – specifically including the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), Indigenous Tribal Peoples Convention (ILO169), and other international human rights obligations and instruments - and on the recognition of historical responsibility and ecological debt. Proper consideration should be given to the indigenous peoples' Anchorage Declaration and to the indigenous peoples' declaration adopted at the Cochabamba Peoples' Summit, April 2010.

... the Shared Vision ... should recognize the role and contribution of indigenous peoples' knowledge, innovations and practices in playing a stewardship role and in contributing solutions to the climate crisis. The crucial role of indigenous women in the transmission of knowledge and preservation of culture and environment should also be acknowledged. *IIPFCC Inter-Sessional, Statement, Bonn, Germany, June 2010.*

[Editor: We have incorporated submissions by the International Indigenous Peoples Forum on Climate Change from the Durban Climate Change Conference and from earlier intergovernmental meetings extending back to 2009. The Powless Photo Essay depicts meetings, demonstrations, and incidents (i.e., efforts to remove Africans from a campsite near the conference in Durban). An estimated 200 indigenous peoples from neighboring communities and from around the world in Kwazulu directly contributed the development of submissions to the Durban Conference. For each participant on-site and individual contributors via Internet communications many hundreds more made

their views known. We at FWJ wish to express our appreciation for the skills, and professional care taken by indigenous participants who never forget who they represent.]

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Powless Photo collections:

<http://bit.ly/powless>

General photos from Durban/COP17 -

<http://www.flickr.com/photos/powless/sets/72157628385853737/> Photos from the Durban Climate

Justice action (Friday, December 9) -

<http://www.flickr.com/photos/powless/sets/72157628347288997/>

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Fourth World Journal



Participation the WIPO Intergovernmental Committee on Intellectual Property, Genetic Resources, Traditional Knowledge and Folklore

Comments submitted by the Grand Council of the Crees (Eeyou Istchee)

**Note on Existing Mechanisms for Participation of Observers in the Work of the
WIPO Intergovernmental Committee on Intellectual Property and Genetic
Resources, Traditional Knowledge and Folklore**

**Traditional Knowledge Division
World Intellectual Property Organization (WIPO)
34, chemin des Colombettes
1211 Geneva 20
Switzerland**

November 30 2011

*{Editor's Note: With permission granted by Grand Chief
Matthew Coon Come of the Grand Council of the Crees (Eeyou
Istchee) we have published the full and complete submission to
the World Intellectual Property Organization Intergovern-
mental Committee. We have not altered content, but only made
format changes to accommodate the FWJ paging format. }*

Table of Contents

Executive Summary 52

- I. Introduction 55
- II. Right to Full and Effective Participation 59
- III. Human Rights Obligations of States and WIPO 64
- IV. Significance of UNDRIP in the Human Rights Context 73
- V. Relevant Problems and Challenges in *Nagoya Protocol* 79
- VI. Response to Questions in Note on Existing Mechanisms for Participation 83

Executive Summary

In its October 2011 Decision, the WIPO General Assembly invited the Intergovernmental Committee (IGC)¹ to review its procedures "with a view to enhancing the positive contribution of observers". The Secretariat issued a *Note on Existing Mechanisms for Participation of Observers* in response to the request to "prepare a study outlining current practices and potential options".

The enclosed Comments are a response to the *Note*.

The objective of the negotiations is to reach

¹ The IGC is WIPO's Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore.

agreement on instrument(s) that will "ensure the effective protection" of genetic resources (GRs), traditional knowledge (TK) and traditional cultural expressions (TCEs).

In relation to Indigenous peoples and local communities, "effective protection" would require *inter alia* the following elements:

- respecting the legal status of Indigenous peoples as distinct "peoples", consistent with international law
- ensuring the "full and effective participation" of Indigenous peoples and local communities at all stages of the work
- accepting proposals, without pre-conditions, for inclusion in draft texts
- requiring proposals to be consistent with international human rights law, including the *UN Declaration on the Rights of Indigenous Peoples* (UNDRIP)
- rejecting terms or phrases to avoid compliance with their rights and related State or other third party obligations.

For an impressive precedent and best practice relating to Indigenous peoples' participation in international processes, WIPO should consider the approaches adopted in the negotiations on UNDRIP within the United Nations.

In crafting a new intellectual property regime, WIPO and member States should not import injustices from the *Nagoya Protocol* on access and benefit sharing. This is especially important, where provisions are discriminatory or are otherwise inconsistent with the *Charter of the*

United Nations, Convention on Biological Diversity or international human rights law.

The IGC has a significant opportunity to enhance the positive contribution of observers in its work. In international processes, ensuring the full and effective participation of Indigenous peoples and local communities is an urgent issue. WIPO is encouraged to play a leadership role.

I. Introduction

1. The WIPO General Assembly is to be commended for its Decision to invite the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) to review its procedures.¹
2. This Decision includes the following key elements:

With a view to enhancing the positive contribution of observers, the General Assembly invites the Committee to review its procedures in this regard. To facilitate this review, the General Assembly requests the secretariat to prepare a study outlining current practices and potential options.²

3. The Decision also includes the following requirement to "ensure the effective protection" of genetic resources (GRs), traditional knowledge (TK) and traditional cultural expressions (TCEs):

The Committee will, during the next budgetary biennium (2012/2013), and without prejudice to the work pursued in other fora, expedite its work on text-based negotiations with the objective of reaching agreement on a text(s) of an international legal instrument(s) which will ensure the effective protection of GRs, TK and TCEs.³

4. The requirement in the Decision to "ensure the effective protection" of GRs, TK and TCEs is consistent with the *Convention Establishing the World Intellectual Property Organization*.⁴ In order to attain its "objective" to "promote the protection of intellectual property throughout the world"⁵, WIPO, through its appropriate organs:

shall promote the development of measures designed to facilitate the efficient protection of intellectual property throughout the world and to harmonize national legislation in this field⁶
...

5. The protection of intellectual property "throughout the world" would necessarily include safeguarding such property relating to Indigenous peoples and local communities. In at least key respects, this would require a *sui generis* intellectual property regime⁷ - consistent with the rights, customs, practices and worldviews of such peoples and communities.⁸
6. In order to ensure the "effective" or "efficient" protection of GRs, TK and TCEs, any new intellectual property regime would need to fully respect the legal status and international human rights of Indigenous peoples and local communities.
7. The requirement to "harmonize national legislation in this field" of intellectual property (IP) would suggest an international regime that is inclusive of, and beneficial to, Indigenous peoples and local communities. National legislation can play a positive role in advancing common objectives and providing some flexibility.
8. However, phrases such as "subject to national legislation" or "in accordance with domestic law" are not appropriate. As evident from the *Nagoya Protocol*⁹ on access and benefit sharing, such phrases continue to be used to undermine Indigenous peoples' human rights and their inherent nature.¹⁰
9. The Grand Council of the Crees (Eeyou Istchee) is pleased to respond to the request

for comments on the WIPO Secretariat's *Note on Existing Mechanisms for Participation of Observers in the Work of the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore* [hereinafter "*Note*" or "*Note on Existing Mechanisms for Participation*"].¹¹ At the same time, we welcome other concerns raised by Indigenous peoples and local communities.

10. The *Note on Existing Mechanisms for Participation* includes the following three questions:

Is there any existing mechanism or practice to facilitate direct participation of observers in the work of the IGC or to strengthen their capacity to contribute to the process that has not been reflected [in the *Note*]?

What are the options for enhancing the existing mechanisms and practices?

What draft recommendations should the twentieth session of the IGC consider with a view to enhancing the positive contribution of observers to the work of the IGC?

11. Prior to replying to these central questions, it is necessary to place these questions in a broader context so as to allow a more comprehensive analysis of the challenges within WIPO.
12. A number of key issues related to WIPO's current consultation have been addressed in, or are linked to, our Joint Submission entitled "Nagoya Protocol on Access and Benefit Sharing: Substantive and Procedural Injustices relating to Indigenous Peoples' Human Rights".¹² This Joint Submission is intended to be an integral part of our present Comments and is submitted together.

II. Right to Full and Effective Participation

13. The right of Indigenous peoples to participate in international and domestic decision-making is itself a human right. As Special Rapporteur on the rights of indigenous peoples, James Anaya, underlines:

The right of indigenous peoples to participate in decision-making is both rooted in other basic human rights and essential to the effective enjoyment of those rights. A number of basic human rights principles underpin the right to participate and inform its

content. These include, among others, principles of self-determination, equality, cultural integrity and property.¹³

14. As affirmed by the United Nations Development Group, “full and effective participation” and free, prior and informed consent (FPIC) are important elements of Indigenous peoples’ right of self-determination.¹⁴ Such participation is also a crucial aspect of FPIC.¹⁵
15. In its study on Indigenous peoples and the right to participate in decision-making, the UN Expert Mechanism on the Rights of Indigenous Peoples links the collective human right to participation to the right to self-determination.

The normative international human rights framework for the collective right to participation is the right to self-determination. Affirmed in Article 1 (2) of the Charter of the United Nations and other major international legal instruments, including common article 1 of the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, self-determination is widely acknowledged to be a principle of customary international law and

even a peremptory norm.¹⁶

16. The current review of IGC procedures is timely and crucial. While some positive steps have been taken, Indigenous peoples still do not enjoy the right to "full and effective participation" in WIPO. It is critical that such participation be ensured at all stages of the work within the Organization.¹⁷

17. Proposals by Indigenous peoples and local communities should be accepted without conditions for inclusion in draft texts.¹⁸ At any stage of the negotiations, consensus should not be a requirement.¹⁹ In no case should consensus undermine the rights of Indigenous peoples and local communities, and related State or third party obligations must not be diminished to their detriment. As concluded by the Expert Mechanism on the Rights of Indigenous Peoples:

Respect for indigenous peoples' right to participate in decision making is essential for achieving international solidarity and harmonious and cooperative relations. Consensus is not a legitimate approach if its intention or effect is to undermine the human rights of indigenous peoples. Where beneficial or necessary, alternative negotiation frameworks should be considered, consistent with States' obligations in the Charter of the United

Nations and other international
human rights law.²⁰

18. In international forums and processes, unfair procedures are undermining the principles of justice, democracy, non-discrimination, respect for human rights and rule of law. The UN Expert Mechanism on the Rights of Indigenous Peoples highlights in its *Final report of the study on indigenous peoples and the right to participate in decision-making*:

Reform of international and regional processes involving indigenous peoples should be a major priority and concern.²¹

19. The UN Permanent Forum on Indigenous Issues urges WIPO and other international bodies and forums to facilitate Indigenous peoples' participation²² and uses UNDRIP as the standard:

The Permanent Forum recognizes the right to participate in decision-making and the importance of mechanisms and procedures for the full and effective participation of indigenous peoples in relation to article 18 of the United Nations Declaration on the Rights of Indigenous Peoples.²³

20. UNDRIP includes a wide range of interrelated or mutually reinforcing provisions that, in their effect, require the full and effective participation of Indigenous peoples.²⁴
21. The international community is widely supportive of this right and principle, including the General Assembly,²⁵ specialized agencies,²⁶ national human rights institutions²⁷ and Indigenous peoples.²⁸ As the African Commission on Human and Peoples' Rights has concluded:

[UNDRIP] ... prohibits discrimination against indigenous peoples and promotes their full and effective participation in all matters that concern them.²⁹

22. Ensuring Indigenous peoples' right to full and effective participation is consistent with principles of democracy, as well as respect for human rights and the rule of law.³⁰ As indicated in the *2005 World Summit Outcome* adopted by consensus at the UN General Assembly, these principles are "interlinked and mutually reinforcing":

We [Heads of State and Government] recommit ourselves to actively protecting and promoting all human rights, the rule of law and democracy and recognize that they are interlinked and mutually

reinforcing and that they belong to the universal and indivisible core values and principles of the United Nations ...³¹

23. WIPO and States Parties have a responsibility to ensure a democratic and fair process. A major factor impeding the full and effective participation of Indigenous peoples is their lack of financial and other support. Adequate numbers of representatives from each region should have funding to participate fully in the current negotiations at all levels.
24. Special Rapporteur James Anaya has emphasized the need for reforms and capacity-building:

Potential reforms within international institutions and platforms of decision-making that affect indigenous peoples' lives should be closely examined ... Financial and administrative support should be maintained and expanded as necessary to ensure that indigenous peoples can participate effectively in international forums.³²

III. Human Rights Obligations of States and WIPO

25. In addressing intellectual property, the central issues within the IGC are GR, TK and TCEs. All three issues involve human rights relating to Indigenous peoples and local communities.
26. In the international human rights Covenants, the right of self-determination - which includes the right to natural resources - has been repeatedly confirmed to apply to the world's Indigenous peoples.³³
27. Intellectual property rights should not prevail over the human rights of Indigenous peoples. In regard to any future WIPO regime, the UN General Assembly by consensus called for adequate protections:

The ongoing discussion of the World Intellectual Property Organization Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore should have as its clear objective the continued development of mechanisms, systems and tools that adequately protect the genetic resources, traditional knowledge and expressions of culture of indigenous peoples at the national, regional and international levels.³⁴

28. The UN Committee on Economic, Social and Cultural Rights highlighted the significance of collective and individual human rights as compared with intellectual property regimes:

Whereas the human right to benefit from the protection of the moral and material interests resulting from one's scientific, literary and artistic productions safeguards the personal link between authors and their creations and between peoples, communities, or other groups and their collective cultural heritage ... intellectual property regimes primarily protect business and corporate interests and investments.³⁵

29. In its resolution on *Intellectual property rights and human rights*, the UN Sub-Commission on the Promotion and Protection of Human Rights: "Remind[ed] all Governments of the primacy of human rights obligations over economic policies and agreements".³⁶ The Sub-Commission requested:

intergovernmental organizations to integrate into their policies, practices and operations, provisions, in accordance with international human rights obligations and

principles, that protect the social function of intellectual property ...³⁷

30. Whenever human rights are at issue, States are required to act in accordance with their human rights obligations. As required by the *Charter of the United Nations*, the UN and its member States have a duty to promote “universal respect for, and observance of, human rights and fundamental freedoms for all without distinction”.³⁸

31. Article 103 of the *Charter of the United Nations* provides for the paramouncy of the *Charter*, in the event of a conflict relating to State obligations:

In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.

32. Similarly, article 30(1) of the *Vienna Convention on the Law of Treaties*³⁹ provides:

Subject to Article 103 of the Charter of the United Nations, the rights and obligations of States parties to successive treaties relating to the same subject-matter shall be determined in accordance with the following paragraphs.⁴⁰

33. Therefore, States could not circumvent or diminish their human rights obligations under the *Charter* through any new IP regime within WIPO.⁴¹
34. International organizations also have a wide range of obligations that include human rights. In the Advisory Opinion, the International Court of Justice rule in *Interpretation of the Agreement of 25 March 1951 Between the WHO and Egypt*:

International organizations are subjects of international law and, as such, are bound by any obligations incumbent upon them under general rules of international law, under their constitutions or under international agreements to which they are parties.⁴²

35. The UN Committee on Economic, Social and Cultural Rights has called upon UN organs and specialized agencies, such as WIPO, to take into account human rights principles and obligations in their work:

United Nations organs, as well as specialized agencies, should, within their fields of competence and in accordance with articles 22 and 23 of the Covenant, take international

measures likely to contribute to the effective implementation of article 15, paragraph 1 (c). In particular, WIPO, UNESCO, FAO, WHO and other relevant agencies, organs and mechanisms of the United Nations are called upon to intensify their efforts to take into account human rights principles and obligations in their work concerning the protection of the moral and material benefits resulting from one's scientific, literary and artistic productions, in cooperation with the Office of the High Commissioner for Human Rights.⁴³

36. In the *2005 World Summit Outcome*, the Heads of State and Government emphasized: "We ... call upon all parts of the United Nations to promote human rights and fundamental freedoms in accordance with their mandates."⁴⁴ This would apply, *inter alia*, to WIPO and other UN specialized agencies. Yet States in the WIPO and Convention on Biological Diversity (CBD) processes appear resistant to respecting and protecting Indigenous peoples' human rights and fulfilling related State obligations.

37. Within the present IGC process, it is not the purpose to strengthen the existing IP regime in favour of States, multinational corporations and other entities. In diverse situations, the current IP system is seriously imbalanced and there is a great deal at stake for Indigenous peoples and local communities.⁴⁵ Chidi Oguamanam highlights:

For a people whose relationship of dependence with their ecosystem is first nature and a basis for their knowledge and socioeconomic and cultural life ..., intellectual property's role in knowledge enclosure is a fundamental human rights issue bordering on life and survival.⁴⁶

38. Clearly the primacy of human rights must apply to non-human rights aspects of intellectual property rights. Peter Yu affirms:

... international human rights treaties do not protect the remaining non-human rights attributes of intellectual property rights or those forms of intellectual property rights that have no human rights basis at all. ... [S]tates have duties to take into

consideration their human rights obligations in the implementation of intellectual property policies and agreements and to subordinate those policies and agreements to human rights protection in the event of a conflict between the two.⁴⁷

39. Addressing human rights issues in the context of an international IP regime can be complex. Some attributes of intellectual property are included in human rights instruments. Examples include the rights in article 27(2) of *Universal Declaration of Human Rights* and article 15(1)(c) of the *International Covenant on Economic, Social and Cultural Rights*.⁴⁸ Where "some attributes of intellectual property rights are protected in international or regional human rights instruments ... a careful and nuanced analysis of the various attributes of intellectual property rights is in order".⁴⁹
40. It is important to emphasize here that Indigenous peoples' collective rights are human rights. The UN Human Rights Council has permanently included the "rights of peoples" under the agenda item "Promotion and protection of all human rights".⁵⁰
41. Based on the past thirty years, there is a well-established practice to address Indigenous peoples' collective rights within

international and regional human rights systems.⁵¹ Even where international human rights instruments affirm the human rights of individuals, such provisions are being interpreted to also include Indigenous peoples' collective human rights.

42. Such interpretations are fully consistent with international law.⁵² Although some States refuse to affirm that Indigenous peoples' collective rights are human rights, WIPO has an obligation under the *Charter of the United Nations* to insist that the new proposed international IP regime adhere to international human rights law.
43. Where States constitute the decision-making bodies of international organizations, those States cannot neglect their international human rights obligations simply by acting through such organizations.⁵³ The International Law Commission provides:

A State member of an international organization incurs international responsibility if, by taking advantage of the fact that the organization has competence in relation to the subject-matter of one of the State's international obligations, it circumvents that obligation by causing the organization to commit an act that, if committed by the State, would

have constituted a breach of the obligation.⁵⁴

44. The prohibition against racial discrimination is a peremptory norm.⁵⁵ Therefore, even if discriminatory provisions were adopted by consensus among Parties in an international organization, these provisions would have no legitimacy or validity.

IV. Significance of UNDRIP in the Human Rights Context

45. The *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP) was overwhelmingly adopted by States at the General Assembly in September 2007. Since that time, each of the four opposing States – Australia, New Zealand, Canada and the United States – has reversed its position and endorsed UNDRIP.
46. The Office of the High Commissioner for Human Rights has highlighted the far-reaching significance of UNDRIP as a universal⁵⁶ human rights instrument which now has achieved global consensus:

The Declaration is now among the most widely accepted UN human rights instruments. It is the most

comprehensive statement addressing the human rights of indigenous peoples to date, establishing collective rights and minimum standards on survival, dignity, and wellbeing to a greater extent than any other international text.⁵⁷

47. The African Commission on Human and Peoples' Rights has characterized UNDRIP as "a universal international human rights instrument that has attained consensus among UN Member States".⁵⁸ The Commission has applied UNDRIP to specialized agencies⁵⁹ and African States.⁶⁰
48. UN treaty bodies are increasingly using UNDRIP to interpret Indigenous rights and State obligations in existing human rights treaties, as well as encouraging its implementation.⁶¹
49. States cannot avoid Indigenous peoples' human rights and related State obligations in UNDRIP by attempting to diminish or disregard the legal significance of the *Declaration* when addressing intellectual property, biodiversity, climate change and other international issues.
50. UNDRIP was adopted as an Annex to a General Assembly resolution, which is generally non-binding. However, under international and domestic law, the

Declaration has diverse legal effects.⁶² UN Special Rapporteur on the rights of indigenous peoples, James Anaya, describes UNDRIP as “a political, moral and legal imperative ... within the framework of the human rights objectives of the Charter of the United Nations”.⁶³ Anaya further concludes:

... the Declaration builds upon fundamental human rights and principles, such as non-discrimination, self-determination and cultural integrity, which are incorporated into widely ratified human rights treaties. In addition, core principles of the Declaration can be seen to be generally accepted within international and State practice, and hence to that extent the Declaration reflects customary international law.⁶⁴

51. Indigenous peoples’ cultural rights are human rights.⁶⁵ As affirmed in the 2010 *Report of the independent expert in the field of cultural rights*, their existence is “a reality in international human rights law today, in particular in the United Nations Declaration on the Rights of Indigenous Peoples.”⁶⁶ Such cultural rights are integral to WIPO's proposed international IP regime, *Convention on Biological Diversity*

and *Nagoya Protocol* and their respective interpretations:

... cultural rights relate to a broad range of issues, such as ... language; identity ... the conduct of cultural practices and access to tangible and intangible cultural heritage. ... They may also be considered as *protecting access to cultural heritage and resources* that allow such identification and development processes to take place.⁶⁷

52. In UNDRIP, article 31 is especially relevant and important. Article 31(1) affirms that Indigenous peoples have, *inter alia*, the “right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, ... including ... genetic resources ... They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.”.
53. Article 31(2) provides: “In conjunction with indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.” When article 31 is read in the context of the whole *Declaration*, States have a duty to “respect,

protect and fulfill” such rights as required by international law.⁶⁸

54. Article 31 affirms an essential aspect of Indigenous cultural rights and related State obligations in the *Declaration*, which together constitute a right to cultural integrity.⁶⁹ These cultural rights, when read together with Indigenous peoples’ “right to live in ... peace and security as distinct peoples” (art. 7(2)), constitute a right to cultural security.

55. In its 2010 "Information Note" to the Permanent Forum on Indigenous Issues, WIPO acknowledges the importance of implementing article 31 of UNDRIP as follows:

The scope and content of the work of the IGC could be seen as an important contribution to implementation of Article 31 of the UN Declaration on the Rights of Indigenous Peoples ... which provides, *inter alia*, that indigenous peoples “have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expression”.⁷⁰

56. The Permanent Forum on Indigenous Issues urges all UN specialized agencies, including

WIPO, to adopt a human rights-based approach as follows:

Given the importance of the full range of the human rights of indigenous peoples, including traditional knowledge ... the Permanent Forum calls on all United Nations agencies and intergovernmental agencies to implement policies, procedures and mechanisms that ensure the right of indigenous peoples to free, prior and informed consent consistent with their right to self-determination as reflected in common article 1 of the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights ...⁷¹

57. Article 42 of UNDRIP explicitly requires UN specialized agencies to promote respect and its full application and follow up its effectiveness:

The United Nations, its bodies, including the Permanent Forum on Indigenous Issues, and specialized agencies ... and States shall promote respect for and full application of the

provisions of this Declaration
and follow up the effectiveness
of this Declaration.

58. As elaborated in these Comments, States and specialized agencies - such as WIPO - have international responsibilities to respect, protect and fulfill human rights relating to Indigenous peoples and local communities.⁷²

V. Relevant Problems and Challenges in *Nagoya Protocol*

59. The new intellectual property (IP) regime being negotiated within WIPO will address GR and TK of Indigenous peoples and local communities. In key respects, these two issues are addressed in a substandard manner in the *Nagoya Protocol*. Parties participating in WIPO are relying upon the terms of the *Protocol* in crafting a new IP regime.
60. WIPO should not simply import injustices from the *Protocol* into a new intellectual property regime. A number of important aspects lack validity or legitimacy, which are briefly summarized below.
61. The new *Protocol* implements a central objective of the 1992 *Convention on Biological Diversity*.⁷³ With respect to the objective of benefit sharing arising from

genetic resources, the *Convention* requires that such sharing be “fair and equitable ... taking into account all rights”.⁷⁴ States are required to exploit their own genetic resources “in accordance with the Charter of the United Nations and the principles of international law”.⁷⁵

62. Despite the obligation to take into account "all" rights to genetic resources, the *Protocol* does not take a rights-based approach. In the operative paragraphs, specific references are made to the "rights" of Indigenous peoples and local communities *solely* when the apparent intent is to severely limit or dispossess them of their rights to genetic resources.⁷⁶
63. In regard to access and benefit sharing of genetic resources, only “established” rights – and not other rights based on customary use – appear to receive some protection under domestic legislation.⁷⁷ Such kinds of distinctions have been held to be discriminatory by the Committee on the Elimination of Racial Discrimination,⁷⁸ as underlined by the Permanent Forum on Indigenous Issues.⁷⁹
64. Such “established” rights might only refer to situations where a particular Indigenous people or local community can demonstrate that its right to genetic resources is affirmed by domestic legislation, agreement or judicial ruling.⁸⁰ This would be a gross distortion of the original intent.⁸¹ Massive dispossessions could result globally from

such an arbitrary approach inconsistent with the *Convention*.⁸²

65. Such dispossessions are beginning to occur. In regard to implementing the *Nagoya Protocol*, the government of Canada issued a draft domestic policy and related documents in September 2011. Among the many injustices, the government indicated that "established" rights to genetic resources would only include those Aboriginal peoples with "completed comprehensive land-claim and self-government agreements".⁸³
66. In a Joint Submission, First Nations across Canada responded that the "proposed policy perpetuates the discriminatory approach on genetic resource rights that the Canadian government insisted upon during the negotiations".⁸⁴ In light of this and other shortcomings, the Submission concluded:

Canada has prepared a draft domestic policy and approach that - if implemented in relation to Indigenous peoples - would "defeat the object and purpose" of the treaty prior to ratification in many crucial ways. Canada's approach to signing the *Protocol* is not consistent with international law and cannot be supported.⁸⁵

67. In regard to the *Nagoya Protocol*, other **substantive injustices** include *inter alia* the following:

- Indigenous peoples' human rights concerns were largely disregarded, contrary to the Parties' obligations in the *Charter of the United Nations, Convention on Biological Diversity* and other international law;⁸⁶

- progressive international standards, such as the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP) were not fully respected – despite the obligation in the *Protocol* that it be implemented “in a mutually supportive manner with other international instruments”;⁸⁷

- repeated use of ambiguous and questionable phrases, such as “subject to national legislation” and “in accordance with national legislation” is not consistent with the requirement that national legislation be *supportive* of the “fair and equitable” objective of benefit sharing;⁸⁸

- excessive reliance on national legislation is likely to lead to serious abuses, in light of the history of violations and the *Protocol's* lack of a balanced framework;

- the phrase “indigenous and local communities” is used throughout the

Protocol, even though “indigenous peoples” is the term now used for such peoples in the international human rights system. Such denial of status often leads to a denial of self-determination and other rights, which would be discriminatory;⁸⁹

- “prior and informed consent” of Indigenous peoples was included in the *Protocol*, but regrettably questionable and ambiguous terms were added that some States are likely to use to circumvent the obligation of consent.⁹⁰

68. Unfair procedures often lead to discrimination and other violations of Indigenous peoples' substantive human rights. In regard to the *Protocol*, **procedural injustices** include *inter alia* the following:

- The procedural dimensions of Indigenous peoples' right to “full and effective participation” were not respected during the negotiations of the *Protocol* and in its final text;⁹¹

- in relation to the formulation and adoption of national legislation and other measures, the democratic requirement of “full and effective participation” of Indigenous peoples and local

communities is virtually
unaddressed;⁹²

- key provisions relating to UNDRIP and “established” rights to genetic resources were negotiated in closed meetings, where representatives of Indigenous peoples and local communities were explicitly excluded;⁹³ and

- some States exploited the practice of seeking consensus among the Parties, with a view to diminishing or ignoring the rights of Indigenous peoples and local communities and applying the *lowest common denominator* among the Parties’ positions.⁹⁴

69. The above injustices exemplify what prejudicial actions are likely to result when there is a lack of an explicit and principled framework for treaty negotiations relating to the rights of Indigenous peoples and local communities. To ensure fair and honourable implementation, a legally-binding human rights-based approach should have been entrenched in the *Protocol*.
70. When addressing diverse State concerns, States Parties made efforts to carefully consider related international law in a fair

and equitable manner and avoid discrimination. In contrast, a much different and lesser standard was applied to Indigenous peoples and local communities. Essential principles of democracy, respect for human rights and rule of law were too often denied or ignored.

71. In view of the above deficiencies, it would not be consistent with the obligations of WIPO and States Parties to simply indicate that the proposed new international IP regime will harmonize with the *Nagoya Protocol*.

VI. Response to Questions in Note on Existing Mechanisms for Participation

72. In responding to the three questions posed in the WIPO Secretariat's *Note*, it is important to fully take into account other crucial elements in the WIPO General Assembly's Decision.

The Committee will, during the next budgetary biennium (2012/2013), and without prejudice to the work pursued in other fora, expedite its work on text-based negotiations with the objective of reaching agreement on a

text(s) of an international legal instrument(s) which will ensure the effective protection of GRs, TK and TCEs.

Question 1:

Is there any existing mechanism or practice to facilitate direct participation of observers in the work of the IGC or to strengthen their capacity to contribute to the process that has not been reflected [in the *Note*]?

73. In addition to those in the *Note*, there are existing mechanisms and practices to facilitate direct participation of Indigenous peoples and local communities in the work of the IGC. There are also mechanisms and practices to strengthen their capacity to contribute to the process.

Mechanisms and practices to facilitate direct participation

74. A major impediment faced by Indigenous peoples and local communities has been the rules of procedure in international processes and forums. In regard to the WIPO General Rules of Procedure, the rules were devised decades ago and are not reflective of the right

of Indigenous peoples and local communities to "full and effective participation".⁹⁵

75. An existing best practice at the international level relates to the former UN Commission on Human Rights' open-ended, intersessional working group that considered the draft UN Declaration on the Rights of Indigenous Peoples from 1995-2006. In order to avoid stringent rules of procedure and ensure full and effective participation by Indigenous peoples, the meetings of the working group were declared to be informal.
76. In this way, democratic Indigenous participation and discussion was consistently ensured. State and Indigenous representatives had equal rights to table proposals, without pre-conditions. When key decisions had to be taken, the formal meeting of the working group was resumed.
77. In relation to this standard-setting process on the *UN Declaration*, it was agreed that any consensus on the draft text would need to include both States and Indigenous peoples. Otherwise, it would not have been possible to reach a compromise and achieve a just and balanced human rights instrument.
78. The Chair of the working group on the *Declaration* made it clear that any consensus would include both States and Indigenous peoples. While achieving consensus was desirable, no strict requirement was imposed. State and Indigenous representatives had

equal rights to make interventions and propose text.

79. When a draft text was sent by the working group Chair to the newly-created Human Rights Council in 2006, an overwhelming number of States supported the text. Subsequently, the African Group of States negotiated nine amendments to the text, and the Indigenous Caucus supported the revised text. State and Indigenous support continued up to and including the adoption of UNDRIP at the General Assembly in September 2007.
80. Thus, in regard to the negotiations on the *UN Declaration*, an inclusive and democratic process of participation⁹⁶ was established within the United Nations. It still constitutes today an impressive precedent and best practice.

Mechanisms and practices to strengthen capacity

81. In relation to Indigenous peoples and local communities, increased financial and administrative capacity is crucial. The WIPO Voluntary Fund for Accredited Indigenous and Local Communities is "voluntary", in that no State can be compelled to contribute funding. Some States may not have the capacity themselves.
82. However, in accordance with principles of democracy and respect for human rights,

there are compelling reasons for States to ensure that Indigenous peoples and local communities participate in far greater numbers from all regions worldwide. Such action could enhance the legitimacy of a future, principled international IP regime.

83. In relation to Indigenous peoples and local communities, a further issue seriously affecting capacity relates to WIPO's rules of procedure. States do not have the authority to exceed WIPO's jurisdiction. Yet, in practice, there are no specific procedures to prevent States from approving proposals, if such proposals violate peremptory norms or otherwise exceed the legal authority of WIPO.
84. This ongoing situation seriously undermines the capacity of Indigenous peoples and local communities to safeguard their status and rights within WIPO. It also undermines the validity and legitimacy of any future international IP regime, when State proposals accepted for consideration - even if they are discriminatory or are inconsistent with WIPO's objectives and international human rights obligations.
85. In this regard, the IGC should adopt specific rules. This would serve to "expedite its work on text-based negotiations" and "ensure the effective protection of GRs, TK and TCEs", as required in the General Assembly Decision.

86. The capacity of Indigenous peoples and local communities is also profoundly affected, as long their status and rights may be undermined by States in the current negotiations process. This issue will be further addressed below under Question 2.

Question 2:

What are the options for enhancing the existing mechanisms and practices?

87. In the current negotiations on a proposed international IP regime, there appear to be virtually no specific rules relating to the responsibilities of WIPO and participating States.
88. For the reasons described in these Comments, the IGC should adopt specific rules. Such rules should also serve to "expedite its work on text-based negotiations" and "ensure the effective protection of GRs, TK and TCEs", as required in the General Assembly Decision.
89. In making proposals that may affect Indigenous peoples and local communities, the binding rules applicable to all participants within the IGC would include, *inter alia*, the following:

- i) consistency with ensuring effective protection for GRs, TKs and TCEs;
- ii) full respect for international human rights law, including UNDRIP;⁹⁷
- iii) concise disclosure of intent when making specific proposals;
- iv) consistent use of the term "indigenous peoples" (*e.g.* "indigenous peoples and local communities");⁹⁸
- v) consistent use of the term "free, prior and informed consent"; and
- vi) use of terms or phrases to avoid compliance not acceptable.⁹⁹

90. Some of the above elements should be included in the "Objectives" or "Principles". In order to ensure compliance, the term "shall" should be used (not "should").

Question 3:

What draft recommendations should the twentieth session of the IGC consider with a view to enhancing the positive contribution of observers to the work of the IGC?

91. The IGC has a significant opportunity to adopt draft recommendations so as to enhance the positive contribution of observers to the work of the IGC. Participation of Indigenous peoples and local communities is an urgent issue in international processes. We encourage WIPO to play a leadership role.
92. It is proposed that the IGC adopt special rules of procedure¹⁰⁰ in order to implement the following **draft recommendations**:

1. In accordance with the Decision of the WIPO General Assembly (October 2011),¹⁰¹ all proposals by member States and observers shall be consistent with ensuring the effective protection of GRs, TK and TCEs relating to Indigenous peoples and local communities, including *inter alia*:

- i. respecting the legal status of Indigenous peoples as distinct "peoples", consistent with international law;
- ii. ensuring the "full and effective participation" of Indigenous peoples and local communities at all stages of the work;
- iii. accepting proposals, without pre-conditions, for inclusion in draft texts;
- iv. requiring proposals to be consistent

with international human rights law, including the *UN Declaration on the Rights of Indigenous Peoples* (UNDRIP);

- v. requiring consistent use of the term "free, prior and informed consent"; and
- vi. rejecting terms or phrases to avoid compliance with their rights and related State or other third party obligations.

2. The Intergovernmental Committee shall recommend to the WIPO General Assembly to revise the WIPO General Rules of Procedure, so as to ensure in WIPO's work:

- i) effective protection of GRs, TK and TCEs relating to Indigenous peoples and local communities;
- ii) increased capacity-building measures; and
- iii) in respect to matters that may affect their rights, their full and effective participation in WIPO bodies.

Endnotes

- ¹ Assemblies of Member States of WIPO, "Matters Concerning the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, Agenda Item 31, DECISION", Fortieth (20th Ordinary) Session, September 26 to October 5, 2011:

The Assemblies of the Member States of WIPO took note of the information contained in document WO/GA/40/7, and decided to renew the mandate of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) for the 2012-2013 biennium on the terms set out in paragraph 16 of the said document. [emphasis added]

- ² *Ibid.*, para. 16(f) of document WO/GA/40/7 (cited in the Decision). [emphasis added]
- ³ *Ibid.*, para. 16(a) of document WO/GA/40/7. [emphasis added] Similarly, see para. 16(d) of the same document:

The Committee is requested to submit to the 2012 General Assembly the text(s) of an international legal instrument(s) which will ensure the effective protection of GRs, TK and TCEs. The General Assembly in 2012 will take stock of and consider the text(s), progress made and decide on convening a Diplomatic Conference, and will consider the need for

additional meetings, taking account of the budgetary process. [emphasis added]

⁴ *Convention Establishing the World Intellectual Property Organization*, signed at Stockholm on July 14, 1967 and as amended on September 28, 1979.

⁵ *Ibid.*, article 3.

⁶ *Ibid.*, article 4. [emphasis added]

⁷ See, e.g., World Intellectual Property Organization (Secretariat), *Elements of a sui generis system for the protection of traditional knowledge*, Doc. WIPO/GRTKF/IC/4/8, September 30, 2002, tabled at the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, Fourth sess., Geneva, Dec. 9-17, 2002, para. 13:

The form of protection of TK, whether through existing IP mechanisms, through adapted or *sui generis* elements of existing forms of IP, or through a distinct *sui generis* system, will depend heavily on why the TK is being protected – what objective the protection of TK is intended to serve. Existing IP systems have been used for diverse forms of TK-related goals, for instance,

- to safeguard against third party claims of IP rights over TK subject matter,
- to protect TK subject matter against unauthorized disclosure or use, to protect distinctive TK-related commercial products,

-
- to prevent culturally offensive or inappropriate use of TK material,
 - to license and control the use of TK-related cultural expressions, and
 - to license aspects of TK for use in third-party commercial products.

⁸ See, e.g., "Fundamental Principles", in *Statement of Indigenous Peoples & Local Communities at WIPO IGC 19*, Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, Nineteenth sess., Geneva, July 18 to 22, 2011, which Principles include *inter alia*:

1. A primary objective of the international legal instrument(s) must be to protect Indigenous Peoples' rights and interests as the owners/holders of TK, TCEs, and GR.
2. The legal instruments must establish a new international regime that conforms to customary law and processes regarding the use, protection from misuse and misappropriation of the GR, TK, and TCEs belonging to Indigenous Peoples.
3. The legal instrument(s) must reaffirm and implement the universal protection of the rights of Indigenous Peoples and nothing in the instrument(s) can be construed as diminishing or extinguishing the rights Indigenous Peoples have now or may acquire in the future.

-
4. The international legal instrument(s) must comply with international norms by adopting the term "Indigenous Peoples" which respects our lawful status and recognized rights.
 5. The international legal instrument(s) must recognize and fully implement the principle of free, prior and informed consent of Indigenous Peoples.
 - ...
 8. Indigenous Peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

⁹ *Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity*, adopted by the Conference of the Parties, Nagoya, Japan, 29 October 2010.

¹⁰ See, *e.g.*, Grand Council of the Crees (Eeyou Istchee) *et al.*, "Nagoya Protocol on Access and Benefit Sharing: Substantive and Procedural Injustices relating to Indigenous Peoples' Human Rights", *infra* note 12, paras. 37-56.

¹¹ World Intellectual Property Organization (Secretariat), *Note on Existing Mechanisms for Participation of Observers in the Work of the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore*, 10 October 2011, http://www.wipo.int/export/sites/www/tk/en/documents/pdf/note_igc_participation.pdf.

¹² Grand Council of the Crees (Eeyou Istchee) *et al.*, “Nagoya Protocol on Access and Benefit Sharing: Substantive and Procedural Injustices relating to Indigenous Peoples’ Human Rights”, Expert Mechanism on the Rights of Indigenous Peoples, 4th sess., Geneva (July 2011), <http://quakerservice.ca/wp-content/uploads/2011/08/Expert-Mechanism-Study-re-IPs-Rt-to-Participate-Joint-Submission-on-Nagoya-Protocol-FINAL-GCC-et-al-July-6-11.pdf>.

¹³ General Assembly, *Situation of human rights and fundamental freedoms of indigenous people: Note by the Secretary-General*, Interim report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, UN Doc. A/65/264 (9 August 2010), para. 39. [emphasis added]

¹⁴ United Nations Development Group (UNDG), “United Nations Development Group Guidelines on Indigenous Peoples’ Issues”, February 2008, www2.ohchr.org/english/issues/indigenous/docs/guidelines.pdf, at 13: “The right to self-determination may be expressed through: ... Respect for the principle of free, prior and informed consent ... Full and effective participation of indigenous peoples at every stage of any action that may affect them direct or indirectly.”

The UNDG unites the 32 UN funds, programmes, agencies, departments, and offices that play a role in development.

¹⁵ *Ibid.* at 28: “Consultation and participation are crucial components of a consent process.”

¹⁶ Human Rights Council, "Progress report on the study on indigenous peoples and the right to participate in decision-making: Report of the Expert Mechanism on the Rights of Indigenous Peoples", UN Doc. A/HRC/15/35 (23 August 2010), para. 30. [emphasis added]

¹⁷ See, e.g., *Statement of Indigenous Peoples & Local Communities at WIPO IGC 19*, *supra* note 8, where it is provided in regard to "Participation, Future Work and Processes", para. 1:

Indigenous peoples and local communities require full and effective participation in all relevant negotiations and decision-making processes, including all regular and special sessions of the IGC, the General Assembly, diplomatic conferences and any other related meetings regarding the proposed instrument(s) on GR, TK and TCEs. The Indigenous Peoples, as peoples and Indigenous nations, participate in these forums in their own right.

¹⁸ *Ibid.*, "Participation, Future Work and Processes", para. 2:

In the spirit of cooperation in the development of an international instrument(s) that are relevant, practical, and fair, Indigenous Peoples' proposals must remain in the text without the qualification of immediate State support in the drafting process or reports. Indigenous Peoples proposals

must be accepted on an equal footing as any State proposal. Indigenous Peoples should be consulted on all proposals, deletions and amendments of all text in a collaborative manner.

¹⁹ See *WIPO General Rules of Procedure*, adopted September 28, 1970 and as amended, http://www.wipo.int/freepublications/en/general/399/wipo_pub_399.html, Rule 35: " Unless expressly provided otherwise in the applicable treaties or in the present General Rules of Procedure, all decisions shall be made by a simple majority."

²⁰ Human Rights Council, *Final report of the study on indigenous peoples and the right to participate in decision-making: Report of the Expert Mechanism on the Rights of Indigenous Peoples*, A/HRC/18/42 (17 August 2011), Annex (Expert Mechanism advice No. 2 (2011)), para. 27. [emphasis added]

²¹ Human Rights Council, *Final report of the study on indigenous peoples and the right to participate in decision-making*, UN Doc. A/HRC/18/42 (17 August 2011), Annex (Expert Mechanism advice No. 2 (2011)), para. 26.

²² Permanent Forum on Indigenous Issues, *Report on the tenth session (16 – 27 May 2011)*, Economic and Social Council, Official Records, Supplement No. 23, United Nations, New York, E/2011/43-E/C.19/2011/14, para. 31:

The Forum reiterates that the United Nations Framework Convention on Climate Change, the Stockholm Convention on Persistent Organic Pollutants, the Convention on

Biological Diversity, the World Intellectual Property Organization and the International Maritime Organization should facilitate indigenous peoples' participation in their processes.

²³ *Ibid.* [emphasis added]

²⁴ See *e.g.*, preambular para. 24 and arts. 3, 4, 5, 10, 18, 19, 22, 23, 26, 27, 29, 30, 31, 32, 34, 38, 41, 42, 43, 45 and 46.

²⁵ UN General Assembly, *Draft Programme of Action for the Second International Decade of the World's Indigenous People: Report of the Secretary-General*, UN Doc. A/60/270 (18 August 2005) (adopted without vote by General Assembly, 16 December 2005), at para. 9, where two of the five objectives of the Decade relate to “full and effective participation”:

(i) Promoting non-discrimination and inclusion of indigenous peoples in the design, implementation and evaluation of international, regional and national processes regarding laws, policies, resources, programmes and projects;

(ii) Promoting *full and effective participation* of indigenous peoples in decisions which directly or indirectly affect their lifestyles, traditional lands and territories, their cultural integrity as indigenous peoples with collective rights or any other aspect of their

lives, considering the principle of free, prior and informed consent ... [emphasis added]

²⁶ IFAD (International Fund for Agricultural Development), *Engagement with Indigenous Peoples: Policy* (Rome: IFAD, November 2009), at 7: “The Declaration addresses both individual and collective rights. It outlaws discrimination against indigenous peoples and promotes their full and effective participation in all matters that concern them.”

²⁷ New Zealand Human Rights Commission, “United Nations Declaration on the Rights of Indigenous Peoples”, <<http://www.hrc.co.nz/home/hrc/humanrightsandthetreatyofwaitangi/unitednationsdeclarationontherightsofindigenouspeoples.php>>: “The Declaration ... declares discrimination against indigenous peoples unlawful and promotes their full and effective participation in all matters that concern them.”

²⁸ International Indigenous Peoples’ Forum on Climate Change (IIPFCC), “Indigenous Groups Announce Grave Concern on Possible Cancun Outcome”, Press release, 10 December 2010:

As members of the IIPFCC, ... we want to reiterate our determination to ensure protection of our rights, as laid out in the UN Declaration on the Rights of Indigenous Peoples, our right to free, prior, and informed, consent, the recognition and protection of our traditional knowledge, and ensure the *full and*

effective participation of Indigenous Peoples in all climate change processes. [emphasis added]

²⁹ African Commission on Human and Peoples' Rights, "Communiqué on the United Nations Declaration on the Rights of Indigenous Peoples", Brazzaville, Republic of Congo, 28 November 2007.

³⁰ UN Commission on Human Rights, *Continuing dialogue on measures to promote and consolidate democracy: Report of the High Commissioner for Human Rights submitted in accordance with Commission resolution 2001/41*, UN Doc. E/CN.4/2003/59 (27 January 2003), (expert seminar on the interdependence between democracy and human rights, Office of the High Commissioner for Human Rights, 25-26 November 2002, Geneva), at 19 (Chair's final conclusions):

In the current context of globalization, whereby decisions affecting people's lives are often taken outside the national context, the application of the principles of democracy to the international and regional levels has taken on added importance.

³¹ General Assembly, *2005 World Summit Outcome*, UN Doc. A/RES/60/1 (16 September 2005) (adopted without vote), para. 119.

³² General Assembly, *Situation of human rights and fundamental freedoms of indigenous people: Note by the Secretary-General*, Interim report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, *supra*

note 13, para. 52.

³³ See, e.g., Human Rights Committee, *Concluding observations of the Human Rights Committee: Canada*, UN Doc. CCPR/C/79/Add.105 (7 April 1999), para. 8; Human Rights Committee, *Concluding observations of the Human Rights Committee: Canada*, UN Doc. CCPR/C/CAN/CO/5 (20 April 2006) at paras. 8 and 9; Human Rights Committee, *Concluding observations of the Human Rights Committee: Panama*, UN Doc. CCPR/C/PAN/CO/3 (17 April 2008) at para. 21; Human Rights Committee, *Concluding observations of the Human Rights Committee: Norway*, UN Doc. CCPR/C/79/Add.112 (5 November 1999) at para. 17; Human Rights Committee, *Concluding observations of the Human Rights Committee: Brazil*, UN Doc. CCPR/C/BRA/CO/2 (1 December 2005), para. 6; Human Rights Committee, *Concluding observations of the Human Rights Committee: United States of America*, UN Doc. CCPR/C/USA/Q/3 (18 December 2006), para. 37; Committee on Economic, Social and Cultural Rights, *Concluding observations of the Committee on Economic, Social and Cultural Rights: Morocco*, UN Doc. E/C.12/MAR/CO/3 (4 September 2006) at para. 35; Committee on Economic, Social and Cultural Rights, *Concluding observations of the Committee on Economic, Social and Cultural Rights: Russian Federation*, UN Doc. E/C.12/1/Add.94 (12 December 2003) at para. 11.

³⁴ General Assembly, *Draft Programme of Action for the Second International Decade of the World's Indigenous People: Report of the Secretary-General*, UN Doc. A/60/270 (18 August 2005) (adopted without vote by General Assembly, 16 December 2005), para. 17. [emphasis added]

³⁵ Committee on Economic, Social and Cultural Rights, General Comment No. 17, *The right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author (article 15, paragraph 1 (c), of the Covenant)*, 35th sess., UN Doc. E/C.12/GC/17 (12 January 2006), para. 2.

³⁶ UN Sub-Commission on the Promotion and Protection of Human Rights, *Intellectual property rights and human rights*, resolution 2000/7, adopted without vote 17 August 2000, para. 3 [emphasis added].

³⁷ *Ibid.*, para. 6. [emphasis added] And at para. 7: "Calls upon States parties to the International Covenant on Economic, Social and Cultural Rights to fulfil the duty under article 2, paragraph 1, article 11, paragraph 2, and article 15, paragraph 4, to cooperate internationally in order to realize the legal obligations under the Covenant, including in the context of international intellectual property regimes".

³⁸ *Charter of the United Nations*, arts. 55c and 56. These articles reinforce the purposes of the *UN Charter*, which includes in art. 1(3): "To achieve international cooperation ... in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion."

Human Rights Council, *The role of prevention in the promotion and protection of human rights*, UN Doc. A/HRC/RES/18/13 (29 September 2011) (adopted without vote):

Reaffirming the obligation of States under the Charter of the United Nations to promote universal respect for and observance of human rights and fundamental freedoms ... (preamble)

Affirms the importance of effective preventive measures as a part of overall strategies for the promotion and protection of all human rights ... (para. 1)

Committee on Economic, Social and Cultural Rights, General Comment No. 17, *The right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author (article 15, paragraph 1 (c), of the Covenant)*, *supra* note 35, para. 37:

The Committee recalls that, in accordance with Articles 55 and 56 of the Charter of the United Nations, well established principles of international law, and the provisions of the Covenant itself, international cooperation for development and thus for the realization of economic, social and cultural rights is an obligation of all States parties and, in particular, of States which are in a position to assist.

³⁹ *Vienna Convention on the Law of Treaties*, opened for signature 23 May 1969, 1155 U.N.T.S. 331 (entered into force 27 January 1980).

⁴⁰ See also *Vienna Convention on the Law of Treaties Between States and International Organizations or*

Between International Organizations, 21 March 1986, (not yet in force), preamble:

Having in mind the principles of international law embodied in the Charter of the United Nations, such as the principles of the equal rights and self-determination of peoples ... and of universal respect for, and observance of, human rights and fundamental freedoms for all,

...

Affirming also that disputes concerning treaties, like other international disputes, should be settled, in conformity with the Charter of the United Nations, by peaceful means and in conformity with the principles of justice and international law,

Affirming also that the rules of customary international law will continue to govern questions not regulated by the provisions of the present Convention,

And at article 30(6): "The preceding paragraphs are without prejudice to the fact that, in the event of a conflict between obligations under the Charter of the United Nations and obligations under a treaty, the obligations under the Charter shall prevail. [emphasis added]

⁴¹ See also *Vienna Convention on the Law of Treaties*, article 5: " The present Convention applies to any treaty which is the constituent instrument of an international organization and to any treaty adopted within an international organization without prejudice to any relevant rules of the

organization."

In regard to "international organizations", article 2 provides: "1. For the purposes of the present Convention: ... (i) 'international organization' means an intergovernmental organization." [emphasis added]

⁴² *Interpretation of the Agreement of 25 March 1951 Between the WHO and Egypt, Advisory Opinion*, 1980 I.C.J. 73, at 89-90, para. 37.

Antonio Cassese, *International Law*, 2nd ed. (Oxford/N.Y.: Oxford University Press, 2005), at 64-65:

... [fundamental] principles [such as respect for human rights and self-determination] ... do not address themselves to States solely, but are binding on other international legal subjects as well (in particular, insurgents, peoples represented by liberation movements, and international organizations). All the legal entities operating in the international community must abide by them. [emphasis added]

⁴³ Committee on Economic, Social and Cultural Rights, General Comment No. 17, *The right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author* (article 15, paragraph 1 (c), of the Covenant), *supra* note 35, para. 57. [emphasis added]

⁴⁴ General Assembly, *2005 World Summit Outcome*,

supra note 31, para. 119. [emphasis added]

⁴⁵ For example, see Chidi Oguamanam, *Intellectual Property in Global Governance: A Development Question* (London/New York: Routledge, 2012) at 82:

The strengthening of intellectual property rights, especially the patents regime, in terms of their scope and enforcement under the TRIPS Agreement has been linked to the public health crisis, especially in regard to the cost of, and access to, essential drugs in indigenous and local communities globally, and in regard to indigenous and local peoples' contributions to the process of pharmaceutical innovation in some cases ...

See *Agreement on Trade-Related Aspects of Intellectual Property* (TRIPS), 15 April 1994, in *Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations*, 15 April 1994, Annex 1B. TRIPS is reprinted in 32 I.L.M. 1197.

Peter K. Yu, "Ten Common Questions About Intellectual Property and Human Rights", (2007) 23 Ga. St. U.L. Rev. 709, at 718-719:

... access to medicines is not the only intellectual property issue implicating the protection of human rights. Other important issues include access to computer software, cultural and educational materials, patented seeds and food products as well as the

protection of traditional knowledge and indigenous materials. Among the rights implicated in these situations are the right to food, the right to health, the right to education, the right to self-determination, the right to freedom of expression, the right to cultural participation and development, and the right to the benefits of scientific progress.

⁴⁶ *Ibid.* [Oguamanam], at 81.

⁴⁷ Peter K. Yu, "Ten Common Questions About Intellectual Property and Human Rights", *supra* note 45, at 739. [emphasis added]

⁴⁸ Peter K. Yu, "Reconceptualizing Intellectual Property Interests in a Human Rights Framework", (2007) 40 U.C. Davis L. Rev. 1039 at 1042:

... article 27(2) of the Universal Declaration of Human Rights ("UDHR" or "Declaration") states explicitly that "everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he [or she] is the author." Closely tracking the Declaration's language, article 15(1)(c) of the International Covenant on Economic, Social and Cultural Rights ("ICESCR" or "Covenant") requires each state party to the Covenant to "recognize the right of everyone ... to benefit from the protection of the

moral and material interests resulting from any scientific, literary or artistic production of which he [or she] is the author."

⁴⁹ *Ibid.*

⁵⁰ Human Rights Council, *Institution-building of the United Nations Human Rights Council*, Res. 5/1 (18 June 2007) (adopted without vote), Annex (Agenda and Framework for the programme of work).

See also UNDRIP, article 1: "Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law."

⁵¹ This includes the African Commission on Human and Peoples' Rights and the Inter-American Court of Human Rights and the Inter-American Commission on Human Rights.

⁵² For a similar conclusion, see Peter K. Yu, "Ten Common Questions About Intellectual Property and Human Rights", *supra* note , at 741-743. See also *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa)*, Advisory Opinion, [1971] I.C.J. Rep. 16 at 31, para. 53: "... an international instrument has to be interpreted and applied within the framework of the entire legal system prevailing at the time of the interpretation."

Vienna Convention on the Law of Treaties, *supra* note

39, article 31(3):.

There shall be taken into account, together with the context:

...

(b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;

(c) any relevant rules of international law applicable in the relations between the parties.

⁵³ Sigrun I. Skogly, “The Position of the World Bank and the International Monetary Fund in the Human Rights Field” in Raija Hanski and Markku Suksi, eds., *An Introduction to the International Protection of Human Rights* (2004).

⁵⁴ International Law Commission, *Draft articles on the responsibility of international organizations, with commentaries*, adopted at its 63rd session, 2011, article 61. [emphasis added]

⁵⁵ Ian Brownlie, *Principles of Public International Law*, 5th ed. (Oxford: Clarendon Press, 1998) at 515: “[Peremptory norms or *jus cogens*] are rules of customary law which cannot be set aside by treaty or acquiescence but only by the formation of a subsequent customary rule of contrary effect. The least controversial examples of [peremptory norms] are the prohibition of the use of force, the law of genocide, the principle of racial non-discrimination, crimes against humanity, and the rules prohibiting trade in slaves and piracy.” At 515 and 517, the author indicates that the principle of self-determination is also a peremptory norm.

Case Concerning Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda), Jurisdiction of the Court and Admissibility of the Application, 3 February 2006, at 89, para. 10 (Separate Opinion, *ad hoc* Judge John Dugard):

Norms of *jus cogens* are a blend of principle and policy. On the one hand, they affirm the high principles of international law, which recognize the most important rights of the international order — such as the right to be free from aggression, genocide, torture and slavery and the right to self-determination ; while, on the other hand, they give legal form to the most fundamental policies or goals of the international community — the prohibitions on aggression, genocide, torture and slavery and the advancement of self-determination.

International Law Commission, *Draft articles on the responsibility of international organizations, with commentaries, supra* note 54, at 53: “peremptory norms that are clearly accepted and recognized include the prohibitions of aggression, genocide, slavery, racial discrimination, crimes against humanity and torture, and the right to self-determination”.

⁵⁶ Mauro Barelli, “The Role of Soft Law in the International Legal System: The Case of the United Nations Declaration on the Rights of Indigenous Peoples”, (2009) 58 ICLQ 957, at 959: “... the Declaration is expected to fill a crucial gap, providing universal and comprehensive

protection to the rights of the world's indigenous peoples."

IFAD (International Fund for Agricultural Development), *Engagement with Indigenous Peoples: Policy* (Rome: IFAD, November 2009), at 7-8:

The Declaration establishes a universal framework of minimum standards for the survival, dignity, well-being and rights of the world's indigenous peoples. ... It outlaws discrimination against indigenous peoples and promotes their full and effective participation in all matters that concern them. [emphasis added]

⁵⁷ Office of the High Commissioner for Human Rights, "Indigenous rights declaration universally endorsed", 2010, online: <http://www.ohchr.org/EN/NewsEvents/Pages/Indigenousrightsdeclarationendorsed.aspx>.

Permanent Forum on Indigenous Issues, *Information on recent activities of the Office of the High Commissioner for Human Rights related to the rights of indigenous peoples: Contribution to the tenth session of the UN Permanent Forum on Indigenous Issues*, 8 April 2011, at 1:

The UN Declaration on the Rights of Indigenous Peoples serves as OHCHR's framework for action to further the advancement and protection of indigenous peoples' rights. The main priority of the Office is to contribute to the promotion and implementation of this key instrument,

along with relevant recommendations, comments and observations of UN human Rights treaty bodies, and Special Procedures.

⁵⁸ African Commission on Human and Peoples' Rights, "Resolution on the protection of indigenous peoples' rights in the context of the World Heritage Convention and the designation of Lake Bogoria as a World Heritage site", done in Banjul, The Gambia, 5 November 2011, preamble.

⁵⁹ *Ibid.*, para. 2.

⁶⁰ *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya*, African Commission on Human and Peoples' Rights, Communication No. 276/2003, Twenty-Seventh Activity Report, 2009, Annex 5, para. 204: "The African Commission notes that the UN Declaration on the Rights of Indigenous Peoples, officially sanctioned by the African Commission through its 2007 Advisory Opinion, deals extensively with land rights."

⁶¹ See, *e.g.*, Committee on the Rights of the Child, *Concluding observations: Cameroon*, UN Doc. CRC/C/CMR/CO/2 (29 January 2010), para.83; Committee on the Rights of the Child, *Indigenous children and their rights under the Convention*, General Comment No. 11, UN Doc. CRC/C/GC/11 (30 January 2009), para. 82; Committee on the Elimination of Racial Discrimination, *Concluding observations of the Committee on the Elimination of Racial Discrimination: Guatemala*, UN Doc.

CERD/C/GTM/CO/12-13 (19 May 2010), para. 11; Committee on the Elimination of Racial Discrimination, *Concluding observations of the Committee on the Elimination of Racial Discrimination: Japan*, UN Doc. CERD/C/JPN/CO/3-6 (6 April 2010), para. 20; Committee on the Elimination of Racial Discrimination, *Concluding observations of the Committee on the Elimination of Racial Discrimination: Cameroon*, UN Doc. CERD/C/CMR/CO/15-18 (30 March 2010), para. 15; Committee on the Elimination of Racial Discrimination (Chairperson), Letter to Lao People's Democratic Republic, 12 March 2010 (Early warning and urgent action procedure) at 1; Committee on the Elimination of Racial Discrimination, *Concluding observations of the Committee on the Elimination of Racial Discrimination: Peru*, UN Doc. CERD/C/PER/CO/14-17 (3 September 2009), para. 11; Committee on the Elimination of Racial Discrimination, *Concluding observations of the Committee on the Elimination of Racial Discrimination: Suriname*, UN Doc. CERD/C/SUR/CO/12 (13 March 2009), para. 17; Committee on Economic, Social and Cultural Rights, *Concluding observations of the Committee on Economic, Social and Cultural Rights: Brazil*, UN Doc. E/C.12/BRA/CO/2 (12 June 2009), para. 9; Committee on Economic, Social and Cultural Rights, *Concluding observations of the Committee on Economic, Social and Cultural Rights: Nicaragua*, UN Doc. E/C.12/NIC/CO/4 (28 November 2008), para. 35; and Committee on the Elimination of All Forms of Discrimination against Women, *Concluding observations of the Committee on the Elimination of Discrimination against Women:*

Australia, UN Doc. CEDAW/C/AUS/CO/7 (30 July 2010) (advance unedited edition), para. 12.

⁶² Paul Joffe, “Canada’s Opposition to the *UN Declaration: Legitimate Concerns or Ideological Bias?*” in Jackie Hartley, Paul Joffe & Jennifer Preston (eds.), *Realizing the UN Declaration on the Rights of Indigenous Peoples: Triumph, Hope, and Action* (Saskatoon: Purich Publishing, 2010) 70 at 87-89.

⁶³ General Assembly, *Situation of human rights and fundamental freedoms of indigenous people: Note by the Secretary-General, Interim report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people*, UN Doc. A/65/264 (9 August 2010), para. 85 (Conclusions). In the same paragraph, Anaya concludes: “The significance of the Declaration is not to be diminished by assertions of its technical status as a resolution that in itself has a non-legally binding character.”

⁶⁴ *Ibid.*, para. 87 (Conclusions). [emphasis added]

⁶⁵ See, e.g. *International Covenant on Civil and Political Rights*, article 27:

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture ...

Indigenous peoples may in diverse situations be minority in number, as compared to non-Indigenous populations in the particular States in

which they live. However, Indigenous peoples are not simply minorities. Indigenous peoples have the legal status of "peoples" and have the right of self-determination under international law.

See also Asbjørn Eide, "Cultural Rights and Minorities: Essay in Honour of Erica-Irene Daes" in Gudmundur Alfredsson & Maria Stavropoulou, eds., *Justice Pending: Indigenous Peoples and Other Good Causes*, Essays in Honour of Erica-Irene A. Daes (The Hague: Kluwer Law International, 2002) 83, at 87:

As so often is the case within the international normative system of human rights, there are close links between the cultural rights contained in Article 27 of the UDHR and the corresponding Article 15 of the CESCR with other rights contained in the International Bill of Human Rights. Most obvious are the links to the right to education, which can be seen as a cultural right in itself; the right to freedom of expression and information, which include a right also to cultural expression; the freedom of religion, since religions and cultures are closely interrelated; as well as freedoms of assembly and of association with others or depend for their meaning on interaction with others.

One of the cultural rights mentioned, namely the right to benefit from the protection of the moral and material interests resulting from any scientific,

literary or artistic production of which the beneficiary is the author, is closely related to the right of property. That right ... is contained in Article 17 of the UDHR. [emphasis added]

⁶⁶ Human Rights Council, *Report of the independent expert in the field of cultural rights, Ms. Farida Shaheed, submitted pursuant to resolution 10/23 of the Human Rights Council*, UN Doc. A /HRC /14/36 (22 March 2010), para. 10.

⁶⁷ *Ibid.*, para. 9. [emphasis added] As further elaborated in Human Rights Council, *Report of the independent expert in the field of cultural rights, Farida Shaheed*, UN Doc. A/HRC/17/38 (21 March 2011), para. 78 (Conclusions):

The right of access to and enjoyment of cultural heritage forms part of international human rights law, finding its legal basis, in particular, in the right to take part in cultural life ... and the right of indigenous peoples to self-determination and to maintain, control, protect and develop cultural heritage.

⁶⁸ UNDRIP, especially arts. 38 (legislative and other measures), 40 (effective remedies) and 42 (full application and follow-up). See also Committee on Economic, Social and Cultural Rights, General Comment No. 17, *The right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author* (article 15, paragraph 1 (c), of the Covenant), UN Doc.

E/C.12/GC/17 (12 January 2006), para. 28: “The right of everyone to benefit from the protection of the moral and material benefits resulting from any scientific, literary or artistic production of which he or she is the author, like all human rights, imposes three types or levels of obligations on States parties: the obligations to respect, protect and fulfil.”

Social and Economic Rights Action Centre and the Centre for Economic and Social Rights v Nigeria, African Commission on Human and Peoples’ Rights, Comm. No. 155/96, 15th Activity Report 2001-02, 31 at para. 44:

Internationally accepted ideas of the various obligations engendered by human rights indicate that all rights—both civil and political rights and social and economic—generate at least four levels of duties for a State that undertakes to adhere to a rights regime, namely the *duty to respect, protect, promote, and fulfil these rights*. These obligations universally apply to all rights ... [emphasis added]

⁶⁹ In regard to Indigenous cultural rights and related obligations, see UNDRIP, preambular paras. 2-4, 7, 9, 11 and arts. 3, 4, 8, 9, 11-16, 25, 31-34, 36, 37, 38, 40 and 41. See also General Assembly, *Second International Decade of the World’s Indigenous People: Note by the Secretary-General*, Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya, in accordance with paragraph 1 of General Assembly resolution 63/161, UN Doc. A/64/338 (4 September 2009),

para. 45: "...the Declaration affirms rights of a collective character in relation to ... cultural integrity".

Human Rights Council, *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, S. James Anaya*, UN Doc. A/HRC/9/9 (11 August 2008), para. 22: "The [Human Rights] Committee's general comment No. 23 (1994) on article 27 of ICCPR advances a broad interpretation of the international norm of cultural integrity in the context of indigenous peoples, understanding that norm to encompass all aspects of indigenous culture including rights to lands and resources."

⁷⁰ Permanent Forum on Indigenous Issues, *Information Note by the World Intellectual Property Organization (WIPO)*, Ninth Session of the Permanent Forum on Indigenous Issues (UNPFII), New York, April 19 to 30, 2010, para. 2 (new negotiating mandate). [emphasis added]

⁷¹ Permanent Forum on Indigenous Issues, *Report on the tenth session, (16 - 27 May 2011)*, Economic and Social Council, Official Records, Supplement No. 23, United Nations, New York, E/2011/43, E/C.19/2011/14, para. 39. [emphasis added]

⁷² Office of the High Commissioner for Human Rights, "International Human Rights Law", available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/InternationalLaw.aspx>:

International human rights law lays down obligations which States are bound to respect. By becoming parties

to international treaties, States assume obligations and duties under international law to respect, to protect and to fulfil human rights. The obligation to respect means that States must refrain from interfering with or curtailing the enjoyment of human rights. The obligation to protect requires States to protect individuals and groups against human rights abuses. The obligation to fulfil means that States must take positive action to facilitate the enjoyment of basic human rights.

Human Rights Council, *Report of the independent expert in the field of cultural rights, Ms. Farida Shaheed, submitted pursuant to resolution 10/23 of the Human Rights Council, UN Doc. A/HRC/14/36* (22 March 2010), para. 30:

It is the responsibility of States ... to create an environment favourable to cultural diversity and the enjoyment of cultural rights, by meeting their obligations to respect, protect and fulfil those rights. This entails taking a wide range of positive measures, including financial measures.

African Commission on Human and Peoples' Rights, *The Social and Economic Rights Action Centre and the Centre for Economic and Social Rights v Nigeria*, Comm. No. 155/96, 15th Activity Report 2001-02, 31 ["Ogoni Case"] at para. 44:

Internationally accepted ideas of the

various obligations engendered by human rights indicate that all rights—both civil and political rights and social and economic—generate at least four levels of duties for a State that undertakes to adhere to a rights regime, namely the duty to respect, protect, promote, and fulfil these rights. These obligations universally apply to all rights and entail a combination of negative and positive duties. [emphasis added]

⁷³ *Convention on Biological Diversity*, concluded at Rio de Janeiro 5 June 1992, entered into force 29 December 1993.

⁷⁴ *Ibid.*, article 1.

⁷⁵ *Ibid.*, article 3.

⁷⁶ In regard to fair and equitable benefit sharing arising from the use of genetic resources, article 5(2) of the Protocol only provides for benefit sharing in regard to “established” rights of Indigenous and local communities:

Each Party shall take legislative, administrative or policy measures, as appropriate, with the aim of ensuring that benefits arising from the utilization of genetic resources that are held by indigenous and local communities, in accordance with domestic legislation regarding the established rights of these indigenous and local communities over these genetic resources, are shared in a fair

and equitable way with the communities concerned, based on mutually agreed terms.

Similarly, article 6(2) of the *Protocol* refers solely to situations where Indigenous peoples and local communities have the “established” right to *grant access* to genetic resources:

In accordance with domestic law, each Party shall take measures, as appropriate, with the aim of ensuring that the prior informed consent or approval and involvement of indigenous and local communities is obtained for access to genetic resources where they have the established right to grant access to such resources.

⁷⁷ *Ibid.*, paras. 65-94. See also World Intellectual Property Organization, "Customary Law and Intellectual Property", http://www.wipo.int/tk/en/consultations/customary_law/index.html:

Customary laws are central to the very identity of many indigenous, local and other traditional communities. ... customary law can relate to use of and access to natural resources, rights and obligations relating to land, inheritance and property, conduct of spiritual life, maintenance of cultural heritage and knowledge systems, and many other matters.

Maintaining customary laws can be

crucial for the continuing vitality of the intellectual, cultural and spiritual life and heritage of many communities. For instance, customary laws can define how traditional cultural heritage is shared and developed, and how TK systems are appropriately sustained and managed within a community.

⁷⁸ See Committee on the Elimination of Racial Discrimination, *Concluding observations of the Committee on the Elimination of Racial Discrimination: Guyana*, UN Doc. CERD/C/GUY/CO/14 (4 April 2006), para. 15, where in regard to Guyana's legislation distinguishing "titled" and "untitled" lands, the Committee "urges the State party to remove the discriminatory distinction between titled and untitled communities from the 2006 Amerindian Act and from any other legislation." [emphasis added]

⁷⁹ Permanent Forum on Indigenous Issues, *Report on the tenth session (16 – 27 May 2011)*, Economic and Social Council, Official Records, Supplement No. 23, United Nations, New York, E/2011/43-E/C.19/2011/14, para. 27:

Consistent with the objective of "fair and equitable" benefit sharing in the Convention and Protocol, all rights based on customary use must be safeguarded and not only "established" rights. The Committee on the Elimination of Racial Discrimination has concluded that such kinds of distinctions would be discriminatory.

⁸⁰ In Canada, see for example *Rio Tinto Alcan Inc. v. Carrier Sekani Tribal Council*, 2010 SCC 43, where the Supreme Court of Canada made the distinction between “established” rights and “unproven” rights. The Court indicated at para. 41 that, in the face of proposed government action, both types of “existing” rights require prior consultation to protect such rights from harm:

The claim or right must be one which actually exists and stands to be affected by the proposed government action. This flows from the fact that the purpose of consultation is to *protect unproven or established rights from irreversible harm* as the settlement negotiations proceed ... [emphasis added]

⁸¹ Articles 5(2) and 6(2) of the *Protocol* run counter to article 10(c) of the *Convention on Biological Diversity* that requires States, as far as possible, to protect and encourage customary use of genetic resources “in accordance with traditional cultural practices”. Article 10(c) does not include any reference to national legislation or domestic law. Nor is there any reference to “established” rights in the *Convention*.

⁸² Grand Council of the Crees (Eeyou Istchee) *et al.*, “Nagoya Protocol on Access and Benefit Sharing: Substantive and Procedural Injustices relating to Indigenous Peoples’ Human Rights”, *supra* note 12, paras. 68-75.

Canada knew from its highest court that an “established” rights approach was “not honourable”,

but insisted on such an approach in the *Protocol*. See *Haida Nation v. British Columbia (Minister of Forests)*, [2004] 3 S.C.R. 511, para. 27:

The Crown, acting honourably, cannot cavalierly run roughshod over Aboriginal interests ... It *must respect these potential, but yet unproven, interests*. ... To unilaterally exploit a claimed resource during the process of proving and resolving the Aboriginal claim to that resource, may be to deprive the Aboriginal claimants of some or all of the benefit of the resource. That is not honourable. [emphasis added]

⁸³ Most First Nations in Canada do not have such "completed" agreements. For an analysis of Canada's draft position, see Grand Council of the Crees (Eeyou Istchee) *et al.*, "*Nagoya Protocol: Comments on Canada's Possible Signature and Draft Domestic Policy*", Joint Submission to the government of Canada (October 2011), paras. 50-68.

⁸⁴ *Ibid.*, para. 15.

⁸⁵ *Ibid.*, para. 154.

⁸⁶ Grand Council of the Crees (Eeyou Istchee) *et al.*, "Nagoya Protocol on Access and Benefit Sharing: Substantive and Procedural Injustices relating to Indigenous Peoples' Human Rights", *supra* note 12, paras. 22-26, 108, 172-173, 189(b), 202-203 and 213.

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- ⁸⁷ *Ibid.*, paras. 26-31.
- ⁸⁸ *Ibid.* paras. 37-56.
- ⁸⁹ *Ibid.*, paras. 112-120.
- ⁹⁰ *Ibid.*, paras. 126-136.
- ⁹¹ *Ibid.*, paras. 149-153 and 155-171.
- ⁹² *Ibid.*, paras. 5, 39, 166, 186, 199, 205-206, 210 and 228(x).
- ⁹³ *Ibid.*, paras. 78-79 and 99.
- ⁹⁴ *Ibid.*, paras. 99-103, 174-183 and 208-210. See also Joseph Henry Vogel, "Epilogue: Architecture by committee and the conceptual integrity of the Nagoya Protocol" in Manuel Ruiz and Ronnie Vernooy, eds., *The Custodians of Biodiversity: Sharing Access and Benefits to Genetic Resources* (New York: Earthscan, 2012) 181 at 181, <http://idl-bnc.idrc.ca/dspace/bitstream/10625/47481/1/IDL-47481.pdf>:

Delegations in nine working groups labored for years to draft a protocol for the Tenth Conference of the Parties (COP 10) which was held in Nagoya, Japan, 18–29 October 2010. Unfortunately, the experts in the delegations did not constitute an independent authority immune to political pressure ... Whatever conceptual integrity may have existed was expunged as the bracketed text began to lose the brackets. Although policymaking by consensus seems

democratic, it is anything but.
Coherence is effectively denied
everyone. [emphasis added]

⁹⁵ The international norm of "full and effective participation" is increasingly used in international processes and forums. However, in most instances, greater efforts are required to achieve this standard in practice. The special Rules of Procedure adopted by the IGC at its first session in April 2001 are not sufficient to attain this standard.

⁹⁶ General Assembly, UN GAOR, 61st Sess, 107th plen. mtg., UN Doc. A/61/PV.107 (2007) at 10 (Mr. Chávez (Peru), original in Spanish): "... in 1995, the draft was submitted for consideration to a working group of the Commission [F]or the first time in the history of the United Nations, representatives of indigenous peoples, who would enjoy the rights cited in the Declaration, actively participated in such a working group, lending unquestionable legitimacy to the document."

⁹⁷ According to the UN General Assembly, terms such as "noting" are *per se* "neutral terms that constitute neither approval nor disapproval: see Annex to General Assembly Decision 55/488 of 7 September 2001. Simply "noting" UNDRIP falls far short of the positive obligations of States in article 38 and 42 of the *UN Declaration*:

States in consultation and cooperation with indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration. (art. 38)

... States shall promote respect for and full application of the provisions of this Declaration and follow up the effectiveness of this Declaration. (art. 42)

⁹⁸ In international law and practice, the term most widely used is "Indigenous peoples". The progressive development of international law is an accepted international principle. To deny it when it relates to Indigenous peoples would be discriminatory. No State maintained objection to use of this term in UNDRIP, which is now a consensus international human rights instrument.

⁹⁹ See, e.g., Chidi Oguamanam, *Intellectual Property in Global Governance: A Development Question*, *supra* note 45 at 212: "In ... [the Convention on Biological Diversity], the loose language of its text, and that of the recent Nagoya Protocol on ABS, cast serious doubts on how seriously states may take their obligations under them."

¹⁰⁰ The general rules of procedure adopted for WIPO bodies, namely the WIPO General Rules of Procedure (publication No. 399 Rev.3), apply to the IGC, subject to any special rules of procedure that the Intergovernmental Committee may wish to adopt. See WIPO General Assembly, *Matters Concerning Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore*, Document prepared by the Secretariat, Geneva, Doc. WO/GA/26/6 (25 August 2000), para. 18.

¹⁰¹ Assemblies of Member States of WIPO, "Matters Concerning the Intergovernmental Committee on Intellectual Property and Genetic Resources,

Traditional Knowledge and Folklore, Agenda Item 31, DECISION", *supra* note 1.

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Fourth World Journal



We are not divided but ONE

By Susan "Lightening Hand" Perna

Last night the Great Spirit came to me in a vision to prepare me to write this article. These were the powerful words of wisdom that the Great Spirit imparted to me: "We are not divided but ONE!" meaning we are not separate, but we are all connected to each other through the Creator."

Right after that another powerful message from the Great Spirit thundered in my ear: "A good leader cannot lead the people unless he becomes one with them." meaning one cannot lead until he understands the people's hearts-becomes one with them."

I have heard the cries of my Native people. The silence has been broken and my heart weighs heavy with grief, Oh Great One hear my prayer:

"Oh Great Spirit whose voice I hear I the wind and the rain and thunder, hear my cry and the cry of my people. Oh Great Spirit, help us to hear as you speak. Help us once more to face the East, proclaiming thy warmth, the West, and feel soft wind on face and through hair. Oh Great Spirit, speak to my people to the north, to the south, on the mountains, in the valleys, let them

hear thy voice and follow. Oh Great Spirit, there be many tribe less, without a Chief, wandering in the wilderness alone. We ask you, Oh Great Spirit, to band us together and give us a Chief to guide, direct, teach our people. I seek a place where the elders can speak without fear and the children can listen without shame, a place where the holy men and holy women can pray and give blessings, a place where the warriors can have purpose again, show me the way out of the land of bitter water and into the land of sweet grass and sage so I may point the way to others.” Hoka heyshni. Written by Great Spirit leader “Fire Eagle”- Harold Parker

Today there is too much arguing that goes on between the full bloods and mixed blood Indians. There are many of the full bloods who have taken it on themselves to call Natives with mixed ancestry outsiders, wanna-be’s, and half breeds just to name a few. They harbor resentment over such trivial issues and deny mixed bloods or as I call them “the true hearts” and the “shadow children” the rights to the teachings of the elders and the cultural ceremonies. Intolerance grows like cancer and tend to choke away at the goodness of man. It was not the hope of the ancestors to have these prejudices of mixed blood versus full blood to linger on. One can see this through many of the quotations from Chief Seattle to Chief Sitting Bull. Those powerful and wise leaders saw a day when people from all Nations would be together as one and heal Mother Earth and each other- Adrian Case.

Though the full bloods have left the “true hearts” and “shadow children” to their own devices, one question remains: who is going to teach the future generations the way of the Red Road? In the not so distant past Native Americans

were small bands of people who were strangers in a strange land. Occasionally one band would meet another and they would come together for the good of all and their children. They would repeat this process and in time they came to be known as Native Americans, today. We are a people of many cultures and many of us mixed with Native blood. And if all of us seek the Red Road to the one God who is colorblind and is himself the color of water then does that not mean we are all his children? All we seek is guidance from those who know the way, those who have fathered us. We only want to be treated as family, yet some of the full bloods have turned their backs on us and have told those that would guide us to be silent -Raven One Heart- R.B.

However what they didn't count on is that we each have a piece of the puzzle and together we have the whole picture. A new generation has been born, those that can truly see what the creator intended for all. Let us all look beyond the color and see the heart of the new people, for all that has been done is in the past and cannot be undone, but we today can work to repair and heal and become one people as we were meant to be by passing on the wisdom of our ancestors to one another and treating each other with brotherly love. *"We need to put our past prejudices aside and make a way for the new generation,"* so said Dennis Binns.

Since the full bloods have left us the "true hearts" and the "shadow children" in the parched barren desert to live as Nomads wandering around with no clear sense of direction, It is up to each one of us to find new teachers who will guide us back to the land where the living waters flow freely; where all are welcome to drink of the

spiritual waters of our ancestors words of wisdom that will quench our thirst and satisfy our bellies. In the ancient of days after the Nomad tribes spent days on end wandering in the wilderness by alone with no leader they would eventually band together and chose a new leader. And in time the Nomads would outnumber those who cast them out. This is symbolic of what is happening between the full bloods and the mixed bloods today. The so called “wanna be's cling more dearly to the value system of caring for one another and expressing brotherly love more so than the full bloods. This goes to show that some of the full bloods did not really value the system of the so-called “tribes” in the first place! If they did then they never would have rejected their own people in the first place.

We the people must come together, (the communities, and society) to unite as a whole to heal the ones who were forsaken so that future generations will not be left in the darkness and start following the path of our ancestors. Will you join us on the Red Road of healing? Would you be willing to call those who are different than you sisters and brothers? The Creator and our ancestors have given us a vision of global peace. A warrior has emerged within me; I have woke up, and this warrior is standing before the world, he is standing for respect, trust and to be heard. A fierce storm is coming and few will survive; those who do will be taught to live from the land as we once did and love and accept one another without prejudice. The difference between the Indians of the new world is that, they will become one race, given only one language.

We need to quit thinking of race and start working for the world that the Great Spirit desires

of us. There will not be any more radically distinct languages; their voices will become one; as all others have disappeared; the new indigenous tribe will emerge. Let us get back to the old ways. Let us move away from materialistic dreams and move closer to caring for each other like our ancestors did. That is my desire. Let us learn from our ancestors. The key to many things can be found there. Much can also be learned there. Let us remember and move forward to create a world that the Great Spirit wants us to have. Let us be strong caretakers of Mother Earth and let us also teach others.

New nations will stand and use their voice's to be heard as we sing our songs of peace, play our drums, and dance to a new beginning. *As the new Americans Indian inhabits this nation, we will never surrender. "We will survive. I dream to inspire and I inspire to dream,"* so said Gaylord Spirit Hawk Brooks.

* * * *

Ever since I found out about my Native American ancestry I have been heavily involved in walking the Red Red." I pray and meditate on a daily basis to become closer to my Creator. The vision I had for the Fourth World Journal came to me from Spirit.

A very prominent and respected American Indian medicine woman told me that the Creator told her that I was born a medicine woman and that writing is my medicine. My teacher the Medicine woman taught me that anyone could be a medicine woman or man, not just Native people. Creator blesses everyone with gifts not just a certain race or class of people. The Creator's

power is not restricted either. It can be used however it best serves a purpose.

About the author

Susan Perna is a freelance writer. She has written several articles touching on spirituality and mental health. I have written for several magazines including *Spotlight on Recovery magazine*, *Phatitude* literary journal, *Buddhism.org*, and *Open Minds Quarterly magazine*.

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Threat of Globalization to Indigenous Peoples' Culture and Identities in India

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Abstract

The paper brings out in detail an analysis on how the western centric globalization with its huge profit motives has resulted in the loss of culture and identities of indigenous people in India. The developmental policies that the government of India taken up aftermath of globalization to meet its demands has created a big divide between haves and have-nots, the latter were being the indigenous people. The peculiarities of indigenous people in their socio-economic, cultural and political life and how their distinctness has been eroded in the wake of globalization have been meticulously explained.

Indigenous peoples in India are popularly known as tribes, *adivasis* (first settlers), aboriginals and *vanajatis* (forest dwellers). They settled in India much before the advent of Aryans and Dravidian invasions and are considered to be the

original inhabitants of the Indian sub-continent (Sarkar & Dasgupta, 2000). Social scientists and anthropologists have used various terms to describe these people. Some scholars designated them as 'primitives' and some other like Gillin and Gillin defined them as a collectivity of local groups having a common area, who use similar language and have a common culture (Upreti, 2007). Indigenous people of India derived their origin from six main races viz. Negritos, Proto Australoids, Mangoloids, Mediterraneans, Western Branchycephals, and Nordics that came to India in ancient times. Indigenous people are distinct in their socio-economic, cultural and political life compared to the mainstream people. Their distinctness is marked by their remoteness in living in far-flung forest areas, hilly tracts, inaccessible areas where the absence of modern transport and communications is clearly visible. They lived in diverse eco-settings and have been classified by Vidyarthi (1981) in to seven cultural strata based on their ecosystem, traditional economy, belief in super natural power and recent impact. These are: (a) forest hunting, (b) primitive hill cultivation, (c) plain agricultural type, (d) simple artisan group, (e) pastoral and cattle herders, (f) industrial, and (g) urban workers type (Sarkar & Dasgupta, 2000).

India has the largest concentration of indigenous people in Asia and second largest in the world (Upreti, 2007). There are more than 3000 such indigenous communities having different dialects found in different parts of the country. The government has recognized only 576 of them. The government of India refers to indigenous people as 'Scheduled Tribes' and their population according to 2001 census is 84.33

millions corresponding to 8.2 percent of the total population (Census, 2001). The recognized communities are grouped into plain tribes and agency tribes (primitive tribes) in order to facilitate special provisions for primitive tribes. Indigenous people in India are historically marginalized and live in extreme poverty. The majority of indigenous people live across a region stretching from the state of Gujarat in the west to seven states in the north east India, with the highest concentration in central India (in the states of Madhya Pradesh, Orissa, Maharashtra, and Chattis Garh) (Upreti, 2007).

They are isolated and discriminated in every walks of socio-economic, political and cultural life. In fact, for outsiders they appear to be rigid, stubborn, and unwilling people to give up their cultural ethos and religious lifestyles. But there is nothing wrong in safeguarding their culture as they are very strong in dogmas and rituals and high self respected people indeed. Before the advent of Aryans and other invasions by non-Indian kingdoms the indigenous people were happy and content in their life as they treated forest as their mother goddess, depended on it for their livelihood, embraced nature and protected it. They had their own political systems and kingdoms with chieftain as their head and strict rules and regulations. All these peculiar features have been eroded in course of time after the advent of modernized Aryans, who brought modernity to Indian subcontinent and eventually acquired tribal kingdoms, looked upon them as uncivilized and barbarous people. Further, they lost their identities and their sufferings got intensified during the British Rule and the same was reinforced in the era of globalization,

liberalization and privatization.

Impact of Globalization on Indigenous People

Globalization is a buzzword. It is a multi-dimensional process constituted by complex and contradictory interactions of global, regional, and local aspects of social life. “Globalization is like prism in which major disputes over the collective human condition are refracted: questions of capitalism, inequality, power, development, ecology, culture, gender identity, population, all come back in a landscape where globalization did it”(Nederveen, 2009). It is marked by both consensus and more by controversies.

Globalization is all embracing, yet carries with it fears among people such as erosion of identities, culture, and losing control of lives to heartless and faceless mega corporations and markets (Legrain, 2002). The origin of globalization which is an invention of global capitalism in 1980s and 1990s has brought remarkable changes in social, economic, political and cultural aspects across the world in general and India in particular. The thrust of globalization is on integration and internationalization of regional economies, cultures and political institutions and brings all the cultures and economies under single unified entity i.e. ‘global’. It emphasizes on free movement of goods, ideas, cultures and traditions across the world. This process of integration has profound effects on the cultures and identities of less developed countries as it is tilting towards the western and American dominance. The economies and political institutions of developed countries are far superior to underdeveloped countries and hence their

cultural domination prevails on less developed. Globalization is more than just about economics. It is not only about the ratio of exports to Gross Domestic Product (GDP) but also about culture, society, politics and people (Rangarajan, 2007). Globalization destroys cultures and identities in many ways.

India embraced the idea of globalization in 1990s with its new economic policy and structural adjustment programs. As such innumerable industries, irrigation projects (dams), companies and educational institutions both local and global have been established all over the nation. These developments may have contributed immensely for the development of the nation but along with that it has given rise to several human rights issues, which are as important as the development of the nation. Huge tracts of land (both form and waste land) have been acquired and the green forest cover has been cleared for the sake of establishment of developmental projects (particularly large dams, mining activities and steel plants). As the forests and mountains are the most viable physical features for these developmental initiatives, the worse sufferers are indigenous people (popularly called as tribes in India) who live in forests and mountain areas. Since these indigenous people are backward in all walks of life (political, economic and social) due to their distinct identities and isolated lifestyle and existence. The lack of education and political power make them more vulnerable to government initiated developmental projects which in no way beneficial for them. Globalization always serves the interests of corporate bodies, private capitalists and corrupt political leaders and eventually creates a huge divide between the rich and poor.

Indigenous people in India present a significant degree of social, cultural and ethnic diversity. Globalization is not merely a question of marginalization for indigenous people it is a multipronged attack on the very foundation of their existence and livelihoods. In the name of 'public interest' and 'national development' the innocent indigenous people sacrifice all the minimal resources under their possession and move to the towns and cities in search of livelihood. This kind of discrimination is against the spirit of democracy. The problems and sufferings they face in the towns and cities are so horrendous for indigenous people that cannot be explained in terms. They lose their culture, identity, customs, and dignity and adjust with the mainstream culture and end up as wage labourers, rickshaw pullers and confine to slums for living.

In the forests, they live a life of dignity and self-respect with whatever little they have without altering the nature and over exploitation of resources. They make their living by making beautiful varieties of baskets; toys etc. with forest products and sell them in the market. This simple living is lost due to globalization that results in the manufacturing of modern goods, modern culture, and modern education. Globalization with its chief motive of rapid profits has a huge toll on the identities of indigenous people in India. Why should people across the world madly embrace an idea that emphasizes on common culture, common identity, or cosmopolitanism etc.? What is wrong if people preserve their distinct identities, dialects, culture etc. and grow along with their tradition? Indigenous people have lost all these valuable and rich cultural identities in the wake of globalization. Globalization has

pushed them farther more backwards rather than contributing anything for their growth and development.

To meet the demands of globalization building of dams for irrigation purpose and initiation of mining activities have been given immense priority by the government of India. These two initiatives together are perceived as juggernauts for having adverse effects on indigenous peoples' identities. Starting from the Hirakud Dam in the state of Orissa in 1940s to the present ongoing major projects like Polavaram Dam in the state of Andhra Pradesh, there are around 3600 Dams built in India since independence. As the areas inhabited by indigenous people are rich in mineral resources their lands have been acquired for mining and establishment of steel plants and industries without giving any consideration to their voices and concerns. Kennedy (2011) points out that "the state cares more about minerals lying below the ground than the 'adivasis' (indigenous people) living below it" (Kennedy & King, 2011). The consequent effects of displacement due to land acquisition for developmental projects spread to generations. The problems such as disrupted community life, profound psychological trauma, change of environment and loss of traditional means of employment etc. are some of the crucial problems of indigenous people due to developmental projects.

Despite agitations by numbers indigenous peoples against land acquisition, Governments at both central and state level are aggressively going ahead with it. To mention a few instances, the government of Andhra Pradesh has signed with Jindal group for bauxite mining in Vishakapatnam district showing blind eye to the protests by

indigenous people (The Hindu, 2005). Very recently, Orissa state government has been pushing ahead for acquiring land for Posco steel plant amidst huge protests by indigenous people. PSUs (Public Sector Undertakings) like NMDC, Steel Authority of India Ltd. and Coal India have been established in the state of Chattisgarh, which is very rich in minerals but spend only 3 percent of their profits for the local area development, instead of spending 20 percent as per norms (The Hindu, 2010). This kind of differential attitude towards indigenous people accounts for gross violation of their rights.

According to the research finding for the period 1947-2000 the total number of development induced displaced and others economically deprived of their livelihood without relocation is more than 60 millions (Fernandez, 2007). Amongst them only about one third have been resettled in a planned manner and for the rest of the people there is no evidence of resettlement. If we look in to some of the states regarding resettlement of displaced people it gives a clear idea about how the injustice has been done to the victims of displacement. In Orissa only 35.27 percent of displaced have been resettled (Fernandez and Asif, 1997), in Andhra Pradesh 28.82 percent (Fernandez, 2001) and in West Bengal a meager 9 percent of 3.7 million displaced have been resettled (Fernandez, 2006). Apart from this even where rehabilitation was done, it was not done in the proper meaning of the term as rehabilitation means bringing to the former condition i.e. providing all that is lost viz. land, house, common property resources and facilities to safeguard their cultural aspects. Amongst all the victims of displacement indigenous people constitute more

than half. In India, majority of people take displacement for granted because most of the displaced are powerless and poor indigenous people (Fernandez, 2007).

Loopholes in Land Acquisition Act and Rehabilitation Policies

The colonial 'Land Acquisition Act 1894' is the only existing law for land acquisition in India. It shows how negligent and indifferent the government towards indigenous people in India. It was only in 1980s after a long gap of more than a century that the need for rehabilitation came to lime light in the wake of several protests by civil society organizations, NGOs, and indigenous peoples' organizations. The Land Acquisition Act of 1894 only specifies how the land could be acquired with payment of compensation in cash and does not take in to consideration the entitlements of indigenous people for resettlement and rehabilitation. Rehabilitation implies bringing to the former condition. But, as the indigenous people mostly depend on Common Property Resources like forests, grazing fields, water etc. these are not given due importance while drafting a rehabilitation policy. Even the law in India considers only the individual entitlement as one's own property and the Common Property Resources are exclusively under the domain of states authority.

The most serious issue to be considered here is there is still no uniform rehabilitation policy in India. Only few states have framed their own rehabilitation policies. These policies are framed without taking into consideration the views and aspirations of indigenous people who are the main

victims. Further, the policies look so sound on the paper and when it comes to implementation the officials turn a blind eye and there is no proper mechanism for redress of grievances. Policy is concerned more with protecting the interests of big business rather than livelihood security of the indigenous people (Fernandez, 2004). In the preamble of the National Rehabilitation Policy 2006 certain specific safeguards were mentioned but the main lacuna is that the preamble is not an actual part of the policy. The affected people have no say in determining the dam site. There is no mention of specific court of law for redress of grievances in the policy. The principle 'eminent domain' is invoked to acquire land. And there is no provision for land for land in the policy. Land will be provided only if government land is available. Hence, there is no concern for deprived people particularly the indigenous people in India and all the government policies are framed in such a manner that they serve the interests of only the rich and private business people.

Police Harassments and Killing of Indigenous People

When there is a clash of interests between different sections of the society, the claims of the weaker sections without any political clout are ignored (Subbareddy, 2006). It is painful to note that whenever the indigenous people protested for their rights and claims they met with serious response from state authorities like they were beaten up, shot and some of them were put in jails on false cases. To mention a few cases- in January 2006, 12 persons of indigenous community were shot dead while protesting against the acquisition of their land for the construction of a steel plant

in the state of Orissa. In another instance, 3 members of indigenous people were killed in a protest against bauxite mining in Rayagada district of Orissa in December 2000 (Balagopal, 2007).

In the state of Andhra Pradesh people met with police harassment and arrests while protesting against Polavaram dam project in January 2007; Police also fired at the agitators in Bhadrachalam in Khammam district when they asked for stopping of survey works for the construction of the dam (Umamaheswari, 2007). In another incident in February 2011, 2 people were killed in police firing in Srikakulam district of Andhra Pradesh while protesting against establishment of a thermal power plant (The Hindu, 2011). Likewise the list of police killings of indigenous people goes on; it is an un-ending process and keeps the spirit of democracy at bay. Such has been the states attitude towards the indigenous people since independence. It ranges from neglect to disregard of constitutional obligations for indigenous people (Sharama, 2006).

Darwin has rightly said that 'might is right'. It is truly applicable in the case of indigenous people in India. Being innocent and powerless they have paid the price for globalization induced developmental policies in India. In its hunger for internationalization, globalization has inflicted innumerable sufferings on indigenous people and affected their distinct culture and identities. Is it possible to stop globalization? It is difficult to answer but it is high time that all the national and

international instruments for the protection of indigenous people, their culture, economy and identities should be re-shaped and redefined for justice to be justified. By doing so, the spirit of democracy and humanity will indeed be realized.

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México's Food Security and Civil Society organizations, A global affair

By Rudolph C. Ryser, PhD

{Adapted from "México es la seguridad alimentaria y las organizaciones de la sociedad civil, un asunto global" delivered as a lecture on 26 November 2011 at the Universidad del Valle de Atemajac-Vallarta [UNIVA] on its 20th Anniversary as the first in a series of lectures entitled: "Construyendo puentes de cooperación: la globalización y el emergente sector sin fines de lucro"} }

As a member of the Public Service Leadership faculty at Capella University and as the Board of Directors Chairman for the Center for World Indigenous Studies I have what I consider to be a distinct academic and professional responsibility to join my international relations experience, experience as an advisor to governments and business, and non-profit organization leadership with my scholarship in the fields of indigenous peoples' food history, food security and climate change. It is in this context that I shall explore in this essay the subject of *México's Food Security and Civil Society organizations. A global affair.*

I am a firm advocate of the scholar-practitioner model. It is this approach that calls on the scholar to investigate, explore, synthesize and critique questions that advance and expand our understanding of the material and immaterial worlds while systematically formulating and implementing practical applications testing that knowledge in everyday life. While it is perfectly legitimate for scholars to passively seek truth and document their thoughts for use by other scholars to advance knowledge, it is equally important for scholarship to directly serve the social, economic, political and cultural needs of the daily world in which we live.

Sectors identified

Three organizational sectors dominate the local, regional and global social, economic, political and cultural environment in México. Governments such as the *District Federal* and the *municipio* and the local community governments



are called upon to establish policies that promote the welfare of citizens. Their mission is to provide for the common welfare, ensure justice and provide for security. Businesses are called on to create wealth through the application of labor and resources promoting prosperity benefiting citizens to ensure the common good. Civil Society organizations (also known as Non-profit organizations and cooperatives) fill the gaps left by government and business to advance social change, promote social justice and improve the quality of life. Given these rather brief descriptions, admittedly all too brief, one can see that the role of non-profit organizations seems an apt response to the limitations of government and business.

Non-profit or community self-help activities through civil-society institutions have existed since well into the pre-Hispanic ages when the Méxica, Mixe, Zapotec, Nayari, Waxárika and other indigenous nations ruled the Méxica civilization. Clearly, the practice is deeply embedded in the indigenous peoples of México and continues in local communities to this day. While it is true that civil society organizations worked in the 18th and 19th century to support education, promote health, reduce poverty, and contribute to the México's economy they remained a small part of the economy and were rendered even less important during the seventy-one-years of Institutional Revolutionary Party rule. PRI's governmental programs extended deeply into communities throughout México during this period limiting the demand for civic organization.

The Mexican government enacted its law governing the formation and operation of civil society organizations in 1987 though rules had long existed in general. This law provided the basic guidelines for non-profit organizations in México. It is a rather limited guide that demands, by virtue of its limitations, a stronger and better-considered body of laws to support and encourage the non-profit sector.



With the election of President Vicente Fox in 2000 the non-profit sector was more strongly encouraged and indeed promoted. In 2004 the Mexican government enacted the *Law to Encourage the Activities of Civil Society Organizations*. This law established two important mandates: It directed that various governmental secretariats work to

promote citizen participation in community service organizations; and it established a *Registry of Organizations* now administered by the Secretary of Social Development (SEDESOL). In the last ten years, the number of non-profit or civil society organizations working across México has increased to more than 35,000 community-based, regional, countrywide and international organizations. Compared to the number of civil-society organizations in the United States and the European Union, México's civil society sector is clearly in its infancy.

With these important efforts, there still remains much to be done. For the non-profit sector to grow and flourish as it has in other countries, both government and business will need to step forward lending improved laws, strong financial support, and strong support of educational institutions such as UNIVA. The Analytical Report on the Civil Society Index of México produced by *Centro Mexicano para la Filantropía*, the World Alliance for Citizen Participation and the Citizens' Initiative for the Promotion of a Culture of Dialogue documented 35,357 civil society organizations throughout México. Most of these organizations concentrate on social support or aid services, community development and 8% focus on health. More than 10 thousand organizations concentrate on education, research, the environment and human rights. Of all civil society organizations in México just 283 function as philanthropic organizations.

Civil Society organizations in México rely primarily on two sources for revenue: Individual donors, and government. Many have voluntary employees and a little more than a third have an average of five employees. Overall the civil society

sector employees about 1 million people in Mexico and manages an estimated \$120.6 billion MxPeso (\$8.9 billion dollars). In the United States of America, 1.6 million general non-profit, private foundation, and public charity organizations administer more than \$1.8 trillion in revenues. Most of these revenues (70%) are spent by public charities with general non-profits handling about 21% and private foundations managing about 2% of those revenues.

Puerto Vallarta is home to scores of non-profit organizations, non-governmental and other so called “civil society” organizations. Most of these organizations, such as *Feed the Children Vallarta and School of Champions* that feeds an estimated 2300 children per day and *Grupo Ecológica de Puerto Vallarta* that promotes adoption of dogs and cats and *Asociación Down* dedicated to the rehabilitation of Down’s syndrome children, are the kinds of organizations that make up the vast majority of non-profit organizations in Puerto Vallarta, México country-wide and across the hemisphere.

Non-Profit globalization

An example of the significance of non-profit organizations in a globalized world is the **United States-México Chamber of Commerce (USMCO)** established in 1973 as a non-profit business association. It was chartered in Washington, D.C. as a coalition of businessmen established to promote trade, investment, and joint ventures between companies in the United States and in México. The Chamber now has twenty offices (10 in México and 10 in the United States). This non-profit organization works to bridge legal and regulatory differences between the countries as

well as differences between the economic systems, language and cultures.

Another globalized non-profit organization is the **Institute of the Americas** founded in 1983 and established to promote cooperation between the public and private sectors to “improve, the economic, political and social well-being of people in the Americas.

AMEXTRA, the **Mexican Association for Rural and Urban Transformation**, is an example of a México-founded non-profit organization established in 1984 that organized a collaborative association with Medical Teams International in Portland, Oregon, United States. AMEXTRA’s mission is to “promote the holistic transformation of marginalized communities in Mexico” providing education workshops on hygiene, healthy diets, appropriate technology, microfinance, emergency services, and infant care in ten (10) states and 350 communities and Mexico City serving more than 100,000 people each year. AMEXTRA’s association with Medical Teams International provides funding and resources to local communities.

These examples of international cooperation between civil society organizations demonstrate a growing trend toward globalization for non-profit organizations.

Non-profit organizations in Mexico Globalization then and now

Modern state globalization policies are dramatically changing the demands on civil society organizations throughout the world. Organizations are now deeply engaged in local and global negotiations to identify mitigation and adaptation

strategies for responding to the adverse affects of climate change. Of all the countries in the world, México has become the center of global concern over the security and future availability of critical foods needed to feed many world populations. The combined concerns over the adverse affects of climate change and México's centrality to the global food supply place a special burden on the small but growing Mexican civil society sector. It is this sector that may most productively and seamlessly ensure the continuity of México's food production capacity that is the small farmers and subsistence farmers.

In the decade beginning in 1999 over 80% of the economic losses resulting from weather-related disasters, according to México's 2009 report to the Food and Agriculture Organization, occurred in the agricultural sector. Drought was a major factor in the loss of food production. Most of these losses occurred in industrialized, modern agricultural businesses. To be sure, small farmers and subsistence farmers suffered losses, but at a much smaller proportional rate per hectare planted in a season. Relying on diversification as a short-term reaction to weather changes, replanting and switching to drought resistant "subsistence maize" small farmers and subsistence farmers remained productive. These farmers responded to adverse weather changes, as did their ancestors more than 2000 years ago. México's small farmers and subsistence farmers constitute a legacy borne of the successes of an earlier age that remain in place to generate new and adaptive strains of nutrition dense food that can continue to feed México and the world.

México's indigenous knowledge systems supported an agriculture system that successfully weathered environmental and climatic changes (volcanoes, droughts, frosts for example) that provided sufficient nutrition for a growing population for more than 2000 years. That system built on and elaborated a food production system that saw population growth of more than 7% per year. México's ancient food system engaged in its own globalization project extending its reach from Yucatan to the great lakes and central regions of what is now Canada and the United States as well



as the upper regions of the Amazon in Brazil and throughout what is now the Caribbean. In addition, the peoples who lived in what are now the states of Nayarit, Jalisco, Michoacán, Colima and Guerrero, extended their reach to what is now Columbia, Ecuador, Peru, Bolivia and Chile. For

more than three thousand years the globalization project emanating from México promoted wide distribution of maize, manioc, chia, cacao, pineapple, huazontli, cacuahuti, avocado, jitomati and chilis. The hemisphere benefited enormously from México's food domesticating and food transforming abilities rooted in its ancient cultures. México too was a major beneficiary of this global reach with the introduction of metallurgy from South America's northeastern shores, textiles, and architectural influences.

México's food domestication and transformation heritage, indeed its very capacity to continue as a nursery of human foods is in jeopardy of being destroyed. The loss of human generated food security produced by small farmers and subsistence farmers will endanger not only nutrition dense foods for the Mexican people, but for peoples on virtually every continent who depend on México's continuing food diversification.

México's ancient food generating food system is not now being jeopardized by changing climate, but by human created policies and practices intent on eliminating what some consider a backward and inefficient food production system. Just as the original food support system of México is so needed when the world experiences dramatic climatic changes that threatens food security worldwide, spending and subsidies in support of small farms and subsistence farmers have been cut or completely curtailed. These and other policies privatizing *ejidos* combine to create a risk of collapsing México's fundamental food system.

This need not happen, and indeed, it should not be allowed to happen. Government and

business sectors depend on healthy people to maintain a stable social and economic system. Redefining policy to recognize small farmers and subsistence, as an essential part of a modern and economically secure México will be necessary to ensure its continuity. Civil Society organizations dedicated to enhancing the ancient food producing systems of México providing economic, political and social support to small farmers and subsistence farms will significantly change the present trajectory of decline. México's government and business sectors should recognize the more than 50 thousand small and subsistence farmers and a part of the non-profit sector where they will be allowed to receive public support, business support and government support without taxation. They should be considered part of civil society due to their centrality to the food security system.

The liberalization policies advantage the commercial system, but undermine the very system that promotes effective food security strategies responsive to climate change. In other words, the current liberalization policies are removing the ability of Mexico's indigenous peoples to produce sustainable food sources adapted to the adverse affects of climate change. This is both risky for the health of the population and a major risk for long-term economic stability in Mexico.

Hallie Eakin writes in her recently published book, *Weathering Risk in Rural Mexico*,

It is important to recognize that the policy decision to orient public support for production only toward farmers who fall within a narrow definition of commercially viable has significant welfare and economic consequences for those who are by definition excluded. If smallholder agriculture has truly been

written off, then opportunities to develop viable alternative (rural livelihood strategies must be supported. (Eakin 2006, 202-203)

The modern era of globalization has placed México in the center of decisions about the ability of humanity to survive in the face of changing climate. And, the first consideration is where will food come from? México is and has been the nursery of foods that now feed the world. Continuing its culturally rooted capacity to diversify food sources is only possible if the people who continue to practice the successful methods of farming that adapted foods to changing climates over the last 2000 years become recognized as a major asset to Mexican society. Removing the stigmas associated with small farming and subsistence farming by indigenous peoples is essential, and recognizing this small farming sector that produces 40% of the foods consumed in Mexico as a part of civil society may be the most reasonable approach to ensuring the economic and social stability of México itself.

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