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Massey University

**Biopiracy and Intellectual Property over Natural Resources:
the consequences for Tobas.**

A comparative work with the New Zealand experience.

Thesis presented in partial fulfillment of the requirements for the degree of
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*To My Father
In Loving Memory*

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I. INTRODUCTION

Indigenous groups have always been discriminated against in Argentina. Since colonization ages their land was systematically expropriated under the, what became known as, *terra nullius* principle. Genocide took place not only in Argentina but in most countries of Latin America, thus only few groups remain and some of these face extinction. For the “survivors”, the scenario is not promising, they are living in indigenous reserves, (most of which are not in fertile land), in very poor and unhealthy conditions facing potential diseases such as cholera and tuberculosis.

The scenario is not necessarily the same for the indigenous people of New Zealand: the Maori. The conquest of the islands by British was made in a more peaceful way if compare with other cases. However, there were also wars, confiscation of lands, and suppression of traditional Maori practices. Nowadays, while Maori are integrated to the society some of the injustices of the past are seen as affecting their spiritual and material way of life.

It is claimed by indigenous activists that, the Intellectual Property Regimes (IPR), under the World Trade Organization (WTO) agreements could make indigenous people face the possibility of being deprived of the free use of plants that they have been using for centuries for food and medicinal healing purposes among others, because of the patenting processes of multinational companies. In addition, aborigine communities could find themselves negotiating without full knowledge of the purpose of the extraction or the use to which the material will be put; and because of

biopiracy, not receiving royalties in exchange for their knowledge of plants. In this context, their situation would become even worse.

However, if these processes and agreements were being made in a more equal and fair legal context, they could obtain the royalties for the use of their knowledge by pharmaceuticals or seed companies, as other people obtain royalties for their knowledge in more “traditional” or market-oriented industrial areas. This money could help them to achieve other goals such as a more indigenous-oriented education, or start their own productive activities to give just some examples. These kind of agreements are part of a more general discussion that includes the rights of indigenous peoples to regulate their own traditional knowledge (TK), this involve: defining what TK is to any given indigenous community, as well as developing norms and standards around who outside the indigenous community can access their knowledge, under what conditions and for what benefit.

This research will analyze the Argentine and the New Zealand cases to compare the public policies implemented in both countries and the effects on indigenous peoples. Detailed objectives are going to be mentioned further on this thesis.